

Plaintiff Brad Marschke brings this Class Action Complaint against Defendants YouTube, LLC (“YouTube”) and Google LLC (“Google”) (collectively, “Defendants”) to put a stop to Defendants’ surreptitious collection, use, and storage of Plaintiff’s and the proposed Class’ (defined below) sensitive biometric identifiers¹ and biometric information² (collectively, “biometrics”) without obtaining informed written consent or providing the data retention and destruction policies to consumers. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. Google is one of the largest corporations in the world. Its business focuses on, among other things, artificial intelligence, Internet search engine technology, online advertising, cloud computing, computer software, quantum computing, e-commerce, and consumer electronics.

2. Google has been referred to as the “most powerful company in the world” and one of the world’s most valuable brands due to its market dominance, data collection, and technological advantages in the area of artificial intelligence. It is considered one of the “Big Five” American information technology companies, alongside Amazon.com, Inc., Apple Inc., Meta Platforms, Inc. (f/k/a Facebook), and Microsoft Corporation.

3. Google offers a multitude of products and services beyond its ubiquitous Google Search, many of which hold dominant market positions, including video sharing through YouTube.

¹ “‘Biometric identifier’ means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” 740 ILCS 14/10.

² “‘Biometric information’ means any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual.” *Id.*

4. Google purchased YouTube on November 13, 2006, for \$1.65 billion in Google stock. YouTube is now a wholly owned subsidiary of Google.

5. Google and YouTube operate the two most visited websites worldwide, google.com and youtube.com.³

6. Google.com and youtube.com are also the two most visited websites in the United States.⁴

7. Founded in 2005, YouTube is the largest social media video-sharing platform in the world.

8. YouTube's platform has more than 2.5 billion monthly users who collectively watch more than one billion hours of videos each day.

9. As of May 2019, videos were being uploaded to YouTube at a rate of more than 500 hours of content per minute.

10. YouTube users can use the YouTube platform to, among other things, upload and share videos, either privately or with the general public.

11. Once a user uploads a video on YouTube, the user can use various YouTube features or tools to, among other things, blur out faces within an uploaded video and/or create thumbnail photographs of various points within a particular video.

12. As alleged in more detail below, Defendants' "Face Blur" tool allows a user to "select the faces" in the user's particular video that they would "like to blur," which when applied

³ *Most Visited Websites by Traffic in the world for all categories, July 2022*, SEMRUSH, <https://www.semrush.com/website/top/>.

⁴ *Most Visited Websites by Traffic in United States for all categories, July 2022*, SEMRUSH, <https://www.semrush.com/website/top/united-states/all/>.

and saved, will result in those faces appearing blurry and ostensibly unrecognizable to any viewer of the video.

13. In order for a YouTube user to use the “Face Blur” tool, the user must use YouTube Studio, which Defendants claim is “the home for creators[,]” and allows YouTube users to “manage [their] presence, grow [their] channel, interact with [their] audience, and make money all in one place.”⁵

14. Upon information and belief based on the investigation of Plaintiff’s counsel, Defendants’ “Face Blur” tool captures and stores biometric identifiers or information in the form of scans of face geometry that the tool is used on. However, Defendants do not provide notice or obtain legally mandated consent from the individual’s whose biometric identifiers or information is captured, in violation of Illinois’ Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”). Nor do they post a publicly available retention schedule and guidelines for permanently destroying the biometric identifiers of Plaintiffs and the Class, as mandated by BIPA.

15. In addition, Defendants offer YouTube users an opportunity to choose specific thumbnail pictures culled from an uploaded video. Specifically, YouTube contains a feature that allows video creators to choose thumbnails for their videos that are auto generated by YouTube.

16. To be sure, thumbnails with faces, especially faces with more expression, generate more clicks and views and, as such, Defendants are incentivized to auto-generate thumbnails that contain faces – especially faces that contain more expression.

17. Upon information and belief based on the investigation of Plaintiff’s counsel, Defendants’ thumbnail feature appears to work by scanning the uploaded video and all faces within the video to identify facial expressions. The purpose of this is to attract the most clicks and views

⁵ *Navigate YouTube Studio*, GOOGLE, <https://support.google.com/youtube/answer/7548152?hl=en> (last visited Aug. 29, 2022).

for the uploaded videos. In doing so, Defendants capture and store biometric identifiers or information in the form of faceprints without providing notice or obtaining legally mandated consent from the individual's whose biometric identifiers or information is captured, in violation of BIPA. Nor do they a post publicly available retention schedule and guidelines for permanently destroying the biometric identifiers of Plaintiff and the Class, as mandated by BIPA.

18. Through these practices, Defendants not only disregard their users' privacy rights, they also violate BIPA, which was specifically designed to protect Illinois consumers from practices like Defendants'. In particular, Defendants violated (and continue to violate) BIPA because they did not:

(a) properly inform Plaintiff or the Class in writing that their biometric identifiers were being collected or stored;

(b) properly inform Plaintiff or the Class in writing of the specific purpose and length of time for which their biometric identifiers were being collected, stored, and used;

(c) provide a publicly available retention schedule and guidelines for permanently destroying the biometric identifiers of Plaintiff and the Class; and

(d) receive a written release from Plaintiff or the Class to collect, capture, or otherwise obtain their biometric identifiers.

19. Accordingly, this Complaint seeks a final judgment: (a) declaring that Defendants' conduct violates BIPA; (b) requiring Defendants to cease the unlawful activities discussed herein; and (c) awarding statutory damages to Plaintiff and the Class.

PARTIES

20. Plaintiff Brad Marschke is a natural person and resident and citizen of the State of Illinois residing in the County of Effingham. Plaintiff has been a customer of Google and a registered and active user of YouTube since at least 2008. Within the applicable statute of

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