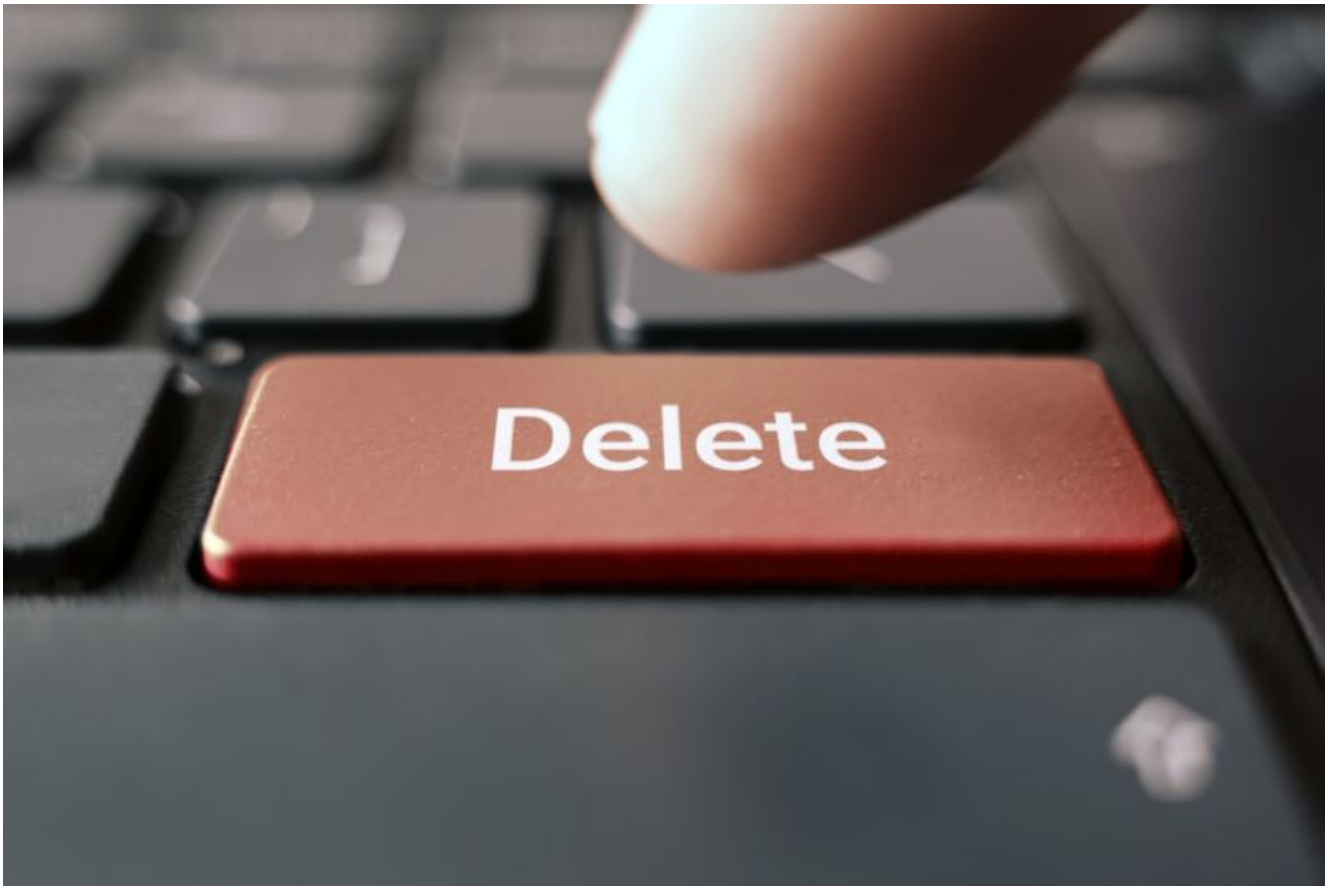
US says Google routinely destroyed evidence and lied about use of auto-delete



Getty Images | Diy13

reader comments

54 with

Share this story

The US government asked a federal court to sanction Google for allegedly using an auto-delete function on chats to destroy evidence needed in an antitrust lawsuit while falsely telling the government that it suspended its auto-deletion practices.

The US motion to sanction Google seeks a ruling that Google

violated the rule against spoliation of evidence and "an evidentiary hearing to assess the appropriate sanctions to remedy Google's spoliation." The US also sought an order forcing "Google to provide further information about custodians' history-off chat practices, through written declarations and oral testimony, in advance of the requested hearing." The motion was filed under seal on February 10 and unsealed yesterday.

"Google consciously failed to preserve relevant evidence. The daily destruction of relevant evidence was inevitable when Google set a company-wide default to delete history-off chat messages every 24 hours, and then elected to maintain that auto-delete setting for custodians subject to a litigation hold," US Department of Justice antitrust lawyers wrote in a memorandum supporting the motion.

Google "had a duty to preserve employee chat messages" starting in 2019 due to the litigation, the US motion said. "Google's daily destruction of written records prejudiced the United States by depriving it of a rich source of candid discussions between Google's executives, including likely trial witnesses," according to the US filing in US District Court for the District of Columbia.

Advertisement

Google's auto-deletions continued until February 8, the US said. "Amazingly, Google's daily spoliation continued until *this week*," the US alleged. "When the United States indicated that it would file this motion—following months of conferral—Google finally committed to 'permanently set to history on' and thus preserve its employees' chat messages."

A similar motion for sanctions was filed by 21 states that are also involved in the litigation against Google. The motions came in a lawsuit filed in October 2020 in which the US and states allege that Google illegally maintains monopolies in search and search advertising through anticompetitive and

exclusionary practices.”

Epic Games also seeks sanction for chat deletions

Google’s “history-off” chats that are deleted every 24 hours previously came up in antitrust litigation over the Google Play Store. In that case, Plaintiff Epic Games and the Utah attorney general want the court to “issue adverse inference jury instructions to remedy Google’s spoliation of Google Chats.” The motion is still pending.

“Google blames its systematic spoliation of relevant evidence on an enterprise default setting for Google Chats that is set to ‘history off,’ but that is no excuse,” Epic Games wrote. “Any administrator of Google Chats—an application developed by Google—could have changed this default setting at any point for all custodians. Google has never claimed otherwise. But Google chose not to change the setting. It also chose to do nothing to ensure that its custodians changed this default setting on their own workstations.”

https://arstechnica.com/?p=1919839