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## United States Senate

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April 30, 2020

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

Dear Mr. Ton-That:

I write regarding reports that Clearview is marketing its facial recognition software to state agencies to track coronavirus patients.<sup>1</sup> Technology has an important role to play in mitigating the COVID-19 pandemic, but this health crisis cannot justify using unreliable surveillance tools that could undermine our privacy rights. Given that your responses to my previous letter failed to address ongoing concerns about your product—particularly around accuracy and bias testing—any plans to deploy it widely to fight the coronavirus could further increase Clearview’s threat to the public’s privacy.

All efforts to combat the coronavirus pandemic should be free from harmful bias, but Clearview has apparently not subjected its technology to rigorous accuracy and bias testing. In your response to my most recent inquiry, you claim that an “Independent Review Panel” evaluated Clearview AI with “the same basic methodology used by the American Civil Liberties Union (ACLU).”<sup>2</sup> However, you provided no detail about the panel’s qualifications, and BuzzFeed News reported that “[n]one of the panelists appear to have any expertise in facial recognition.”<sup>3</sup> Furthermore, the ACLU not only repudiated your claim that the panel followed the ACLU’s evaluation methodology, but also exposed serious flaws with the panel’s assessment.<sup>4</sup> Alarming, the panel apparently failed to consider something as basic as “what happens when police search for a person whose photo isn’t in the database” and provided no information about error rates for false matches and people of color.<sup>5</sup> The steps Clearview has taken to test the accuracy of your product fail to convincingly demonstrate that your technology is free of bias and technological flaws.

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<sup>1</sup> Kirsten Grind, Robert McMillan and Anna Wilde Mathews, *To Track Virus, Governments Weigh Surveillance Tools That Push Privacy Limits*, Wall Street Journal (Mar. 17, 2020), <https://www.wsj.com/articles/to-track-virus-governments-weigh-surveillance-tools-that-push-privacy-limits-11584479841>.

<sup>2</sup> Letter from Tor Ekeland, Attorney, to Senator Edward J. Markey (Mar. 24, 2020).

<sup>3</sup> Caroline Haskins, Ryan Mac, Logan McDonald, *The ACLU Slammed A Facial Recognition Company That Scrapes Photos From Instagram And Facebook*, Feb. 10, 2020), <https://www.buzzfeednews.com/article/carolinehaskins1/clearview-ai-facial-recognition-accurate-aclu-absurd>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

In light of these concerns, I request written answers to the following questions by May 14, 2020:

1. Please identify any government entities, including state government entities, with which Clearview has engaged on the use of Clearview's technology for contact tracing or other responses to the ongoing pandemic.
  - a. Has Clearview reached any agreement with any government entities, including state government entities, to use its technology for contact tracing? If so, please identify those entities, describe the nature of the agreements, including what data will be processed, how it was initially collected, any measures being taken to preserve anonymity and privacy, and the role Clearview will play.
  - b. Please identify any evidence-based rationale that Clearview has for the use of its facial recognition technology in contact tracing and the specific objectives that this use would achieve.
2. Is Clearview marketing the use of real-time facial recognition technology for purposes of contact tracing in response to the COVID-19 pandemic?
3. Please provide additional information about the Independent Review Panel that you claimed evaluated Clearview AI and provide the panelists' qualifications and expertise in facial recognition technology.
4. Will Clearview submit its product 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? If not, why not?
5. In my March 3, 2020 letter, I requested that you provide individuals the ability to delete their images from Clearview's database without having to provide their government ID.<sup>6</sup> You responded that "[a] government ID is necessary to ensure the individual requesting access or removal is the individual pictured."<sup>7</sup> A government ID contains a considerable amount of sensitive information beyond just an individual's face. While I understand your interest in verifying deletion requests, it is unclear why Clearview needs that extra information to process such a request,<sup>8</sup> especially considering you have repeatedly claimed Clearview does not collect personally identifiable information such as individuals' names.<sup>9</sup> Will Clearview commit to providing individuals with the means to delete their images without having to submit government-issued identification? If not, why not?

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<sup>6</sup> Letter from Senator Edward J. Markey to Mr. Hoan Ton-That, Founder & CEO, Clearview AI (Mar. 3, 2020).

<sup>7</sup> Letter from Tor Ekeland, Attorney, to Senator Edward J. Markey (Mar. 24, 2020).

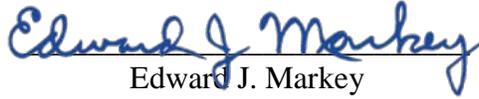
<sup>8</sup> See California Consumer Privacy Act Regulations Proposed Text of Regulations § 999.325, <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-text-of-second-set-clean-031120.pdf> (last visited Apr. 17, 2020) (stating that companies should verify identities by matching "with data points maintained by the business" to a degree of certainty depending on "the risk of harm to the consumer posed by unauthorized deletion").

<sup>9</sup> Letter from Tor Ekeland, Attorney, to Senator Edward J. Markey (Mar. 24, 2020). ("Clearview AI only indexes and stores public photos and their public URL. We don't match names, addresses, or other forms of personally identifying information with a photo.").

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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