

BFA Achieves Sweeping Victory for Chrome Users as Court's Common-sense Ruling Sends Chrome Privacy Class Action to Trial

BFA achieved a sweeping victory for consumers before the United States Court of Appeals for the Ninth Circuit in *Patrick Calhoun et al. v. Google LLC*. *Calhoun* is a nationwide data privacy class action brought on behalf of Google Chrome users alleging that Chrome violated its express promise not to send users' personal data to Google when users did not sync their data.

In December 2022, the district court dismissed the case, accepting Google's technical arguments regarding data collection and consumer consent.

On August 20, 2024, the appeals court reversed, saying that while consent can be express or implied, any consent must be mutual. The Ninth Circuit criticized the concept that expert-level knowledge should determine whether reasonable users should expect their data to be collected. "Whether a 'reasonable' user of Google's computer software at issue in this case consented to a particular data collection practice is not to be determined by attributing to that user the skill of an experienced business lawyer or someone who is able to easily ferret through a labyrinth of legal jargon to understand what he or she is consenting to," the order said. "Instead, a determination of what a 'reasonable' user would have understood must take into account the level of sophistication attributable to the general public, which uses Google's services."

The Ninth Circuit remanded the case to the district court for trial.

BFA is serving as Co-Lead counsel on behalf of Chrome users together with Simmons Hanly Conroy LLP and Dicello Levitt LLP. Gupta Wessler LLP participated in the appeal.