

A New Type of Face Painting - The Use of Facial Recognition Technology in Sports Venues

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Professional sports teams' greatest rivals in the coming seasons could be their own fans. With the increase of facial recognition technologies implemented within sports venues, compliance with state biometric privacy laws will be vital in order to avoid hefty fines or class action lawsuits.

Facial recognition technology can be used to collect an individual's biometric identifier. [Biometric identifiers](#) are unique physical characteristics, such as a retina scan, fingerprint or a scan of a hand or face geometry, used to identify individuals. Facial recognition captures a person's individual characteristics and [maps the geometry of their face](#). This data is then used to identify the individual. Biometric privacy laws have been put into place to address the sensitive nature of these identifiers. Biometric identifiers such as retina scans, fingerprints and facial scans have an element of permanence that other identifiers and pieces of personal information do not — biometric identifiers cannot be changed if compromised, whereas other identifiers, such as account numbers and numeric identification numbers, can be changed should a breach occur. The penalties and potential damages associated with biometrics are often more significant than with other types of personal information.

Sports venues around the country have implemented facial recognition into their stadiums to enhance fan experiences. Venues take biometric scans directly from each person and use the scans to expedite what they think is a fans' least favorite part of the game day experience. Venues like Citi Field, home of the New York Mets, and FirstEnergy Stadium, home of the Cleveland Browns, use facial recognition for ticketing. Rather than having to provide a physical a ticket or a mobile pass, patrons stand in front of a camera, the camera scans their face geometry, and their face grants them entry. Venues are expanding this technology to be used at the concession stands as well. A patron's facial scan is connected to their digital wallet, eliminating the need for other payment options. Facial recognition technology can also be used to preserve

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the moments fans are featured on large venue video displays, including the JumboTron.

Along with enhancing the fan experience, facial recognition can be used for security purposes. Venues can obtain publicly available photos, rather than taking scans from the individual themselves, run a biometric scan on the photo and use the technology to scan the crowd and locate potential threats. States like New York have begun to use biometrics to exclude unwanted or banned individuals from sports venues, including banning adversarial firms and their attorneys from Madison Square Garden.

Though these systems use publicly available photos for scan comparisons, scanning an individual's face and making a match constitutes collection of biometric information in states that have biometric information privacy laws. In this scenario, consent is required and can present some practical challenges, particularly in situations where an individual purchases a ticket and consents to the use of biometrics but then transfers that ticket to another individual. Venues must be careful with how they obtain required consent in order to comply with these new laws. If venues do not obtain proper consent from fans in states that have biometric privacy statutes, they are at risk for fines or lawsuits.

Although there is not a federal biometric privacy statute, Illinois, Texas and Washington have adopted biometric privacy statutes which provide strict requirements for collecting, storing or retaining an individual's biometric data, including information related to facial recognition technology. Generally, a private entity wanting to use an individual's biometric data must obtain the individual's informed consent. If the individual is not provided the opportunity to consent to the use of their biometric information, the private entity is subject to civil or criminal penalties, enforced by the state's attorney general. Further, in Illinois, individuals may bring a private cause of action against the entity for violation of the Illinois statute.

Proper consent to collect and store biometric data varies by state. Although most states have enacted laws that mention biometric collection and storage, they do not require private entities to obtain consent from the individual. [Illinois](#), [Texas](#) and [Washington](#) all require informed consent before collecting biometric information. Specifically, a sports venue in Illinois must 1) inform the patrons in writing that biometric identifiers or information is being collected or stored; 2) inform the patrons in writing of the purpose and duration for which the biometric identifiers or information will be used; and 3) receive a written release from the patron consenting to the use. Texas also requires informed consent but does not specify the notice and consent must be in writing. New York, on the other hand, requires commercial establishments, including sports venues, to disclose that they are collecting or storing biometric information. The disclosure must be in plain view at the entrances of the establishment, but does not require the establishments to obtain consent for such a use. Residents of New York may also bring a private cause of action if the commercial establishment fails to comply with the statute.

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Fans benefit from decreased ticket fraud through the use of biometric identifiers. Both venues and fans benefit from speedier transactions and a more practical method to impose safety policies. As states continue to propose and adopt laws that implicate biometric privacy concerns, sports venues need to be careful about compliance with these laws. Sporting events with sold-out crowds that eventually turn into plaintiffs are not the problems that any teams or venues want to face.

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