

**E-FILING**

**AD ORIGINAL**

**FILED**

2013 MAR 27 P 12:12

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
N.D. CALIF. - SAN JOSE

*fees paid  
no process*

890

#

99

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

LYNNE KRAUSE  
*on behalf of  
herself and all others similarly situated,*

Plaintiff,

vs.

GOOGLE, INC., a Delaware Corporation,

Defendant.

**CV 12-01524**

CIVIL ACTION NO: \_\_\_\_\_

CLASS ACTION COMPLAINT

**JURY TRIAL DEMANDED**

**HRL**

**BY FAX**

Plaintiff, Lynne Krause, individually and on behalf of all others similarly situated, by and through her attorneys, submits this Class Action Complaint for damages and other available relief under federal law and pursuant to Rule 23 of the Federal Rules of Civil procedure and avers as follows:

1. This action asserts that defendant Google, Inc., surreptitiously inserted computer code that deactivated pre-installed security default settings on plaintiff and the proposed class' electronic devices that utilize Safari™ web browser to surf the internet.

2. This action further asserts that Google's purpose in deactivating Safari's pre-installed default security settings was to enable Google's paying advertisers to track the browsing habits of Plaintiff and the Class without their knowledge and consent.

3. This class action seeks to redress the violations of federal law arising from Google's illicit conduct, including damages and other available relief under the Federal Wiretap

1 Act, the Computer Fraud and Abuse Act, and the Stored Electronics Communications Act.

2 **JURISDICTION AND VENUE**

3 4. This Court has subject matter jurisdiction over this civil action under 28 U.S.C. §  
4 1331, in that Plaintiff alleges violations of federal law, namely the Federal Wiretap Act as  
5 amended by the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*, the Computer  
6 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, and the Stored Electronics Communications Act,  
7 18 U.S.C. § 2701 *et seq.*

8 5. Jurisdiction in this civil action is further authorized pursuant to the Class Action  
9 Fairness Act, 28 U.S.C. § 1332(d), as some Class Members' citizenship is diverse from Google,  
10 there are more than 100 putative Class Members, and the amount in controversy is in excess of  
11 \$5,000,000.

12 6. This Court has personal jurisdiction over the parties because Google conducts  
13 substantial business in this District and has systematic and continuous contact with this District.

14 7. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a substantial part  
15 of the events or omissions giving rise to Plaintiff's claims occurred in this District.

16 **PARTIES**

17 8. Plaintiff Lynne Krause is a resident of Philadelphia, Pennsylvania. She owns an  
18 i-Phone, MacBook Pro and iMac that all use the Safari web browser. Plaintiff has uses Google as  
19 her primary search engine.

20 9. Defendant Google, Inc. is a Delaware corporation, headquartered in Mountain  
21 View, California.

22

23

24

25

26

27

28

1 **FACTS**

2 10. Google describes itself as “a global technology leader focused on improving the  
3 ways people connect with information.” See [http://investor.google.com/corporate/faq.html#toc-](http://investor.google.com/corporate/faq.html#toc-located)  
4 [located.](http://investor.google.com/corporate/faq.html#toc-located)

5 11. “Google primarily generates revenue by delivering relevant, cost-effective online  
6 advertising. Businesses use our AdWords program to promote their products and services with  
7 targeted advertising. In addition, third-parties that comprise our Google network use our Google  
8 AdSense program to deliver relevant ads that generate revenue and enhance the user experience.”  
9 *Id.*

10 12. Through Google’s AdWords and AdSense programs, businesses and other third  
11 parties could have their ads displayed on various websites (hereinafter “Google Ads”).

12 13. Safari is an Internet web browser offered by Apple, Inc., that comes pre-installed  
13 on iPhones, iPads, and Mac computers, and can be installed on PCs. In fact, Safari is the first  
14 web browser to offer the default setting that blocks the tracking ability for web advertisers and  
15 other websites. See e.g., [http://www.apple.com/safari/features.html#technologies:](http://www.apple.com/safari/features.html#technologies)

16 **“Safari Cookie Blocking<sup>1</sup>**

17 Some companies track the cookies generated by the websites you  
18 visit, so they can gather and sell information about your web  
19 activity. Safari is the first browser that blocks these tracking  
20 cookies by default, better protecting your privacy. Safari accepts  
21 cookies only from the current domain.”

---

22  
23  
24  
25 <sup>1</sup> A “cookie” is defines as “a small file or part of a file stored on a World Wide Web user’s  
26 computer, created and subsequently read by a Web site server, and containing personal information (as a  
27 user identification code, customized preferences, or a record of pages visited).” See [http://www.merriam-](http://www.merriam-webster.com/dictionary/cookies)  
28 [webster.com/dictionary/cookies.](http://www.merriam-webster.com/dictionary/cookies)

1           14.     This factory default privacy setting works by requiring third parties such as  
2 advertising and web analytics firms to obtain your authorization or permission *before* accessing  
3 the cookies that reveal your identify, browsing history, etc. This feature frustrates Google's  
4 attempts to deliver personalized advertising and to enable full functionality of its products.

5           15.     Google's conduct first came to light by Stanford University researcher Jonathan  
6 Mayer who discovered that Google inserted certain computer code into its products that  
7 circumvent Safari's default privacy settings.

8           16.     Moreover, Mayer confirmed recently that this circumvention affected all users,  
9 independent of whether they had a Google account, were logged into a Google account, or had  
10 made a choice about social advertising.

11           17.     Google thus had the ability to track users across the web even though their privacy  
12 settings indicated they did not want to be tracked.

13           18.     Consumers' browsing activity has economic value to companies such as  
14 defendant Google's, whose revenues totaled 39.5 billion in 2011. *See*,  
15 <http://investor.google.com/financial/tables.html>.

16           19.     To further its scheme to circumvent the default privacy settings that came  
17 with Safari, Google made blatantly false statements in its browser instructions to Safari users that  
18 "Safari is set by default to block all third-party cookies. If you have not changed those settings,  
19 this option effectively accomplishes the same thing as setting the [Google advertising cookie opt-  
20 out plugin]."

21           20.     This representation was false, as Google knew that it would insert its own code to  
22 essentially render the Safari default privacy setting inactive-- all unbeknownst to the Safari users  
23 such as Plaintiff and the Class.

24           21.     Upon information and belief, Google has since removed the above-quoted  
25  
26  
27  
28

1 language from its webpage.

2 22. Google admits that it used code that was designed to ascertain whether Safari  
3 users were also signed in to Google and that, as a result of this code, tracking cookies could be,  
4 and were placed on a Safari user's browser and ultimately on their hard drive.  
5

6 23. On information and belief, visiting these websites and others allowed Google's  
7 tracking cookies to be placed on Plaintiff's devices without appropriate authorization and  
8 allowed Google to obtain, again without appropriate authorization, information  
9 pertaining to the websites that Plaintiff visited.

10 24. Upon information and belief it will require a time-consuming process  
11 to fully rid Plaintiff's devices of the unauthorized cookies, without also deleting the cookies that  
12 Plaintiff and Class Members have chosen to allow on their devices.  
13

14 **CLASS ACTION ALLEGATIONS**

15 27. Plaintiff brings this action on behalf of himself and, additionally, pursuant to Rule  
16 23 of the Federal Rules of Civil Procedure, on behalf of the following Class:

17 /All persons throughout the United States whose iPhone, iPad, Mac, or other device with  
18 Safari web browser installed on it, was subjected to the Google code that circumvented Safari's  
19 third-party cookie blocking feature and placed tracking cookies on their device(s) (the "Class")."

20 28. Excluded from the Class are Google; any parent, subsidiary, or affiliate of Google;  
21 any entity in which Google has or had a controlling interest, or which Google otherwise controls  
22 or controlled; and any officer, director, employee, legal representative, predecessor, successor, or  
23 assignee of Google.

24 29. This action satisfies the requirements for class certification: numerosity,  
25 commonality, typicality, adequacy, predominance, and superiority.

26 30. This action has the requisite numerosity. The Safari web browser is installed on  
27 millions of devices and millions of Safari users have been affected. Thus, the Class consists of  
28

1 millions of persons. The Class is therefore so numerous that joinder of all members, whether  
2 otherwise required or permitted, is impracticable.

3 31. There are common questions of law and fact common to the class, including,  
4 among others:

5 a. Whether Google's code circumvents Safari's third-party cookie blocking  
6 feature;

7 b. Whether the concerned code allows tracking cookies to be placed on Plaintiff's  
8 and Class Members' devices;

9 c. Whether Google collects the browsing history of Plaintiff and Class Members  
10 through the concerned code and tracking cookies;

11 d. Whether Google violated the Federal Wiretap Act;

12 e. Whether Google violated the Computer Fraud and Abuse Act;

13 f. Whether Google violated the Stored Electronic Communications Act;

14 g. Whether members of the Class have sustained damages and other compensable  
15 losses and, if so, the proper measure thereof; and

16 h. Whether Class Members are entitled to statutory damages and other relief  
17 under the federal statutes and common law claim referenced herein.

18 32. The claims asserted by Plaintiff are typical of the claims of the members of the  
19 Class because they are similarly affected by the privacy-compromising code.

20 33. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff  
21 has retained attorneys experienced in class and complex litigation.

22 34. Predominance and superiority exist here because:

23 a. absent a class action, members of the Class, as a practical matter, will be  
24  
25  
26  
27  
28



1 obtained through the interception of a wire, oral, or electronic communication in violation of this  
2 subsection.” 18 U.S.C. §2511 © and (d).

3 38. By placing code in Google Ads that circumvented Safari’s third-party cookie  
4 blocking feature, which allowed tracking cookies to be placed on Plaintiff’s devices and the  
5 devices of members of the Class, Google intentionally intercepted Plaintiff’s and Class  
6 Members’ electronic communications and then used the communications, as the cookies track  
7 the users’ browsing history.

8 39. Statutory damages, punitive damages, reasonable attorneys’ fees, litigation costs  
9 reasonably incurred, and other appropriate relief is available in a civil action for any person  
10 whose electronic communication is intercepted, disclosed, or intentionally used in violation of  
11 the Act. 18 U.S.C. § 2520(b). The Court may assess statutory damages of “whichever is the  
12 greater of \$100 a day for each day of violation or \$10,000.” 18 U.S.C. § 2520(c)(2)(B).  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that the Court enter  
16 judgment against defendant Google as follows:

- 17
- 18 A. Certifying the proposed Class under Federal Rule of Civil Procedure 23, and  
19 appointing Plaintiff and Plaintiff’s counsel of record to represent the Class;
  - 20 B. Finding that Google has violated the Federal Wiretap Act, as alleged herein;
  - 21 C. Awarding Plaintiff and members of the Class statutory damages, punitive  
22 damages, and other appropriate relief (including the cost of removing the unauthorized cookies)  
23 against Google in an amount to be determined at trial;

24

- 25 D. Awarding Plaintiff and members of the Class the reasonable costs and expenses of  
26 suit, including attorneys’ fees; and  
27



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E. Granting additional legal or equitable relief as this Court may find just and proper.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT II**  
**VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

40. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

41. Under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, “the term ‘computer’ means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device[.]” 18 U.S.C. § 1030(e)(1).

42. Under the Computer Fraud and Abuse Act, “the term ‘protected computer’ means a computer – . . . (B) which is used in or affecting interstate or foreign commerce or communication . . .” 18 U.S.C. § 1030(e)(2).

43. Plaintiff’s devices fall within the definition of a protected computer, as they are used in interstate commerce or communication.

44. The Computer Fraud and Abuse Act makes it unlawful to intentionally access a computer without authorization, or to exceed authorized access, and thereby obtain information from any protected computer. 18 U.S.C. § 1030(a)(2)(c)

45. The “term ‘exceeds authorized access’ means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter[.]” 18 U.S.C. § 1030(e)(6).

46. The Computer Fraud and Abuse Act also makes it unlawful to intentionally access a computer without authorization and, as a result of such conduct, cause damage and loss. 18

1 U.S.C. § 1030(a)(5)©.

2 47. The “term ‘damage’ means any impairment to the integrity or availability of data,  
3 a program, a system, or information[.]” 18 U.S.C. § 1030(e)(8).

4 48. The “term ‘loss’ means any reasonable cost to any victim, including the cost of  
5 responding to an offense, conducting a damage assessment, and restoring the data, program,  
6 system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or  
7 other consequential damages incurred because of interruption of service[.]” 18 U.S.C. §  
8 1030(e)(11).

9 49. Plaintiff and members of the Class have suffered loss and economic damage as a  
10 result of Google’s tracking cookies, which allowed Google to access their web browsing activity  
11 that Google was not entitled to obtain.

12 50. A civil action may be brought by any person who suffers damage or loss by reason  
13 of a violation of the Computer Fraud and Abuse Act, provided that the conduct involves one of  
14 four factors set forth in subsection (c)(4)(A)(i) of the Act.

15 51. The aggregated loss to Plaintiff and members of the Class during the previous  
16 year exceeds \$5,000 in value. 18 U.S.C. § 1030(c)(4)(A)(i)(I).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of himself and the Class, requests that the Court enter  
19 judgment against Google as follows:

- 20 A. Certifying the proposed Class under Federal Rule of Civil Procedure 23, and  
21 appointing Plaintiff and Plaintiff’s counsel of record to represent the Class;  
22 B. Finding that Google violated the Computer Fraud and Abuse Act, as alleged herein;  
23 C. Awarding Plaintiff and Class Members economic damages (including the cost of  
24 removing the unauthorized cookies) as provided for under the Computer Fraud and Abuse Act,  
25  
26  
27  
28

1 and other appropriate relief against Google in an amount to be determined at trial;

2 D. Awarding Plaintiff and Class Members the reasonable costs and expenses of suit,  
3 including attorneys' fees; and

4 E. Granting additional legal or equitable relief as this Court may find just and proper.  
5

### 6 **COUNT III**

#### 7 **VIOLATION OF THE STORED ELECTRONIC COMMUNICATIONS ACT**

8 52. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,  
9 as if fully set forth herein.

10 53. The Stored Electronic Communications Act, 18 U.S.C. § 2701 *et seq.*, makes it  
11 unlawful to intentionally access, without authorization or by exceeding authorization, a facility  
12 through which an electronic communication service is provided, and thereby obtain, alter, or  
13 prevent authorized access to a wire or electronic communication while it is in electronic storage  
14 in such system. 18 U.S.C. § 2701(a)(1)-(2).

15 54. Any person aggrieved by any violation of the Stored Electronics Communications  
16 Act, in which the conduct constituting the violation is engaged in with a knowing or intentional  
17 state of mind, may recover from that entity appropriate relief, including: (1) such preliminary and  
18 other equitable or declaratory relief as may be appropriate; (2) damages under subsection (c); and  
19 (3) a reasonable attorney's fee and other litigation costs reasonably incurred. 18 U.S.C. § 2707(b).  
20

21 55. Subsection © of the statute further provides that: The court may assess as  
22 damages in a civil action under this section the sum of the actual damages suffered by the  
23 plaintiff and any profits made by the violator as a result of the violation, but in no case shall a  
24 person entitled to recover receive less than the sum of \$1,000. If the violation is willful or  
25 intentional, the court may assess punitive damages. In the case of a successful action to enforce  
26 liability under this section, the court may assess the costs of the action, together with  
27 reasonable attorney fees determined by the court. 18 U.S.C. § 2707©.  
28





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Of counsel:  
Lawrence E. Feldman, Esquire  
432 Tulpehocken Avenue  
Elkins Park, PA 19027

*Counsel for Plaintiff Lynne Krause  
and the Proposed Class*