

Facebook Granted Dismissal of Biometric Privacy Claims Brought by “Non-Users”

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This week, the District Court for the Northern District of California dismissed the *Gullen* putative class action asserting Illinois biometric privacy claims brought by “non-users” based on evidence that the social media site did not use its facial recognition technology on business or organizational accounts (as opposed to personal social media pages). ([Gullen v. Facebook, Inc.](#), No. 16-00937 (N.D. Cal. Apr. 3, 2018)). This ruling on the merits follows a decision last month where the court [refused to dismiss the action due to lack of standing](#). In *Gullen*, the plaintiff alleged that Facebook violated the Illinois [Biometric Information Privacy Act](#) (BIPA), 740 Ill. Comp. Stat. 14/1 et seq. (“BIPA”), by collecting his biometric identifiers without notice or consent via Tag Suggestions, its facial recognition-based system of photo tagging. The plaintiff’s claim was based upon a single photograph uploaded to an organizational page. A declaration by a software engineer for the defendant confirmed that not all photos uploaded to Facebook undergo facial recognition and that plaintiff’s photo was not scanned, and since plaintiff failed to rebut such evidence, the court granted summary judgment in the site’s favor.

While the *Gullen* action was dismissed on factual grounds, the companion *In re Facebook Biometric Privacy Litig.* action involving Facebook users remains ongoing and raises important legal issues surrounding BIPA, including the scope of the statute as it relates to uploaded photographs and the sufficiency of Facebook’s notice and consent procedures, as well as constitutional issues regarding the extraterritorial reach of BIPA to activities and cloud-based transactions that allegedly occurred outside of Illinois.

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