

# Judge leaning toward OK of \$22.5M fine of Google (Update)

November 16 2012, by Michael Liedtke

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A proposed \$22.5 million fine to penalize Google for an alleged privacy breach is on the verge of winning court approval, despite a consumer rights group's cry for tougher punishment.

U.S. District Judge Susan Illston told lawyers during a Friday court hearing in San Francisco that she is likely to approve the fine, which is the cornerstone of a settlement reached three months ago between the Federal Trade Commission and Google Inc.

The rebuke is meant to resolve allegations that Google duped millions of Web surfers who use the Safari browser into believing their online activities couldn't be tracked by the company as long as they didn't change the browser's privacy settings. That assurance was posted on Google's website earlier this year, even as the Internet search leader was inserting computer coding that bypassed Safari's automatic settings and enabled the company to peer into the online lives of the browser's users.

The FTC concluded that the contradiction between Google's stealth tracking and its privacy assurances to Safari users violated a vow the company made in another settlement with the agency last year. Google had promised not to mislead people about its privacy practices.

While FTC hailed its actions as proof of its resolve to protect the public interest, a consumer rights group attacked the settlement as an example of ineffectual regulation. The group, Consumer Watchdog, is trying to bring more attention to the issue as the FTC wraps up a separate

investigation into complaints that Google has been stifling competition and raising online ad prices by highlight its own services in its influential search engine.

Consumer Watchdog attorney Gary Reback is hoping to pressure the FTC to take Google to court in the antitrust investigation instead of negotiating a settlement known as a consent decree, as it did in the Safari privacy flap.

A consent decree "is not a good way to police Google," Reback said in an interview after Friday's court hearing. Reback also is representing some of the Internet companies that have filed complaints against Google in the antitrust case.

FTC Chairman Jon Leibowitz has said he expects regulators to decide whether to sue, settle or simply close the antitrust investigation by the end of this year.

In the Safari case, Consumer Watchdog argued the fine amounts to loose change for a company like Google, which generates about \$22.5 million in revenue every four hours. In legal briefs, Reback asserted that Google should be fined at least \$3 billion because of the number of people potentially affected. The FTC estimates about 190 million people use Safari to browse the Web on computers, smartphones and tablets made by Google's rival Apple Inc. But the agency said the impact of Google's breach was relatively small, estimating the company picked up about \$4 million in revenue from the intrusion.

The FTC considers the fine to be a milestone because it's the largest the agency has ever levied for a civil violation. The FTC estimates Google generated no more than \$4 million in revenue from its alleged misconduct.

Consumer Watchdog also contended the settlement lacked teeth because it allowed Google to deny any liability for its conduct. That echoed a concern of FTC Commissioner J. Thomas Rosch, who voted against the Google settlement. Leibowitz and three other FTC commissioners voted for the settlement anyway because they believe it will deter similar breaches in the future.

Google insists it didn't intentionally bypass Safari's default settings.

Finally, Consumer Watchdog blasted the settlement for allowing Google to retain the data that it got from Safari users without authorization.

Illston brushed off the objections about the magnitude of the fine and Google's denial of liability. She did probe deeper into Google's retention of the Safari browser data, raising the possibility that she could require revisions to that portion of the settlement. Illston didn't say when she intended to issue a ruling.

Analyzing Web surfing data helps Google gain a better understanding of people's preferences so it can customize online ads to appeal to different tastes.

But Google lawyer David Kramer told Illston that the data gathered from Safari browsers during the period covered by the settlement would be too stale to be of practical use to the company's advertising network. He also maintained that much of the data transmitted to Google would have been sent even without the unauthorized insertion of additional computer coding.

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