

Google Agrees to Scrub Users' "Incognito" Browsing Data, But is Left with More Litigation

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KEY TAKEAWAYS

- Google agreed to settle a class action filed in 2020 by Google Chrome users who web-browsed under the "Incognito" option.
- In the settlement, Google agreed to change its disclosures on private browsing data, delete billions of data records reflecting private browsing activities, and limit future data collection.
- The plaintiffs' lawyers have already filed new individual damages claims on behalf of over a thousand users in California state court—a noteworthy effect of the court's decision to break up class action injunctive relief and monetary damages.

On April 1, 2024, Google agreed to settle a class action brought by Google Chrome users regarding their web-browsing histories under the "Incognito" option. The action—filed in 2020 in the Northern District of California—alleged that for years, Google had been tracking individuals using Chrome's incognito browsing mode.

In "an historic step in requiring dominant technology companies to be honest in their representation to users," the settlement provided injunctive relief by requiring Google to rewrite its disclosures to fully inform users that Google collects private browsing data, delete its historic private browsing data records, and limit the amount of data that Google can collect for the next five years. Additionally, Google agreed it would no longer track people's choices to browse privately.

Notably, while the settlement provided for the injunctive relief noted above, it did not resolve plaintiffs' damages claims—meaning individual users affected by Google's policies remain free to sue for monetary damages but must do so on an individual (non-class action) basis. The settlement agreement noted that the injunctive relief is "especially valuable" as it "delivers relief to class members far sooner, without the delay and uncertainty inherent in trial and any appeal," while Google's counsel was quick to point out that the "plaintiffs originally wanted \$5 billion and are receiving zero." Class action counsel requested the judge to award them \$217.6M in attorneys' fees payable by Google.

Because under the settlement, individual users have not relinquished their rights to sue Google for monetary damages, plaintiffs' counsel has already filed new claims on behalf of over a thousand individual users in California state courts, with more on the way.

While Google representatives have stated that the company is "pleased to settle this lawsuit," this case highlights the importance of assessing risks in the initial class certification stages and throughout settlement. Although the settlement resolves the class action trial, which was scheduled for early February, it now leaves Google to face a wave of litigation for individual damages for years to come.

If you have any questions on managing class action risks regarding settlement damages and injunctive relief, please reach out to the contributing authors.

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