



## 1. REPORT MANAGEMENT BOARD 2021

### A. Introduction

- 1.1 Foundation Take Back Your Privacy ("**TBYP**") is dedicated to promoting the privacy and consumer interests of people in the Netherlands and abroad. TBYP was founded on February 24, 2021 in response to the unpleasant reality that privacy and consumer rights are currently being violated on a large scale. TBYP stands up for the privacy and consumer rights, not only of Dutch people but of consumers worldwide.
- 1.2 To achieve its goals, TBYP undertakes various activities. For example, it negotiates with parties, acts in the media, consults with politicians and representative entities, and litigates against parties acting unlawfully. The foundation has its statutory seat in Amsterdam. The foundation is independent and has no profit motive.
- 1.3 In this report, the management board summarizes and accounts for its activities for the year 2021. This report is made available on the foundation's website: [www.takebackyourprivacy.nl](http://www.takebackyourprivacy.nl).

### B. On the governance of TBYP

- 1.4 TBYP has a management board and a supervisory board ("**SB**"). The members of these bodies have the specific expertise required to adequately represent the interests as defined in TBYP's (statutory) objective.<sup>1</sup> TBYP adheres to the *best practice* provisions of the 2019 Claims Code, and follows the principles contained therein (where possible), as evidenced by its *Claims Code Compliance Statement*.<sup>2</sup>

### C. The board

- 1.5 TBYP has three board members at the time of publication of this report: Friederike van der Jagt (president), Steven Prins (treasurer) and Ben Baldwin (secretary). The background of the board members is listed on TBYP's website and in the summons.<sup>3</sup> The board is responsible for establishing and implementing the (financial) policy and strategy aimed at achieving the statutory objective.
- 1.6 A change of board members took place during the year 2021. Pieter Paul Saasen, one of the founding directors, stepped down for personal reasons. He served as a board member from Feb. 24, 2021 until his resignation on Oct. 4, 2021. Mr. Saasen is succeeded by Mr. Steven Prins, who was a member of TBYP's Supervisory Board before that.

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<sup>1</sup> See TBYP's bylaws at: <https://stichtingtakebackyourprivacy.nl/documenten>.

<sup>2</sup> The most recent Claim Code Compliance Statement can be accessed at: <https://stichtingtakebackyourprivacy.nl/documenten/>.

<sup>3</sup> About the Board: <https://stichtingtakebackyourprivacy.nl/en/board-of-directors/>  
The summons is available at: <https://stichtingtakebackyourprivacy.nl/documenten/>



- 1.7 The board has regular consultations, through conference calls and through physical meetings. During board meetings, the board discusses TBYP's strategy, operational issues as well as concrete ongoing and possible further actions. The board also regularly receives advice from experts during board meetings.

#### **D. Activities of TBYP in 2021**

- 1.8 In 2020 and early 2021 (prior to its formal establishment, TBYP was active as a foundation in formation), it researched the desirability and possibilities of establishing a new representative organization in the field of privacy and consumer rights. The crystal clear conclusion was that a strong representative organization was (and is) necessary, in light of the frequent and often large-scale violations of privacy and consumer rights.
- 1.9 Having been founded, TBYP's year 2021 was dominated by its collective action against TikTok. The board determined that TikTok was systematically and massively violating the privacy and consumer rights of Dutch children, and decided to act against it as a representative organization.
- 1.10 Before and after the foundation was established, TBYP consulted with various parties, asking them to support a (collective) action by TBYP against TikTok. Ultimately, very broad support proved to be available for TBYP's action. After consultation, TBYP entered into a partnership with the Consumentenbond. In addition, many leading organizations expressed their support for TBYP's (collective) action against TikTok. These include: NOYB, Privacy International, Privacy First, the European consumer organization BEUC, Bureau Jeugd & Media, Waag Technology & Society, Bits of Freedom, Platform Bescherming Burgerrechten, Terre des Hommes, Defence for Children and KidsRights.
- 1.11 The board maintained contact with these organizations in 2021. TBYP keeps them informed about developments in the TikTok action and gives them opportunities to provide input.
- 1.12 Before launching the action against TikTok, the board also investigated possible external funding for the TikTok action. Such funding turned out - after negotiations - to be available and was secured by the board in 2021, prior to the formal start of the TikTok action. Due to the availability of external funding, no contribution in advance needed to be requested from the prejudiced Dutch children (or their parents).
- 1.13 After steady preparation and thorough investigation into TikTok's actions, TBYP sent a letter of liability to TikTok on June 23, 2021. The letter also included an invitation to enter into consultations with TBYP on an out-of-court resolution. Conversations were held between (the board of) TBYP and TikTok, but an out-of-court solution proved (yet) impossible.



- 1.14 On August 31, 2021, TBYP filed a lawsuit against TikTok with the District Court of Amsterdam.<sup>4</sup> The lawsuit is a so-called collective action and is based on the Law on Settlement of Mass Damages in Collective Action (*Wet afwikkeling massaschade in collectieve actie*),<sup>5</sup> which entered into force on January 1, 2020. TBYP has asked the court to be appointed as the exclusive representative of the Dutch children. It concerns the children (persons under the age of 18) who used the TikTok application (or precursors thereof) after May 25, 2018. The summons has been published on the website of the Dutch courts and on TBYP's website.<sup>6</sup> The current status of the proceedings can be seen on the current timeline on TBYP's website.<sup>7</sup>
- 1.15 TBYP's action (in cooperation with the Consumentenbond) against TikTok can count on broad support. By 2021, tens of thousands of people have signed up. People are still signing up.
- 1.16 TBYP is also committed to protecting people's right to privacy beyond the TikTok action in the Netherlands and abroad. In 2021, three concrete other possible collective actions were studied by the board. In two of the three cases, after consideration, the board decided not to initiate the actions in question. In the third case, the board did decide to take action: this concerns a currently confidential matter. TBYP is trying to reach a solution in consultation with the organization involved.
- 1.17 The board held several formal board meetings in 2021, which were January 15, 2021, June 21, 2021, September 27, 2021 and December 13, 2021. In addition to these formal board meetings, the board also held informal (telephone) meetings to discuss ongoing issues and determine strategy. At the joint meeting on September 27, 2021, the board accounted to the Supervisory Board in accordance with Principle V of the Claimcode 2019. Apart from the board meetings, the board members also interacted among themselves on a regular basis.

## E. Financial 2021

- 1.18 TBYP does not have a profit motive. All costs of TBYP, including the costs of the TikTok collective action, are borne by TBYP.
- 1.19 Regarding the TikTok collective action, the board sought and found external funding. BPGF Funding I Limited, based in Jersey, funds the TikTok action. The funder ensures that the case can be done on a *no cure, no pay basis*. This means that the funder only receives something when the TikTok action is successful. If compensation is awarded, the funder is entitled to 22% of the proceeds, and compensation for the costs incurred for the TikTok action, whereby the funder can never receive more than 25% of the total proceeds. TBYP argues that TikTok should also pay the funding costs of the TikTok collective action, and thus 100% of the compensation

<sup>4</sup> Defendants are: TikTok Technology Limited, TikTok Information Technologies UK Limited, TikTok Inc., ByteDance Ltd., Beijing ByteDance Technology Co. Ltd. en TikTok Pte. Limited.

<sup>5</sup> In full: Wet van 20 maart 2019 tot wijziging van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering teneinde de afwikkeling van massaschade in een collectieve actie mogelijk te maken, Stb. 2019, 130.

<sup>6</sup> Here: <https://stichtingtakebackyourprivacy.nl/documenten/>.

<sup>7</sup> Here: <https://stichtingtakebackyourprivacy.nl/tijdslijn/>.



should go to the aggrieved children. In the collective action, TBYP therefore claims the funding costs from TikTok.

- 1.20 The board confirms that TBYP has a healthy financial and that TBYP has sufficient funds to conduct the TikTok action and its further activities.

## **F. Conclusion**

- 1.21 2021 was an important year for the foundation: TBYP was founded and the TikTok collective action was successfully launched. The foundation was able to gather great support from other advocates and individuals, and that support continues to grow.
- 1.22 TBYP closely monitors developments in privacy and consumer concerns and takes action as it deems appropriate.

Amsterdam, 10th of October 2022

Friederike van der Jagt (president)

Ben Baldwin (secretary)

Steven Prins (treasurer)