UNITED STATES OF AMERICA
Federal Trade Commission
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Office of Commissioner
Alvaro M. Bedoya

Remarks of Commissioner Alvaro M. Bedoya[1]
As Prepared for Delivery at the May 18, 2023 Open Commission Meeting

Regarding the Policy Statement on Biometric Information and Section 5 of the Federal Trade Commission Act

May 18, 2023

Two years ago, a mom in Detroit dropped her teenage daughter off at a local skating rink. But she couldn't get in. Security at the rink said she had been in a fight there earlier that year. In reality, she had never been there. But a face recognition system used by that skating rink said she had—and misidentified her with 97% confidence.[2]

Unfortunately, this kind of thing is getting more and more common. And it isn't just at places like skating rinks. Increasingly, when students try to take an important exam online; when people try to walk into the front door of their apartment building; or when they go shopping—automated face recognition algorithms decide for them if they can do that.

And unfortunately, if you are a woman, if you are a kid or a teen, if you are trans or non-binary, if you have a dark complexion, research suggests that some biometric technology does not perform as well on you as it does on other people. That is a problem. Biometric technology raises problems well beyond privacy—problems of basic fairness. This is an issue I've been studying since I was a young Hill staffer over a decade ago. In July of 2012, I helped organize one of the first full congressional oversight hearings on face recognition and privacy. Since then, I've spent much of my professional life trying to understand this technology and what it means for our society.

One of the things I've learned is that people really care about technology that tracks your body. Because that's what this is. For most of history, surveillance technology has tracked your technology. Your car, your phone, your computer. Biometric surveillance tracks your body. It can track your face, your voice, the distinctive way you carry your body. And it can do that in secret and from far away, in a way that used to be impossible. And in a way that is unavoidable.

People get that that's different. They get that it's new. And they have responded to that in a way they have never responded to any other form of surveillance. Never in the history of government surveillance has a city or state legislature effectively banned a surveillance

[1] The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other commissioner.
[2] Randy Wimbley & David Komer, *Black teen kicked out of skating rink after facial recognition camera misidentified her*, FOX 2 DETROIT (Jul. 16, 2021), https://www.fox2detroit.com/news/teen-kicked-out-of-skating-rink-after-facial-recognition-camera-misidentified-her.

technology. That didn't happen with wiretaps, or geolocation, or any other surveillance technology.

That changed with face recognition. For the first time, cities and states put near total bans or moratoria on government use of a surveillance technology. I think it's worth sitting with that for a second: biometric surveillance technology is so sensitive that American legislatures tried to rein it in in a way that they never had before.

Of course, those measures focused on government use of the technology—not corporate use of biometrics, which raises a related but also separate set of issues. Which is one reason I'm so excited about today's statement:

With today's statement, we are setting clear guideposts for how our oldest consumer protection authority—Section 5 of the FTC Act—applies to commercial use of biometric technology.

I want to be clear: This is our view on how one law applies to biometrics. We enforce around 80 laws. And so it is entirely possible that other rules would apply based on those other statutes.

Biometrics is an area mired in technical jargon: "Probe images," "false positives," "false negatives." So I want to highlight a few of the guidelines we're issuing today in simple, straightforward language.

First, if you make marketing claims about how accurate your technology is, or how it is not biased, you need proof of that.

And not just proof from the lab, where all of your cameras are high definition, and all of your photos are perfect quality. If you make claims about real-world validity, accuracy, or performance, you need proof of how it performs in real life, in the kind of situation in which it is actually used.

Second, when you measure bias, you need to look at how it affects real people before using biometric technology to make choices about them.

All of us have an age. All of us have a gender. All of us have different levels of melanin in our skin. Yet too many tests only measure bias across binaries: men vs. women, Black vs. white, young vs. old. The leading research in this field, for example by Drs. Buolamwini and Gebru, has shown that measuring bias in this one-dimensional way can hide the true extent of that bias.[3]

[3] Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROC. MACH. LEARNING RSCH. 1, 11 (2018) (assessing commercial gender classification systems and finding that all three performed worst for females with darker skin tones).

Third, it is *common knowledge* that this technology can be biased. Companies cannot ignore that. They need to take proactive steps to reduce or eliminate the risks that such errors could hurt people.

And so if you are a company using biometric technology, you need to think about how biases in that technology will affect the public. And you need to address any substantial consumer harm that may flow from that.

Lastly, and most importantly, there are some uses of this technology that are illegal in and of themselves.

If you are tracking highly sensitive information that could be used to hurt people, if you are doing it in secret such that people cannot avoid that, I urge you to consider whether you should be using that technology in the first place.