

**Testimony of Steven Ettannani
New York City Department of Consumer Affairs**

**Before the
Joint Committee of Technology, Housing & Buildings, and
Consumer Affairs & Business Licensing**

**Hearing on
Int. No. 1170-2018**

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Good morning Chairs Holden, Cornegy Jr., Espinal and members of the joint committee. My name is Steven Ettannani and I am the Executive Director for External Affairs at the New York City Department of Consumer Affairs, recently renamed the Department of Consumer and Worker Protection (DCWP). I would like to thank the joint committee for the opportunity to testify today on behalf of DCWP Commissioner Lorelei Salas regarding Int. 1170 related to requiring commercial establishments to notify customers of their use of biometric identifier technology. DCWP appreciates and shares the Council's concern regarding the collection of biometric information and consumer privacy.

DCWP protects and enhances the daily economic lives of New Yorkers to create thriving communities. DCWP licenses more than 75,000 businesses in more than 50 industries and enforces key consumer protection, licensing, and workplace laws that apply to countless more. By supporting businesses through equitable enforcement and access to resources and, by helping to resolve complaints, DCWP protects the marketplace from predatory practices and strives to create a culture of compliance. Through our community outreach and the work of our Offices of Financial Empowerment and Labor Policy & Standards, DCWP empowers consumers and working families by providing tools and resources they need to be educated consumers and to achieve financial health and work-life balance.

In today's marketplace, the use of technology to connect to the services and products we utilize is ubiquitous. Advances in technology now make it possible for consumers to use their biometric information for purposes of identification or authentication on networking platforms, devices, and more. Increasingly, biometric information is replacing traditional forms of access control, such as passwords and pins¹.

At the same time, we are becoming aware of the unique challenges presented by the embedding of this technology into our everyday devices and how it facilitates the collection of biometric information by businesses and third parties. For example, multinational companies have long applied their access to consumer photos and videos to develop facial recognition technology³. What once seemed innocuous and convenient has now raised legitimate questions of the need for consumer consent and control over the collection, use, and sharing of biometric information. This is even more salient with the potential for large-scale breaches of databases containing

¹ <https://venturebeat.com/2019/09/29/its-not-too-late-to-get-biometrics-right/>

consumer biometric information². Due to these concerns, we have seen states across the country, such as Montana, Florida, and even New York develop legislation to prohibit the collection of biometric data without consumer consent.

Consumer protection is at the heart of DCWP's mission; and a myriad of laws guide our work toward the fundamental principle that an educated consumer is best positioned to make informed decisions in the marketplace. Naturally, a part of consumer education includes requiring businesses to post conspicuous notices and disclosures. DCWP requires signage related to price posting, refund policies, and consumer rights pursuant to various City, and State laws depending on the business. To promote compliance, DCWP regularly educates individual businesses and trade associations about their legal obligations.

Int. 1170 requires commercial establishments, defined as "any premises exercising trade, business, profession, vocation, commercial or charitable activity," across the City to conspicuously post signage alerting consumers that the establishment is collecting their biometric identifier information. This information could include, a retina or iris scan, fingerprints, voiceprints, hand scan, or "face geometry." Additionally, these establishments would have to make available online a description of the type of information they are collecting, how long it is being collected for, who they share the information with, and the establishment's overall privacy policy governing the collection of the biometric information. DCWP supports the intent of this legislation but has concerns with enforcement of its provisions as currently drafted.

First, the scope of "biometric identifier information" is unclear. For example, does a security camera capture an individual's "face geometry"? If so, does it matter whether the footage was "collected" to "identify an individual"? Absent guidance, the scope of conduct covered by the bill is ambiguous. Second, DCWP's typical enforcement practice, with respect to signage requirements, is for inspectors to conduct onsite inspections to verify that the signage has been posted. But, before issuing a violation, DCWP would need reason to believe that an establishment is collecting, retaining, converting, sorting, or sharing "biometric identifier information." Inspectors in the field will be unable, in most circumstances, to determine whether a business is capturing biometric information, especially if the business is doing so surreptitiously. And, DCWP does not have the investigative expertise to assess whether a business is, for example, collecting "retina or iris scans." Third, Int. 1170's definition of commercial establishment appears to implicate nearly every brick-and-mortar business, or premise conducting charitable activity in New York City. Determining how many of those establishments are collecting "biometric identifier information" and then conducting an onsite inspection and online audit for each establishment poses extraordinary operational challenges. For the above reasons I have outlined, DCWP supports the intent of the legislation but would like to work with the Council and hear from today's panelists about how best to address these enforcement concerns.

As I said earlier, DCWP believes that businesses and consumers alike reap the benefits of a fair and transparent marketplace. The Agency welcomes a frank and thorough discussion about the

⁴ <https://www.forbes.com/sites/forbestechcouncil/2019/10/04/how-facial-recognition-needs-to-improve-to-be-effective/#7cfcfa332cdf>

scope of biometric information collection, its prevalence citywide, and how we can empower consumers, through disclosures, to make informed decisions. Thank you for the opportunity to testify today and I am now happy to answer any questions you may have.