Shutterfly® faces a reckoning on biometrics

A technology marketed by online image publishing service, Shutterfly, is making it easier for subscribers to tag family and friends has landed the company in court, with two Illinois residents bringing a class action lawsuit alleging violations of their privacy. Up against a publicly traded industry leader, a small law firm with seasoned class action veterans is taking the lead on the case.

THE FACTS

Since its inception in 1999 near the end of the dot com bubble, Shutterfly, Inc. has presented itself as an online platform that lets consumers remember special days and moments by putting them in frames or on everything from calendars to pillows to t-shirts.

Many of those moments include the faces of friends, family and loved ones, and by printing them onto all these different mediums, Shutterfly not only enables you to remember them, but also keeps some memories for itself.

Vernita Miracle-Pond and her friend Samantha Paraf, both Illinois residents with and without Shutterfly accounts, respectively, uploaded such a moment into Shutterfly's online software and realized that their faces were both quickly identified, measured, analyzed, and stored by the photo service. Although seemingly convenient for future tagging and sharing, neither of the friends had given Shutterfly consent to do so.

THE CLAIMS

After realizing the potential impact of Shutterfly's use of biometric data on members and non-members alike, Miracle-Pond and Paraf filed a class action suit against the image publishing company, alleging their analysis and storage of such data violates the Illinois Biometric Information Privacy Act (BIPA). The 2008 law dictates that private companies cannot retain or seek out private citizens' biometrics without having received written consent from the individual and informing them of how long the data will be kept.

This is not Shutterfly's first time facing off with BIPA. In 2017, the company fought a similar lawsuit that alleged storage of biometric data without consent after a plaintiff's face was identified by their software. Over the past decade, other photo-sharing companies such as Facebook®, Google™ and Snapchat® have also found themselves ensnared in major litigation with account holders who made similar allegations.

As the use of biometrics grows in the tech industry, cases such as these illustrate that the legal system is catching up to technology. Today, Washington and Texas are the only other states to have laws like Illinois' BIPA on the books, but nevertheless there are over 200 class action suits alleging similar privacy violations. That number is sure to grow in years to come.

THE FIRM BEHIND THE CASE

Taking the lead against Shutterfly on behalf of Miracle-Pond and Paraf is small Pittsburgh-based firm Carlson Lynch Ltd. It was founded in 2004 by Bruce Carlson and Gary Lynch. From its inception, the partners sought to merge their rural Pennsylvania working class roots and grit with the metropolitan skill and savvy that they learned in the big law firms where each got their start. From day one, their work has espoused a commitment to fighting for workers who face poor treatment by well-financed industries, a struggle that has evolved from the steel and rail workers of industrial Pittsburgh to the high-tech consumers of the modern era.

Having quickly expanded from a two-person firm, since 2004 Carlson and Lynch have added another heavy hitting partner, Edwin J. Kilpela, Jr., along with 18 other attorneys and counting. Once inhabiting a small office in PNC℠ Park, the firm has now expanded nationwide with offices and attorneys in Pittsburgh, Chicago, San Diego and New Castle, Pennsylvania.

Providing a voice for "those individuals who are harmed when capitalism shrugs," the firm and its attorneys deal with and lead some of the nation's highest profile consumer litigation and has advocated for consumers against major companies such as Uber®, Starbucks®, Cracker Barrel®, and others that have taken advantage of consumers financially or otherwise.

Although Carlson Lynch has taken the lead, they are aided in the case by attorneys from fellow class-action firms Ahdoot & Wolfson, PC in California and Carey Rodriguez Milian Gonya, LLP in Florida.

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