

Google's 'Incognito mode' tracking is under legal scrutiny

Article

The news: Google's request for summary judgment in a \$5 billion lawsuit was denied by federal judge **Yvonne Gonzalez Rogers**, bringing the class-action suit on privacy in **Chrome's** "Incognito mode" closer to trial.

Key details: The people suing Google claim Chrome's use of analytics, cookies, and tools continued to track internet browsing behavior even when users opted to use Incognito mode. Chrome has 3 billion users globally, per Forbes.

- Incognito mode on Chrome, which other browsers like **Apple's Safari** and **Microsoft Edge** offer as well, creates a fresh user identity.
- When invoked, the feature ostensibly enables short and discreet browsing sessions that aren't tracked as part of browsing history.
- Judge Gonzalez Rogers cited several of Google's public communications that might have led users to believe their data would remain untouched in private browsing.

The problem: Plaintiffs provided evidence that Google intermingles regular and private browsing data to fuel personalized advertising. They said that even if the data points are anonymous, aggregating them might help Google identify users with significant accuracy.

- An internal team (the **Privacy and Data Protection Office**) conducted interviews with current and former Google employees that focused on Google's data privacy.
- The employees said they don't know the scope of data Google collects from users.
- The court stated that financial damages alone are not an adequate remedy for the Incognito mode case, with "injunctive relief necessary to address Google's ongoing collection of users' private browsing data."

Google's response: "We clearly state each time you open a new Incognito tab, websites might be able to collect information about your browsing activity during your session."

Key takeaway: While Google can opt to settle the case, it will likely go to trial to avoid having to alter its data collection or change Incognito mode.

- Incognito mode does warn users that their data is visible to websites, ISPs, and network managers, which might strengthen Google's case.
- Google has had a litigious year, with cases focused on privacy and tracking. Last year, it **paid \$391.5 million to settle a tracking lawsuit with US 40 states.**

Actions US Consumers Have Taken for Privacy Reasons, by Generation, March 2023

% of respondents in each group

	Gen Z (18-26)	Baby boomers (59-77)	Total
Cleared browser cookies	42%	62%	54%
Turned off location services/sharing	47%	50%	51%
Covered the computer's camera	39%	26%	35%
Gone into incognito or private mode on a web browser	39%	21%	35%
Stopped using an app or website entirely	29%	36%	33%
Used an ad blocker	27%	31%	31%
Used a VPN	33%	21%	28%
Change search behavior to protect their privacy	25%	13%	20%
Used a disposable email address	23%	10%	18%
Used virtual credit card numbers	14%	6%	17%
None of the above	22%	16%	13%

Note: ages 18+

Source: Tinuiti, "How US Consumers Really Feel About Online Privacy and Marketing in 2023," May 24, 2023

282664

Insider Intelligence | eMarketer