

Can Google be trusted?

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(The short answer is no but read on)

Google got slapped with a record \$22.5 million fine Thursday for breaking a promise to stop snooping on its users — shocking news to the average Internet user. But regulators across the globe weren't surprised because this isn't the first time the search giant has been dinged for failing to keep up its end of the bargain with government enforcers.



The track record of going back on its word when it comes to privacy has regulators around the globe wondering: Can Google be trusted?

Two weeks ago, Google confessed that it didn't dump all the personal data it scooped up from Wi-Fi networks by its mapping cars. In April, a U.S. agency accused the company of holding up a probe into the same scandal.

Last year, it agreed to two years of privacy reviews by the Federal Trade Commission after it botched the rollout of a social network called Google Buzz that turned private email address books into public friend lists.

"Google's defense that 'we didn't know;' ... that raises red flags for regulators," said David Vladeck, the FTC's director of Bureau of Consumer Protection. "As a regulator, it's hard to know which answer is worse — 'we didn't know' or 'we did it deliberately.' Both are bad."

The FTC highlighted the trust issue Thursday when it levied the largest civil fine the agency has ever issued for Google's flouting of the 2011 Buzz settlement. The offense: FTC officials say Google bypassed the privacy settings of Apple's Safari browser while telling users it wasn't tracking the websites they visited.

For its part, Google says it has worked diligently to cooperate with regulators and takes "privacy and security very seriously." The company has also taken steps to remove the ad cookies from Safari and says the tools never collected personal information from the browser to begin with.

"We work closely with regulators to answer their questions and we are always happy to have feedback on our products," a Google spokesperson told POLITICO.

That feedback hasn't been good lately.

"The accretion of these issues and enforcement actions simply undermines trust and credibility, which goes to the core of their business model," Sen. Richard Blumenthal (D-Conn.), who investigated Google as Connecticut's attorney general in 2010, told POLITICO. "As a former law-enforcement official, credibility and trust are very important to assessing generally whether and how to settle cases."

Privacy officials overseas are in a huff about Google's recent revelation that it discovered a fresh batch of data from about a dozen countries from its Street View mapping cars, including personal tidbits gleaned from unsecured Wi-Fi networks. The United Kingdom and France have reopened their investigations and are demanding that Google hand over the data. And earlier this week, Australia's top privacy cop said he is "concerned that the existence of these additional disks has come to light, particularly as Google had advised that the data was destroyed."

On Thursday, Google agreed to enter into a settlement with the FTC and pay the \$22.5 million fine, a move that allows the company to avoid admitting guilt. FTC Commissioner Thomas Rosch didn't vote for the settlement — he thought the company should have been forced to admit to violating the 2011 FTC agreement. "[T]his is not the first time the Commission has charged Google with engaging in deceptive conduct," Rosch said in a statement. "This is Google's second bite at the apple." It's a view shared in several corners of Washington these days.

The Federal Communications Commission concluded an investigation earlier this year into the Street View program and found that the company didn't violate anti-wiretapping laws. But the FCC did fine Google \$25,000 for being uncooperative during the probe. Google blamed the incident on an engineer who invoked his Fifth Amendment rights and refused to be deposed, and the company took issue with the FCC's characterization of its conduct. Google said the agency didn't correspond with the company in a timely manner.

Google's responses to regulators are not necessarily helping the company.

"They haven't fallen off into the abyss yet, but bit by bit Google's credibility is dissipating," said Robert Lande, a professor of antitrust law at the University of Baltimore School of Law. "They are certainly going down a slippery slope."

That's a problem for a company with a \$200 billion market capitalization that has carefully tried to craft its image as a good guy — hence the motto "Don't be evil" — pushing green energy and Internet freedom platforms worldwide.

Moving forward, trust is going to be more important than ever for Google. Regulators at the FTC and the European Commission are weighing the biggest threat to the company to date: Potential antitrust cases related to whether Google unfairly used a dominant position in search to harm competitors.

European officials, who have been working in concert with the FTC on the Google probe, are engaging in settlement talks with Google. The FTC, however, has stayed mum on what's it's planning to do, although the agency earlier this year hired a big gun — former Justice Department prosecutor Beth Wilkinson — to pursue the antitrust investigation.

If the FTC decides to settle rather than go to court, observers say any deal will need to incorporate a powerful enforcement tool to make sure Google doesn't run afoul of any agreement. "A lot of folks would say Google is not trustworthy in terms of voluntary actions and consent decrees," said a senior Judiciary Committee staffer.

And if Google needs a quick lesson in how credibility can impact high-stakes antitrust scenarios, it doesn't have to look any further than one of its biggest rivals: Microsoft.

The federal judge in the DOJ's antitrust case against Microsoft in the late 1990s admonished the company's officials as liars in court. He eventually got removed from the case because of a perceived bias and some of his remedies — like breaking up Microsoft into two companies — were wiped out by an appeals court.

But it's still an important lesson in how a giant tech firm can rub federal officials the wrong way and pay a price down the road.

There is "a certain trust-based relationship, and when you diminish that with government enforcers and the people that are in charge, it absolutely affects government enforcement decisions," said Makan Delrahim, who served as a top DOJ antitrust regulator under the Bush administration.

"The government isn't just some inanimate object," Delrahim said. "They're people. And just like in your personal life, if you are unfaithful to them the first time, you may make it work, but the fact that you did will always be in the back of their mind. Usually, if you repeat it a second time, then that's the end of the trust between the two."

In D.C., the company's circle of supporters say Google should be cut some slack — it's taking its lumps from regulators all over the world but is still evolving and has never before dealt with global scrutiny from regulators.

"I don't buy the idea that the Google folks are saying, 'We're going to violate something or sneak it from them.' They're not dumb," said a tech industry source. "It's not just credibility with the government; it's credibility with the public. As a company, they would be idiots if they screwed with their trust."

Then there's Google's tussle with regulators in the Lone Star State.

Texas Attorney General Greg Abbott sued Google in June to compel the search company to share more documents with investigators as part of the state's antitrust probe into Google's search market dominance. Google has already released "hundreds of thousands of documents" to the attorney general, according to court filings.

But the company is fighting the release of some 14,500 documents it says are protected from release under attorney-client privilege. In a court filing last week, Google reiterated its stance that it has no plans to hand over the documents to Abbott's office.

As for the \$22.5 million settlement announced Thursday, some see it as a pittance compared with Google's worldwide profits.

"This is an area in which a lot of folks are scratching their heads and saying, 'What in the world is Google doing?'" said the senior Judiciary Committee staffer. "It's understandable for the first time in the company's history if they're under intense regulatory scrutiny ... and they don't like it and they're fighting against it. But they're doing it in a way that's drawing ire from the regulators that they're going to have continued interaction with."

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