



BIOMETRICS

(A glimpse on the U.S.A)



United States / California

In **California**, the Consumer Privacy Act of 2018 aims to protect the personal information of "**consumers**" (California residents), including their biometric info. The law applies to businesses with over \$25 million in annual revenue and collect personal information on 50,000 people or devices.

§ 1798.81.5(d)(1)(A) of the Cal.Customer Records Act defines "**Personal information**": when an individual's name is recorded "in combination" with another listed "data element," such as unique **biometric** data.

The CCPA requires business privacy policies to include information on consumers' privacy rights and how to exercise them: Right to Know, Right to Delete, Right to Opt-Out of Sale, Right to Non-Discrimination.

If an organization does not implement a reasonable security **program** to protect data and/or suffers a breach, it can be subject to a class action with statutory damages of between \$100 and \$750 per consumer.

A consumer seeking statutory damages must first give a firm an opportunity to "cure" the alleged violation, prior to filing suit: §1798.150(b)



United States / New York

- In 2021, **New York City** enacted legislation imposing restrictions on the collection and use of biometric data applicable to “commercial establishments”.
 - The city's biometric information privacy law, effective July 9, **prohibits** the use of biometric identifier information (BII) for transactional purposes to sell, lease, trade or otherwise profit from biometric information.
- **New York State** Senate is **trying** to create a new “**Biometric Privacy Act**”, on retention, collection, disclosure and destruction (banning sale to third parties)
 - It shall require private entities in possession of biometric identifiers to develop a written policy for permanently destroying them when the initial purpose for collecting or obtaining such identifiers has been satisfied or, at the latest, within three years.



United States / Illinois

- Traditionally, the most restrictive law has been that of the State of **Illinois** (2008).
- The States of **Texas** and **Washington** (in 2017) followed along, but only Illinois provides individuals with a private right of action.

The Illinois legislature wrote in 2008:

“Biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse and is at heightened risk for identity theft.”



United States / Illinois

- **Written Notice & Consent**
- **Minimize Retention of Biometric Data** (permanently destroy biometric data when no longer needed for the initial purpose).
- **Maintain a Biometrics-Specific Privacy Policy:** Although neither Texas nor Washington require companies to maintain a biometrics-focused privacy disclosure, it is advisable that companies nonetheless maintain a written, publicly-available privacy policy addressing their biometric data collection, use, retention, and destruction practices and protocols.

Otherwise, on which basis would a customer express her “informed” consent?

- **Implement Reasonable Security Measures to Safeguard Biometric Data** (from unauthorized access, disclosure, or acquisition) → Security protocols.
- **Prohibiting Sales & Profiting From Biometric Data**



Litigation in the United States

- *Among others....*

***Calderon v. Clearview AI, Inc.*, 2020 U.S. Dist. LEXIS 94926 (S.D.N.Y. 2020)** (defendants scraped over 3 billion facial images from the internet and scanned biometric identifiers; created a searchable database, illegally sold to law enforcement & government agencies, and private entities too); *see also* ***Mutnick v. Clearview AI, Inc.*, 2020 U.S. Dist. LEXIS 109864 (N.D.Ill. 2020)**

businesslawtoday.org/2021/06/recent-developments-in-artificial-intelligence-cases

➔ ***Thornley v. Clearview AI, Inc.* (7th Cir. 2021)**

2022 settlement: <https://www.theguardian.com/us-news/2022/may/09/clearview-chicago-settlement-aclu>

CNN: *Here's why tech companies keep paying millions to settle lawsuits in Illinois*
<https://edition.cnn.com/2022/09/20/tech/illinois-biometric-law-bipa-explainer/index.html>