

ADVISORY | Global Privacy & Data Security

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GOOGLE EXECUTIVES CONVICTED IN LANDMARK PRIVACY CASE

Two senior Google executives were convicted yesterday of criminal violations of Italian privacy laws in a case that could have significant repercussions for online services that host user-generated content. A former executive and board member of Google Italy was also found guilty. All three have been sentenced by an Italian court to suspended 6-month prison sentences. The convicted Google executives include the chief legal officer, David Drummond, and the global privacy counsel, Peter Fleischer. Google has announced that the “astonishing” decision will be appealed.

The case centers on footage that was uploaded to Google Video showing Italian teenagers bullying a schoolmate with Down syndrome. Google claimed it removed the video when it was notified of its content, and that the company assisted authorities in identifying the individual who uploaded it. She and several classmates were reportedly sentenced to community service. But Italian prosecutors also charged Google with violating the Italian privacy code, including Article 3 (general obligation for fair and lawful processing of personal data), Article 17 (processing operations carrying specific risks), and Article 26 (safeguards applying to sensitive data.) It is not clear which provisions the executives have been convicted of infringing as the court’s decision has not yet been made public. Charges for criminal defamation reportedly were not withheld.

In addition to placing high-level executives in the dock for privacy violations, the case has attracted attention because of the wider implications for online services hosting user generated content. Google argues that yesterday’s ruling could threaten the viability of user-generated content platforms.

In a statement, Fleischer noted that “[i]f company employees like me can be held criminally liable for any video on a hosting platform, when they had absolutely nothing to do with the video in question, then our liability is unlimited. The decision today therefore raises broader questions like the continued operation of many Internet platforms that are the essential foundations of freedom of expression in the digital age.”

Google argues that it should be protected by an EU law (the e-Commerce Directive) that provides a safe harbor from liability for hosting services if they promptly remove illegal material. Courts and policy makers may now need to grapple with the scope of this provision in light of the case and the growing popularity of services hosting user-generated content.

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