

ARIZONA STATE UNIVERSITY
CORPORATE AND BUSINESS LAW JOURNAL
FORUM

VOLUME 1

FEBRUARY 2020

NUMBER 14

COMMENTARY

*FACIAL RECOGNITION: FACEBOOK SETTLES A CLASS ACTION
FOR \$550 MILLION*

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Facebook announced that it has agreed to pay \$550 million to settle a class action lawsuit. The class action began over Facebook’s use of facial recognition technology in Illinois on Illinois residents. The case, *In re Facebook Biometric Information Privacy Litigation* (15-cv-03747-JD) (N.D. Cal.), comes specifically from a photo-labeling service rolled out by Facebook to make it easier to identify the people in your photos and then to tag them.¹ The service, known as Tag Suggestions, uses a face-matching software to suggest the names of people in users’ photos.

The class action lawsuit alleges that Facebook violated Illinois biometric privacy law. Allegedly, Facebook violated the law by harvesting facial data for Tag Suggestions from the photos of millions of users in Illinois without their permission. Facebook also failed to tell Illinois residents how long the data would be kept. Facebook responded to and denied these allegations, saying they have no merit.

The Illinois Biometric Information Privacy Act requires written permission of the person before a company can collect fingerprints, facial scans, or other identifying biometric data.² In traditional privacy cases a barrier to recovery has been that it is hard to establish that you were harmed. However, in 2019, the Illinois Supreme Court held unanimously in *Rosenbach v. Six Flags* that there was no need to show additional harm to have standing to sue other than violation of the privacy rights granted in the act.³ The Illinois Supreme Court said in the opinion that “an individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an ‘aggrieved’ person.”⁴ This decision opened the door for the class action lawsuit against Facebook.

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¹ *In re Facebook Biometric Info. Privacy Litig.*, 185 F. Supp. 3d 1155 (N.D. Cal. 2016).

² 740 Ill. Comp. Stat. Ann. 14/1 *et. seq.*

³ *Rosenbach v. Six Flags Entm’t Corp.*, 2019 IL 123186, 432 Ill. Dec. 654, 129 N.E.3d 1197.

⁴ *Id.* at 40.

Under the settlement, Facebook will pay \$550 million to Illinois users if they are [eligible](#) and will pay for the plaintiffs' legal fees.⁵ Facebook disclosed the settlement of this class action lawsuit as part of their [quarterly financial report](#).⁶ According to the [New York Times](#), a Facebook spokesperson responded, when asked about the settlement, saying, “[w]e decided to pursue a settlement as it was in the best interest of our community and our shareholders to move past this matter.”⁷

Facebook has since replaced the tag suggestions feature.⁸ While users are still manually able to tag their friends in photos, there will no longer be automated tag suggestions. Facebook also added a setting to control how facial recognition identifies individuals in photos. The setting, known as facial recognition, includes features beyond tagging such as whether you are in photos where you are not tagged or if someone else used your face for their profile picture. This setting gives users increased control over facial recognition used by Facebook affects them.

This settlement of the class action by Facebook comes during the renewed skepticism of facial recognition technology following the revelations around Clearview, AI's scraping of social media site photos to train their facial recognition software.⁹ There have been similar class action lawsuits under the Illinois Biometric Information Privacy Act filed against [IBM](#)¹⁰ and [Clearview, AI](#).¹¹ With Facebook choosing to settle the class action instead of litigate, we may see the same course of action in these subsequent cases as well as more class actions brought in the future under the same act which is unique to Illinois.

⁵ Edleson, *Facebook Biometric Privacy Settlement*, (Feb. 8, 2020, 6:36 PM) <https://edelson.com/facebook-settlement>.

⁶ Press Release, Facebook, Facebook Reports Fourth Quarter and Full Year 2019 Results (Jan. 29, 2020).

⁷ Natasha Singer & Mike Isaac, *Facebook to Pay \$550 Million to Settle Facial Recognition Suit*, N.Y. TIMES, Jan. 29, 2020.

⁸ Queenie Wong, *Facebook Replaces Setting that Only Suggested Friends to Tag in Photos*, CNET, (Sept. 3, 2019), <https://www.cnet.com/news/facebook-replaces-setting-that-only-suggested-friends-to-tag-in-photos/>.

⁹ Kashmir Hill, *The Secretive Company That Might End Privacy as We Know It*, N. Y. TIMES, Jan. 18, 2020.

¹⁰ Corrado Rizzi, *Class Action Accuses IBM of 'Flagrant Violations' of Illinois Biometric Privacy Law to Develop Facial Recognition Tech*, CLASSACTION.ORG, (Jan. 30, 2020), <https://www.classaction.org/news/class-action-accuses-ibm-of-flagrant-violations-of-illinois-biometric-privacy-law-to-develop-facial-recognition-tech>.

¹¹ Erin Shaak, *Class Action: Clearview AI's Private Database Contains 'Billions' of Photos Collected Without Consent*, CLASSACTION.ORG, (Feb. 7, 2020), <https://www.classaction.org/news/class-action-clearview-ais-private-database-contains-billions-of-photos-collected-without-consent>.