

Google Inc: “Don’t Be Evil”

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For a company whose corporate motto is “Don’t Be Evil,” Google Inc. certainly has found itself at the receiving end of its share of lawsuits, claims and controversies. Still, even by Google’s standards this past week has been a difficult one.

A strange press release touting a company calling itself “Planetary Resources”—which promises to combine the “space exploration and natural resource” sectors and is being backed by a who’s who of technorati and big-name investors including Google co-founders Larry Page and Sergey Brin—is providing plenty of fodder for speculation in the press (“Is asteroid mining in our near future?”). But not even an announcement that Google itself was about to go interplanetary would be enough to keep the company’s legal woes off the business pages of the newspapers (let alone its own online news service).

Dominating the attention of the tech world at the moment is Oracle’s lawsuit against Google over an alleged misuse of Oracle’s programming platform, Java. The claim: Google used some Java in Android, their mobile offering, without licensing. The stakes: Oracle is seeking \$1 billion and an injunction from further Android sales until the issue is settled. The hype: Testimony by both Larry Page and Larry Ellison, the CEOs of Google and Oracle respectively, earlier this week generated plenty of buzz and press attention. The bottom line: Oracle’s original \$6.1 billion claim was thrown out of court because the judge determined that they were essentially making up their calculations, and no one really expects that they will receive the \$1 billion they are now asking. In fact, it’s far from clear they will be awarded damages at all, although an injunction against the use of Java in Android could be an important and precedent-setting outcome.

But this was not Google’s biggest headache of the week.

Corporate governance specialists are accusing co-founders Page and Brin of making the company a dictatorship with a recent proposal to effect a 2:1 stock split that will create a new class of non-voting shares. The deal will create a third tier of Google shares, Class C, that will trade under a different ticker and hold no voting rights. Investors will end up with double the number of shares but their vote will be diluted, effectively consolidating the power of the holders of Class B shares, primarily Page and Brin. Now investors are complaining that this is all just a power grab designed to entrench the co-founders’ control over the company at the expense of everyone else.

But this was not Google's biggest headache of the week, either.

Google also finds itself in the crosshairs of an antitrust lawsuit alleging that the company colluded with Apple, Adobe, Intel and three other tech giants to suppress salaries and mobility opportunities for top employees by agreeing not to poach from each other. The suit was brought by five software engineers who are alleging that the accused companies entered into identical bilateral agreements to not recruit each other's employees. They allege that the fact that all seven companies entered into nearly identical reciprocal agreements in secret within a 2-year time span represents a case of illegal collusion. The case cleared its first hurdle this week when U.S. District Court judge Lucy Koh ruled that the charges cannot be dismissed as implausible and the companies will have to face the suit. The case is expected to go to trial in June 2013.

Neither was this Google's major headache, however.

Co-founder Sergey Brin has had to backpedal on comments made in an interview with the Guardian earlier this week in which he effectively said that the biggest threat to freedom and openness on the internet are companies and applications that don't allow Google's bots into their data. Meanwhile, Russian search engine Yandex accused Google of shutting out rivals, raising the specter of the ongoing European Commission antitrust investigation into the company's alleged practice of favoring its own services in its search rankings and locking advertisers in to their services. That investigation is expected to wrap up within days. The search giant is also having to cozy up to the Chinese government, which it made such a point of falling out with in 2010, to win approval for its \$12.5 billion purchase of Motorola Mobility.

But these are not Google's biggest headaches this week, either.

What must really be causing sleepless nights in Mountain View this week is the possibility that the Street View fiasco may still not be over. Last Sunday's news that the tech giant had gotten away from the scandal with a \$25,000 hangnail ("rap on the knuckles" seems too painful to analogize to such a puny fine) was immediately met with renewed outcry over the affair. The Electronic Privacy Information Center is calling for a full copy of the FCC's report on their investigation, which they insisted on releasing in heavily redacted format. Rep. Edward Markey (D-Mass.) is insisting that the FCC decision leaves many questions unanswered and is calling for a Congressional investigation.

For those unfamiliar with the Street View brouhaha, the scandal erupted in May 2010 when Google was forced to admit that their fleet of Street View camera cars was doing more than taking the occasionally uncomfortable photo of random passers-by while prowling the streets, snapping pictures for their street map database. They were also sniffing wi-fi networks and, supposedly by accident, private information, including emails, passwords, and any other data flowing through unencrypted networks whenever the cars were rolling by. For this heinous breach of personal privacy the company has so far received a lot of

stern finger-wagging from various governments' privacy commissioners and now the insignificant FCC fine and threats of (likely ineffectual) investigations by Congress.

Given its track record so far, none of these threatened actions or investigations are particularly frightening to the company behind the most-visited website on the Internet. What is potentially frightening is the thought that the public might actually become interested in the issue of privacy as it relates to Google, because once that can of worms is opened there might be no way to put the lid back on.

In 2010, then-CEO Eric Schmidt gave an interview to the Atlantic where he stated, "Google policy is to get right up to the creepy line and not cross it." Exactly what that creepy line is was never precisely defined, but he did indicate that implanting people with Google microchips was probably across it. Tellingly, though, Schmidt also pointed out that given the amount of information people willingly give to the information trafficker each day, without even typing a word Google can "more or less know what you're thinking about." These words coming from a frequent attendee of the annual Bilderberg conference should at the very least give one pause for thought.

In fact, Google is just one player among many in Silicon Valley who are engaged in a race to rewrite the social norms adhering to the concept of privacy. The FTC and its French counterpart are investigating charges that Google is bypassing Apple's web browser's privacy settings to serve advertising cookies to customers against their will. An investigation earlier this year showed how Facebook was spying on smartphone users' text messages. A report last year that iPhones keep logs of users' personal location data that stays with the user across backups and even device migrations caused shockwaves, especially since recently released internal police documents have demonstrated that Apple and Google are required to help law enforcement break into iPhones and Androids when issued a court order.

This is nothing compared to the technologies that are being prepared for the very near future. Google has admitted since 2006 that it is developing "audio fingerprint" technology that would make use of the user's computer's built-in microphone to "listen in" on the user's environment and deliver relevant advertisements. A dog barking in the background, for example, might elicit advertisements for dog food. Even if these technologies were only and forever assumed to be in benevolent hands, the implications are clear: a home is no longer a castle in the Internet age and old notions of privacy don't exist.

Of course, these spying tools are not in the disinterested hands of advertising executives, a point that has been demonstrated forcefully a number of times over the years. In 2006 a retired AT&T technician blew the whistle on Room 641A, an intercept facility that the NSA set up in an AT&T (later SBC) communication building. Documents revealed by the whistleblower showed that the room was being fed data via beam splitters installed on the fibre optics carrying Internet backbone traffic, and the data was being fed into a Narus STA 6400, designed to analyze Internet communications. The story leads into the NSA warrantless wiretapping scandal and seems to imply that the NSA at the very least had the capability to spy on any and all Internet traffic flowing through that hub.

Also in 2006 an ex-CIA agent went public claiming that CIA seed money had helped to get Google off the ground and that the two had maintained a “small but significant relationship.” The story was officially denied by Google, with the whistleblower claiming that the company was lying in an effort to keep the lid on the story. Alarm bells were raised in 2010, however, when it was announced that Google was collaborating with the NSA on cybersecurity operations. For nearly two years, EPIC has been fighting a FOIA battle to get documents about the relationship disclosed to the public, but so far all of those efforts have been stonewalled.

In a groundbreaking story last month James Bamford revealed the nature of a new data center the NSA is building in Utah. According to the insiders sourced in the report, the center will not only be a repository of internet traffic and information, it will also be equipped with state-of-the-art code-breaking technologies that will allow the NSA to open and analyze all of the data they intercept, from financial information to legal documents to military and diplomatic communiques. According to one official: “Everybody’s a target; everybody with communication is a target.”

The public tends to concentrate on isolated stories about privacy issues, but the full picture of government and corporate surveillance is hardly ever put together. When it is it reveals the mind-boggling amounts of data that these entities have already collected on almost anyone with access to electronic communication.

This is only a problem for companies like Google if the public cares. As long as they stay on this side of Eric Schmidt’s “creepy line” (however one defines that) and be careful not to upset people too much, they can get away with just about anything. So far, there has not been significant outcry about the Street View fiasco or similar revelations except in isolated tech journals. Most people seem content to sign up for services that track and trace their users’ every movement, activity and social relation. Perhaps Facebook CEO Mark Zuckerberg was correct after all when he said the social norm of privacy was “evolving over time.”

In any event, Google is a business and just like any other business it will only be forced to change tack when significant numbers of users become aware of and concerned about the issue of online privacy. There are a number of alternative search engines promising privacy and claiming not to record IP addresses, although the majority of the online public doesn’t consider this a priority right now. Incidents like the Street View scandal, however, offer the chance to air this dirty laundry and give the public a chance to reflect on just how much our society has altered its views about privacy in such a short time. However ineffectual another government investigation into the process might be in terms of securing stiffer fines or penalties, the real reward of such efforts is the attention it draws to the issue.

Maybe one day the Internet-using public will actually hold Google to their corporate motto.

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