

Technology

Photographer: Meg Roussos/Bloomberg

Facebook Jerks Around A Federal Judge And Creates ‘Troubling Theme’ in Privacy Case

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Social network is accused of violating Illinois biometrics law

Judge says company tried to revive already rejected arguments

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A judge scolded [Facebook Inc.](#) for misconstruing his own rulings as he ordered the company to face a high-stakes trial accusing it of violating user privacy.

The social media giant has misinterpreted prior court orders by continuing to assert the “faulty proposition” that users can’t win their lawsuit under an Illinois biometric privacy law without proving an “actual injury,” U.S. District Judge James Donato said in a ruling Monday. Likewise, the company’s argument that it’s immune from having to pay a minimum of \$1,000, and as much as \$5,000, for each violation of the law is “not a sound proposition,” he said.

Under the Illinois Biometric Information Privacy Act, the damages in play at a jury trial set for July 9 in San Francisco could easily reach into the billions of dollars for the millions of users whose photos were allegedly scanned without consent.

Apart from his concerns about the “troubling theme” in Facebook’s legal arguments, Donato ruled a trial must go forward because there are multiple factual issues in dispute, including a sharp disagreement over how the company’s photo-tagging software processes human faces.

The users argue the technology necessarily collects scans of face geometry because it uses “regions” of faces to recognize them, according to the order. Facebook claims its software “learns for itself” what distinguishes different faces, he said.

“This is a quintessential dispute of fact for the jury to decide,” Donato wrote.

The judge said the users have “identified more than enough evidence to allow a reasonable jury to conclude their biometric data was harvested.”

Donato cited a Facebook research paper on its DeepFace program that he said the company agrees is “descriptive of its technology.” The users have also unearthed internal emails “indicating that Facebook understood it was collecting what is ‘normally referred to as biometric data,’” Donato wrote.

The users last month won the right to sue as a group. Donato referred to the ruling granting class-action status to again reject Facebook’s arguments that the case should be thrown out because it would require the company to change its practices for users outside of Illinois.

Facebook didn’t immediately respond to a request for comment on the ruling.

The case is *In re Facebook Biometric Information Privacy Litigation*, 15-cv-03747, U.S. District Court, Northern District of California (San Francisco).