



INNOVATIONS  
by PRIDESTAFF **LIVE**

# Emerging Trends in Biometric Use & Privacy Law

Minimizing the Legal Risks of Emerging Trends  
in Privacy and Cybersecurity

PRESENTED BY

Melissa Siebert | *Partner*  
Shook Hardy & Bacon | Chicago

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## Melissa Siebert

*Partner and Director of  
Shook's Biometric Privacy Task Force*

[masiebert@shb.com](mailto:masiebert@shb.com)

Melissa has the largest biometric privacy defense practice in the U.S. She and her team have handled over 80 biometric privacy class actions and are considered leaders in managing legal risks associated with biometric technology.\*

\* This presentation is not intended to provide legal advice or to create an attorney-client relationship, and should not be relied upon in lieu of consulting a biometric privacy attorney.

EMERGING TRENDS

# Biometric Technology: In the Workplace

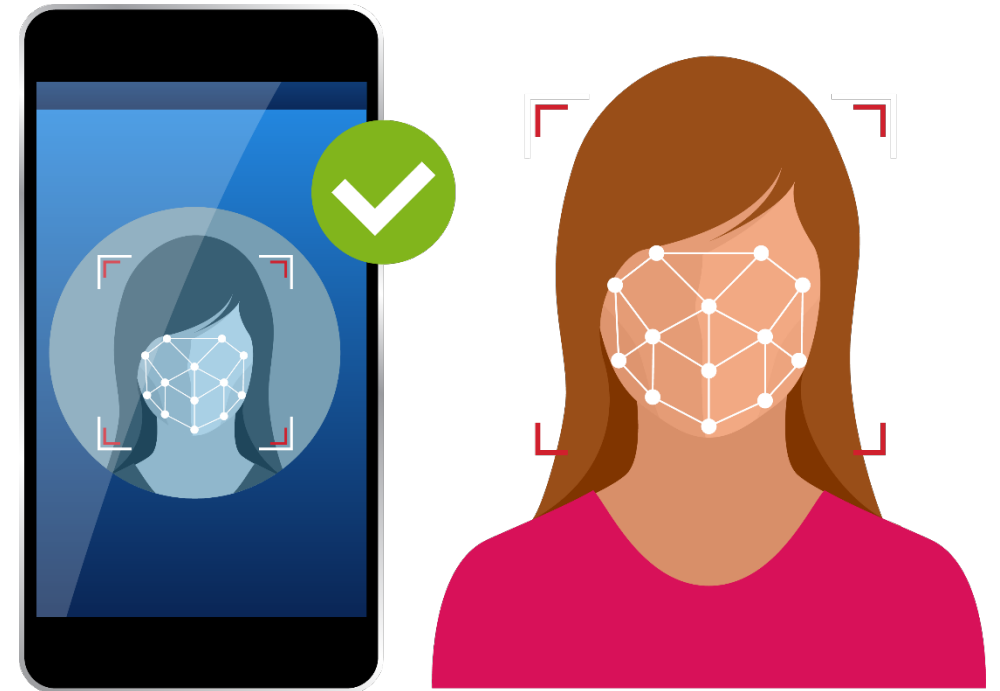
# Employee Health & Safety

- Temperature taking during COVID-19.
- Contact tracing in work environments.
- “Touch-free” technologies.



# Workplace & System Security

- Work-from-home access via facial recognition.
- Iris scans and physical security.
- Facial recognition and finger scan perimeter and system security.
- Geolocation.



# Employee Time & Attendance

- Majority of biometric privacy lawsuits involve finger sensor timekeeping.
- Timekeeping does not involve fingerprints.
- How it works:
  1. Sensor measures attributes of fingertip
  2. Mathematical algorithm created
  3. Algorithm is encrypted/stored, indexed
- Cannot be reverse engineered.



# Employee Concerns

- Too much information
- “Big Brother”
- Data security
- Personal privacy
- Use of data



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# Biometric Privacy Laws

# A Definition

## **GDPR defines biometric data as:**

- Personal data resulting from specific technical processing relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or fingerprint data.



## Another Definition

### **BIPA's biometric data includes biometric identifiers and biometric information:**

- Identifiers – retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.
- Information – any information based on a biometric identifier used to identify an individual.
- We will discuss exclusions later.



# A Third Definition

## CCPA defines biometric data as:

- An individual's physiological, biological, or behavioral characteristics, including an individual's DNA, that can be used to establish individual identity.
- It includes imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template (faceprint, minutiae template, or voiceprint) can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

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# Biometric Privacy Lawsuits

# BIPA Lawsuits

- More than 800 lawsuits filed in Illinois (700 active)
- Four to ten new cases filed *every week*





# The Illinois Biometric Information Privacy Act (BIPA): An Overview

**Scope:** applies to private entities; biometric identifiers AND biometric information

- Requirements:
  - Notice and consent/release before collection
  - Publicly available policy re retention/destruction
  - Consent for disclosure to 3d party
  - Reasonable care to safeguard/transmit
  - Retention limited to purposes collected
- Private right of action

# BIPA's Exclusions/Exemptions

- Photographs
- Biometric information related to certain medical testing
- HIPAA-related information
- Unionized employees – labor law pre-emption
- Certain financial institutions
- State government contractors



# BIPA Litigation – Defenses & Trends

- Scope of workers' comp exclusivity
- Statute of limitations
- Federal court remands
- Facial recognition lawsuits
- Lawsuits within “verticals”
- Settlement landscape



# Risk Mitigation: Documentation

- Policy regarding biometric information
- Disclosure form
- Consent form with waiver
- Document retention policy
- Data protection impact assessment



# Risk Mitigation: Insurance

- Which policies may provide coverage?
- Any exclusions to look out for?
- Questions applicants should ask their broker/carrier?



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# Compliance with California Privacy Law, Now and in the Future

# Current Law: CCPA

- Enforcement timeline

**CCPA in effect:**

January 1, 2020

**AG starts enforcing:**

July 1, 2020

**Regulations effective:**

August 14, 2020

JANUARY 2020

JULY 2020

AUGUST 2020



# What's on the Horizon: CPRA in 2023

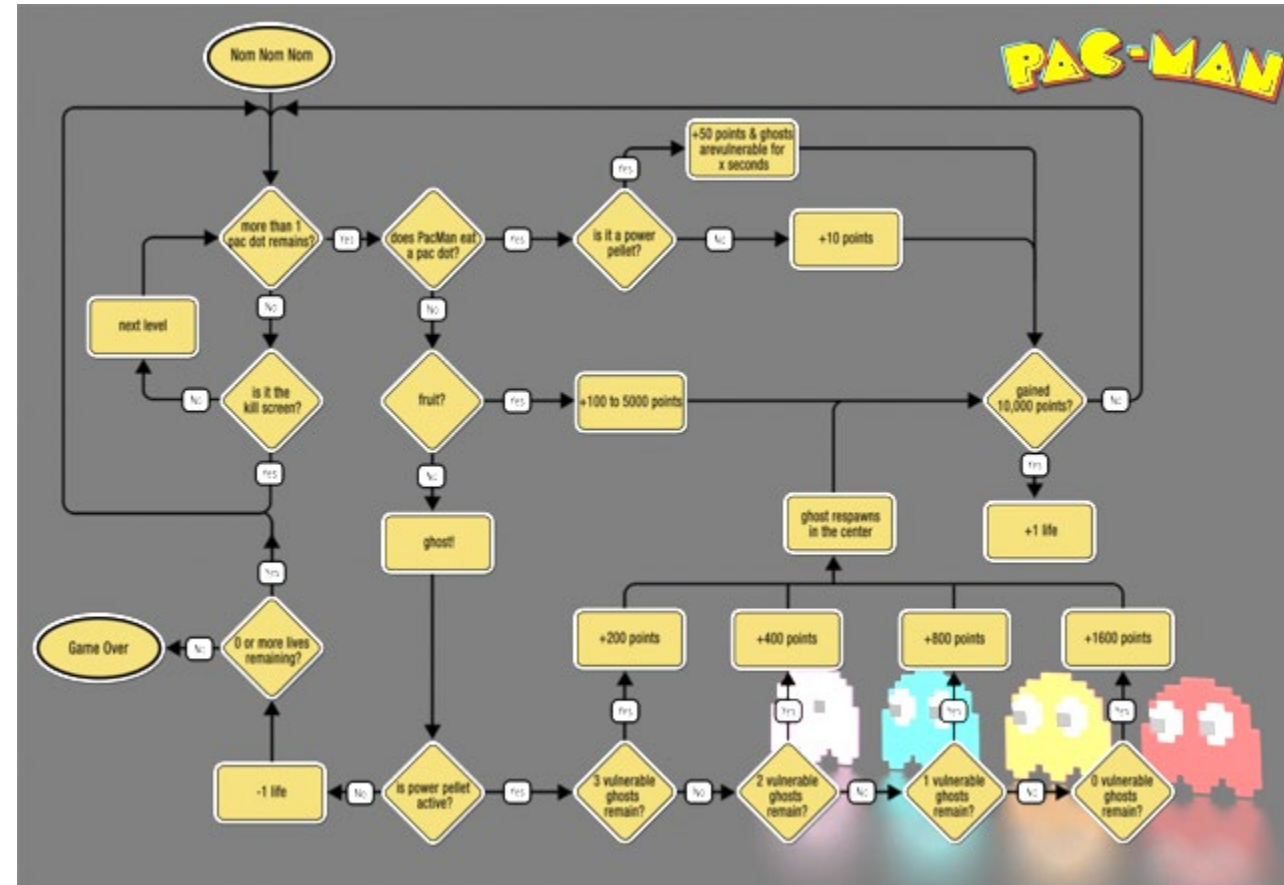
Prop 24 will significantly amend the CCPA

- Creates a new privacy agency
- Expands private right of action to include email breaches and password/security question breaches
- Discretionary 30-day cure period
- Additional protections for sensitive information
- Restrictions on sharing
- Proportional fines
- Extends the employee and B2B exemptions



# What Does a CCPA Program Look Like?

- Consumer-facing disclosures
- Processes for consumer requests
- Recordkeeping
- Training
- Vendor contracts





## What's Next?

- National Data Privacy legislation?
- Increased state data privacy laws?
- Artificial intelligence?
- Significant increase in facial recognition use?
- Increased public health surveillance?



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