



Smartphones cause IP headaches

Mobile phones have been linked to serious health risks. **Michael Ellis** of Ellis IP explains how the new wave of mobile technology can cause other unintended risks

Smartphone lawsuits are hot IP cakes. Recent IP infringement lawsuits have been brought against Apple by Nokia and vice versa and against Apple by HTC and so on. While these IP wars wage on, the smartphone devices themselves cause businesses a different type of IP headache consisting of three major IP issues: security, reputation and ownership.

Security

Confidential information can be lost in three ways: a visitor can take it (eg, via internet), an employee can walk out with it (using a USB storage device) or it can be sent out (eg, by email). This applies regardless of the security technology or device used to facilitate such loss. Conventional security measures have become impotent with the emergence of smartphones as ubiquitous devices. And complacency about associated risks is rife.

According to the European Network and Information Security Agency (enisa), smartphones will outnumber PCs by 2013¹. Enisa identify the top three smartphone security risks as 'data leakage resulting from device loss or theft', 'unintentional disclosure of data' and 'attacks on decommissioned smartphones'. Interestingly, the highest risks¹ do not involve phishing, malware or network spoofing attacks² and are considered as both medium risk and preventable.

Further, iPhone contacts are at risk from unauthorised copying by certain apps. It has been reported³ that social network app Path, took iPhone contact information and placed it on Path servers without permission. Since then, apps from Facebook, Foursquare and Twitter, are reported to have accessed contact details with varying levels of permission, raising questions on how safely the data is transported across the network. Additionally, unencrypted email is so readily intercepted that it has been said to be the electronic equivalent to sending a postcard. This risk is largely ignored.

Reputation

Reputation is the most difficult issue to control. Bad press can proliferate wildly since the advent of new internet technologies. True or not, an unfavourable comment can directly affects a business's reputation and, potentially, income.

As a result, employees should be aware of their responsibility for the reputation of their employer on social media websites. The potential seriousness should not be ignored, reference the plight of K C Preece in *Preece v JD Wetherspoons Plc* – where inappropriate comments on Facebook allegedly damaged the pub chain's reputation and led to Preece's dismissal.

Posts by malicious third parties are trickier. TripAdvisor and other such review websites can carry malicious and misrepresentative comments. For example, comments posted about the Good Life restaurant in Shrewsbury, UK, consisted of "hairs in my quiche" and "staff were cold and inattentive". The poster later issued an apology in *The Times* after her arrest⁴ but the owner claimed that profits fell by 25% following the negative comments.

Where most reputation management guidance is required is with positive contributions to social media platforms such as Twitter, Facebook and LinkedIn by a company's employees.

Ownership

Ownership of the profiles, contributions and connections on social media platforms is another issue. When an employee is actively encouraged to engage in LinkedIn networking or tweeting on Twitter, who has the right to the data should that employee decide to leave? Now that social media platforms are increasingly being recognised as networking and marketing opportunities, these questions of ownership inevitably arise.

In 2008, a former employee of Hays Specialist Recruitment Ltd was ordered to hand over details of his business contacts recorded on LinkedIn, which he obtained during his time of employment at Hays. The judge appeared to be persuaded by a clause in the employment contract which prohibited him from divulging information relating to the business, its client database and financial dealing⁵. Thus, database rights will no doubt play a part in determining ownership in the future.

With the question of ownership comes the question of value. PhoneDog, a review website, is pursuing its former blogger Noah Kravitz over ownership of a Twitter account. Kravitz set up the account under the handle @PhoneDog_Noah and blogged about PhoneDog's services.

On leaving, he changed the Twitter handle to @noahkravitz taking the 17,000 followers with him and continued to blog (now amassing 24,426 followers)⁶. PhoneDog seeks \$370,000 damages (representing \$2.50 per follower per month) caused by the loss of that account. Kravitz argues that if the account has any monetary value, it might be between \$4k and \$7k depending on which online twitter value website you use⁷.

What to do: Establish a clear policy on security, reputation and ownership measures and communicate it effectively. Effective engagement and communication is critical for compliance. Implement the measures in practice and through adoption of relevant contractual terms.

Footnotes

1. Top 10 smartphone risks. <http://bit.ly/ykiZDI>.
2. Phishing: luring customers to an imposter site and tricking them into revealing valuable information. Malware: malicious software designed to disrupt computer operation and gather sensitive information. Spoofing attack: when an attacker deploys a rogue network access point (wi-fi or GSM) and users connect to it. The attacker subsequently carries out further attacks such as phishing.
3. <http://bit.ly/zSDJrt>.
4. As reported by *The Telegraph* <http://tgr.phx5iOET>. The remarks were the result of a personal grudge following a legal dispute with the restaurant's owner.
5. Fleeing the nest, by Paul Gershlick and Michael Delaney in *Intellectual Property Magazine's* November 2011 issue. *Hays Specialist Recruitment (Holdings) Limited v Ions* [2008] EWHC 745.
6. <http://bbc.in/sBbXne>.
7. According to whatsmytwitteraccountworth.com, you can calculate the worth of an individual Twitter account. The site states that the author's Twitter account @Ellis_IP is worth \$20.

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