



The Civil Rights Implications of the Federal Use of Facial Recognition Technology

Key Findings from U. S. Commission on Civil Rights Report

Facial Recognition Technology (FRT) has several compelling use cases and has been adopted by federal agencies and law enforcement to aid in fulfilling their missions. The field of AI has advanced rapidly, and with increased testing and algorithm training, FRT capabilities continue to grow and improve.

Meaningful federal guidelines and oversight for responsible FRT use have lagged behind the application of this technology in real-world scenarios. With the advent of biometric technology and its widespread use by both private and government entities, the Commission studied how certain federal government agencies are utilizing this technology, specifically FRT, in compliance with existing civil rights laws.

Currently, there are no laws that expressly regulate the use of FRT or other AI by the federal government, and no constitutional provisions governing its use.

CONCERNS WITH UNRESTRICTED FRT USE BY THE FEDERAL GOVERNMENT

- FRT's potential for surveillance and covert use, paired with the widespread availability of personal information that can be associated with a facial image, implicates privacy concerns.
- The technology's relatively easy development and ability for inexperienced and inadequately trained operators to wield makes its use easy to expand without fully understanding its capabilities and risks.
- Algorithmic accuracy rates can vary widely among developers and can result in false positive and false negative matches. Fluctuating accuracy rates can lead to discriminatory practices and potentially violate an individual's civil rights.

During the Commission's briefing, NIST representatives and other experts testified that algorithm testing alone is not sufficient to account for the entire system at work. While algorithm testing targets the algorithm itself for accuracy, scenario testing tests FRT in simulated use cases to mimic real-world operational applications of the entire FRT system.

CURRENT USE OF FRT BY GOVERNMENT AGENCIES

- Within the Department of Justice, FRT is primarily utilized by the Federal Bureau of Investigations (FBI) and the U.S. Marshals Service (USMS), most often to generate leads in criminal investigations and during efforts to locate known subjects.
- The Department of Homeland Security uses biometrics (such as fingerprints, iris, and face recognition) to help enable operational missions, both to support national security and public safety and to deliver benefits and services with greater efficiency and accuracy.
- Commission research shows that through the Department of Housing and Urban Development, FRT is integrated into surveillance cameras used in some federally funded public housing programs.

RECOMMENDATIONS FOR REGULATIONS AND BEST PRACTICES

A January 2024 National Academy of Science report ordered by President Biden recommended that the federal government:

- Take prompt action to sustain a vigorous program of FRT testing and evaluation, establish industry-wide standards, and form multi-disciplinary working groups to develop and periodically review standards for reasonable and equitable use.
- DOJ and DHS to establish an FRT working group charged with developing minimum technical requirements for FRT procured by law enforcement agencies and a process for periodically evaluating and updating such standards.
- Create policies and procedures to address local law enforcement failures to adhere to procedures and attain appropriate certification, and to establish mechanisms for redress by individuals harmed by FRT misuse or abuse.
- Cultivate greater community trust by adopting more inclusive designs and engaging with communities to help individuals understand FRT's capabilities, limitations, and risks.
- Develop requirements for the training and certification of officers and staff using FRT.

However, many researchers and civil rights advocates caution that merely setting standards will not be sufficient. The federal government needs to actively ensure that FRT is being used responsibly and does not infringe upon Americans' civil rights.
