

Google Says Spokeo Shuts Down Student Email Privacy Suit

By Kat Sieniuc

Law360, New York (July 21, 2016, 5:32 PM ET) -- The more than 700 university students, faculty and staff accusing Google Inc. of scanning their emails for targeted advertising have no case because claims of mere privacy violations without a consequential harm is not enough to sue under the U.S. Supreme Court's Spokeo decision, the tech giant told a California federal judge Wednesday.

Google said the Supreme Court's recent Spokeo Inc. v. Robins ruling eliminated the group's ability to bring suit when it spelled out that a statutory violation must be pled in the context of a concrete injury, arguing that violating the Electronic Communications Privacy Act on its own is not material or personal enough to meet decision's standards.

"The critical question for standing purposes is, instead, whether the alleged wrongful conduct — the automated processing of emails with no independent resulting harm — implicates 'a legally protected interest that is concrete and particularized' independently of the alleged statutory violations," the company said.

Google argued it is not, calling the group's allegations "too abstract and hypothetical" to support a suit.

The students and staff claim that Google violated the ECPA by reviewing the content of communications sent through their college email accounts in order to create targeted advertising profiles, even though the tech giant had said it wouldn't engage in that practice.

The plaintiffs — who are current or former students, faculty members or staff members — allegedly maintained a Google Apps for Education, or GAFE, account at some point between the time when Google launched the campus pilot of the service in 2004 and when the company claimed in April 2014 to have stopped intercepting, scanning and processing GAFE email for commercial purposes.

They urged a California federal judge earlier this month to allow them to unite their cases in a joinder, saying their cases involve many similarities.

Google had asked the court in April to deny joinder in the case, arguing that litigating 710 individual actions together would create judicial inefficiency, as well as prejudice Google since class treatment had already been denied in 2014 to the plaintiffs in a prior case, known as the Gmail MDL.

Google added to that argument Wednesday, insisting that Spokeo means the students and staff don't even have grounds to sue, let alone sue altogether. Neither of the two forms of harm they allege — loss

of the economic value of their information, and diminished privacy— are sufficiently concrete or personal, Google said.

"[Blanket] assertions of harm will not suffice; instead, standing depends on whether a concrete injury exists given the specific circumstances and consequences of each alleged violation," Google said.

Google also argued that numerous other courts have found since Spokeo — in lawsuits against Facebook and LinkedIn, for instance — that generalized assertions of economic harm and privacy deprivation based solely on the alleged value of personal information don't make the cut as a basis for a lawsuit.

Four college students at the University of California, Berkeley, initially filed the suit in January. They amended their complaint in March, dropping one named plaintiff and adding 707 more who reside in 35 states as well as Washington, D.C., Canada, Germany, Spain and Hong Kong and attend nearly two dozen U.S. colleges, including New York University, University of Hawaii, University of Michigan, Harvard University, Yale University and Northwestern University.

An attorney representing the plaintiffs declined to comment Thursday.

The plaintiffs are represented by Ray E. Gallo, Dominic R. Valerian and Warren Stramiello of Gallo LLP.

Google is represented by Michael Rhodes, Whitty Somvichian, Kyle Wong, Karen Burhans and Amy Smith of Cooley LLP.

The case is Ryan Corley et al. v. Google Inc., case number 5:16-cv-00473, in the U.S. District Court for the Northern District of California.

--Editing by Philip Shea.

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