

Texas sues Meta over Facebook's dropped facial-recognition tech

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Facebook claims it no longer collects and profits off users' faces through controversial facial-recognition technology. Texas isn't buying it.

The state sued Meta Platforms Inc. over claims its Facebook and Instagram platforms are still monetizing people's faces without their consent, as well as holding onto a facial-geometry database compiled over a decade. Wielding multiple laws that allow for penalties of \$25,000 per violation, the state is seeking billions of dollars in its complaint filed Monday.

"These claims are without merit and we will defend ourselves vigorously," Meta said in a statement.

Facebook announced last year it would stop using facial-recognition technology and delete its database of users' facial profiles after privacy advocates mounted a push-back campaign. That came after the company agreed to pay \$650 million in 2020 in the largest-ever U.S. consumer privacy settlement, resolving a class-action suit by disgruntled Facebook users in Illinois who didn't give permission for the company's data-tagging tool to harvest biometric identifiers from their photos and videos.

Shortly after the settlement, Texas Attorney General Ken Paxton kicked off his own investigation into the company's facial-recognition technology, in what critics called a naked play at shaking Facebook down again. Little was heard from Texas's investigation in the intervening year and a half, until Monday.

Paxton staged a press conference to announce the suit against Meta on the first day of early voting in the Texas primaries. Paxton is hip deep in a fierce re-election battle against well-financed Republican primary rivals, while simultaneously fending off a federal corruption probe into improper use of his office. The Meta complaint was filed in state court in Marshall, the home district of one of his toughest political opponents.

The embattled attorney general is also awaiting a civil trial on long-

stalled allegations he violated state securities laws. Paxton, who has been endorsed by former President Donald Trump, has carved out a niche attacking Big Tech giants like Google, Twitter and Facebook as well as the Biden administration's immigration and vaccination policies.

In the new lawsuit, Texas claims Facebook hasn't said it deleted biometric identifiers collected from photos and videos uploaded by family and friends of non-Facebook users, or whether facial-recognition technology is still being used at Meta's Instagram, WhatsApp, Facebook Reality Labs "or its upcoming virtual-reality universe," according to the complaint.

Meta said on its blog in November that it was deleting face print records for more than 1 billion people. The company said one third of its users had given their consent to use the technology.

"We need to weigh the positive use cases for facial recognition against growing societal concerns, especially as regulators have yet to provide clear rules," the post said.

The company also said that it wasn't giving up on the technology.

"Looking ahead, we still see facial recognition technology as a powerful tool, for example, for people needing to verify their identity, or to prevent fraud and impersonation," according to the post.

At Paxton's press conference and in the lawsuit, he said he's not letting Meta off the hook.

Facebook has created the largest facial dataset in the world with its DeepFace algorithm, a deep learning facial-recognition system that "approaches human-level accuracy in identifying faces," the state attorney general said in the complaint. "And it exists only because—for

over a decade—Facebook illegally and surreptitiously captured the biometric identifiers of tens of millions of Facebook and Instagram users and non-users."

If Texas's claims hold up, Meta could be looking at stiff fines.

Paxton claims Meta's gathering and commercialization of biometric identifiers without consent violates the Texas Capture or Use of Biometric Identifier Act, or CUBI, as well as three other state privacy statutes concerning the use of biometric identifiers. Three of the laws carry penalties up to \$25,000 per violation, while the fourth penalizes violators at up to \$10,000 per occurrence, which Texas claims happened "billions of times."

It's not clear that CUBI, which was enacted in 2009 and can only be enforced by the Texas attorney general's office, has ever been used against a company.

"There can be no free pass for Facebook unlawfully invading the privacy rights of tens of millions of Texas residents by misappropriating their data and putting one of their most personal and valuable possessions—records of their facial geometry—at risk from hackers and bad actors, all to build an AI-powered virtual-reality empire," Paxton said in the complaint.

The case is State of Texas v Meta Platforms Inc. f/k/a/ Facebook Inc., 71st Judicial District Court in Harrison County, Texas (Marshall).

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