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FYI: Law 360 -- Shutterfly Hit With Class Action Over Facial Recognition

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From This Morning's Law 360:

Shutterfly Hit With Privacy Suit Over Facial Recognition

http://www.law360.com/privacy/articles/669371?nl_pk=489e324c-f2dd-4214-aaad-2f10d79110a6&utm_source=newsletter&utm_medium=email&utm_campaign=privacy

By Y. Peter Kang

Law360, Los Angeles (June 17, 2015, 8:19 PM ET) -- In the wake of similar allegations against Facebook Inc., a putative class action filed in Illinois federal court Wednesday accuses Shutterfly Inc. of using facial recognition technology to create and store millions of face templates without permission, in violation of a state law protecting residents' control over their biometric data.

Plaintiff Brian Norberg, an Illinois resident, alleges in the suit that online image publisher Shutterfly and its subsidiary ThisLife LLC violated the state's Biometric Information Privacy Act by collecting facial recognition data from user-uploaded photos without first notifying individuals and receiving their written consent, and by failing to inform them how long the information will be stored and how it will be used.

"Specifically, defendants have created, collected and stored millions of 'face templates' (or 'face prints') — highly detailed geometric maps of the face — from millions of individuals, many thousands of whom are non Shutterfly users residing in the state of Illinois," the complaint states.

Norberg seeks to hold defendants liable to the class for statutory damages of \$5,000 for each intentional and reckless violation, and \$1,000 for each violation resulting from defendants' negligence.

"Defendants in this case made no effort whatsoever to obtain consent from unwitting third parties when they introduced their facial recognition technology," the suit says. "Not only do defendants' actions fly in the face of FCC guidelines, they also violate the privacy rights of Illinois residents."

The suit against Shutterfly comes on the heels of similar actions filed against Facebook in Illinois federal court in recent months. The social media giant was slammed with a proposed class action in April alleging that Facebook's proprietary facial recognition software violates state privacy laws, followed by a similar putative class action filed in mid-May.

Illinois law also prohibits companies that collect biometric data from selling it to third parties, a possibility Facebook skirted in a 2012 U.S. Senate hearing over the issue.

In the hearing, Sen. Al Franken, D-Minn. — the chairman of the Senate Judiciary subcommittee on privacy, technology and the law at the time — pushed for a commitment that Facebook would never share or sell the facial recognition data it generates from the feature to third parties.

Saying that it was "difficult to know" what Facebook would look like in the future, the company declined to make this promise, but added that it would "obviously be transparent" with any changes it decided to make and that the Federal Trade Commission and other regulators would be critical of any perceived problems.

In 2013, Franken criticized Facebook's expansion of the tag suggestions feature to collect data from user's profile photos, not just photos in which they had already been tagged. Facebook defended the practice, saying that it gives users more awareness of when a photo featuring their face is uploaded to the site and thus allows them to remove a "tag" or ask the uploading user to take it down, if necessary.

The FTC recommended that companies "take steps to make sure consumers are aware of facial recognition technologies" in its 2012 report on best practices for using such data.

--Additional reporting by Emily Field, Jody Godoy, Allison Grande and Daniel Wilson. Editing by Emily Kokoll.

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