

To
The Norwegian Data Protection Authority
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The Consumer Ombudsman
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Complaint regarding user agreements and privacy policies for internet-connected toys – the Cayla doll and i-Que robot

The Norwegian Consumer Council should hereby like to lodge a formal complaint regarding two toys capable of connecting to the internet via an app and which are on sale in the Norwegian market. The toys in question are the Cayla doll and the i-Que robot.

The Consumer Council has examined the terms for downloading and using the apps, and has commissioned a technical test of the toys.

See the attached report *“Analysis of consumer and privacy issues in three internet-connected toys”* (appendix 1) and the technical report *“Investigation of privacy and security issues with smart toys”* (appendix 2), which provide details of our findings.

On a general note, the Consumer Council asks the regulators to study the attached reports and to establish whether any breaches of the Marketing Control Act and the Personal Data Act have occurred. In this letter we will also highlight certain issues in the documentation that we find to especially be cause for concern, and we therefore ask that these matters be investigated in their own right.

Background

Society is becoming increasingly digital, and more and more objects can now connect to the internet via smartphone apps, thus providing new features compared to similar, analogue objects. The Consumer Council is concerned with protecting the interests and position of consumers as society changes, and we have therefore launched a number of projects in order to look into the matter. In part one of our project on the internet of things, we looked at activity wristbands, and part two concerns internet-connected toys.

Our investigation of toys involved the Cayla doll and the i-Que robot, and we have examined the user agreements and privacy policies (hereafter collectively described as the terms of use) for the two toys. We also commissioned a technical test.

Both toys are available in the Norwegian market, and the number of app downloads could give some indication of the toys' popularity. The Cayla doll appears to be the more popular of the two, and from



what we can see, the Norwegian app has been downloaded from Google Play between 10,000 and 50,000 times¹. The app associated with the i-Que robot is less in demand, with between 1,000 and 5,000 downloads from Google Play². The number of Apple App Store downloads is not available to the public. Yet there is no reason to believe that it is lower than the number of Google Play downloads.

Our examination looked at certain aspects of the terms of use that have consequences for consumers, and we have applied European legislation as a basis for comparison and evaluation. The study was carried out by downloading the apps from Google Play. The apps do not provide links to their terms of use in Google Play, so we have read these on the toys' websites.

How the toys work

To use the toys' digital features, you have to download an app from Google Play or Apple's App Store³. There are Norwegian-language versions of the apps for both toys. When starting the app for the first time you are presented with the terms of use, which you must accept by clicking a button prompt. Only when you have clicked and accepted the terms of use does the app open fully. In order to use the app's features, the toy must be connected to the smartphone on which the app is installed. This is done using the phone's Bluetooth function while the on/off switch on the toy is set to "on". Once Bluetooth is turned on, the user has to click on either Cayla or i-Que in the list of available Bluetooth devices, then click "Pair". Once you have completed this procedure, you can use the app to ask the doll questions, play games or engage in other activities⁴.

When the child talks to and asks questions of the toy, voice processing takes place locally within the app, and answers to questions are obtained either from a list of pre-programmed answers, or from internet sources. Both Cayla and i-Que are able to obtain answers from the Wikipedia and Weather Underground websites.

Legal issues – legal person

The correct terms of use are not easy to find since there is no link in the respective app stores, and it is also somewhat difficult to ascertain which companies are responsible for the services. In Google Play, Genesis Industries is listed as the app supplier for Cayla and i-Que, and the following address is provided: Genesis Industries 8/F, HK Spinners Industrial Building, 818 Cheung Shan Wan Road, Kowloon, HK.

The terms of use⁵ published on the Cayla website names ToyQuest as the contracting party for the app, while Genesis Toys is listed as the contracting party for i-Que. The address for both of them is the Hong Kong address stated above.

From what we can tell, the wording of the privacy policies for Cayla and i-Que are mostly identical, and both list Genesis as the contracting party along with the same Hong Kong address.

Please refer to appendix 1, pages 9 and 10 for additional information.

¹ <https://play.google.com/store/apps/details?id=com.toyquest.Cayla.no>

² <https://play.google.com/store/apps/details?id=com.toyquest.iQue.no>

³ The app can also be downloaded and used on tablets with a Bluetooth function.

⁴ The two toys offer slightly different user options. The i-Que app controls the robot's movements, for instance.

⁵ <http://myfriendcayla.co.uk/agreement> and <http://ique-robot.co.uk/user-agreement>



The toys are manufactured by Genesis Toys, but there is no company information on its website, www.genesis-toys.com. However, the website does link to a privacy policy for Genesis which provides the Hong Kong address. There are different European importers of the toys, and there may be multiple importers of the toys to the same country. From what we have been able to establish, the importer of the toys in Norway is Top Toy Norge AS (business registration number 991 492 704). The company is a major participant in the Norwegian (and Nordic) toy market, through the chain stores BR Leker and Toys R Us. In Norway, these outlets appear to be subdivisions⁶ of the company Top Toy Norge AS⁷.

The Cayla doll was named toy of the year in both Norway and Sweden in 2014, according to a sticker on the toy's packaging. The toys are actively marketed in this year's Christmas catalogues from both Toys R Us and BR Leker. The toys are being sold worldwide.

Governing law and jurisdiction

The Personal Data Act applies to "controllers who are established in Norway", and the Consumer Council would like to ask the Data Protection Authority to determine whether the importer of the toys could be considered a controller in the sense described in the Personal Data Act.

The Consumer Ombudsman is charged with overseeing compliance with the Marketing Control Act, and in previous cases the Ombudsman has stated that its regulatory powers extend to cases similar to this one⁸. The toys are being sold in Norway, and the service providers have made the Cayla and i-Que apps available to Norwegian consumers in that Norwegian versions can be downloaded from Google Play and Apple's App Store.

Notification of changes to the terms of use

None of the services commit themselves to notifying users *before* making changes to the terms of uses, see appendix 1, table 4, page 13. The service providers state that they will do their utmost to give advance notice, and that they will do so by posting on the website. We do not find this to be satisfactory from a consumer point of view.

It is a cause for concern that the services do not give users satisfactory prior notice of changes to their terms of use. There is reason to ask whether the failure to give advance notice, the threshold for giving notice, and the way in which this is done may constitute an unreasonable contract term. We are therefore asking the regulators to consider taking action.

Data collection – how much data is collected, and how much is required to provide a functional service?

Our investigation has found that the service providers are asking for information that is not required in order to deliver the service, see appendix 1, tables 5 and 7, pages 16 and 17. For example, in their

⁶ <https://w2.brreg.no/enhet/sok/underenh.jsp?orgnr=991492704>

⁷ <https://w2.brreg.no/enhet/sok/detalj.jsp?orgnr=991492704>

⁸ Cf. <http://fbrno.climg.no/wp-content/uploads/2016/03/20160301-Klage-på-urimelige-avtalevilkår-Tinder.pdf>, and <https://forbrukerombudet.no/content/2016/07/Brukervilkår-til-Tinder-Inc.-mfl.-§-22-L340135.pdf>



terms, both Cayla and i-Que reserve the right to collect the contact lists on the device on which the app is installed which, in our view, does not have a logical connection with the service. Voice recognition is an expressed aim for both services, and it would therefore seem rather odd to request access to contact lists in order to achieve this. We did not observe contact lists being accessed when we conducted the technical tests. The Consumer Council asks the regulators to investigate this further.

Sharing personal data with third parties

The Consumer Council believes that the sharing of information with third parties is a matter of great concern. The users of the services are at high risk of losing control of their own data due to terms of use that grant the service providers far-reaching and unspecified powers to share information, see appendix 1, page 18 ff.

The service providers state that they will only share voice data with third parties that they themselves are able to control. However, in our opinion, still this means that the service providers grant themselves wide-reaching and ambiguous permissions to share data with third parties in our view. Two third parties are explicitly named in the terms of use. It is stated that the two software providers Nuance and Ivona are able to receive voice data when the users ask questions of the toys. That users are told who may receive the voice data is in itself a positive factor. What is not particularly reassuring, however, is that the user is referred onward to these companies' privacy policies, and that the service provider claims that these further privacy policies apply to the companies' use of voice data⁹. The technical tests found that only Nuance received voice data on both Android and iOS-based devices.

We urge the regulators to establish whether the terms of use comply with the Personal Data Act.

Use of voice data

In the opinion of the Consumer Council, there are several worrying aspects of this use of voice data from a user perspective. Furthermore, there is reason to ask whether this use of voice data is in breach of the rules on purpose limitation, and whether it does not comply with the rules on marketing aimed at children.

In this respect, we would particularly like to highlight the Cayla and i-Que terms stating that they may show targeted advertising based on anonymised information, personally identifiable information, and personal data that the users themselves have made publicly available, see appendix 1, page 22. This allows them to profile children and target advertising at children.

Our investigation also found that certain questions asked by the user are answered with pre-programmed answers, see appendix 1, page 23, and appendices 3, 4 and 5¹⁰. The answers can look like product placement and advertising for companies with which the service providers co-operate,

⁹ Nuance reserves the right to amend its own privacy policy without prior notice, it uses and is able to share voice data with additional third parties, and the rules on when and whether data is deleted are vague. Nuance also states that it does not process voice data for children under the age of 13, which is contradictory to the fact that voice data is transferred from the toys to Nuance. The privacy policy can be read in full here: <http://www.nuance.com/company/company-overview/company-policies/privacy-policies/index.htm>

¹⁰ The text in appendices 3 to 5 has been extracted from the apps by Bouvet.



see appendix 3. The Consumer Council asks whether this could be in breach of the Marketing Control Act's provisions on marketing aimed at children.

Miscellaneous – poor user security

The technical tests revealed that it is possible for any mobile phone to connect to Cayla through a Bluetooth connection, without having physical access to the toy. This is possible because there are no mechanical barriers and/or because the Bluetooth chip is of inadequate quality. This is described in more detail in appendix 2, page 12, and in appendix 1, page 34. The Consumer Council is highly concerned about this and would therefore like to draw the relevant regulators' attention to the matter, even though it appears difficult to address the problem on the basis of existing legislation. We find it particularly worrying that products aimed at children, deploy vulnerable communication standards such as Bluetooth without security measures, which allow connections from unauthorized devices. We therefore urge the regulators to investigate the matter further, especially because children are involved.

Finally, we would like to emphasize that the report describes the above-mentioned concerns in more detail, and that it also covers other issues that may be in breach of the Personal Data Act and the Marketing Control Act. The issue of parental consent could be raised, and we find it pertinent to ask whether the parents' consent infringes on children's individual right to privacy in certain cases, for example concerning the sharing of personal data with third parties. As with our investigation of activity wristbands, once again we note that there are ambiguous terms on the deletion of personal data (items 12 and 13 in the report), that the supplier may unilaterally cease to supply the service (item 14 in the report) and that the services operate with an incomplete definition of personal data (item 5 in the report).

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This complaint generally falls within the powers of the Consumer Ombudsman and the Data Protection Authority. The Consumer Council is therefore submitting an identical complaint to both the Data Protection Authority and the Consumer Ombudsman, and urges a joint examination of the supporting documentation and investigation of this complaint.

The Consumer Council awaits the investigation by the regulators, and would be happy to be of assistance if further clarification is needed.

Best regards
The Norwegian Consumer Council

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Appendix 2: Investigation of privacy and security issues with smart toys

Appendix 3: Advertising in the toys

Appendix 4: Cayla category answers

Appendix 5: i-Que category answers

Appendix 6: For information only – copy of letter of concern to the Directorate for Civil Protection