

Verve

Case officer:

Ailo Krogh Ravna

E-mail:

ailo.krogh.ravna@forbrukerradet.no

Our date:

12.05.2020

Our case:

20/6987 - 6

Your date:

Your case:

Concerning Verve collection of personal data through the app Perfect365

Dear madam/sir,

We would like to address a number of issues related to Verve, through its platform Receptiv, collecting personal data through the app Perfect365, as detailed in chapter 6.2.1 of our report “Out of Control”.¹ We find the data collection that we observed Verve engaging in to be alarming from a data protection and consumer rights perspective.

As far as we are aware, Verve has not responded to the findings of the report. Therefore, we want to take this opportunity to outline several problematic practices that we have observed through our work.

We would like to start by saying that throughout our report and this letter, we refer to “personal data” as set forth in GDPR Article 4(1). This includes any information relating to an identified or identifiable natural person, including identifiers such as Android Advertising IDs and IP addresses. As described in chapter 6.1 of our report, location data can be used to identify individuals, and is therefore considered personal data. We note that the Verve privacy policy operates with a definition of “personal information” that does not include IP addresses. However, as Verve is processing the data of individuals situated in Norway, the GDPR applies, which means that this is also personal data.

We would also like to emphasize that the Norwegian Consumer Council is not a regulatory body or supervisory authority. We are a governmentally funded interest organization working for consumer rights.

When the report was published on January 14th 2020, the Norwegian Consumer Council did not formally file complaints to data protection authorities against the data collection we observed from Verve. However, as far as we understand, the data collection that we observed Verve engaging in lacks a valid legal basis for processing, and consequently does not comply with the GDPR.

¹ “Out of Control” <https://www.forbrukerradet.no/out-of-control/>



On the same day, the Norwegian Consumer Council and other consumer organisations asked data protection authorities to take action regarding all processing activities and sharing of personal data described in the report.² Additionally, on March 4th 2020, eleven digital and human rights organizations sent letters to their national data protection authorities, voicing concern about the data collection practices from a human rights perspective.³ This call for investigation includes our findings regarding Verve.

As described in chapter 6.2.1 of 'Out of Control', during our testing of the app Perfect365, we observed transmissions of personal data such as the Android Advertising ID and GPS coordinates to Verve.

Some of these transmissions containing personal data were sent unencrypted. As described in Mnemonic's report, this is a serious security issue.⁴

We acknowledge that third party service providers may need to collect some data in order to provide various in-app functionalities. However, as far as we can understand from the Verve privacy policy, Verve reserves the right to use the data collected from Perfect365 for a variety of its own commercial purposes.

In order to make advertising messages as relevant as possible, precise location data may be used for targeting ads and as input into location targeting segments based on the characteristics of locations. Location data is also used to count impressions, clicks, and other metrics to model household locations for the purposes of demonstrating marketing impact of advertiser campaigns. Location data that you provide to an app or web site may be provided to Verve for ad serving or reporting purposes. In addition, supplemental information may also be used such as a device's speed of movement and positioning, proximity of nearby devices, or similar information available from an operating system. You can opt-out of the use of precise data for location-based tracking by using the settings available on your mobile device. Ads will continue to be selected for you based on more general information, such as location that can be inferred from Internet Protocol (IP) addresses or other data.⁵

The consumer is not in a position to know how this information may be used or shared, and how to meaningfully be in control. As described in the report, consumers have no way to understand how their personal data is shared with third parties. In short, consumers expect that personal data stays between them and the apps that they use.

² "Consumer organisations call to stop online advertising companies' massive surveillance practices infringing EU laws" https://www.beuc.eu/publications/beuc-x-2020-002_letter_to_executive_vice-president_vestager.pdf

³ "Rights Organizations Warn about Unlawful Data Exploitation in Popular Apps" <https://www.liberties.eu/en/news/7-eu-countries-warn-about-unlawful-data-exploitation-of-popular-apps/18864>

⁴ Mnemonic report, chapter 3.3.4 <https://fil.forbrukerradet.no/wp-content/uploads/2020/01/mnemonic-security-test-report-v1.0.pdf>

⁵ Verve privacy policy [accessed 05.05.2020] <https://www.verve.com/privacy-policy/>



As stated in the Verve privacy policy, consumers may opt out of having their location tracked by using device-level settings.⁶ However, this would entail that the consumer is aware that Verve is collecting and using personal data. Furthermore, even if the consumer opts out using “the settings available on your mobile device”, the company will still process the IP address, which is also personal data.

Under the GDPR, the processing of personal data requires a valid legal basis. As described in the legal analysis in chapter 8 of ‘Out of Control’, the collection, compilation and use of personal data for advertising and other commercial purposes is often impossible for consumers to understand, and therefore data controllers such as Verve cannot rely on consent for this processing. Additionally, under the GDPR, consent must be given by a clear affirmative act from the data subject,⁷ and thus cannot be based on the user not opting out.

Furthermore, the extent of tracking that we observed constitutes a major breach of the rights and freedoms of the individual data subject, which outweighs any legitimate interest Verve may claim to have to process this data for its own commercial purposes.

Therefore, we cannot see that Verve fulfils any of the relevant legal bases for the processing of personal data that we observed. We expect that Verve changes its practices to bring it into compliance with the GDPR, and delete any data that has been collected without a valid legal basis.

Please do not hesitate to get back to us if we have misunderstood anything about the practices of Verve.

This letter will also be forwarded to Datatilsynet, which is the relevant data protection authority investigating the issues highlighted in our report.

Best regards
The Norwegian Consumer Council

Inger Lise Blyverket
Director General

Gro Mette Moen
Acting Director of Digital Services

CC: Datatilsynet

⁶ Ibid.

⁷ GDPR Recital 32



Att: Tobias Judin

Tobias.Judin@Datatilsynet.no

This document is digitally validated and therefore has no signature.