

Facing Facts: Do We Sacrifice Security Out of Fear?

Article By:

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Long before the dawn of time, humans displayed physical characteristics as identification tools. Animals do the same to distinguish each other. [Crows](#) use facial recognition on humans. Even [plants](#) can tell their siblings from unrelated plants of the same species.

We present our physical forms to the world, and different traits identify us to anyone who is paying attention. So why, now that identity theft is rampant and security is challenged, do we place limits on the easiest and best ID system available? Are we sacrificing future security due to fear of an unlikely dystopia?

In one of the latest cases rolling out of Illinois' private right of action under the state's Biometric Information Privacy Act (BIPA), [Rogers v. BNSF Railway Company](#)[1], the court ruled that a railroad hauling hazardous chemicals through major urban areas needed to change, and probably diminish, its security procedures for who it allows into restricted space. Why? Because the railroad used biometric security to identify authorized entrants, BIPA forces the railroad to receive the consent of each person authorized to enter restricted space, and because BIPA is not preempted by federal rail security regulations.

The court's decision, based on the fact that federal rail security rules do not specifically regulate biometrics, is a reasonable reading of the law. However, with BIPA not providing exceptions for biometric security, BIPA will impede the adoption and effectiveness of biometric-based security systems, and force some businesses to settle for weaker security. This case illustrates how BIPA reduces security in our most vulnerable and dangerous places.

I can understand some of the reasons Illinois, Texas, Washington and others want to restrict the unchecked use of biometrics. Gathering physical traits – even public traits like faces and voices – into large searchable databases can lead to overreaching by businesses. The company holding the biometric database may run tests and make decisions based on physical properties. If your voice shows signs of strain, maybe the price of your insurance should rise to cover risk that stress puts on your body. But this kind of concern can be addressed by regulating what can be done with biometric readings.

There are also some concerns that may not have the foundation they once had. Two decades ago, many biometric systems stored bio data as direct copies, so that if someone stole the file, that person would have your fingerprint, voiceprint or iris scan. Now, nearly all of the better biometric systems

store bio readings as algorithms that can't be read by computers outside the system that took the sample. So some of the safety concerns are no longer valid.

I propose a more nuanced thinking about biometric readings. While requiring data subject consent is harmless in many situations, the consent regime is a problem for security systems that use biometric indications of identity. And these systems are generally the best for securing important spaces. Despite what you see in the movies, 2019 biometric security systems can be nearly impossible to trick into false positive results. If we want to improve our security for critical infrastructure, we should be encouraging biometrics, not throwing hurdles in the path of people choosing to use it.

Illinois should, at the very least, provide an exception to BIPA for physical security systems, even if that exception is limited to critical facilities like nuclear, rail and hazardous shipping restricted spaces. The state can include limits on how the biometric samples are used by the companies taking them, so that only security needs are served.

The field of biometrics may scare some people, but it is a natural outgrowth of how humans have always told each other apart. If limit its use for critical security, we are likely to suffer from the decision.

[1] 2019 WL 5699910 (N.D. Ill).

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