

117TH CONGRESS
2D SESSION

S. 5334

To establish best practices for the Federal use of facial recognition technology,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Mr. PORTMAN introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish best practices for the Federal use of facial
recognition technology, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Facial, Accountability, Clarity, and Efficiency in Tech-
6 nology Act” or the “FACE IT Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ESTABLISHING BEST PRACTICES FOR CURRENT
FEDERAL USE OF FACIAL RECOGNITION TECHNOLOGY

- Sec. 101. Disclosure of Federal uses of facial recognition technology.
- Sec. 102. Accuracy requirements for the procurement of facial recognition technology.
- Sec. 103. Requirement for procurement of facial recognition technology.
- Sec. 104. Disclosure of high risk use case.
- Sec. 105. Requirement of human involvement in facial recognition technology decisionmaking.
- Sec. 106. United States person notice and opt-out for non-investigative uses of facial recognition technology.
- Sec. 107. Guarantee of constitutional rights.
- Sec. 108. Database access restrictions for Federal use of facial recognition technology.
- Sec. 109. Notification for criminal defendants.
- Sec. 110. Rule of construction for facial recognition technology that is not high risk.
- Sec. 111. Limitation to civilian agencies.

TITLE II—DEVELOPING BEST PRACTICES FOR FUTURE FEDERAL USE OF FACIAL RECOGNITION TECHNOLOGY

- Sec. 201. Establishment of a Federal Advisory Committee on Facial Recognition Technology.
- Sec. 202. Membership of the Federal Advisory Committee on Facial Recognition Technology.
- Sec. 203. Meetings of the Federal Advisory Committee on Face Recognition Technology.
- Sec. 204. Authorization of appropriations.

TITLE III—FOIA

- Sec. 301. Applicability of FOIA.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the term “Advisory Committee” means the
 4 Federal Advisory Committee on Facial Recognition
 5 Technology established under section 201(a);

6 (2) the term “applicable congressional com-
 7 mittee” means—

8 (A) the Committee on Homeland Security
 9 and Governmental Affairs, the Committee on
 10 Commerce, Science, and Transportation, and

1 the Committee on the Judiciary of the Senate;
2 and

3 (B) the Committee on Homeland Security,
4 the Committee on Energy and Commerce, the
5 Committee on Oversight and Reform, the Com-
6 mittee on Science, Space, and Technology, and
7 the Committee on the Judiciary of the House of
8 Representatives;

9 (3) the term “Director” means the Director of
10 the Office of Management and Budget;

11 (4) the term “facial recognition technology”
12 means an automated or semi-automated process of—

13 (A) generating a mathematical representa-
14 tion of an individual’s face, known as a probe
15 face template; and

16 (B)(i) querying a gallery populated with
17 many face templates that may be linked to per-
18 sonally identifiable information and subse-
19 quently returning an identity if the similarity of
20 the probe face template to any face template in
21 the gallery is above a specified threshold; or

22 (ii) comparing the probe face template to
23 a specific face template of an existing image of
24 the individual to verify their identity;

1 (5) the term “Federal agency” has the meaning
2 given the term “agency” in section 3502 of title 44,
3 United States Code;

4 (6) the term “high risk”, with respect to a use
5 case, means one in which face recognition query out-
6 puts influence the decision to—

7 (A) arrest or convict an individual, deny an
8 individual access to government services to
9 which the individual is legally entitled; or

10 (B) take other action that directly impacts
11 the fundamental rights or equal protection of
12 that individual under the law;

13 (7) the term “intelligence community” has the
14 meaning given the term in section 3 of the National
15 Security Act of 1947 (50 U.S.C. 3003);

16 (8) the term “Secretary” means the Secretary
17 of Homeland Security;

18 (9) the term “use case”—

19 (A) means a description of the ways and
20 circumstances in which a technology is operated
21 to perform a specific function; and

22 (B) does not include research programs
23 that use Institutional Review Board informed
24 consent; and

1 (10) the term “security use case” means the
2 ways and circumstances in which a technology is op-
3 erated to perform a specific function related to—

4 (A) conducting a criminal investigation;

5 (B) protecting national security;

6 (C) monitoring and preventing unauthor-
7 ized access to Federal buildings; or

8 (D) detecting or combating fraud or other
9 illegal activity.

10 **TITLE I—ESTABLISHING BEST**
11 **PRACTICES FOR CURRENT**
12 **FEDERAL USE OF FACIAL**
13 **RECOGNITION TECHNOLOGY**

14 **SEC. 101. DISCLOSURE OF FEDERAL USES OF FACIAL REC-**
15 **OGNITION TECHNOLOGY.**

16 (a) IN GENERAL.—Not later than 270 days after the
17 date of enactment of this Act, and biannually thereafter,
18 the Director shall submit to the applicable congressional
19 committees a report on all Federal Government programs
20 that use face recognition technology.

21 (b) EXECUTION OF REPORT.—In order to facilitate
22 the submission of the report under subsection (a), the
23 head of each Federal agency shall provide necessary infor-
24 mation to the Director at the request of the Director.

1 (c) CONTENTS.—Each report submitted under sub-
2 section (a) shall include—

3 (1) a description of each facial recognition tech-
4 nology use case deployed by a Federal agency;

5 (2) an evaluation of how facial recognition tech-
6 nologies deployed by a Federal agency comply with
7 the accuracy requirements under section 102;

8 (3) a list of the private sector entities which
9 provide facial recognition technologies to each Fed-
10 eral agency for each use case;

11 (4) a list of the State, local, and Tribal govern-
12 ment agencies and entities that provide access to fa-
13 cial recognition technologies to each Federal agency
14 for each use case;

15 (5) the databases that facial recognition tech-
16 nology queries for each Federal agency for each use
17 case and, if applicable, the authorization allowing ac-
18 cess to privately owned and maintained databases;

19 (6) an explanation of the reasons, with quan-
20 titative rationales where possible, for using facial
21 recognition technology for each use case;

22 (7) for each use case described in paragraph
23 (1), an enumeration of whether the use case is high
24 risk; and

1 (8) any additional information the Director de-
2 termines appropriate.

3 (d) FORM OF REPORT.—Each report required under
4 subsection (a) shall be submitted in an unclassified form,
5 but may contain a classified annex.

6 **SEC. 102. ACCURACY REQUIREMENTS FOR THE PROCURE-**
7 **MENT OF FACIAL RECOGNITION TECH-**
8 **NOLOGY.**

9 (a) DEVELOPMENT OF ACCURACY REQUIREMENTS.—
10 Not later than 1 year after the first report is submitted
11 under section 101(a), the Director of the National Insti-
12 tute for Standards and Technology and the Secretary, in
13 consultation with the Director of the Office of Science and
14 Technology Policy and other agencies and entities as ap-
15 propriate, shall develop minimum accuracy requirements,
16 specific to each Federal agency, for use cases of facial rec-
17 ognition technology in the Federal Government as deter-
18 mined in the report.

19 (b) DEVELOPMENT OF ACCURACY REQUIREMENTS
20 FOR HIGH RISK USE CASES.—In developing the require-
21 ments under subsection (a), the Director of the National
22 Institute for Standards and Technology shall ensure that
23 the requirements for the use cases identified as high risk
24 shall be more strict than the requirements for the uses
25 cases that are not high risk.

1 (c) CERTIFICATION FOR THE ACCURACY STAND-
 2 ARDS.—The head of each Federal agency shall develop a
 3 process to ensure that, with the exception of research and
 4 testing, the facial recognition technology used by the Fed-
 5 eral agency meets the relevant requirements established
 6 under subsection (a).

7 (d) ACCURACY ACROSS DEMOGRAPHIC GROUPS.—
 8 The requirements under subsection (a) shall include min-
 9 imum accuracy requirements for individuals regardless of
 10 different skin tone or race, disability status, age, or sex,
 11 alone and in combination, to ensure that facial recognition
 12 technology can accurately identify diverse individuals.

13 (e) TRANSPARENCY REQUIREMENTS.—Not later
 14 than 30 days after the date on which the requirements
 15 are developed under subsection (a), the Director of the
 16 National Institute for Standards and Technology shall
 17 make such requirements available on a public website.

18 **SEC. 103. REQUIREMENT FOR PROCUREMENT OF FACIAL**
 19 **RECOGNITION TECHNOLOGY.**

20 (a) IN GENERAL.—Except as provided in subsection
 21 (c), before a Federal agency procures or acquires a facial
 22 recognition technology, the Federal agency shall—

23 (1) publicly report testing and performance re-
 24 sults from the Face Recognition Vendor Testing
 25 Program of the National Institute of Standards and

1 Technology or other reputable testing authority in a
2 manner that is compatible with Global Reporting
3 Initiative 102 requirements for the facial recognition
4 systems that the Federal agency aims to procure or
5 acquire;

6 (2) certify to the Director that the technology
7 shall meet the accuracy requirements developed
8 under section 102; and

9 (3) include the certification described in para-
10 graph (1) in the next report required under section
11 101.

12 (b) LIMITATION ON PROCUREMENT OF FACIAL REC-
13 ognition.—

14 (1) IN GENERAL.—On and after the date on
15 which the accuracy requirements are developed
16 under section 102(a), the head of a Federal agency
17 shall not procure or acquire facial recognition tech-
18 nology that does not meet the requirements under
19 subsection (a).

20 (2) ACQUISITIONS BEFORE DEVELOPMENT OF
21 ACCURACY REQUIREMENTS.—The head of a Federal
22 agency—

23 (A) may procure or acquire facial recogni-
24 tion technology before the date described in
25 paragraph (1); and

1 (B) if the head of the Federal agency pro-
2 cures or acquires technology described in sub-
3 paragraph (A), shall ensure that the technology
4 meets the requirements under subsection (a)
5 not later than 1 year after the date on which
6 the accuracy requirements are developed under
7 section 102(a).

8 (c) EXCEPTIONS.—The requirements under sub-
9 section (a) shall not apply to a facial recognition algorithm
10 software update, enhancement, derivative, correction, de-
11 fect, or fix, or research program exempted under section
12 102.

13 **SEC. 104. DISCLOSURE OF HIGH RISK USE CASE.**

14 (a) TESTING AND TRANSPARENCY FOR HIGH RISK
15 USE CASES.—Not later than 30 days after a report re-
16 quired under section 101 is submitted, each Federal agen-
17 cy shall report on a publicly available and easily accessible
18 Federal website the testing and performance results of the
19 relevant facial recognition algorithm from the Face Rec-
20 ognition Vendor Testing Program of the National Insti-
21 tute of Standards and Technology or other reputable test-
22 ing authority for high risk use cases.

23 (b) UPDATES.—Each Federal agency shall update
24 the results published under subsection (a) following the

1 identification of new high risk use cases in subsequent re-
2 ports submitted under section 101.

3 **SEC. 105. REQUIREMENT OF HUMAN INVOLVEMENT IN FA-**
4 **CIAL RECOGNITION TECHNOLOGY DECISION-**
5 **MAKING.**

6 (a) IN GENERAL.—A Federal agency shall not take
7 any adverse final action to an identified or verified indi-
8 vidual that was based on a query output from facial rec-
9 ognition technology deployed by that Federal agency un-
10 less a human person has reviewed the facial recognition
11 technology query output and documented the human in-
12 volvement in the process.

13 (b) QUALIFICATIONS FOR HIGH RISK USE CASES.—
14 With respect to a high risk use case, the individual de-
15 scribed in subsection (a) shall be qualified in accordance
16 with the relevant training standards developed by the Face
17 Identification Scientific Working Group for particular use
18 cases.

19 **SEC. 106. UNITED STATES PERSON NOTICE AND OPT-OUT**
20 **FOR NON-INVESTIGATIVE USES OF FACIAL**
21 **RECOGNITION TECHNOLOGY.**

22 (a) IN GENERAL.—A Federal agency that uses facial
23 recognition technology for a purpose other than a criminal
24 investigation or other security use case, such as identity
25 verification, shall—

1 (1) notify the United States person that they
2 are or were subject to identity verification by facial
3 recognition technology; and

4 (2) provide the United States person an alter-
5 native method of identity verification that does not
6 involve the use of facial recognition technology.

7 (b) PUBLICATION OF OPT-OUT AVAILABILITY.—Fed-
8 eral agencies using facial recognition technology in a man-
9 ner described in subsection (a) shall communicate to a
10 United States person subject to the use of facial recogni-
11 tion technology that the United States person can elect
12 to verify their identity using an alternative method that
13 does not involve the use of facial recognition technology.

14 (c) SIMPLICITY OF THE OPT-OUT.—For United
15 States persons that exercise the rights under subsection
16 (b), Federal agencies shall not impose a burden for opting
17 out that is substantially greater than the person would ex-
18 perience by using facial recognition technology.

19 **SEC. 107. GUARANTEE OF CONSTITUTIONAL RIGHTS.**

20 A Federal agency shall not use facial recognition
21 technology to violate any rights guaranteed by the Con-
22 stitution of the United States.

1 **SEC. 108. DATABASE ACCESS RESTRICTIONS FOR FEDERAL**
2 **USE OF FACIAL RECOGNITION TECHNOLOGY.**

3 No component, official, or personnel of a Federal
4 agency shall use facial recognition technology to access a
5 privately owned and maintained database without prior
6 authorization from the head of the Federal agency, with
7 the exception of a database used for a research and testing
8 program.

9 **SEC. 109. NOTIFICATION FOR CRIMINAL DEFENDANTS.**

10 Any criminal defendant, or a counsel thereof, identi-
11 fied through an investigative process that used facial rec-
12 ognition technology in the course of the investigation that
13 led to identifying the defendant by the Federal agency
14 conducting the investigative process shall receive notice
15 that facial recognition technology was used in the inves-
16 tigative process.

17 **SEC. 110. RULE OF CONSTRUCTION FOR FACIAL RECOGNI-**
18 **TION TECHNOLOGY THAT IS NOT HIGH RISK.**

19 Nothing in this title shall be construed to diminish
20 any Federal requirements with respect to face recognition
21 technology that is not classified as high risk.

22 **SEC. 111. LIMITATION TO CIVILIAN AGENCIES.**

23 Nothing in this title shall apply to the Department
24 of Defense or any element of the intelligence community.

1 **TITLE II—DEVELOPING BEST**
2 **PRACTICES FOR FUTURE**
3 **FEDERAL USE OF FACIAL**
4 **RECOGNITION TECHNOLOGY**

5 **SEC. 201. ESTABLISHMENT OF A FEDERAL ADVISORY COM-**
6 **MITTEE ON FACIAL RECOGNITION TECH-**
7 **NOLOGY.**

8 (a) ESTABLISHMENT.—The Director, in consultation
9 with the Secretary, the Director of the National Institute
10 for Standards and Technology, and the head of any other
11 Federal agency that the Director determines appropriate,
12 shall establish a Federal advisory committee on the use
13 of facial recognition technology to be known as the “Fed-
14 eral Advisory Committee on Facial Recognition Tech-
15 nology” to advise Federal agencies on matters related to
16 the use of facial recognition technology.

17 (b) PURPOSES OF THE ADVISORY COMMITTEE.—The
18 Advisory Committee shall advise the Federal agencies
19 on—

20 (1) opportunities to deploy facial recognition
21 technology to improve the effectiveness of the Fed-
22 eral Government;

23 (2) the risks associated with the use of facial
24 recognition technology in different use cases;

1 (3) the ways that Federal agencies can improve
2 the safety and reliability of facial recognition tech-
3 nology, including through research and development
4 funding to support face recognition technology inno-
5 vation;

6 (4) the ethics of facial recognition technology
7 and its use, including mitigating potential bias asso-
8 ciated with the use of facial recognition;

9 (5) protections for privacy, civil liberties, civil
10 rights, and information security when using facial
11 recognition;

12 (6) the ways that Federal agencies can manage,
13 track, and resolve facial recognition failure rates re-
14 lating to skin complexion or color;

15 (7) trends in the use of facial recognition tech-
16 nology;

17 (8) any necessary updates to the list of high
18 risk use cases that should be enumerated in the bi-
19 annual reports required under section 101(a);

20 (9) requirements for monitoring and docu-
21 menting any Federal agency use of facial recognition
22 technology that the Federal Government does not
23 own for a high risk use case; and

24 (10) any other safeguards necessary, including
25 audit and compliance procedures, standards, and

1 training programs, to ensure the safe and reliable
2 deployment of new facial recognition systems not
3 currently used by the Federal Government.

4 (c) ANNUAL REPORT.—Not later than 1 year after
5 the date of enactment of this Act and every year there-
6 after, the Director shall submit a report on the activities
7 of the of the Advisory Committee and any guidance pro-
8 vided to Federal agencies on matters related to the use
9 of facial recognition technology to—

10 (1) the Committee on Homeland Security and
11 Governmental Affairs of the Senate;

12 (2) the Committee on Commerce, Science, and
13 Transportation of the Senate;

14 (3) the Committee on Homeland Security of the
15 House of Representatives;

16 (4) the Committee on Oversight and Reform of
17 the House of Representatives; and

18 (5) the Committee on Science, Space, and
19 Technology of the House of Representatives.

20 **SEC. 202. MEMBERSHIP OF THE FEDERAL ADVISORY COM-**
21 **MITTEE ON FACIAL RECOGNITION TECH-**
22 **NOLOGY.**

23 (a) IN GENERAL.—The Advisory Committee shall be
24 composed of 17 members who shall be appointed by the

1 Secretary in addition to the representatives listed in sub-
2 section (c).

3 (b) REPRESENTATION.—In carrying out subsection
4 (a), the Secretary shall ensure that members are ap-
5 pointed as follows:

6 (1) 4 members from private industry, including
7 small businesses.

8 (2) 4 members from the academic or research
9 community who are computer scientists or otherwise
10 primarily technical experts in the science and engi-
11 neering behind facial recognition technology.

12 (3) 4 members from civil society, including indi-
13 viduals that advocates for privacy, civil liberties, or
14 civil rights.

15 (4) 1 member from the Biometric and Identity
16 Technology Center of the Department of Homeland
17 Security.

18 (5) 1 member from the Face Identification Sci-
19 entific Working Group.

20 (6) 1 member from the Face Identification Sub-
21 committee of the Organization of Scientific Area
22 Committees for Forensic Science of the National In-
23 stitute of Standards and Technology.

24 (c) EX-OFFICIO REPRESENTATION.—The Advisory
25 Committee shall be composed of 1 ex-officio representative

1 knowledgeable in biometric risks, benefits, programs, poli-
2 cies, operations, and applications from—

3 (1) the National Institute of Standards and
4 Technology;

5 (2) the Department of Commerce;

6 (3) the General Services Administration;

7 (4) the Department of Justice;

8 (5) the Department of Homeland Security;

9 (6) the Department of State;

10 (7) the Department of Education;

11 (8) the Department of Energy;

12 (9) the Transportation Security Administration;

13 (10) the Department of Veterans Affairs;

14 (11) U.S. Customs and Border Protection;

15 (12) U.S. Immigration and Customs Enforce-
16 ment;

17 (13) the Federal Emergency Management
18 Agency;

19 (14) the Office of Biometric Identity Manage-
20 ment;

21 (15) the National Science Foundation;

22 (16) the National Science and Technology
23 Council;

24 (17) the Office of Science and Technology Pol-
25 icy; and

1 (18) such other Federal agencies as the Sec-
2 retary considers appropriate.

3 (d) CHAIRPERSON.—The Secretary shall appoint a
4 chairperson for the Advisory Committee from among the
5 members appointed under subsection (a).

6 **SEC. 203. MEETINGS OF THE FEDERAL ADVISORY COM-**
7 **MITTEE ON FACE RECOGNITION TECH-**
8 **NOLOGY.**

9 (a) MEETINGS.—The Advisory Committee shall meet
10 in person, or by telepresence, not less frequently than
11 twice per year.

12 (b) POWERS.—In order to carry out its duties under
13 section 201, the Advisory Committee shall—

14 (1) hold such hearings, sit and act at such
15 times and places, take such testimony, and receive
16 such evidence as the Advisory Committee considers
17 appropriate;

18 (2) submit to Federal agencies such rec-
19 ommendations as the Advisory Committee considers
20 appropriate;

21 (3) issue reports, guidelines, and memoranda;

22 (4) hold or host conferences and symposia;

23 (5) establish subcommittees; and

24 (6) establish rules of procedure.

1 (c) TRAVEL EXPENSES.—The members of the Advi-
 2 sory Committee shall be allowed travel expenses, including
 3 per diem in lieu of subsistence, at rates authorized for em-
 4 ployees of Federal agencies under subchapter I of chapter
 5 57 of title 5, United States Code, while away from their
 6 homes or regular places of business in the performance
 7 of services for the Advisory Committee.

8 **SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

9 There is authorized to be appropriated such sums as
 10 may be necessary to carry out the requirements of this
 11 title.

12 **TITLE III—FOIA**

13 **SEC. 301. APPLICABILITY OF FOIA.**

14 Nothing in this Act, or in a report produced under
 15 section 101, shall be construed to allow the disclosure of
 16 information or a record that is exempt from public disclo-
 17 sure under section 552 of title 5, United States Code
 18 (commonly known as the “Freedom of Information Act”).

○