

## 1. REPORT MANAGEMENT BOARD 2022

### A. Introduction

- 1.1 The Take Back Your Privacy Foundation ("**TBYP**") fights for the privacy and consumer rights of people in the Netherlands and abroad. To achieve its goals, TBYP undertakes various activities. For example, it negotiates with parties, makes media appearances, consults with politicians and representatives and litigates against parties acting in violation of privacy laws and/or consumer rights. TBYP has its registered office in Amsterdam. TBYP is an independent organisation and has no profit motive.
- 1.2 With this report, the management board summarizes and accounts for its activities for the year 2022. This report is made available on TBYP's website: [www.stichtingtakebackyourprivacy.nl](http://www.stichtingtakebackyourprivacy.nl).

### B. Governance of TBYP

- 1.3 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 subscribes to the *best practice* provisions of the Claim Code 2019, and follows the principles therein (where possible), as also reflected in its *Claim Code Compliance Statement*.<sup>2</sup>

### C. The management board and the supervisory board

- 1.4 TBYP's management board consists of three board members: Friederike van der Jagt (president), Steven Prins (treasurer) and Ben Baldwin (secretary). The background of the board members can be found on TBYP's website.<sup>3</sup> The management board is responsible for establishing and implementing the (financial) policy and strategy aimed at achieving the statutory objective.
- 1.5 The board has regular consultations, through conference calls and through physical meetings. During board meetings, the board discusses TBYP's strategy, operational issues, specific ongoing and possible further (legal) actions, and the other activities performed by TBYP (e.g. in the field of education). Where necessary, the board seeks advice from experts in writing or during board meetings.
- 1.6 TBYP's SB consists of four members: Colette Cuijpers, Jan Schinkelshoek, Maarten Rosenberg and Jim Stolze. The background of the members of the SB can be found on TBYP's website.<sup>4</sup> Through correspondence and physical meetings, the SB monitors the management board internally. The SB reported on its supervisory duties in the Supervisory Board Report 2022.<sup>5</sup>

<sup>1</sup> See TBYP's Articles of Incorporation on: <https://stichtingtakebackyourprivacy.nl/documenten>.

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

<sup>3</sup> About the management board: <https://stichtingtakebackyourprivacy.nl/de-raad-van-bestuur/>.

<sup>4</sup> About the SB: <https://stichtingtakebackyourprivacy.nl/de-raad-van-toezicht/>.

<sup>5</sup> The 2022 supervisory board report can be accessed on: <https://stichtingtakebackyourprivacy.nl/documenten/>.

## D. The TikTok action

- 1.7 TBYP's year 2022 was largely dominated by its collective action against TikTok regarding systematic and large-scale violations of the privacy and consumer rights of Dutch children. TBYP commenced this action – in cooperation with the Dutch Consumentenbond – on 31 August 2021 before the Amsterdam District Court, based on the Law on Settlement of Mass Damages in Collective Action ("**WAMCA**").<sup>6</sup>
- 1.8 TBYP's action has received wide support. In total, more than 50,000 people have signed up and this number is still increasing every day.
- (i) First phase successfully completed
- 1.9 In this case, on 6 April 2022, TikTok filed preliminary defences contesting the jurisdiction of the Dutch court and, in the alternative, a request for a stay. On 1 June 2022, TBYP responded in writing to these baseless preliminary defences. Among other things, TBYP explained that the Dutch court has jurisdiction to decide on TBYP's claims. In addition, TBYP explained that there is no reason to stay the proceedings; doing so would cause unnecessary delay. The first hearing on TikTok's preliminary defences took place on 10 October 2022.
- 1.10 The court rendered an interlocutory judgment on 9 November 2022, ruling in favour of TBYP on all counts. First, the court held that it had jurisdiction to adjudicate all of TBYP's claims against all of the TikTok defendants. Second, the motion to stay the proceedings was denied. Third, TikTok's motion to refer questions to the European Court of Justice was rejected. Finally, TikTok is not permitted to appeal the judgment at this point in time.
- (ii) Second phase
- 1.11 Hereafter, the second phase of the proceedings commenced. This phase deals with (i) the admissibility of TBYP and the two other foundations that filed a collective action against TikTok, (ii) the designation of the exclusive representative and (iii) the applicable law.
- 1.12 On 21 December 2022, TBYP and the two other foundations filed a deed regarding the appointment of the exclusive representative. TBYP asked the court to be appointed as the exclusive representative for the Dutch children, because TBYP is the most appropriate party to represent the interests of Dutch children. TikTok responded in writing on 22 February 2023.
- 1.13 The next steps in the proceedings are as follows. A hearing is scheduled for 28 June 2023. After this, the court will give an opinion on these points. Then the third phase, the proceedings on the merits, will begin.

## E. Other activities of TBYP in 2022

- (a) Other actions / WAMCA proceedings
- 1.14 In addition to the TikTok claim, TBYP also examined other potential cases in 2022 to see if it should act as a representative organisation in those situations. In each case, these were

<sup>6</sup> In full: Act of 20 March 2019 amending the Civil Code and the Code of Civil Procedure in order to settle mass damages in collective action enable, Stb. 2019, 130.

situations involving serious violations of privacy and consumer rights. Consultations were held with some infringers in 2022.

- 1.15 For example, TBYP has taken action against WhatsApp. WhatsApp, part of Meta, violates the privacy rights of its users, in part because users are not adequately informed about the processing of their personal data. In early 2022, TBYP sent a letter to WhatsApp as a first step, with the aim of gathering more information and engaging in a conversation with WhatsApp. Among other things, TBYP asked what personal data is shared with the various Meta entities on what basis. TBYP also asked WhatsApp to explain the revenue model of the (free) app. The substantive response offered little comfort that the rights of Dutch WhatsApp users are safeguarded. TBYP has been closely monitoring regulatory developments regarding WhatsApp ever since. TBYP has reserved the right to file a formal collective action under Article 3:305a of the Dutch Civil Code, but for now is still trying to induce WhatsApp to comply with the law out-of-court.

(b) Active participation in social and political debate and information provision

- 1.16 TBYP was also active in the public debate on privacy protection (including specifically the protection of vulnerable children) in 2022. For example, TBYP acted as a spokesperson in the media. Among other things, TBYP and the Consumentenbond, which is supporting TBYP in the TikTok litigation, have been interviewed several times by radio and television journalists about the TikTok case. One example is the 17 November 2022 interview by Jeugdjournaal podcast and NOS Jeugdjournaal TV. In addition, TBYP has recorded several podcasts, including in collaboration with Privacy Watchdogs<sup>7</sup> and Proteqtor Cybersecurity Stories<sup>8</sup>.
- 1.17 TBYP also debates and consults with politicians about the privacy and consumer interests of Dutch citizens, including children. By way of illustration, TBYP points to its conversations with Marieke Koekkoek, Lower House member of the pan-European political party Volt on 24 October 2022<sup>9</sup> and with Don Ceder, Lower House member of the *ChristenUnie* on 25 November 2022<sup>10</sup>.
- 1.18 Finally, TBYP monitors developments in the field of (European) privacy law, in particular possible breaches thereof. TBYP publishes relevant developments on the news page of its website to keep its supporters informed.<sup>11</sup>

(c) Educational activities

- 1.19 TBYP maintains contacts with educational institutions to educate them on privacy and consumer law. In this way, TBYP contributes to the social debate.

<sup>7</sup> The podcast can be listened on the following website:  
<https://podcastluisteren.nl/pod/Privacywaakhonden>.

<sup>8</sup> The podcast can be listened on the following website:  
<https://open.spotify.com/show/7FiFXH4mLA1b6PDvR4eenD>.

<sup>9</sup> The interview can be read on:  
<https://stichtingtakebackyourprivacy.nl/tbyp-spreekt-met-tweede-kamerlid-koekkoek-over-belang-van-privacy/>.

<sup>10</sup> The interview can be read on:  
<https://stichtingtakebackyourprivacy.nl/tbyp-spreekt-met-kamerlid-don-ceder-christenunie-over-de-bescherming-van-privacyrechten-van-kinderen/>.

<sup>11</sup> News releases can be found on: <https://stichtingtakebackyourprivacy.nl/privacy-news/>.



1.20 For example, on 31 March 2022, TBYP engaged in an online interactive session with alumni of the IMC Weekend School Foundation, which provides education to children. Also, on 9 May 2022, TBYP's president delivered the opening lecture on behalf of TBYP at the symposium "Big Tech: Gatekeeping the Digital Markets" of the Sirius study association of the Utrecht Law College (part of the Utrecht University law school). Finally, TBYP regularly answers questions or requests for information from scholars and students who are studying privacy law and the risks associated with violations of privacy law.

(d) Consultation with other representative organizations

1.21 TBYP maintains close contact with other representative organizations for the TikTok action. In addition to the Consumentenbond, many leading representative organizations have expressed their support for the TikTok action, namely: NOYB, Privacy International, Privacy First, the European consumer organization BEUC, Bureau Jeugd & Media, Waag Technology & Society, Bits of Freedom, Civil Rights Protection Platform, Terre des Hommes, Defense for Children and KidsRights. TBYP keeps these representative organizations informed about developments in the TikTok action and gives them an opportunity to provide input.

(e) Management board meetings

1.22 The management board held four formal board meetings in 2022, on 3 February, 8 June, 25 October and 13 December 2022. In addition to these formal board meetings, the management board also held regular informal (digital) meetings to discuss ongoing issues and determine strategy, both among themselves and with the SB. During a joint meeting on 25 October 2022, the management board accounted to the SB in accordance with Principle V of the Claim Code 2019.

## F. Finance 2022

1.23 TBYP is a non-profit organisation. All costs of TBYP, including the costs of the TikTok action, are borne by TBYP.

1.24 The TikTok action is funded by external funder BPGL Funding I Limited, based in Jersey. The funder ensures that the case can be litigated on a *no win, no fee basis*. That is, the funder will only receive something if the TikTok action succeeds. If compensation will be awarded, the funder is entitled to 22% of the proceeds, as well as compensation for the costs incurred in the TikTok action, whereby the funder will never receive more than 25% of the total proceeds. Incidentally, TBYP argues that TikTok should also pay the funding costs of the TikTok action, and thus 100% of the compensation should go to the aggrieved children. In the collective action, TBYP therefore claims the funding costs from TikTok.

1.25 The management board confirms that the financial position of TBYP is stable, and that TBYP has sufficient resources to (implement) the TikTok action and its further activities.

## G. Conclusion

1.26 The year 2022 was another important year for TBYP: following a successful judgment by the Dutch court establishing its jurisdiction to adjudicate TBYP's claims against TikTok, phase 2 in the TikTok action began.



- 1.27 TBYP also receives an ever-growing support from other representative groups and individuals. TBYP keeps a close eye on all developments regarding privacy and consumer interests and takes action where it sees fit.

Amsterdam, 26 May 2023

Friederike van der Jagt (president)

Ben Baldwin (secretary)

Steven Prins (treasurer)