

CAUSE NO. 22-01-88230-D

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	VICTORIA COUNTY, TEXAS
	§	
GOOGLE LLC,	§	
Defendant	§	377 th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, KEN PAXTON (the "State"), complains of Defendant GOOGLE LLC ("GOOGLE," the "Company," or the "Defendant"), and for causes of action would respectfully show as follows:

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I. INTRODUCTION

Google has become one of the richest companies in the world, in part, by deceiving Texans and profiting off their confusion. Specifically, Google has systematically misled, deceived, and withheld material facts from users in Texas about how and why their behavior is tracked and how to stop Google from monetizing their personal data. As relevant to this Petition, Google's deceptive practices fall into two closely related buckets: tracking location history and tracking private-browsing activity.

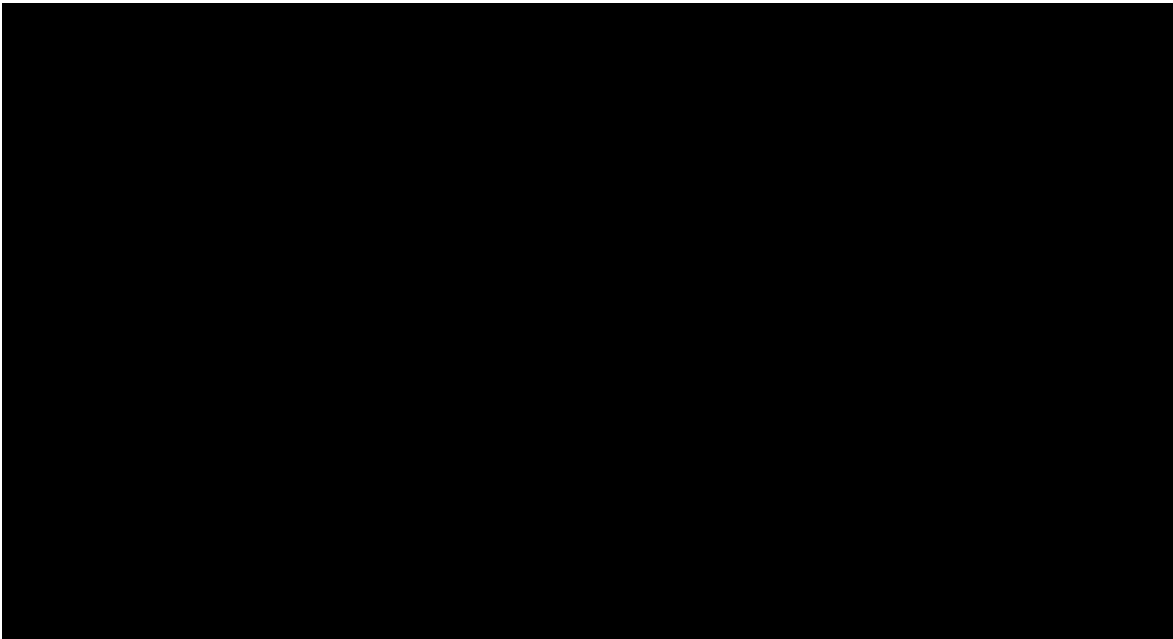
As to the former, while many Texans may reasonably believe they have disabled the tracking of their location, the reality is that Google has been hard at work behind the scenes logging their movements in a data store Google calls "Footprints." But while footprints generally fade, Google ensures that the location information it stores about Texans is not so easily erased.

Google leads its users to believe that they can easily control what location information the Company retains about them and how it is used. For example, Google has touted a setting called "Location History" as allowing users to prevent Google from tracking their location. Given Google's representations, a reasonable user would expect that turning a setting called "Location History" off means their location history is no longer tracked. But even with Location History off, Google deceptively continues to track users' location history unless they successfully navigate a counterintuitive labyrinth of seemingly unrelated settings. And even if a user does survive the Google gauntlet of privacy controls to disable all the appropriate location-related settings available to them, [REDACTED]

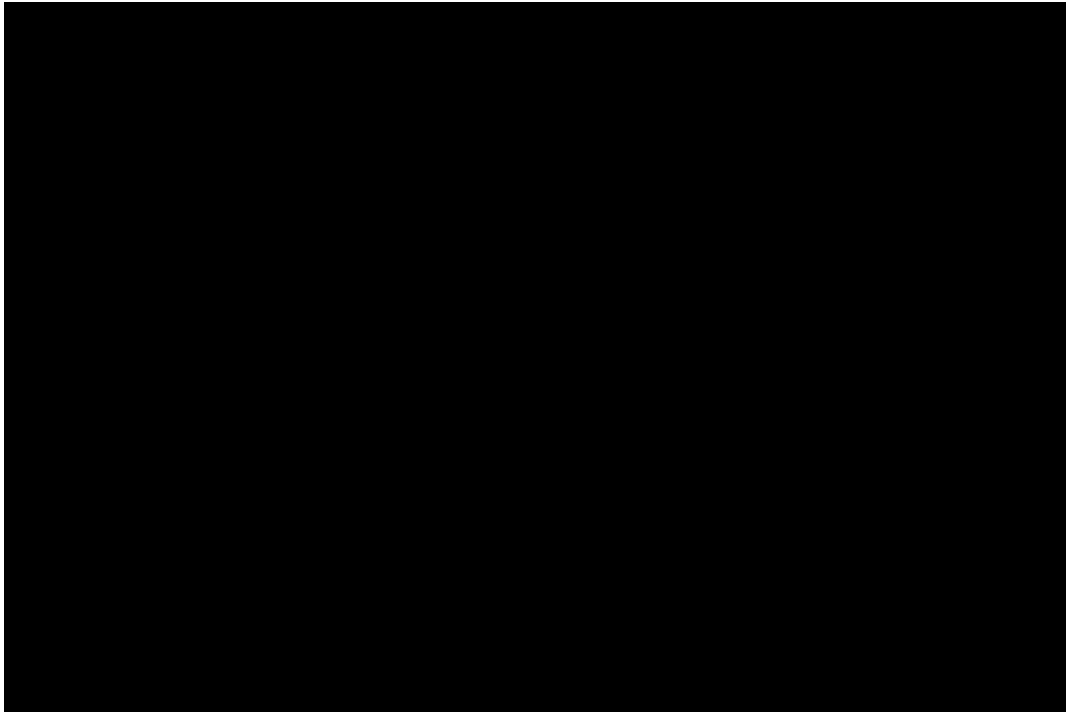

[REDACTED]

[REDACTED]

[REDACTED]



As Google employees themselves have recognized, this is “[d]efinitely confusing from a user point of view.” Yet much of the deception relates to programs and practices that receive input



Of course, Google’s deception does not stop with location tracking. Google also misleads users to believe that they have meaningful control over whether Google collects personal information during private-browsing sessions and what information is collected.

Texans engage in the Google-offered option of “private browsing”—known as Incognito mode—for a wide variety of legitimate purposes, including viewing highly personal websites that might indicate, for example, their medical history, political persuasion, or sexual orientation. Or maybe they simply want to buy a surprise gift without the gift recipient being tipped off by a barrage of targeted ads. Google, however, has misled such Texans to believe that they have meaningful control over whether Google collects personal information during so-called Incognito sessions. In reality, Google deceptively collects an array of personal data even when a user has engaged Incognito mode.

As with Google’s general approach to location tracking, Google provides a confusing selection of options that purportedly empower users to limit what data Google tracks. But these controls are not what they seem. Even when Texans follow each convoluted step they believe necessary to protect their data, Google still intercepts the sensitive information Texans seek to keep private. The end result is that Google misleads and deceives the Texans who trust Google when it insists that its privacy controls, features like Incognito mode, and supposed commitments to privacy are designed to give Texans control over when and how Google collects their data. In reality, these “controls,” features, and commitments are no more than a smokescreen—with Texans effectively unable to prevent Google from collecting their personal data.

One might wonder why it is so important to Google to mine its users’ personal information. The answer is simple: ***Profit***.

The majority of Google’s revenues derive from business-facing services—namely, targeted advertising and advertising analytics. And to support this lucrative arm of its business, Google harvests location and other personal information, which Google uses both to market to its users and to evaluate the effectiveness of the advertisements it serves. *Profit* is also why Google represents to Texans that, for example, its Incognito mode allows users to “browse privately, [and] other people who use this device won’t see your history.”¹ Critically, Google omits from Incognito disclosure that it still collects a user’s personal information *even when the user has taken Google at its word and affirmatively elected to enable Incognito mode*.

Under this model, every Texan Google user is a potential unwitting profit center. As Google knows, [REDACTED] [REDACTED]. Aggregated over time, this data paints an intimate mosaic that can effectively reveal a person’s identity and routines. Location and private browsing data, for example, can be used to infer an individual’s home address, political or religious affiliation, sexual orientation, income, health status, and participation in support groups. It can also suggest major life events, such as marriage, divorce, and the birth of children.

This information is even more powerful in the hands of Google due to the near ubiquity of Google products in users’ pockets, homes, and workplaces. The prevalence of Google technology allows the Company to derive detailed insights about users they may not even realize they have revealed—especially when Google misleads those users to believe they have disabled the collection of sensitive information.

¹ [How Private Browsing Works in Chrome, GOOGLE CHROME HELP, https://support.google.com/chrome/answer/7440301?hl=en&co=GENIE.Platform%3DAndroid.](https://support.google.com/chrome/answer/7440301?hl=en&co=GENIE.Platform%3DAndroid)
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The upshot is that Google uses its window into millions of Texans’ personal lives to sell “targeted” advertising designed to exert the maximum influence over those users. In so doing, the Company has reaped spectacular gains at the expense of Texans’ privacy. Indeed, Google has generated hundreds of millions—if not billions—of dollars of advertising revenues from ads presented to users in Texas alone.

Google, therefore, has a powerful financial incentive to obscure the details of its location-tracking and Incognito-tracking practices and to make it difficult for users to opt out. Google’s ability to amass troves of data about its users as they move throughout Texas translates into improved advertising capabilities and an outsized share of the multibillion-dollar digital-advertising market.

Google’s incentive to cash in on the collection of Texans’ movements and browsing activity is inherently in conflict with its legal and ethical obligations as one of the world’s most powerful technology companies. Indeed, Google correctly admits that “[u]sers are not the experts in privacy and security, it’s actually Google,” and that “Google should be telling users what’s wrong, we should point out the anomalies, and guide users through their settings.”² Notwithstanding these acknowledgements, Google has long understood that its design choices deceive reasonable users. In one 2014 internal presentation, for instance, Google employees considered a specific scenario in which a Google user would reasonably be deceived by Google’s design choices. Google’s own internal example involved a hypothetical individual who “opted out of Google location” but then finds that, nevertheless, “Google maps has house-level accurate

² Lily Hay Newman, *The Privacy Battle to Save Google from Itself*, WIRED (Nov. 1, 2018), <https://www.wired.com/story/google-privacy-data/>.

location,” leaving the user wondering,—in Google’s words—“how does Google know my location? I thought I said no!”

Despite Google’s obvious understanding of its obligation to users and the ongoing risk of deception, the truth is that Google’s exhaustive surveillance practices are most effective and profitable to Google when users have no meaningful awareness of the intimate details they are sharing, how their data is used and monetized, and no clear idea of how to limit Google’s access to details about their personal lives. As such, when given a choice between (a) doing the right thing by its Texan users and (b) using false, deceptive, and misleading practices to fuel profits—Google ignores its obligations to Texans and chooses profits. And Google effectuates this decision through false and deceptive misrepresentations as well as omissions.

Google’s capturing of location data is demonstrated, for example, by an August 13, 2018, Associated Press (“AP”) article, which revealed that Google “records your movements even when you explicitly tell it not to.”³ The reporting concerned Google’s “Location History” setting, discussed above. As reported by the AP, Google had promised users that “with Location History off, the places you go are no longer stored.”⁴

That promise was false and deceptive. Specifically, even when users had explicitly opted out of location tracking through the Location History setting, Google nevertheless recorded users’ locations via other means, including (but not limited to) a separate and seemingly unrelated setting called “Web & App Activity.” When the Web & App Activity setting is enabled, Google collects and stores a large swath of data, including location data, whenever the user interacts with Google

³ Ryan Nakashima, *Google tracks your movements, like it or not*, AP NEWS (Aug. 13, 2018), <https://apnews.com/article/north-america-science-technology-business-ap-top-news-828aefab64d4411bac257a07c1af0ecb>.

⁴ *Id.*

products and services. Notably, the Web & App Activity setting is automatically enabled for all Google Accounts, yet Google’s disclosures during Google Account creation did not even mention the Web & App Activity setting until 2018.

In the days following the AP report, many users disabled one or both of these location-related settings, presumably having learned for the first time that Google was keeping an alarmingly meticulous record of their whereabouts over days, weeks, months, and years. Even Google employees expressed surprise upon learning that the Company was collecting location data under the auspices of the seemingly unrelated Web & App Activity setting.

Similar to its deceptive practices relating to the Web & App Activity setting, Google misleadingly and deceptively represents that, for example, its Incognito mode allows users to “browse privately, [and] other people who use this device won’t see your history.”⁵ Critically, however, Google fails to disclose that it *still* collects a user’s personal information even when the user has taken Google at its word and affirmatively elected to enable Incognito mode. As it turns out, unbeknownst to Texas users, no one is “incognito” to Google. Yet, Google continues to assure its users that “[y]ou’re in control of what information you share with Google.”⁶ These misleading representations and omissions about Incognito mode, like Google’s other deceptive practices, deceive Texans on the one hand but serve to maximize Google’s profits on the other.

Google’s statements about how to protect user privacy have all the reliability of the fox telling hens how to prevent fox intrusions. Google’s ambiguous, contradictory, and incomplete statements about these controls all but guarantee that users do not understand when their personal

⁵ *How Private Browsing Works in Chrome*, GOOGLE CHROME HELP, <https://support.google.com/chrome/answer/7440301?hl=en&co=GENIE.Platform%3DAndroid>.

⁶ *Search & Browse Privately*, GOOGLE SUPPORT, https://support.google.com/websearch/answer/4540094?hl=en&ref_topic.

information and location is retained by Google or for what purposes. In fact, Google’s claims to give users “control” and to respect their “choice” largely serve to obscure the reality that, regardless of the settings users select, Google is still hard at work collecting, storing, and monetizing the very location and other personal information users seek to keep private.

II. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 3 pursuant to Tex. R. Civ. P. 190.4.
2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the State’s claims include a claim for nonmonetary relief and claims for monetary relief, including penalties and attorneys’ fees and costs in excess of \$1,000,000.

III. PUBLIC INTEREST

3. Plaintiff has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below. Plaintiff has further reason to believe Defendant has caused and will cause adverse effects to consumers in Texas, to legitimate business enterprises which lawfully conduct trade and commerce in this state, and to the State of Texas. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas is of the opinion that these proceedings are in the public interest.

IV. JURISDICTION

4. This action is brought by Attorney General KEN PAXTON in the name of the State of Texas and in the public interest under the authority granted him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 et seq. (“DTPA”) upon the grounds that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and

declared unlawful by, subsections 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to section 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief.

5. Google has extensive and ongoing business operations throughout Texas, including operations conducted by itself and by various other affiliated entities Google has registered with the State. This has been the case for many years. Google has appeared as a party to many lawsuits in Texas state and federal courts, as both plaintiff and defendant. Google provides products and services to millions of Texans across every corner of the State, has multiple corporate offices in multiple cities in the State, uses the State's residents and resources to test new products and services, such as Google Fiber, and is, therefore, essentially at home in Texas. Google also maintains a major data center in Midlothian, Texas, which helps keep Google's products and services running. The allegations herein relate to many, but not all, of Google's overwhelming contacts with the State and arise from Google's conduct vis-à-vis users Google knows to be using Google's products and services in the State. Google is doing business in Texas and is subject to both general and specific personal jurisdiction of this Court. Solely by way of illustrative examples, Google contracts by mail or otherwise with Texas residents and either party is to perform the contract in whole or in part in this state, Google commits torts in whole or in part in this state, and Google recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

V. DEFENDANT

6. Google LLC is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

7. Google is a technology company that specializes in Internet-related products and services, which include online advertising technologies, search, cloud computing, and other software and hardware.
8. Google markets, advertises, offers, and provides its products and services throughout the United States, and the number of Google's Texas users is likely in the millions.

VI. VENUE

9. Venue of this suit lies in Victoria County, Texas because, under DTPA subsection 17.47(b), Defendant and its agents have done business in Victoria County, Texas by offering its goods and services to consumers and businesses in Victoria County, Texas.

VII. TRADE AND COMMERCE

10. Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by subsection 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

11. Whenever in this Petition it is alleged that Defendant did any act, it is meant that Defendant performed or participated in the act or Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

IX. NOTICE BEFORE SUIT

12. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below at least seven days before filing suit, as may be required by subsection 17.47(a) of the DTPA.

X. FACTUAL ALLEGATIONS

A. Google's False, Misleading, and Deceptive Practices Regarding Location History

1. Google's Business Model Relies on Constant Surveillance of Texans.

13. Google's business is profiting from user data. Through its many consumer products and services, Google collects and analyzes the personal and behavioral data of billions of people. In turn, the Company uses this information to build user profiles and provide analytics that support Google's digital advertising business. Google's advertising products generated nearly \$150 billion in revenue in 2020.

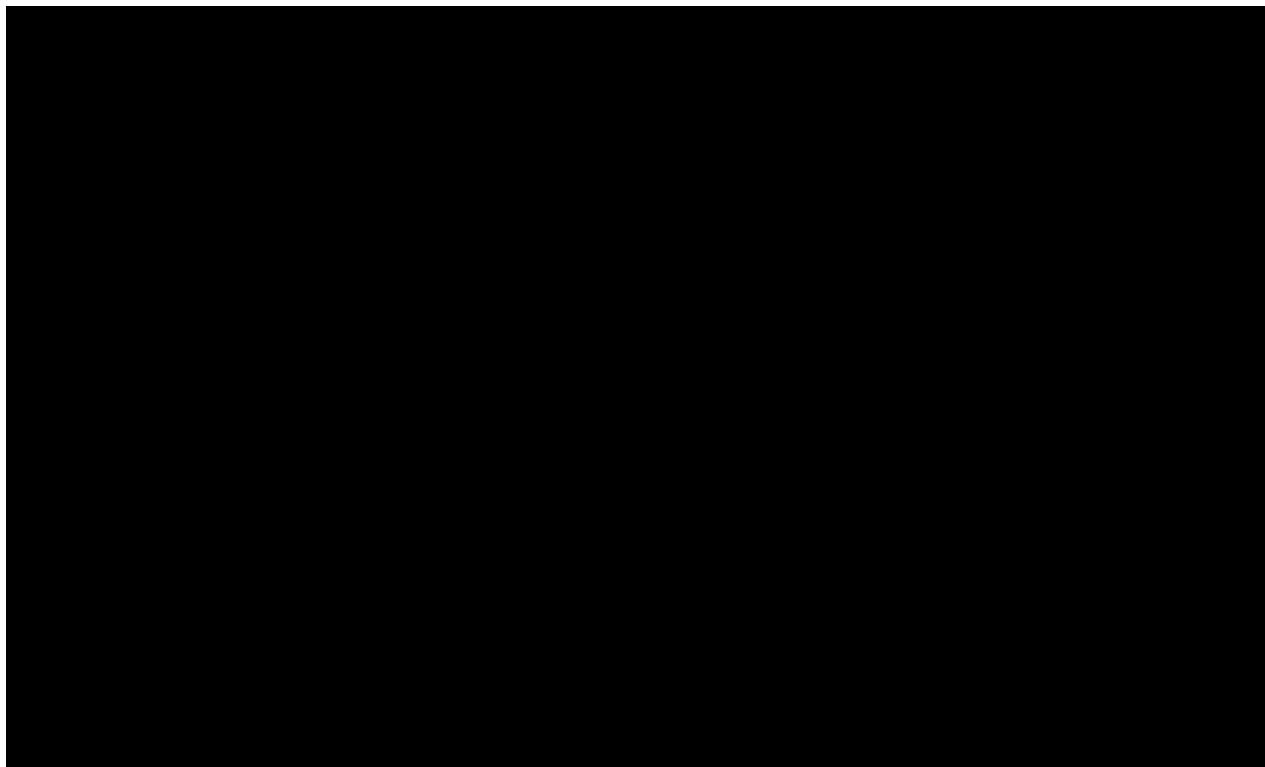
a) *Google Collects Texans' Location Data Via the Android OS and Google Apps and Services.*

14. Much of Google's location data collection occurs by way of Google's Android operating system ("Android" or "Android OS"). Android has been used on a majority of smartphones in the world and approximately half of smartphones in the United States since at least 2015.⁷ The Android operating system is free and open-source software. However, most Android devices on the market include a suite of Google apps and application programming interfaces ("APIs")⁸ (collectively, "Google Mobile Services") that are preinstalled on a user's device under a licensing agreement between Google and Android device manufacturers ("OEMs").

⁷ The smartphone market is generally split between two operating systems ("OS"): Apple's "iOS" and Google's Android OS. Apple's iOS is used on all iPhone and iPad devices.

⁸ An API is a software interface that connects computers or pieces of software to each other.

15. The basic functioning of the Android OS provides Google with a steady stream of location data from Android devices. Through sensors and APIs installed on Android devices,⁹ Google can track the precise location of a device and its owner on a continuous basis, using GPS coordinates, cell tower data, Wi-Fi signals, and other signals that are transmitted by the device to Google.



16. Google's other consumer products include apps and web-based services, such as Google Search, Google Maps, Chrome web browser, YouTube, Google Play Store, and Google Assistant, many of which can be used on both Android and Apple iOS devices (such as iPhones). These products are also critical to Google's ability to extract location data. Google collects and stores users' location data when they interact with certain Google apps

⁹ As used herein, the term "Android device" refers to mobile devices that use Google's Android OS and that come pre-installed with Google-licensed software and APIs (Google Mobile Services), including the Google Play Store and Google Play Services API.

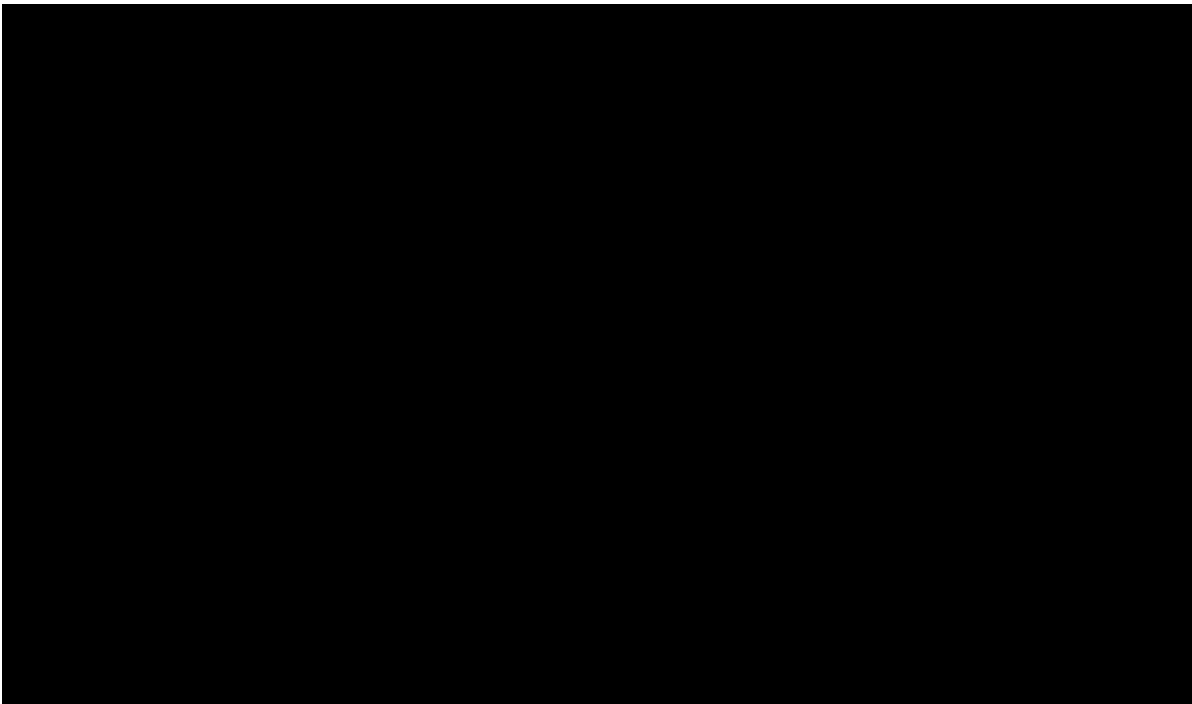

and services, even when a user's location is not needed to support the core functionality of the app or service.


17. On Android devices, certain Google apps are granted permission to collect users' location data by default. Other Google apps ask permission from users to allow Google to collect location data. On many versions of Android, once apps are permitted to collect a user's location data, they may continue to collect and transmit location data to Google unless the user remembers to revoke permission. And if a user elects not to grant permission, an app may continue to prompt the user to enable location settings until the user relents.
18. Furthermore, even when a user disables the settings that allow their device to transmit location data to Google, Google still approximates that user's location, for example, through its Oolong service and by using IP address¹⁰ information that is transmitted when the user interacts with many Google apps and services. Google's "IPGeo" service, in fact, maps IP addresses to geographic locations and that service cannot be disabled.

b) *Location Data Is Highly Valuable to Google.*

19. Some of Google's consumer products can be used at no direct financial cost to the user. But that is simply because it is the user that is for sale. Instead of charging money for its products, Google collects exhaustive personal data about its users when they engage with Google products, including their browsing history, location data, and information from their email. Google processes this data to draw inferences about individuals and groups of users that it monetizes through advertising and other business-facing services.

¹⁰ An IP address is a unique address that identifies a device on the internet or a local network. IP stands for "Internet Protocol."

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20. Google's advertising business is dependent on its collection of this personal data, and location data is particularly valuable. 

 In marketing materials directed at advertisers, Google actively publicizes its ability to provide better advertising services through location-based analytics and geo-targeted consumer advertising.

21. Because location data is key to Google's lucrative advertising business, the Company has a strong financial incentive to dissuade users from withholding access to that data. As detailed herein, Google has employed and continues to employ a number of deceptive practices to make it nearly impossible for users to stop Google from collecting their location data when using Google products. These practices include privacy-intrusive default location settings, hard-to-find location settings, misleading descriptions of location settings, repeated nudging and pressuring to enable location settings, and incomplete or misleading disclosures of Google's location-data collection and processing.

22. In one striking example, Google dramatically reworded a pop-up window that prompted users to enable a setting so that the prompt no longer disclosed on its face that enabling the setting allowed Google to continuously collect the user's location. [REDACTED]. See *infra* § E(2). The roll-out of this vague prompt [REDACTED]

2. Google Cloaks Its Location Monitoring in a Web of Unrelated Settings.

23. Google misleads its users by presenting them with a maze of settings the users must navigate should they dare to try to keep their whereabouts private. Aside from the sheer number of confusing settings, Google's deception lies in the reality that many of the settings ostensibly have nothing to do with location, some are activated by default, and some are simply insufficient to protect one's privacy, despite what Google leads users to believe. Google promises a path to its users out of the Google-created blizzard of location harvesting; however Google made sure to plant deceptive sign posts masquerading as privacy settings so no reasonable user could likely escape becoming a Google profit center.
24. At the highest level, Google's settings can be classified into two categories: Google Account settings and device-level settings. Google Account settings apply to data collected from *any* device signed in¹¹ to a user's Google Account. In contrast, device settings apply *only* to the specific device on which the setting appears. Below is a brief description of the settings most pertinent to Google's deceptive representations and omissions regarding location tracking.

¹¹ A device (or user) is "signed-in" to Google if the user has signed into the user's Google Account at device set-up or in connection with a Google app.

a) *Location-Related Google Account Settings.*

25. Google’s collection and use of location data is purportedly subject to at least three Google Account settings: Location History, Web & App Activity, and Google Ads Personalization (“GAP”).
26. Location History is a Google Account feature that captures all the places where a signed-in user goes. [REDACTED]
[REDACTED]. Location History has existed in some form since approximately 2009. [REDACTED]
[REDACTED]
[REDACTED] Using those various signals, Google can track a user’s precise location,¹² [REDACTED]
27. [REDACTED]
[REDACTED]. Using this information, Google builds a “private map” of all the places a user has been.
28. The primary value of Location History data for Google lies in its profitability for advertising uses. This data informs what advertising Google will present to that user.
29. In addition, Google uses Location History data to provide advertisers with “store conversion” rates—i.e., the rate at which users who view an ad actually visit the advertised store. Google’s ability to follow their users’ movements in the physical world after they click on digital ads is a unique selling point for its advertising business.
30. Web & App Activity is a separate Google Account setting that collects, stores, and monetizes user location. Whereas Location History passively collects location information

¹² As used herein, “precise location” refers to the user’s exact longitude and latitude.

on all of a user's movements, Web & App Activity records a user's "transactional location"—i.e., the location of a signed-in user's device when the user is interacting with certain Google products.¹³ For example, when a signed-in user conducts a search for "chocolate chip cookie recipe" on the Google Search app, Google collects the user's location at the time of the search, along with details about the search, and stores that information to the user's Web & App Activity log. Later, if the user searches for an address on Google Maps, Google again stores the user's location at the time of that search, along with details about what was searched, to the same log.

31. Google uses Web & App Activity data to deduce user habits and interests for advertising purposes. Google's ability to target ads to users based on information about their locations is critical to the success of its billion-dollar advertising business. From in or around 2015 to in or around 2019, Google used the Web & App Activity setting to log a user's precise latitude and longitude.
32. Because Location History and Web & App Activity are independent settings, disabling one does not impact whether a user's location is collected and stored by the other. In other words, even if a user attempts to prevent location tracking by disabling one of these settings, Google still tracks and monetizes that user's location through the other. And until recently, Google kept the data stored in connection with these settings indefinitely, unless the user manually deleted the data.
33. Google also offers users a Google Account setting related to personalized advertising—the GAP setting. The GAP setting purports to provide signed-in users the ability to opt out of

¹³ A "supplemental" Web & App Activity setting also collects and stores information about the user's interactions with non-Google apps and with non-Google websites on Google's Chrome browser.

personalized ads served by Google. Google told users that with this setting enabled, “Google can show you ads based on your activity on Google services (ex: Search, YouTube), and on websites and apps that partner with Google.”

b) *Location-Related Device Settings.*

34. Location-related device settings control whether a specific device transmits location information to apps, APIs, or other services on the user’s device. Android devices have multiple location-related device settings.
35. First, Android devices have a location “master switch” that controls whether the device can share the device’s location with any other apps on the device. When this “master switch” is enabled, apps and services can request and access the device’s location. If a user disables this setting on their device, then no apps or services can access the device’s location.
36. Second, Android devices have “app-specific” location settings. Using these settings, users can grant or deny a specific app, such as Google Maps or Uber, permission to access the device’s location. On some versions of Android, apps with permission to access device location could access a user’s location in the background—i.e., even when no apps requiring location were in active use.
37. On Android devices, these two types of settings control the flow of location information to Google. For example, enabling the location “master switch” allows Google to collect and use location information from the user’s device to improve an internal Google platform called Google Location Services.¹⁴ [REDACTED]

[REDACTED]

[REDACTED].

¹⁴ Google Location Services is also referred to as Google Location Accuracy.

38. Android mobile devices also have other settings that purportedly give users control over other types of data collection that Google uses to determine the users' location. For example, Android users can control whether their device scans for nearby Wi-Fi access points or Bluetooth devices, both of which technologies Google uses to determine a user's location. Certain versions of the Android OS also include "Low Battery" and "High Accuracy" modes that control whether Google uses Wi-Fi, Bluetooth, cellular signals, and Google Location Services, in addition to GPS, to ascertain the user's precise location.
39. This complex web of settings misleads users into believing that they are not sharing their location with Google when, in fact, they are.

3. Google Deceives Users Regarding Their Ability to Protect Their Privacy Through Google Account Settings.

40. One way that Google misleads users regarding their location data is through the Google Account settings described above. As a result of deceptive practices with respect to these settings, Google has collected enormous amounts of location data from unwitting Texans and monetized that data in the service of Google's advertising offerings without Texans' knowledge or consent.

a) *Google Misrepresented the Characteristics of the Location History and Web & App Activity Settings.*

41. Google misrepresented and omitted material information regarding the Location History and Web & App Activity settings until at least 2019. These misrepresentations and omissions confused users about which settings implicate location data, making it more likely that Google would capture, store and profit from such data without users' knowledge or consent.

42. For years, Google assured Android users on a public webpage that “[y]ou can turn off Location History at any time. *With Location History off, the places you go are no longer stored.*” Google similarly explained that Apple users could log into their online Google account and select “Stop storing location” in order to turn off Location History, and that turning Location History off would “*stop[] saving new location information.*” Google thus represented Location History as the setting that, when turned off, empowered users to prevent Google from storing or saving their personal location information.
43. That representation was false. Even when Location History was off, Google deceptively continued to collect and store users’ locations through other means. Namely, depending on a user’s other settings, Google collected and stored location data through Google’s Location Services feature, Web & App Activity, Google apps on the user’s device, Wi-Fi and Bluetooth scans from the user’s device, the user’s IP address, and [REDACTED]
[REDACTED]
44. Google’s statements prompting users to turn on Location History also falsely implied that only this setting controlled whether Google stores a user’s location. For example, at various times, Google told users that enabling Location History “lets Google save your location;” allows Google to “store and use” the “places you go;” permits Google to “periodically store your location;” “allows Google to store a history of your location;” or allows Google “to save and manage your location information in your account.” Like Google’s statements on its webpages, these statements obscured the fact that the Location History setting does not alone control whether Google collects and saves a user’s location data.
45. Google’s misleading statements and omissions regarding Location History were exacerbated by separate misleading statements and omissions in connection with the Web

& App Activity setting. Specifically, Google did not disclose to users that even when Location History is disabled, the Company still collects, stores, and uses location data through the Web & App Activity feature. This despite the fact that Google knew that location information is uniquely sensitive.

46. As alleged above, Web & App Activity collects location data when a user interacts with certain Google products. For example, if a user asks Google Assistant to search for the author of a book, Web & App Activity would save the user's location and the time when the query was made—even with Location History off. Google also collects and stores information that could implicitly reveal a user's location, such as the places a user inputs into Google Maps.
47. The 2018 AP story illustrated the extent of Google's location tracking through Web & App Activity. The report provided a visual map of the data Google collected from the AP investigator's device when Web & App Activity was enabled but Location History was disabled. The resulting map reflected that in only eight hours, Google captured almost two dozen precise, time-stamped GPS coordinates.
48. Google recognizes that the mosaic of the locations of individual users over time constitutes sensitive information. Despite this, Google concealed the fact that the Web & App Activity setting controlled Google's storage and use of location information. Moreover, users could not reasonably avoid Google's deceptive storage and use of their location because it occurred without their knowledge.
49. First, Google failed to disclose the Web & App Activity setting when users set up Google Accounts for the first time. Yet at this stage, the Web & App Activity setting is defaulted "on" for all Google Accounts. Thus, a user who sets up a Google Account is unknowingly

automatically opted-in to location tracking (via Web & App Activity) unless the user learns about and affirmatively changes this setting. But until 2018, the Google Account set-up process made no mention of the Web & App Activity setting.

50. Furthermore, Android phones effectively require a user to sign in to a Google Account,¹⁵ and Google apps like Search and Maps are granted location permission on Android devices by default. As a result, a new Android user could create a new Google Account, be automatically opted in to the Web & App Activity surveillance program, and then defaulted into granting location permissions to multiple Google apps, meaning Google could track that user's location across the user's Google Account and through several apps without disclosing the existence of the setting or presenting the user with an option to opt out.
51. One of the only ways users would even become aware that Web & App Activity was storing location data was if they happened to navigate to a separate webpage where Google recorded data stored under the Web & App Activity setting, called "My Activity." But when users first landed on this webpage, Location History was presented as the only setting that related to location data. For example:

¹⁵ A user must sign in to a Google Account on their Android device to access the Google Play application ("app") store, which is needed to download new apps or receive app updates that enable apps to function properly and safely. On information and belief, once Android users sign in to their Google Account, users can not sign out of Google. If they do not want to be signed in, their only option is to fully remove their Google Account(s) from their device.

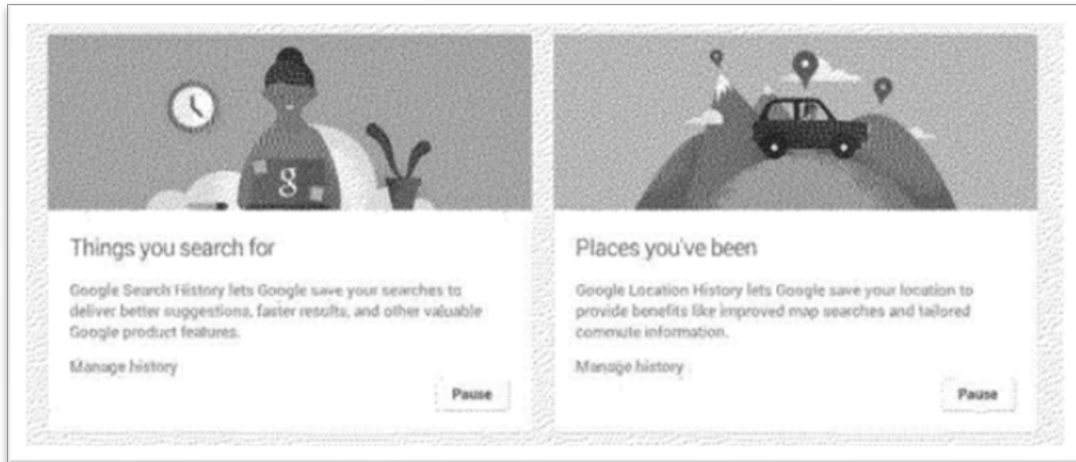


Figure 5. A screen capture representative of Google's Account set-up disclosures in 2018.

52. In 2018, Google revised its Google Account set-up process to include the option to disable Web & App Activity. However, the Company still deceptively concealed from new users the fact that location data was captured by the setting. Until at least mid-2018, this information was only revealed to new users who first clicked on a link to see “More options” to customize settings and then selected a second link to “Learn More” about the Web & App Activity setting. [REDACTED]

[REDACTED]

[REDACTED]

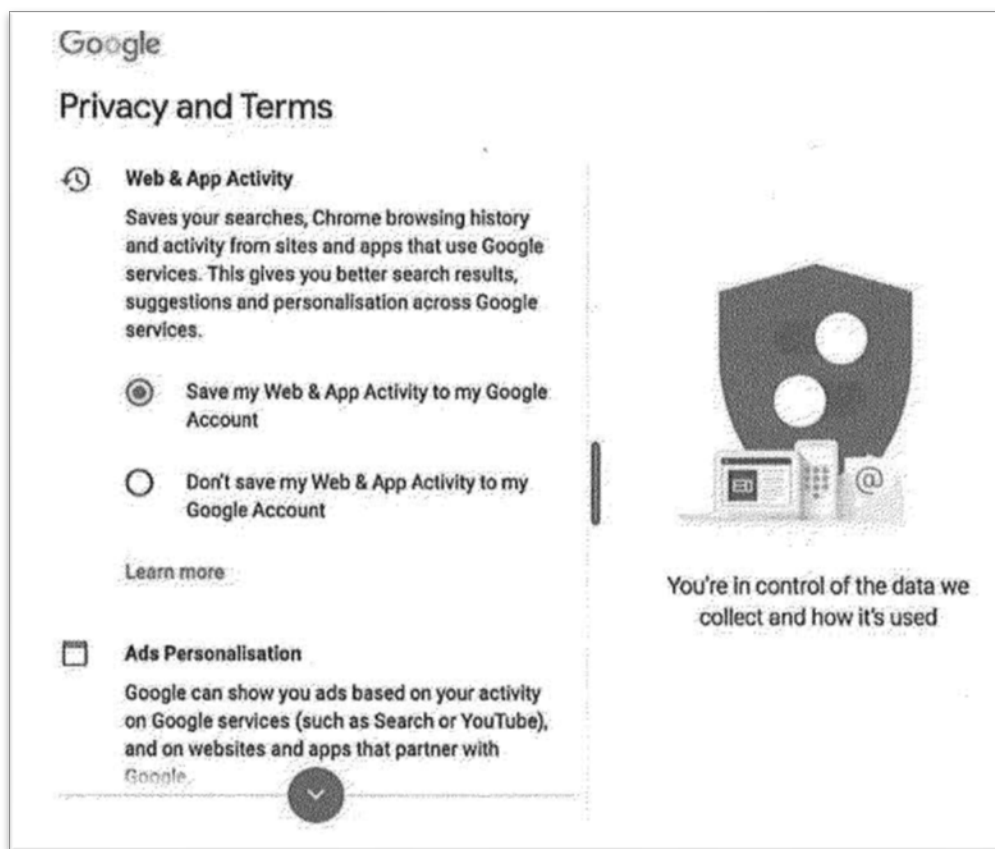


Figure 6. A screen capture demonstrating Google's failure to inform Texans that Web & App Activity was used to track location.

53. Second, Google failed to disclose the Web & App Activity setting to users when they set up new devices using existing Google Accounts. A user's Web & App Activity "enabled" or "disabled" status applies to all devices signed in to the user's Google Account. Thus, any time a user signed in to an existing Google Account on any device, Google could begin tracking that device as long as Web & App Activity was enabled on the user's Account. Because Android devices need to be signed in to a Google Account to use critical functionalities and because users sign in to Google at Android device set-up, Google was able to track Android users via Web & App Activity as soon as they set up new devices on their Google Accounts. Users did not receive a separate notification that Google had begun storing the location of the new device via the Web & App Activity setting.

54. Third, Google did not identify Web & App Activity as a location-related setting in the places where a user would expect to find that information. For example, until around 2019, users who explored location settings on their Android devices would not find Web & App Activity listed among them. Likewise, a Google webpage titled “Manage your Android’s device location settings,” which described Google’s location-based settings, discussed Location History without mention of the Web & App Activity setting. Google’s Privacy Policies also omitted mention of the Web & App Activity setting. For instance, the December 18, 2017 version of Google’s Privacy Policy lists examples of information about “your actual location” that Google “may collect and process.” These examples include a specific mention that “Location History allows Google to store a history of your location data,” but make no reference to the Web & App Activity setting.
55. Finally, many of Google’s affirmative disclosures regarding Web & App Activity also failed to disclose that this setting authorized Google to store and use location data. Google routinely described the Web & App Activity setting as allowing the Company to store things like Google search history and activity on Google apps—without mention of location (unless the user clicked on a link to a pop-up window for more information). Yet Google stores Web & App Activity data in, among other places, a data store it calls Footprints. It is difficult to imagine a more misleading incongruence than an arrangement where users are told they can prevent the storage of their location history by disabling a setting called Location History while the Company continues to store the users’ location history in a data store called Footprints using a setting that the Company does not clearly advertise as implicating location history.

56. These design choices all reinforce Google’s underlying deception that disabling Location History was sufficient to prevent Google from storing a user’s location history, as Google promised. The name “***Location*** History” gives users every reason to believe that the setting controls the collection of their ***location*** history while nothing about the name “***Web & App*** Activity” gives users a reason to believe that setting tracks one’s ***location*** history. A reasonable user would be misled and deceived. And that is even before considering Google’s false promise that “with Location History off, the places you go are no longer stored.”
57. In sum, Google misrepresented that disabling Location History stopped Google from storing a user’s location and concealed that the Web & App Activity setting also stored location data. This tended to mislead users to believe that the Web & App Activity setting did not impact the collection, storage, or use of location data; that the Location History setting alone controlled whether Google retained and used location data; and that the Location History setting would prevent Google from retaining and using the user’s historical locations on an ongoing basis.
58. Both the gravity and the flagrance of these misrepresentations are demonstrated by Google’s response to the public revelation in the 2018 AP article that Google “store[s] your location data even if you’ve used a privacy setting that says it will prevent Google from doing so.” Within Google, a self-titled “Oh Shit” meeting was convened the day the AP story was published to begin brainstorming responses to the article. Soon after, Google CEO Sundar Pichai and other senior executives became directly involved in crafting the Company’s response. After being caught red-handed by the AP story, Google updated its

help page to remove the false promise that “With Location History off, the places you go are no longer stored.”

59. [REDACTED]
[REDACTED]
[REDACTED]. At its peak, the number of users who disabled at least one of these settings increased by over 500%. [REDACTED]
[REDACTED]

60. Internally, Google employees agreed that Google’s disclosures regarding Location History were “definitely confusing” and that the user interface for Google Account settings “feels like it is designed to make things possible, yet difficult enough that people won’t figure it out.” One IT specialist at Google admitted, “I did not know Web and App Activity had anything to do with location.”

61. Even before the AP article was published, however, [REDACTED]
[REDACTED]. Yet Google did not act to correct this misleading impression or attempt to clarify the Web & App Activity and Location History settings until after the Company’s misconduct was made public.

b) *Google Misrepresents the Characteristics of its Other Google Account Settings.*

62. Google also misleads users about its location tracking practices by misrepresenting and omitting material facts regarding the extent to which Google Account settings prevent Google’s collection and use of location data. Google Account settings offer seemingly simple “privacy controls” to attract users and lull them into a sense of security, but Google continues to exploit users’ location data regardless of the choices users make with respect to these settings.

63. For years, Google has made misleading promises that users can control the information that Google collects, stores, and uses about them by adjusting their Google Account settings. In numerous iterations of Google’s Privacy Policies and other disclosures, Google has pointed to Google Account settings as features that, among other things, allow users to make “meaningful choices about how [the information Google collects] is used;” “control the collection of personal information;” “decide what types of data...[they] would like saved with [their] account when [they] use Google services;” or “make it easier for [them] to see and control activity that’s saved to [their] account and how it’s used.” For example:

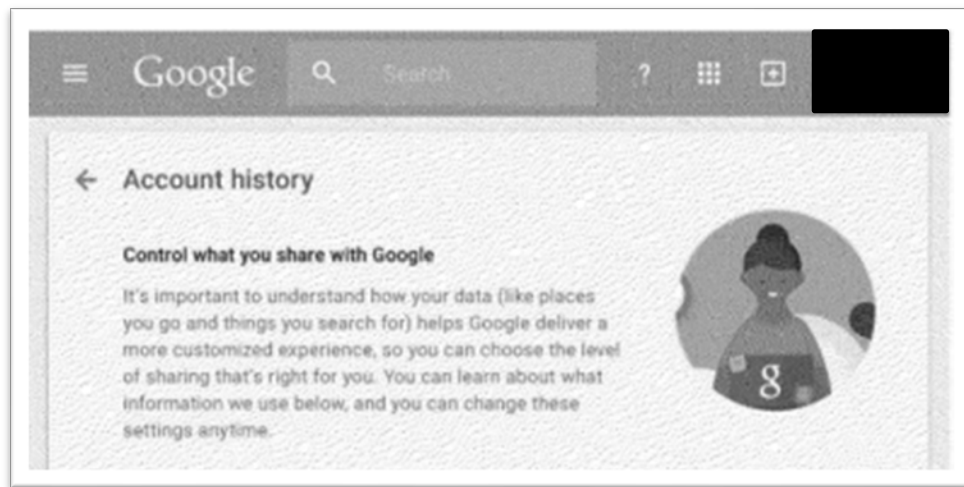


Figure 7. An example of Google's representations about user control.

64. Since May 25, 2018, Google’s Privacy Policy has explained that “across our services, you can adjust your privacy settings to control what we collect and how your information is used.” In its Terms of Service and Privacy Policies, Google has also represented that it would “respect the choices you make to limit sharing or visibility settings in your Google Account.”

65. As part of setting up a Google Account, Google expressly tells users, “You’re in control. Depending on your account settings, some ... data may be associated with your Google Account and we treat this data as personal information. You can control how we collect and use this data....You can always adjust your controls later or withdraw your consent....”
66. In another example, since 2019, Google has maintained a webpage devoted to explaining “How Google uses location information.” This webpage states that “[i]f Web and App Activity is enabled, your searches and activity from a number of other Google services are saved to your Google Account. The activity saved to Web and App Activity may also include location information.... Pausing Web & App Activity will stop saving your future searches and activity from other Google services.”
67. In statements like these, Google frames Google Account settings as tools that allow a user to easily control Google’s collection and use of their personal information. The Company’s reassuring statements about these settings misleadingly imply that a user can stop Google from storing or deploying the user’s location information by disabling these settings.
68. But this is not true. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].
69. In other words, while touting user’s ability to control personal-data collection through Google Account settings, Google flouts that control by continuing to collect, store, and use location data regardless of whether the user disables these settings.

70. Google further misleads users by providing them only partial visibility into the location data Google collects. For example, Google’s current Privacy Policy claims that users can manage their privacy because they can “review and control information saved in [their] Google Account” and “decide what types of activity [they would] like saved in [their] account.” Earlier versions of the Privacy Policy likewise indicated that Google provides “transparency and choice” by allowing users to “access, manage, or delete information that is associated with [their] Google Account,” and stated that Google provides these tools in order to “be clear about what information [it] collects.” In other disclosures, Google explains that the My Activity webpage “allows [users] to review and control data that’s created when [they] use Google services” and that “My Activity is a central place where [users] can view and manage [their] saved activity.”

71. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Users can delete this subset of location data, as well as Location History. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

72. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

73. Despite claiming to endeavor to “be clear about what information [Google] collects, so that [users] can make meaningful choices about how it is used,” [REDACTED]

[REDACTED]

74. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. Until May 2018, Google did not disclose in its Privacy Policy [REDACTED]

[REDACTED] who cannot prevent this form of data collection. Even today, the webpage devoted to explaining “How Google uses location information” only explains how location data is “saved in [a] Google Account,” [REDACTED]

[REDACTED]

[REDACTED]

76. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As a result of Google’s misleading statements with respect to these settings, users cannot reasonably avoid Google’s access to and use of their location data.

77. Google is aware that users do not understand Google Account settings or how these settings interact with other location-related settings. Google employees themselves admit that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) *Google Misrepresented the Characteristics of the Google Ad Personalization Setting.*

78. Google's deceptive practices extend to the GAP setting as well. The GAP setting purportedly allows users to opt out of personalized advertising. Similar to Google's other practices, this setting allows users to "control" the Company's use of their location data only to an extent.
79. Google has explained that enabling the GAP setting will "Let Google use [a user's Google Account activity] to show [the user] more relevant ads on [Google's] services and on websites and apps that partner with [Google]." In connection with explaining this setting, Google told users that they should "let Google know [their] location," so that "[they] won't get ads for stores in other regions."
80. The GAP setting and Google's disclosures indicate that a user has control over whether Google will serve "personalized" ads based on the user's location. But this setting only provides an illusion of control. In reality, Google continues to target ads based on a user's

location—both on and off Google products—even if the user opts out of ads personalization by disabling the GAP setting.

81. Rather than curing its deception, Google chose not to disclose to users who disable ad personalization that Google would continue to serve targeted ads based on the user's location anyways.

4. Google Deceives Users Regarding Their Ability to Protect Their Privacy Through Device Settings.

82. Google further confuses and misleads users into sharing more location data than they intended through deceptive practices that contradict the Company's representations and users' expectations regarding location-related device settings. Google conceals from users that, even when they deny Google permission to access their location via device settings, Google continues to collect and store the users' location regardless of the user's explicit attempt to block Google's access to that information. Google misleads users in at least three respects.

83. **First**, Google tells users that they can control the flow of location data via the location “master switch.” Google includes this “master switch” on Google-licensed Android phones in order to provide this functionality. Furthermore, beginning with its May 2018 Privacy Policy, Google has represented that “the types of data [Google] collect[s] depend in part on [the user's] device and account settings. For example, [a user] can turn [an] Android device's location on or off using the device's setting app.” Google also provided Help pages explaining how to turn off Android device location, including explanations such as: “If [a user] turn[s] off Location for [a] device, then no apps can use [the user's] device location.” Today, Google tells users: “[Users] can allow Google and other apps to provide

[users] with useful features based on where [a] device is located” “if [the user] choose[s] to turn on [the] device location.”

84. These representations, as well as the Android device setting itself, mislead users to believe that if they disable the master location setting, Google does not collect, store, or use their location to provide “services” (including ads) to the user. However, for years, including through today, Google has deceived users by failing to disclose that regardless of whether the user *explicitly forbids* Google from accessing location via a device, Google derives and stores the user’s location [REDACTED].
85. Specifically, when a user turns the location “master switch” off, believing that they are not sharing location information, Google nevertheless uses the user’s IP address [REDACTED] [REDACTED] to infer the user’s location. [REDACTED] [REDACTED].
86. ***Second***, app-specific device settings are also ineffective. Google includes these settings on Android devices to allow a user to deny device location information to specific apps. Further, Google provides Help pages explaining that, on Android devices, a user can choose which apps can access and use a user’s device location. But contrary to what Google leads users to expect, Google still determines a user’s approximate location [REDACTED] [REDACTED] even when a user has denied location access to the app.
87. Yet, in disclosures up to at least 2019, Google claimed that IP addresses revealed only the *user’s country*, and that Google would merely use this information to provide search results and identify the correct language—with no mention of advertising. Even today, on its

webpage explaining “How Google uses location information,” the Company downplays the accuracy and precision with which it infers a user’s location based on the user’s IP address. The Company proffers only that IP addresses are “roughly based on geography” and allow Google to “get some information about your general area.”

88. **Third**, device settings related to specific location signals on Android phones, such as Wi-Fi and Bluetooth, are confusing and conflicting, making it very challenging for users to limit Google’s access to this data when they intend to. For example, Google uses Wi-Fi scans to compute device location more accurately and precisely. Android phones include a “Wi-Fi scanning” setting among other location-related settings. However, if this setting is “off,” Google can still obtain Wi-Fi scans. If a user has enabled a separate “Wi-Fi connectivity” setting along with Google Location Services, Google continues to access and use Wi-Fi scanning to locate the user, even if Wi-Fi scanning was disabled by the user.
89. Simply put, even when a user’s mobile device is set to deny Google access to location data, the Company finds a way to continue to ascertain the user’s location. Google’s undisclosed practice of bypassing users’ location-related device settings constitutes a deceptive act or practice.
90. Because these practices are not clearly disclosed to users and contradict user expectations, users cannot reasonably avoid Google’s access to and use of their location data. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As one Google employee correctly summed up user beliefs, [REDACTED]

[REDACTED]

5. Google Deploys Deceptive Practices that Undermine Users' Ability to Make Informed Choices About Their Data.

91. In addition to misrepresenting the extent of user control and choice over location-data collection, Google has relied on, and continues to rely on, deceptive practices that make it difficult for users to decline location tracking or to evaluate the data collection and processing to which they are purportedly consenting.
92. Such practices are known in academic literature as “dark patterns.” Dark patterns are deceptive design choices that alter the user’s decision-making for the designer’s benefit and to the user’s detriment. Dark patterns take advantage of behavioral tendencies to manipulate users into actions that are harmful to users or contrary to their intent. Common examples of “dark patterns” include complicated navigation menus, visual misdirection, confusing wording (such as double negatives), and repeated nudging.
93. Because location data is immensely profitable to Google, the Company makes extensive use of dark patterns, including repeated nudging, misleading pressure tactics, and evasive and deceptive descriptions of features and settings, to cause users to provide more and more data (inadvertently or out of frustration), and to impede them from protecting their privacy.

a) *Dark Patterns Exist in Google Account Settings.*

94. Some of Google’s deceptive practices with respect to Google Account settings already alleged above reflect the use of dark patterns. For example, Google’s decision to enable by default the privacy-intrusive Web & App Activity feature, while failing to disclose this

setting, was a deceptive design. By enabling privacy intrusive settings and then hiding those settings, Google not only misled users about the extent of its location tracking, but also made it more difficult for users to refuse this tracking.

95. Dark patterns are also evidenced in Google’s presentation of “in-product” prompts to enable Google Account settings—i.e., prompts to enable these settings when a user begins to use Google apps and services on a device. For example, for at least part of the relevant time period, Google told users during setup that certain Google products, such as Google Maps, Google Now, and Google Assistant “need[]”or “depend[] on,” the Location History feature. For example:

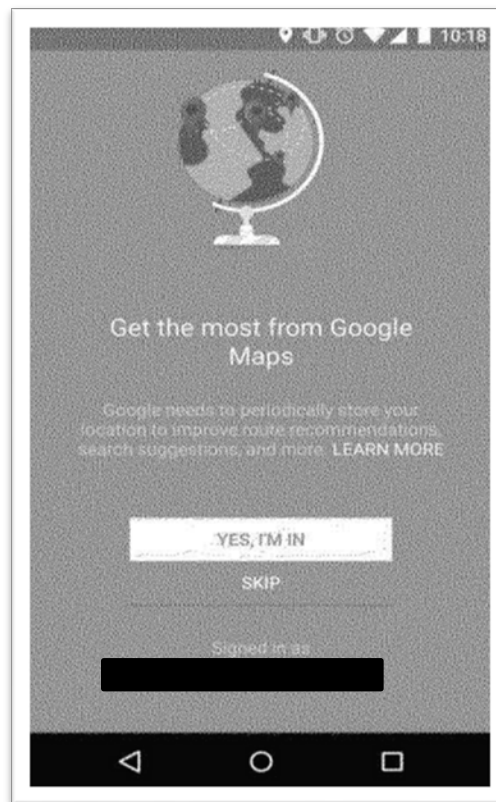


Figure 8. An example of the pressuring Google deploys during set up to lead Texans to consent to location tracking.

96. However, these products could properly function without users agreeing to constant tracking. For example, Maps and Google Now did not “need” Location History to perform their basic functions and, in fact, both products would continue to function if the user later took a series of actions to disable Location History. Because Google’s statements falsely implied that users are not free to decline to enable Google Account settings if they wished to use a number of (often pre-installed) Google products as they were intended, users were left with effectively no choice but to enable these settings.
97. Google also designed the set-up process for certain Google products in a manner that limited users’ ability to decide whether to permit Google to track them. In particular, Google prompted users to enable Location History and Web & App Activity, along with multiple other settings, in order to use products like Google Assistant or Google Now. For example:

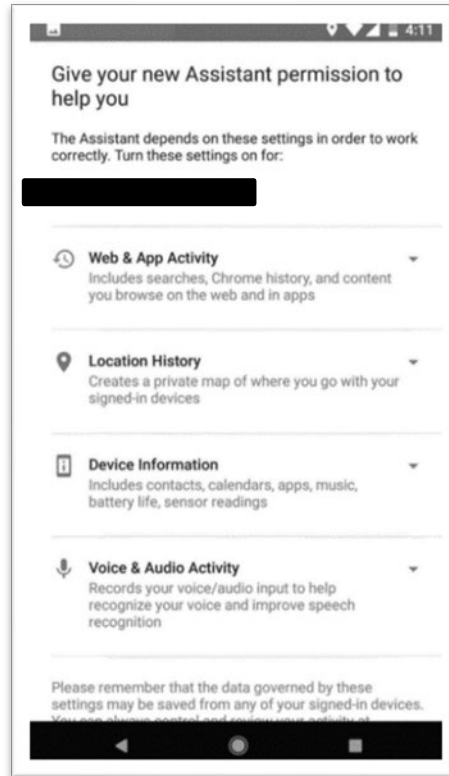


Figure 9. An example of Google's representations that data permissions were necessary for applications to work.

98. By presenting users with an “all or nothing” opt-in, Google similarly denied users the ability to choose which data-sharing features to enable, unless users took the additional and burdensome action of trying to locate and disable these features after set-up.
99. Google also did not (and still does not) give users the choice to decline location tracking once and for all. If users decline to enable Location History or Web & App Activity when first prompted in the set-up process for an Android device, for instance, they are later shown further prompts to enable these settings when using Google products—despite already refusing consent to these services.
100. [REDACTED]
[REDACTED]
[REDACTED]. By repeatedly

“nudging” users to enable Google Account settings, Google increases the chances that a user will relent and enable the setting inadvertently or out of frustration. Google does not and has never provided similarly frequent prompts to opt *out* of location sharing.

101.

[REDACTED]

102. Further, until at least mid-2018, users who read Google’s prompts to enable Google Account settings regarding location issues were provided only vague and imbalanced information about the effects enabling Google Account settings, until users clicked on discrete links that led to further information.

103. These prompts misleadingly emphasized a few benefits that Location History provided to users—such as commute notifications or more personalized search results—without providing a similar emphasis and disclosure about the advertising and monetary benefits to Google. Indeed, Google only revealed that it used this comprehensive data for

advertising purposes in separate linked or drop-down disclosures that were hard to find.

For example:

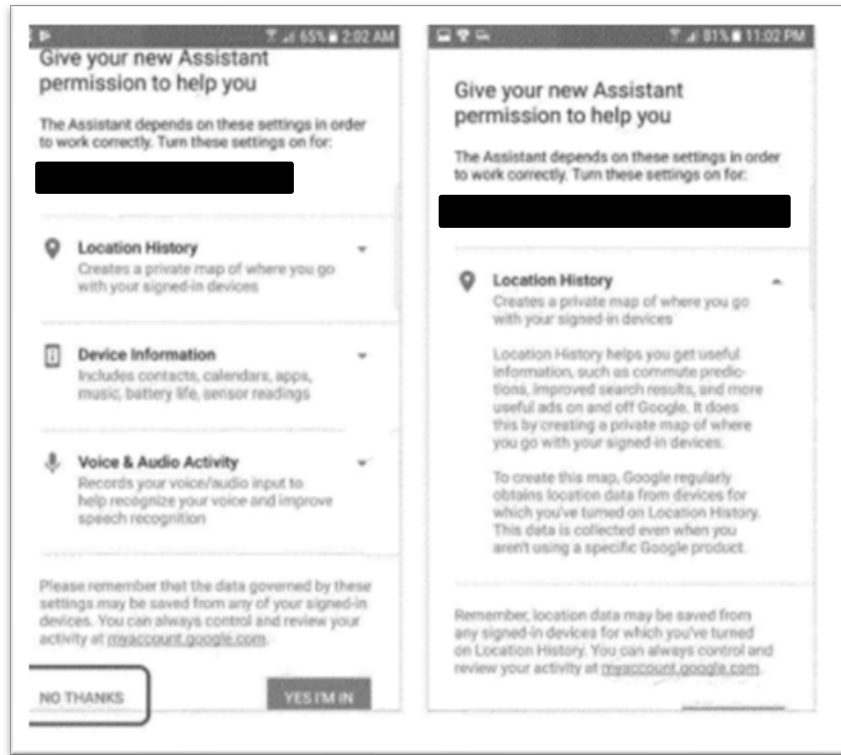


Figure 10. An example showing how Google buries information about its use of Texans' data for commercial purposes in layers of disclosures.

104. [REDACTED]

105. At relevant times, users who paused Location History or deleted Location History entries also received vague warnings implying that disabling or limiting Location History would hinder the performance of Google apps. For example, users who disabled Location History

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were told that doing so “limits functionality of some Google products over time, such as Google Maps and Google Now” and that “[n]one of your Google apps will be able to store location data in Location History.” Users who deleted Location History entries were also warned that “Google Now and other apps that use your Location History may stop working properly.” These warnings were misleading because they include statements and omissions that failed to provide users with sufficient information to understand what, if any, services would be limited, and they falsely implied that Google products would not function unless the user agreed to provide location data on a continuous basis.

b) *Dark Patterns Exist in Device Settings.*

106. Users who seek to limit Google’s location data collection through device settings also face an uphill battle to protect their privacy as a result of Google’s deceptive design practices. For example, users may try to limit Google’s surveillance of their location through the location “master switch” or the app-specific location permission settings. However, after disabling these settings, users are subject to repeated pressuring to re-enable location tracking when using various Google apps. One Google employee complained, [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
107. Furthermore, once location is re-enabled on a user’s device, other Google apps and services can access the user’s location, including (in some versions of the Android OS) when the user is not interacting with the app. The only way to avoid such access is if the user remembers to disable location again, a process which the user is discouraged to undertake

because it requires a number of steps and must be repeated every time a user wants to permit (and then deny) Google access to their location.

108. During the relevant time period, Google also actively sought to increase the percentage of users who enabled location settings on Android devices by providing vague disclosures and making it more difficult for users to disable these settings. For example, in one version of Android (called KitKat),¹⁶ Google offered a toggle that allowed users to disable location from a pull-down menu at the top of their screen. This made the setting more easily accessible to users. However, Google removed this toggle from Android phones that Google manufactured, [REDACTED]
- [REDACTED]
- [REDACTED]

109. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

110. Around the same time, Google also changed the dialogue box that users would see when prompted by Google to enable location, so that more users would consent to report their locations to Google. Pursuant to this change, users were no longer advised that they were agreeing to persistent tracking of their precise location by Google, as shown below:

¹⁶ Android KitKat was publicly released on October 31, 2013.

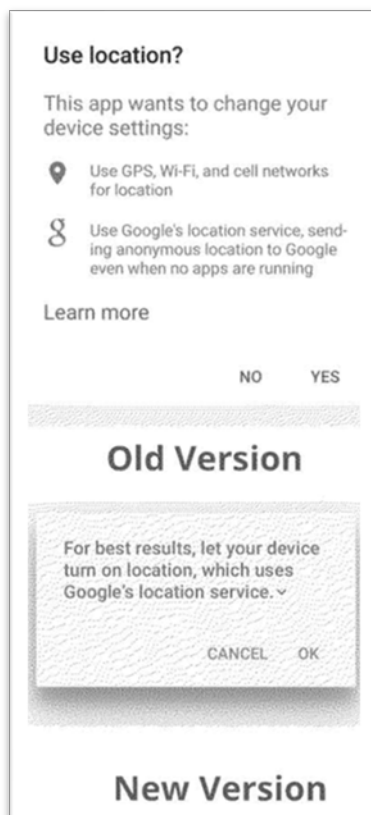


Figure 11. An example of Google's design changes deployed to increase location-tracking permissions.

111. [REDACTED]
112. Google took these actions because it has profound financial incentives to pressure users into enabling location services and other location settings on their devices. Without these settings enabled, Google had a substantially reduced ability to ascertain, extract, and monetize the locations of its users.

B. Google’s False, Misleading, and Deceptive Practices Regarding Incognito Mode

1. Google Deceptively Represents that “Incognito Mode” Allows Texans to Control What Information Google Sends and Collects.

113. In addition to the deceptive location-tracking practices described in the above paragraphs, Google deceptively captures Texans’ information while they are in Incognito mode. Google does this despite repeatedly assuring Texans that they have control over what information generated during an Incognito session is shared with Google and others.
114. “Incognito mode” is a feature Google offers that can be used with Google’s own web browser, Google Chrome. Incognito mode can be used in Chrome on desktop computers as well as on tablets, iPhones, and Android phones. Google apparently carefully chose the name Incognito as the average Texan would understand the word “incognito” to mean having “one’s identity concealed.”¹⁷
115. Consistent with the ordinary and common usage of the term “incognito,” when a Texan opens an Incognito session in Google Chrome, a standard splash screen appears (hereinafter “Incognito Screen”). Until at least June 2020, the Incognito Screen appeared as follows:

¹⁷ *Incognito*, MERRIAM-WEBSTER DICTIONARY (last visited January 25, 2022), <https://www.merriam-webster.com/dictionary/incognito>.

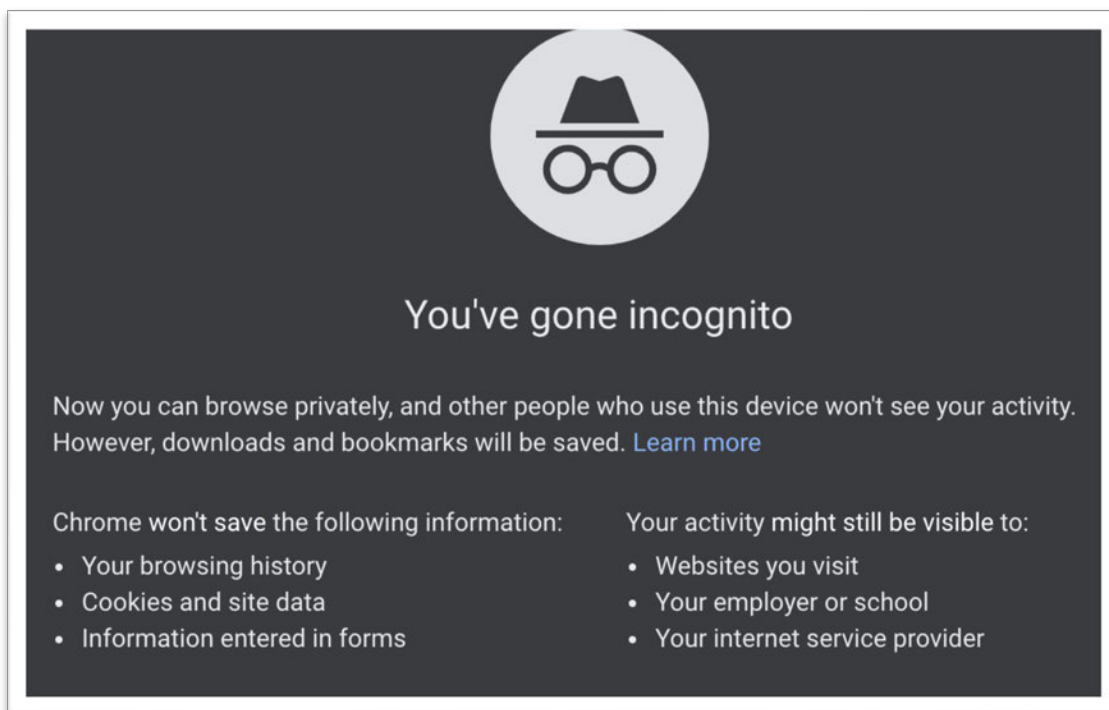


Figure 12. A screen capture representing Google's Incognito Screen in June 2020.

116. A screen with identical or substantially similar text appears when Incognito mode is launched on the iPhone or Android Chrome app.
117. Google's Incognito Screen is deceptive because it is insufficient to alert Texans to the amount, kind, and richness of data-collection that persists during Incognito mode. Based on the representations on the Incognito Screen, Texans reasonably expect that Google will not collect their data while in Incognito mode. Texans reasonably understand "***You've gone incognito***" and "***Now you can browse privately***" to mean the Texans can browse privately without Google continuing to track and collect their data.
118. Texans further have every reason to believe that the privacy controls Google advertises are designed to, and actually, allow Texans to prevent Google from tracking their information, because Google has made representations such as:

- a. “***You’re in control*** of what information you share with Google when you search. To browse the web privately, ***you can use private browsing***, sign out of your account, change your custom results settings, or delete past activity.”
- b. “You can use our services in a variety of ways to manage your privacy . . . across our services, ***you can adjust your privacy settings to control what we collect and how your information is used.***”
- c. “Privacy is personal, which makes it even more vital for companies to give people clear, individual choices around how their data is used.”
- d. “You can also choose to ***browse the web privately*** using Chrome in Incognito mode.”
- e. “Your searches are your business. . . . When you have [I]ncognito mode turned on in your settings, your search and browsing history ***will not be saved.***”
- f. “If you can search it, browse it, or watch it, you can delete it from your account.”

119. Based on Google’s misleading designs and representations, Texans reasonably expect that if they use Incognito mode, Google cannot and will not collect and record data about the Texans’ Incognito activity. In fact, although the Incognito Screen has some information about limits on its protection, nowhere on the Incognito Screen does it disclose that Google may still track users in Incognito mode. However, as described below, Google has deceived Texans, because Google has many opportunities to collect data—and, in fact, does collect data—about Texans using Incognito mode.

2. Google's Privacy Settings Deceptively Lead Texans to Believe They Can Prevent Google From Sending and Collecting Browsing Data.

120. In addition to Google's specific statements about Incognito mode and Google's misleading Incognito Screen, Google's Privacy Policy leads Texans to believe that they have control over when and how Google collects certain data. So, even Texans who take the extra time and effort to dig deeper to protect their privacy come away confused and deceived about Incognito mode.
121. Currently, Google directs users interested in controlling what Google collects to the "Control Panel" of the current Privacy Policy.¹⁸ When users click on "Go to My Activity" to control their data, they are presented with the option to click "Activity controls."¹⁹ When users click on "Learn more," they are taken to a page for "Privacy Controls" in Google's Safety Center. Assuming a Texan has made it three levels deep into Google Privacy Policy, they are greeted by a page that purports to provide the ways in which Google can help users control their privacy and what information is and is not collected by Google. The reassuring title sums up Google's public position: "Your privacy is protected by responsible data practices."²⁰

¹⁸ *Privacy & Terms*, <https://policies.google.com/privacy?hl=en-US> (last visited Jan. 19, 2022)

¹⁹ *Activity Controls*, https://myactivity.google.com/activitycontrols?utm_source=my-activity&hl=en_US (last visited Jan. 19, 2022)

²⁰ *Data Practices*, <https://safety.google/intl/en-US/privacy/data/> (last visited Jan. 19, 2022)

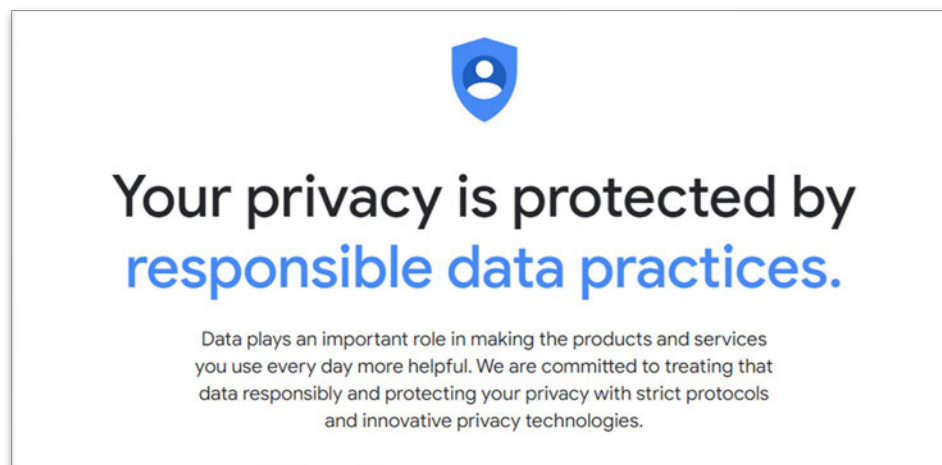


Figure 13. An example of Google's misleading representations about its data-harvesting practices.

122. Separately, Google's Search Help Center provides users information on how to allegedly search and browse privately. There, Google assures users that: "You're in control of what information you share with Google when you search."²¹ But Google deceptively fails to disclose that programs such as Google Analytics remain able to (and, in fact, do) collect data about a Texan's browsing activity even when that Texan is in Incognito mode. Nor does Google disclose where, when, or which websites implement such data-collection tools.
123. Elsewhere in Google's sprawling Help Center, Google discusses its ubiquitous Web & App Activity setting.²² The page conspicuously lacks any reference to what Google keeps when a user turns off Web & App Activity. The only reference is a link to learn more about "[h]ow your saved activity is used."²³ Instead, Google deceptively represents that

²¹ Search & Brown Privately, [https://support.google.com/websearch/answer/4540094?](https://support.google.com/websearch/answer/4540094?hl=en&ref_topic=3378866)

²² Find & Control Your Web & App Activity, https://support.google.com/websearch/answer/54068?hl=en&ref_topic=3378866 (last visited Jan. 19, 2022)

²³ Safety Center, <https://safety.google/> (last visited Jan. 19, 2022)

searching and browsing in “private browsing mode” will “turn off” any “search customization” “using search-related activity”:

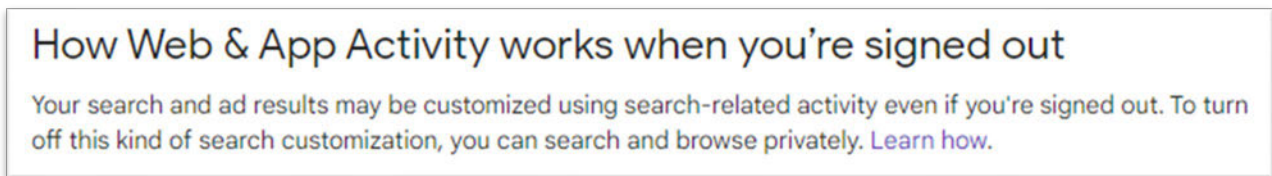


Figure 14. An image depicting Google's representations that private browsing prevents search customization.

124. Yet when users click the “Learn how” link, they are redirected back to the “Search & Browse Privately” page. And there, Google states that Incognito users “might see search results and suggestions based on your location or *other searches you’ve done during your current browsing session*”—a representation that is apparently in conflict with the representation that a Texan can “turn off this kind of search customization” by “search[ing] and brows[ing] privately.”

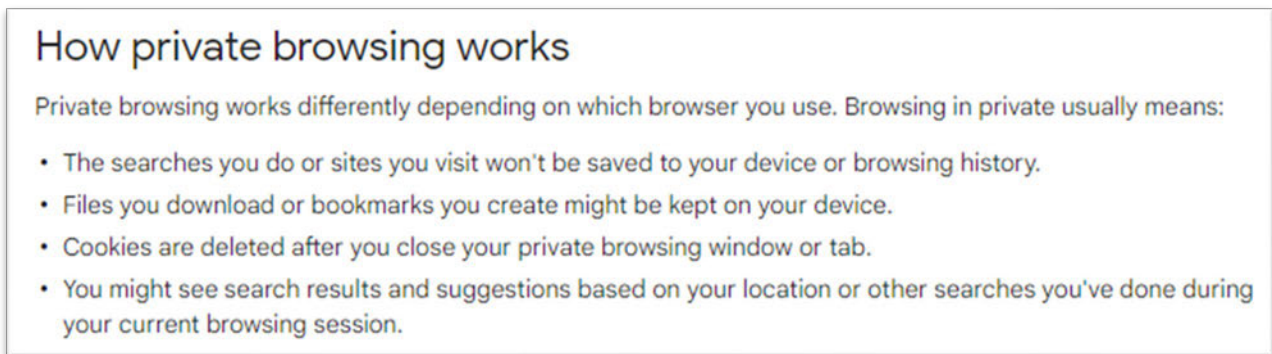


Figure 15. An image depicting Google's contradictory representation that search customization persists in Incognito mode.

125. In sum, Google’s Help Center generally leads Texans to believe that they can “control” and limit the information they share with Google by entering Incognito mode. But when Texans dig deeper into the maze, they are presented with misleading, deceptive, and seemingly inconsistent information that leaves Texans unable to make informed, intentional, and consent-driven decisions about the data they share.

126. Moreover, throughout several iterations of its customer-facing privacy policy, Google has stated since at least May 2018 that “[y]ou can use our services in a variety of ways to manage your privacy... [y]ou can also choose to browse the web privately using Chrome in Incognito mode.” When it updated the Google Chrome app for iOS to feature Incognito Mode, Google’s Director of Product Management posted on the company Blog that users would have “[m]ore control with Incognito mode” as “[y]our searches are your business. That’s why we’ve added the ability to search privately with Incognito mode in the Google app for iOS. When you have Incognito mode turned on in your settings, your search and browsing history will not be saved.” In a 2019 New York Times article, Google’s CEO Sundar Pichai represented to users that Google has “stayed focused on the products and features that make privacy a reality for everyone” while championing the company’s rollout of “Incognito mode, the popular feature in Chrome that lets you browse the web without linking any activity to you, to YouTube.”
127. All of these representations lead Texans to believe that Incognito mode gives users the control to browse privately without being tracked.

3. Google’s Private-Browser Cookies Deceptively Continue to Track and Send Data About a Texan’s Incognito Activity.

128. Google could have disclosed on the Incognito Screen that Google is able to (and does) track and collect data on Texans browsing privately, and that Google is able to use the data once the private session is ended. But Google did not. Instead, Google intimated through its privacy policies, help screens, and Incognito Screen that Texans are able to browse *privately* with only limited exceptions—none of which disclosed Google’s private-browsing data-collection practices.

129. The Incognito Screen is false, misleading, and deceptive in several ways. First, Google represents that Google “won’t save . . . [y]our browsing history . . . cookies and site data[.]” This is misleading. On information and belief, even the temporary private-browser cookies Google uses for Texans who use Incognito mode while signed out of their Google account contain bits of data such as [REDACTED] sent to Google’s servers during private browsing sessions. On information and belief, Google could use that data to build, update, and monetize detailed profiles on Texans.

130. Indeed, while Google publicly represents that it “won’t save . . . [y]our browsing history . . . cookies and site data,” Google internally [REDACTED]

[REDACTED]

[REDACTED]

131. This disparity is highly misleading and deceptive to Texan Incognito users.

132. Second, Google represents in the Incognito Screen that “[n]ow you can browse privately and other people who use this device won’t see your activity.” This is misleading. In fact,

“other people who use this device” can often discern what preceding users of an Incognito session did by way of targeted ads served by Google based on browsing activity that took place during that “private” browsing session.

133. Notably, it is only possible to serve targeted ads to Texans who are using Incognito mode because Google deceptively continues to send and receive detailed data about Texans’ “private” browsing activity.
134. Third, Google represents on the Incognito Screen that entities to whom a Texan’s “activity might still be visible” are “the websites you visit[,] [y]our employer or school[, and] [y]our internet service provider[.]” This is misleading. Texans’ private-browsing activity is visible to Google in a variety of ways and across a spectrum of granularity and anonymity. As noted above, Google continues to collect an array of data through its temporary, private-browser cookies. Furthermore, Google is able to collect additional data on the website side of a Texan’s private-browsing activity if a visited website deploys certain Google-powered data-collection tools, such as Google Analytics or Google Ad Manager, as described more fully below.
135. Despite all this, Google has consistently represented to Texans that they can control what information is shared with Google, especially through the use of Incognito mode. Missing from Google’s statements, help pages, and splash screens, however, is a disclosure that Google is able to, and does, continue to track users while they are in private-browsing mode. As a result, users reasonably reach the *opposite* conclusion, believing that Incognito mode prevents Google from collecting data during a private-browsing session.

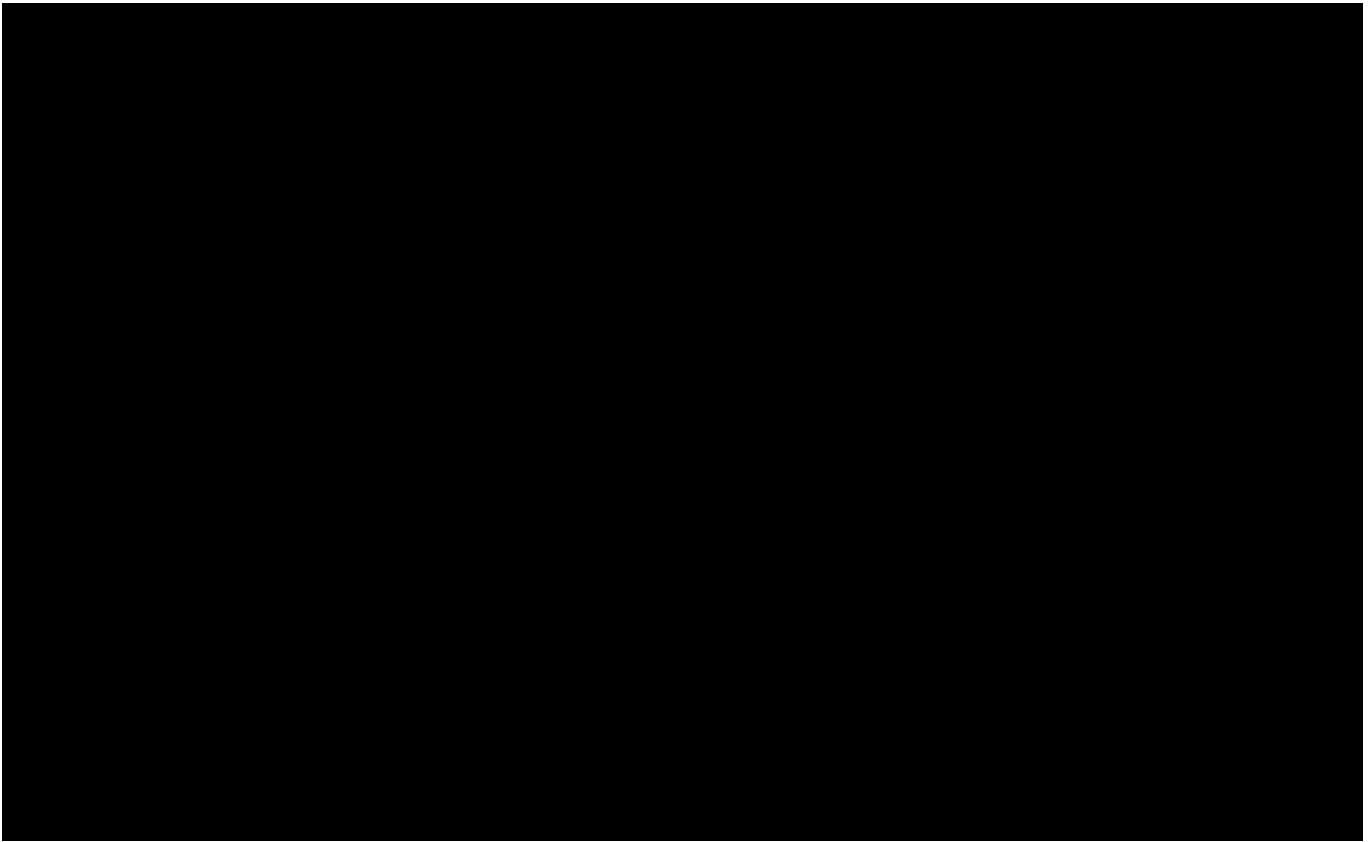
4. Internally, Google [REDACTED]
[REDACTED]

136. [REDACTED] For example, one Google presentation reported, [REDACTED]

[REDACTED]

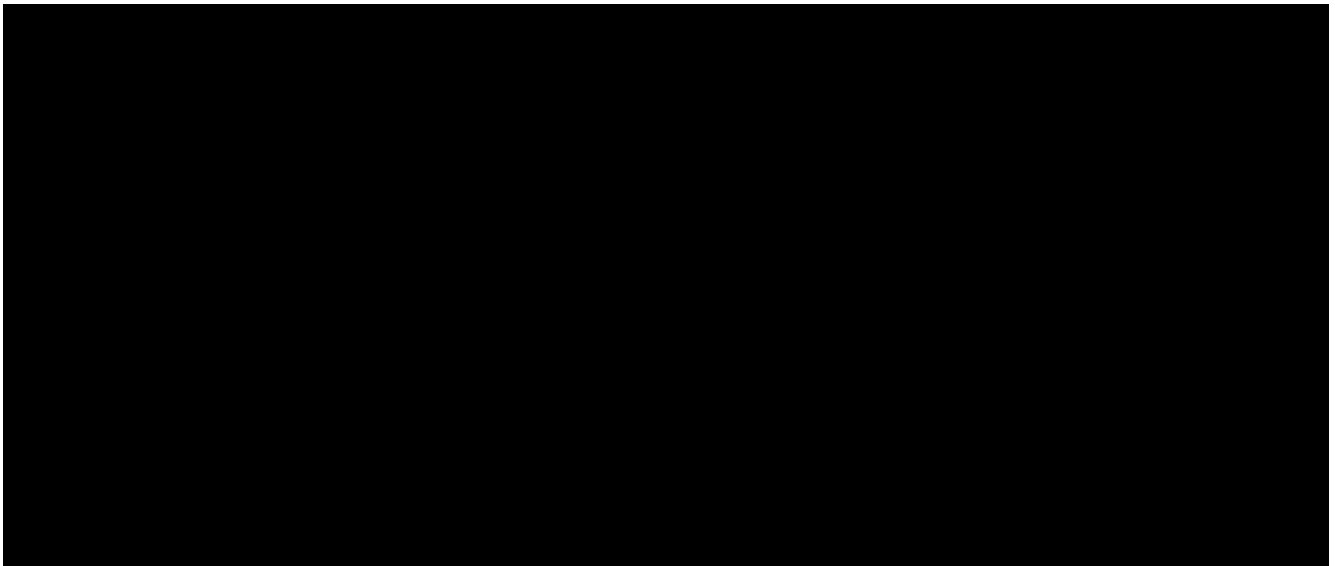
137. Another internal Google communication discloses that one of the major aspects of Incognito [REDACTED]

[REDACTED]



138. Another Google presentation helpfully visualizes the [REDACTED]

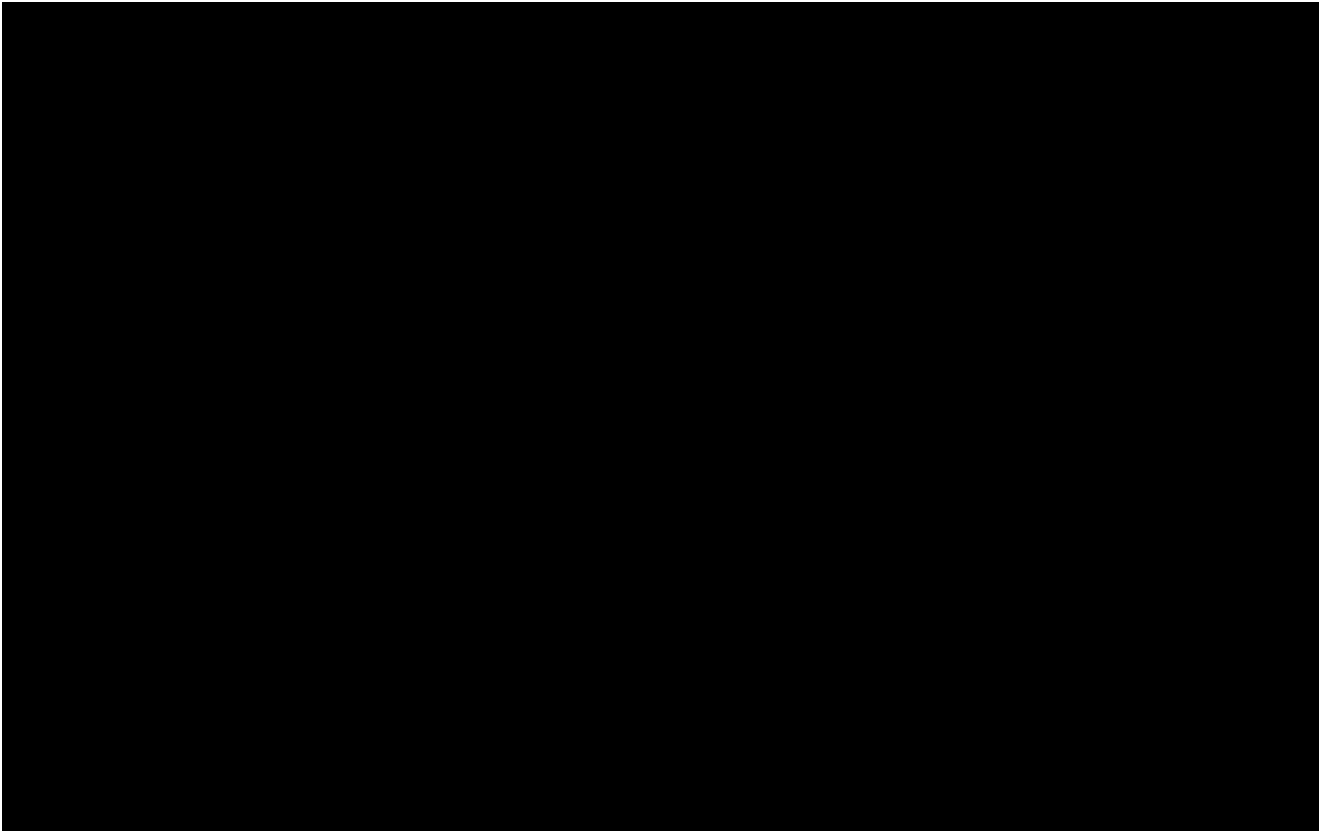
[REDACTED]:




139. And Texans may be surprised to learn that, according to what Google says internally, [REDACTED]

[REDACTED]

[REDACTED]



140. Google's representations about Incognito mode are false, deceptive, and misleading. Not only do users not know that Google is able to and does collect data on them during private browsing, users effectively have no way to avoid much of Google's data-collection practices. 

5. Google Uses Additional Data-Collection Tools to Collect and Store Data About Texans' Incognito Sessions, and Incognito Deceptively Does Not Prevent This.

141. Upon information and belief, even when a Texan enables Incognito mode, when the Texan visits a website that is running Google Analytics or Google Ad Manager, Google's software scripts that drive those programs surreptitiously direct the user's browser to send a secret, separate message to Google's servers. This message contains at least:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]

142. The below diagram illustrates the flow of a Texan’s data while in Incognito mode when, for example, clicking on a link to content the Texan wishes to view on ESPN.com. Since ESPN.com is running Google Analytics, Google’s embedded code, written in JavaScript, communicates with the Texan’s browser without alerting the user and, in doing so, covertly duplicates the data communicated between the Texan’s web browser and the ESPN.com website.

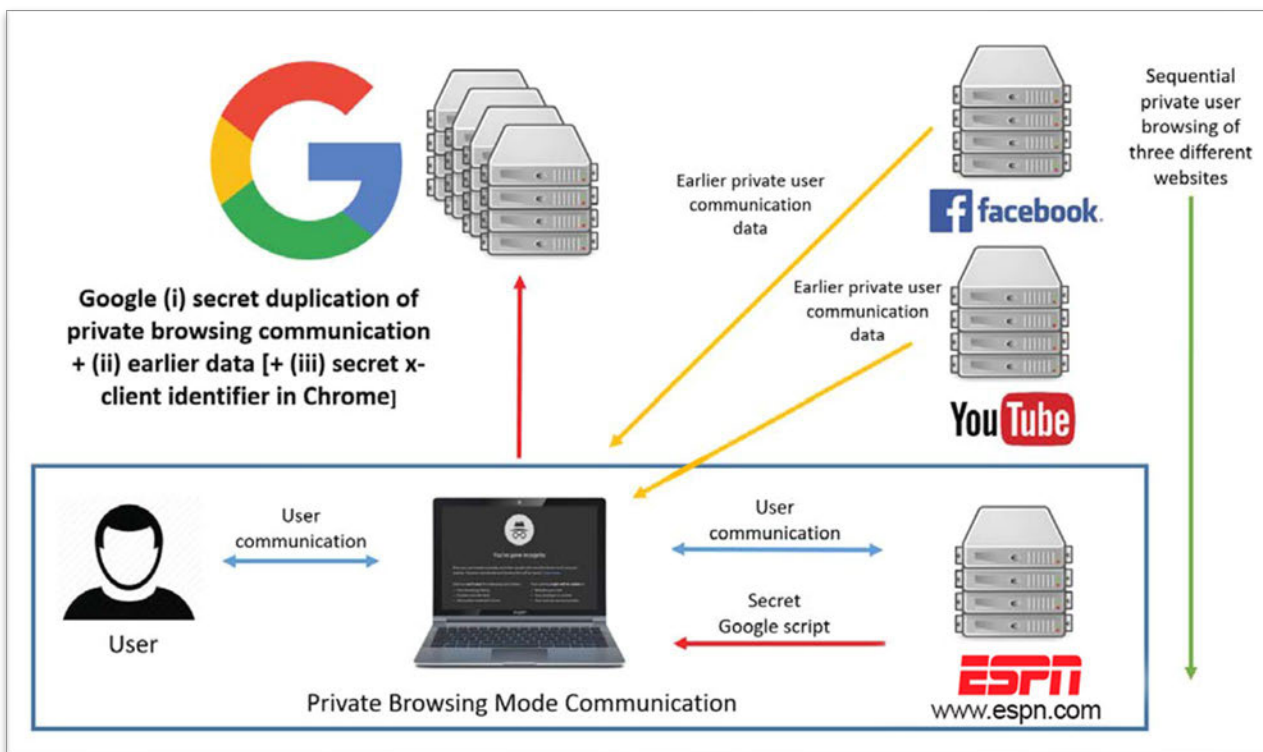


Figure 21. A visual example of how data flows between a Texan's machine, a website running Google Analytics, and Google's servers during an Incognito session.

143. As another example, take a Texan who visits USPS.com while in private-browsing mode. Even after enabling private-browsing mode, Google Analytics and Google Ad Manager continue to track his data. The following screen shot, a feature not customarily presented to the individual and accessible only by using developer tools, demonstrates this:

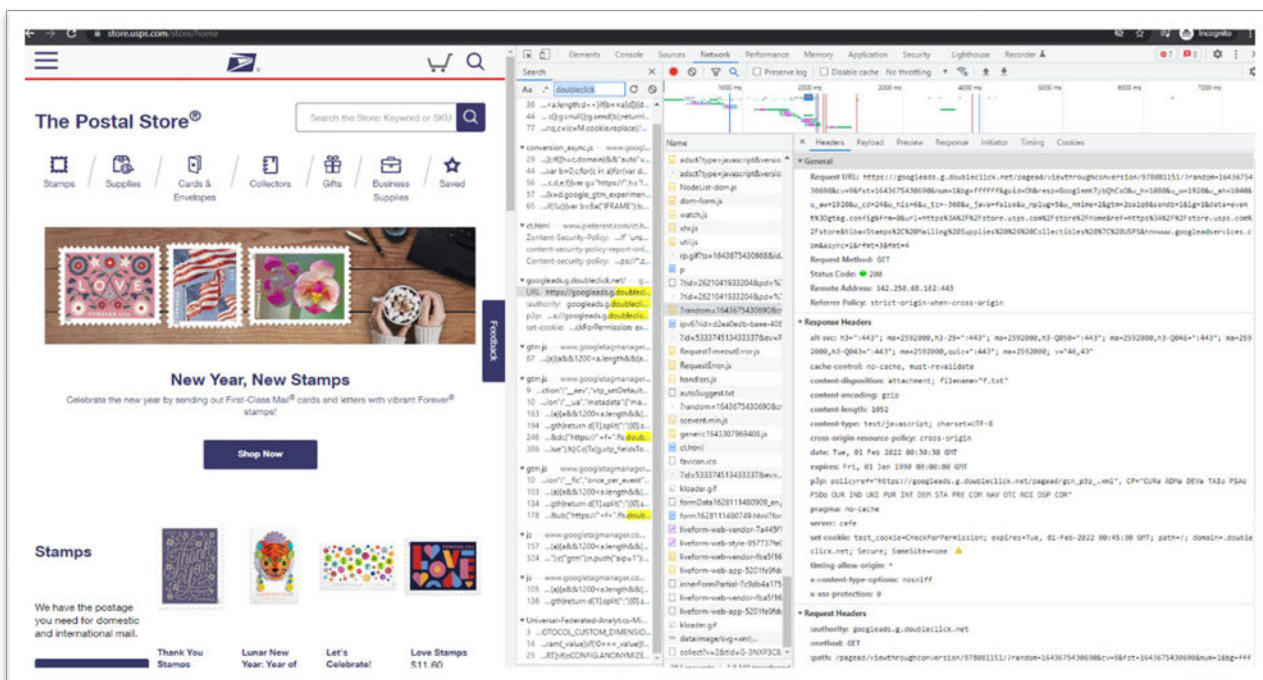


Figure 23. An example of the kind of data tracked when a Texan in Incognito Mode visits a website running Google Analytics and Google Ad Manager.

145. Thus, even when Texans are browsing the internet in Incognito mode, Google continues to track them, profile them, and profit from their data whenever they visit websites using Google Analytics or Google Ad Manager. Said another way, Google collects precisely the type of private, personal information from which Texans wish and expect to be protected even when they have undertaken the steps that Google instructs them to take to obtain that protection. Google's tracking occurred—and continues to occur—no matter how sensitive or personal Texans' online activities are and no matter what steps a Texan takes to prevent it.
146. Google does not notify Texans that it is able to collect and manipulate data in the ways identified above, even when the user is in Incognito mode. And Given Google's persistent representations to the contrary, most Texans would be shocked to learn this—especially

since the operative code and data collection is hidden from the average Texas user. Texans also have no way to remove the operative Google script or to opt out of its functionality.

147. In fact, even though Google changed its Incognito Screen in or around 2020 to allow Texans the option to block third-party cookies, the new Incognito Screen, shown below, deceptively fails to disclose that the new option does *not* prevent tracking by the first-party cookies used by Google Analytics and Google Ad Manager.

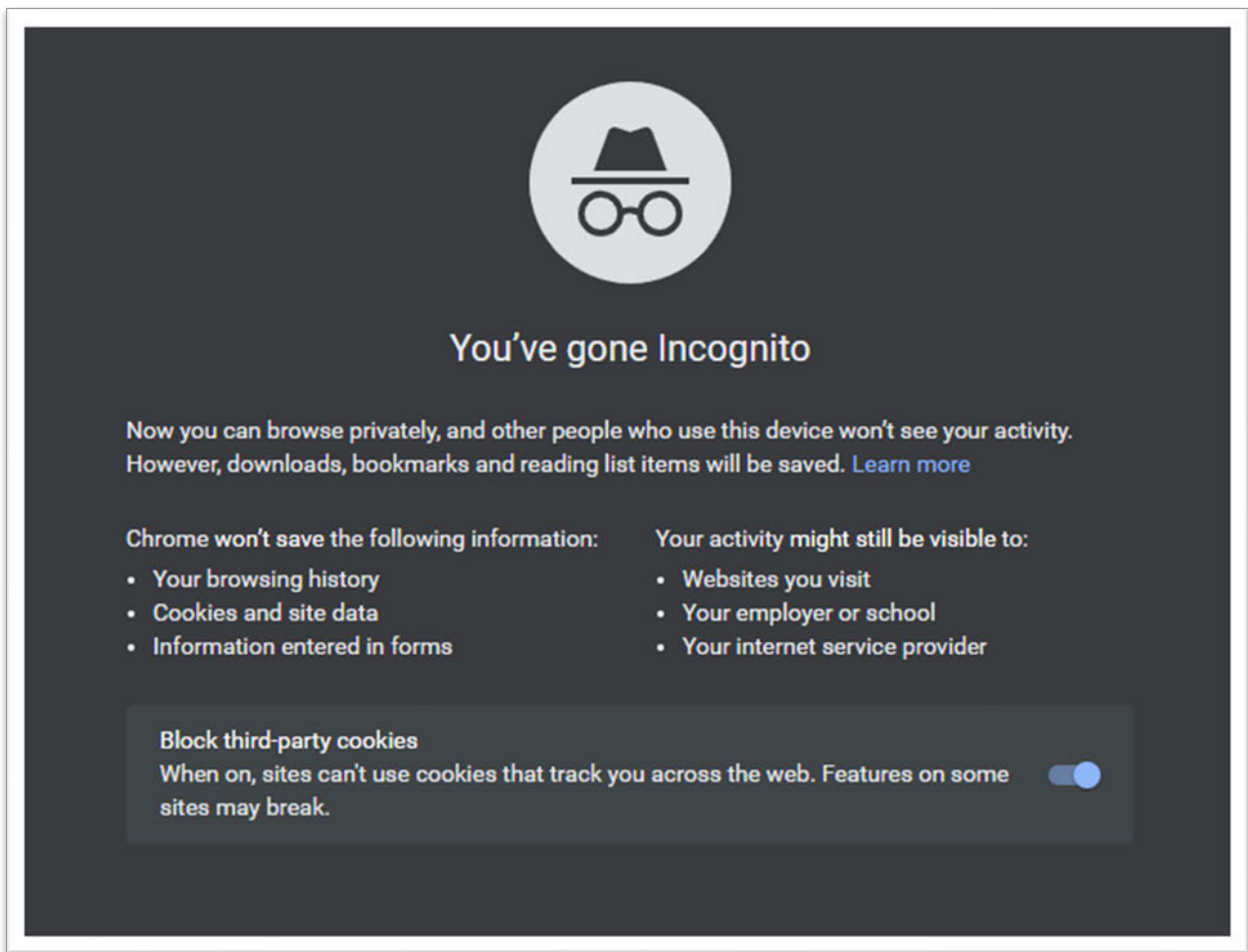


Figure 24. A screen capture representing Google's current Incognito Screen.

148. Google's overarching design, at the device level, the account level, and at the website API level, renders it virtually impossible for users to prevent Google from accessing their data,

and Incognito mode is no exception. As Google tells Texans, private browsing modes are supposed to provide users with privacy. Google's own software, however, appears to enable Google to secretly collect Texans' data to profile and profit off their personal information. Specifically, Google pierces the purported privacy protections of private-browsing modes like Incognito by deploying tools like Google Analytics.

6. Google Is Able to Unmask Texans By Combining Their Incognito Data with Additional Data.

149. Although Google purportedly terminates cookies (at the device level) generated during a given Incognito session, in certain circumstances, Google is still able to attribute anonymous data created during an Incognito session to a specific Texan user.
150. For starters, Google uses tracking tags that allow Google to catalogue things like a Texan's device, unique browser, and location data, even during Incognito sessions. This is unsurprising, since Google admits it serves targeted ads with data collected during Incognito mode. The kicker, however, is that Google is capable of linking data and events from a Texan's Incognito session to searches and conduct the Texan previously conducted while in private-browsing mode and, potentially, with non-private-browsing data, too.
151. Vanderbilt University Professor of Computer Science Douglas Schmidt has written about these issues and has run his own diagnostics to identify the data Google is able to collect on individuals during their "private"-browsing sessions and how.
152. As a baseline, Professor Schmidt's research demonstrated how Android phones' frequent "check-in" data sync with Google's servers contained significant personally identifying information, including the user's Gmail account, the device MAC address, the International Mobile Equipment Identity ("IMEI") and Mobile Equipment Identifier ("MEID"), and device serial number. With this information, Google can link a user with an Android

device's permanent identifiers. When that same user interacts with a Google server, such as completing a ReCaptcha user verification, Google receives communications including device identifiers that could link the data generated during that private-browsing session to the user's personal information.

153. Professor Schmidt's testing proceeded with four steps:

- i. First, Professor Schmidt "Opened a new (no saved cookies, e.g. Private or Incognito) browser session (Chrome or other)";
- ii. Second, he "Visited a 3rd-party website that used Google's DoubleClick ad network";
- iii. Third, he "Visited the website of a widely used Google service (Gmail in this case)"; and
- iv. Fourth, he "Signed in to Gmail."

154. According to Professor Schmidt,

53. After completion of step 1 and 2, as part of the page load process, the DoubleClick server received a request when the user first visited the 3rd-party website. This request was part of a series of requests comprising the DoubleClick initialization process started by the publisher website, which resulted in the Chrome browser setting a cookie for the DoubleClick domain. This cookie stayed on user's computer until it expired or until the user manually cleared cookies via the browser settings.

54. Thereafter, in step 3, when the user visited Gmail, they are prompted to log in with their Google credentials. Google manages identity using a "single sign on (SSO)" architecture, whereby credentials are supplied to an account service (signified by *accounts.google.com*) in exchange for an "authentication token," which can then be presented to other Google services to identify the users. In step 4, when a user accesses their Gmail account, they are effectively signing into their Google Account, which then provides Gmail with an authorization token to verify the user's identity.⁵⁴ This process is outlined by Figure 24 in Section IX.E in the Appendix.

55. In the last step of this sign-on process, a request is sent to the DoubleClick domain. This request contains both the authentication token provided by Google and the tracking cookie set when the user visited the 3rd-party website in step 2 (this communication is shown in Figure 11). This allows Google to connect the user's Google credentials with a DoubleClick cookie ID. Therefore, if the users do not clear browser cookies regularly, their browsing information on 3rd-party webpages that use DoubleClick services could get associated with their personal information on Google Account.

Figure 11: Request to DoubleClick.net includes Google's authentication token and past cookies



Figure 25. An excerpt from Professor Douglas Schmidt's research findings.

155. At bottom, if a user is in Incognito mode and accesses a Google service for which the user has a signed-in Google account, Google will generate an authentication token for the user as if the user is signing into their Google Account. At that point, with the user still in Incognito mode, Google is able to link the user's previously anonymous browsing data

vis-à-vis their private browsing activity that occurred in the session prior to interacting with their Google Account.

156. Professor Schmidt’s research appears to reveal what Google has—internally, at least—recognized as something users ought to know:

Signing in to Google or other accounts while Incognito

- Warn users that logging in makes their identity known on both Google and any other site (i.e. look for password fields)

Figure 26. An excerpt from internal Google documents demonstrating Google understood it needed to warn users of the risks of unmasking during Incognito sessions.

157. The critical context is that the core of Google’s business model is data collection and analytics. The bulk of Google’s annual hundreds of billions of dollars in revenue comes from what companies pay Google for data. Because Google has already collected detailed “profiles” on each user and their devices, Google is easily able to associate data collected during a Texan’s private-browsing sessions with that Texan’s pre-existing Google “profile.” And doing so improves the “profile,” which allows Google to sell more targeted data.

XI. CAUSE OF ACTION

Violations of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 et seq.

158. Defendant, as alleged above and detailed below, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA. Such acts include:

- A. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has

a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA § 17.46(b)(5), including by representing, directly or by implication or omission, that:

1. The Location History setting controlled whether Google retained and used users' location information;
2. That disabling the Location History setting would prevent Google from retaining and using users' location information going forward;
3. The Web & App Activity setting did not impact Google's collection, storage, or use of location information;
4. Users could prevent Google from retaining and using their location information by disabling Google Account settings;
5. Users could review and manage all location data associated with their Google Account and/or otherwise retained by Google for its commercial use;
6. Users had a choice about or could control whether Google collected their personal or location information;
7. Users could prevent Google from using their personal or location to target advertisements by disabling Google Account settings;
8. Users could prevent Google from collecting, storing, and using users' location by adjusting device settings that control whether device location is enabled;
9. Users could prevent Google from collecting, storing, and using users' location by adjusting device settings that control whether device location is shared with specific Google apps;
10. Users could prevent Google from collecting, storing, using, and profiting

from users' data by enabling Incognito mode or another private browsing mode;

11. Users could prevent Google from collecting, storing, using, and profiting from users' data by enabling Incognito mode and blocking third-party cookies;

12. Users could prevent Google from collecting, storing, using, and profiting from users' data by disabling the use of cookies;

13. Users could implement the steps provided by Google to prevent Google from collecting, storing, using, and profiting from users' data;

14. Users could control whether Google and Websites could access, collect, store, use, and profit from their data;

15. That Incognito mode actually meant that a user could keep their browsing private from Google.

B. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of § 17.46(b)(12); and

C. Failing to disclose information concerning goods or services which was known at the time of the transaction with the intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of § 17.46(b)(24), including failing to disclose the following material facts:

1. Google continued to collect and store users' location information even with Location History disabled (i.e., turned off);

2. Personal and location information was collected through the Web & App Activity feature;
3. Users cannot not prevent Google from retaining and using users' locations by adjusting Google Account settings;
4. Users cannot prevent Google from using their location to target advertisements by disabling Google Account settings;
5. Google continues to collect location information even when a device's location is turned off; and
6. Google apps that are denied permission to access location data can still obtain that data from other sources available to Google, [REDACTED]
[REDACTED]
7. Users cannot prevent Google from collecting user data by enabling Incognito mode;
8. Users cannot prevent third-parties from collecting user data by enabling Incognito mode;
9. Users cannot prevent Google from collecting user data by enabling Incognito mode and blocking third-party cookies;
10. Users cannot control Google's access to their personal information through the means provided by Google.
11. Even if users could theoretically control Google's access to their personal information, Google's false, misleading and deceptive statements coupled with its use of dark patterns was designed to ensure that users could not effectively control Google's access to their personal information.

XII. TRIAL BY JURY

159. Plaintiff herein requests a jury trial and will tender the jury fee to the County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604.

XIII. PRAYER FOR RELIEF

160. Plaintiff further prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from violating the DTPA.
161. In addition, Plaintiff respectfully prays that this Court will:
- A. Order Defendant to pay restitution to restore all money or other property taken from identifiable persons by means of unlawful acts or practices;
 - B. Adjudge against Defendant civil penalties in favor of Plaintiff in the amount of not more than \$10,000 per violation of the DTPA;
 - C. Order Defendant to pay Plaintiff's attorney fees and costs of court pursuant to the TEX. GOVT. CODE, § 402.006(c);
 - D. Order Defendant to pay both pre-judgment and post judgment interest on all awards of restitution or civil penalties, as provided by law.
162. Plaintiff further prays that this court grant all other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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