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June 8, 2020

Mr. Hoan Ton-That
Founder & Chief Executive Officer
Clearview AI
214 W 29th St, 2nd Floor
New York, NY 10001

Dear Mr. Ton-That:

I write regarding recent reports that law enforcement agencies in cities experiencing protests inspired by the killing of George Floyd may be utilizing Clearview AI's facial recognition technology.¹ I have previously written to you about law enforcement's use of your technology, expressing my fear that it could infringe on Americans' civil liberties, including their privacy rights, but your responses failed to allay my concerns. In light of the ongoing protests and demonstrations across the country, I write with additional questions and to reiterate the need for your company to take urgent action to prevent the harmful use of its product.

As demonstrators across the country exercise their First Amendment rights by protesting racial injustice, it is important that law enforcement does not use technological tools to stifle free speech or endanger the public. Civil liberties experts have expressed concerns that unregulated deployment of facial recognition technologies could allow law enforcement agencies to identify and arrest protesters long after the demonstrations end.² The prospect of such omnipresent surveillance also runs the risk of deterring Americans from speaking out against injustice for fear of being permanently included in law enforcement databases.³ These concerns do not exist

¹ See Caroline Haskins & Ryan Mac, *Here Are The Minneapolis Police's Tools To Identify Protesters*, BUZZFEED NEWS (May 29, 2020), <https://www.buzzfeednews.com/article/carolinehaskins1/george-floyd-protests-surveillance-technology>.

² *Police can track protesters even after the demonstrations end*, MARKETPLACE TECH (Jun. 2, 2020), <https://www.marketplace.org/shows/marketplace-tech/police-protesters-surveillance-tracking-facial-recognition/>.

³ See Albert Fox Cahn & Zachary Silver, *The long, ugly history of how police have tracked protesters*, FAST COMPANY (Jun. 2, 2020), <https://www.fastcompany.com/90511912/the-long-ugly-history-of-how-police-have-tracked-protesters>.

Mr. Hoan Ton-That

June 8, 2020

Page 2

purely in the abstract; according to reports, they are common among protesters in countries where local law enforcement agencies broadly deploy facial recognition technologies.⁴

Unfortunately, your responses to my previous inquiries have failed to provide the information necessary to assure the public that law enforcement's use of your technology in the United States will not violate Americans' rights. To date, your company has not been adequately transparent about several issues, including how law enforcement agencies procure access to Clearview AI's app; how Clearview AI ensures that the software will not be misused; and whether Clearview AI's technology is free of dangerous biases and inaccurate results. Although you have previously argued that your technology's many potential harms are "speculative,"⁵ waiting for them to occur, especially in the current environment, would be foolhardy.

In light of these concerns, I request responses to the following questions by June 22, 2020:

1. You have previously refused to provide a list of Clearview's clients.⁶ Given the renewed public interest in identifying law enforcement agencies with access to your technology, please list any law enforcement agencies that Clearview AI has marketed to since May 25, 2020.
 - a. In addition, please list any law enforcement agencies that Clearview AI has signed new contracts with since May 25, 2020.
2. Has search traffic on Clearview AI increased, week-over-week, during the weeks of May 25 and June 1, compared to the two prior weeks? If so, by how much?
3. Please describe the process of granting a free trial of Clearview to a potential law enforcement client. What steps does Clearview AI take to verify the identity of the client requesting your services, and what level of authorization does Clearview require from the organization to grant a free trial?
4. In your March 24, 2020 response letter, you failed to indicate whether Clearview AI considers whether law enforcement agencies have a history of unlawful or discriminatory policing practices when deciding to whom it will market or sell its technology.⁷

⁴ See, e.g., Rosalind Adams, *Hong Kong Protesters Are Worried About Facial Recognition Technology. But There Are Many Other Ways They're Being Watched*, BuzzFeed News (Aug. 17, 2019), <https://www.buzzfeednews.com/article/rosalindadams/hong-kong-protests-paranoia-facial-recognition-lasers>; Alexandra Ulmer & Zeba Siddiqui, *India's use of facial recognition tech during protests causes stir*, REUTERS (Feb. 17, 2020), <https://www.reuters.com/article/us-india-citizenship-protests-technology/indias-use-of-facial-recognition-tech-during-protests-causes-stir-idUSKBN20B0ZQ>.

⁵ See Clearview Letter to Senator Edward J. Markey (Mar. 24, 2020) ("We share your concern in preventing abuse of this critical law enforcement tool. To date, we are aware of none. Fortunately, all the harm is speculative.").

⁶ See *id.*

⁷ See *id.*

- a. Please describe the process of forming a contract for Clearview AI with a law enforcement client.
 - b. What steps does Clearview AI take to verify the identity of the client seeking your services?
 - c. What level of authorization does Clearview AI require from the organization to sign a contract?
 - d. What vetting does Clearview AI itself conduct before granting an entity access to your technology?
5. Will you commit to explicitly prohibiting law enforcement agencies or others from using Clearview AI's technology to monitor or identify peaceful protestors? If so, please detail how you will do so. If not, why not?
6. You have acknowledged in previous letters that you have developed a mechanism for individuals to remove individual photos from the Clearview AI database.⁸ Now, presumably to comply with state data privacy laws,⁹ you have established additional mechanisms for California and Illinois residents to opt-out of the Clearview AI database entirely by providing an image of themselves.¹⁰ Will you commit to providing these opt-out mechanisms to residents of all 50 states? If not, why not?
7. Does Clearview AI's opt-out mechanism prevent your company from matching a person's face to images in the Clearview AI database on a permanent and ongoing basis? Or does the mechanism only deindex photos that exist in the database at the time a person requests to opt-out? If the latter, will you commit to developing a tool that allows for people to permanently opt-out?
8. In your May 15, 2020 response letter, you did not commit to submitting Clearview AI's technology for an independent assessment of accuracy and bias by facial recognition experts, including testing for error rates for true negatives, false matches, and people of color, and publish the results of this assessment publicly. Given the concerns raised by civil liberties experts that false positives could lead to innocent protesters (especially women and people of color) being arrested or confronted by police,¹¹ will you now commit to submitting Clearview AI to such an assessment?

⁸ See *id.*; Clearview Letter to Senator Edward J. Markey (May 15, 2020).

⁹ See California Consumer Privacy Act of 2018, Cal.Civ.Code §1798.100 (2018); Biometric Information Privacy Act, 740 ILCS 14 (2008).

¹⁰ *Privacy Request Forms*, CLEARVIEW AI, <https://clearview.ai/privacy/requests>.

¹¹ See Maya Shwayder, *Police facial recognition tech could misidentify people at protests, experts say*, DIGITAL TRENDS (Jun. 2, 2020), <https://www.digitaltrends.com/news/police-protests-facial-recognition-misidentification/>.

Mr. Hoan Ton-That

June 8, 2020

Page 4

9. You have previously confirmed that Clearview AI is engaging with government entities regarding the potential use of Clearview AI's technology for COVID-19 contact tracing efforts.¹² Will you commit to ensuring that any images, personal information, or other data that Clearview AI collects as part of any contact tracing program will not be accessible to law enforcement agencies who contract with it?

Clearview AI has an obligation to proactively ensure that its clients do not use its technology in ways that harm the public. I urge you to take every step necessary to ensure that your technology will not force Americans to choose between sacrificing their rights to privacy or remaining silent in the face of injustice.

Thank you for your continued attention to these important matters. If you have any questions, please contact my office at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator

¹² See Clearview Letter to Senator Edward J. Markey (May 15, 2020).