

The Federal Lawyer In Cyberia

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Cellular Phone and Laptop Security Is Serious Business for Lawyers

One of the lawyers with whom I'm acquainted has had a "multi-apped" iPhone™ for quite some time—and hardly a day goes by without someone commenting on the usefulness of his nifty phone in his work as a lawyer. There are so many applications that are available for iPhones that fill needs lawyers have!

Yes, up until a few weeks ago, he was the envy of his law office. Then the unthinkable happened. He left his iPhone on the seat next to him as he exited his morning commuter train. That nifty iPhone contained copies of literally hundreds of e-mails that contained

confidential information transmitted to or from clients. In addition, there were documents that had been sent to his e-mail system as attachments.

Only when he arrived at the office and reached into his pocket did he realize that his iPhone was gone. Too late! I was there and saw his reaction. The shock was visible on his face. Not only was he looking at the prospect of immediately replacing an iPhone and rebuilding many apps, but he was also looking right into the face of an unmitigated disaster that only another lawyer could fully appreciate: He had potentially compromised a large amount of confidential client information that was solely his responsibility to protect. My colleague was not alone.

Have *you* ever lost a work-related laptop computer?

Have *you* ever lost a work-related cellular

phone? If you have not, the statistics suggest that you are lucky. According to one

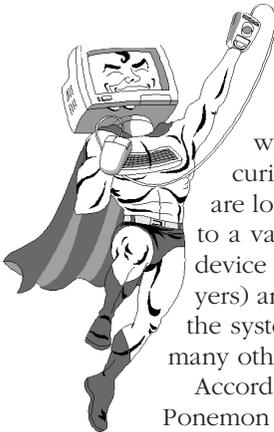
presumptively reliable source, Absolute™ Software—a company that has partnered with Intel® to up the ante on providing security solutions for notebook computers that are lost or stolen—such notebooks are vulnerable to a variety of attacks designed to reconfigure the device for another use (a less scary result for lawyers) and/or gain access to sensitive data stored on the system (the ultimate nightmare for lawyers and many other professionals).

According to the Absolute Software website, the Ponemon Institute® (www.ponemon.org), which conducts independent research on privacy, data protection, and information security policy, conducted several security studies of laptop and notebook computers, including a survey of more than 2,600 information security professionals in eight countries. Results

of the Ponemon survey showed that 72 percent of American employees are allowed to store sensitive and confidential information on their notebook computers. Ninety-two percent of the information technology security professionals who participated in the survey reported theft or loss of notebooks in their organization and noted that lost or stolen notebooks result in a data breach 71 percent of the time. One of the Ponemon Institute reports I read (that formed much of the basis for this article) wryly noted that 89 percent of the employees queried ask others to watch their notebook while traveling.

As the Absolute website (www.absolute.com) notes, one of the serious problems with notebook security is that anti-theft software products can be installed and uninstalled relatively easily. A software-only approach depends entirely on an operating system that is loaded and working properly, which means that such security approaches may fail miserably if the operating system itself is compromised or unable to function. However, if you are willing to settle for a software security approach, you can pick your poison at lock-folder.software.informer.com. But be aware that with a software-only security solution installed, a savvy information thief may be able to circumvent the computer's protection by simply reformatting or replacing the hard drive to make the notebook usable again or—worse yet—may be able to move the hard drive to another system in order to readily access the data on the disk.

Absolute further notes that employee behavior often makes it *easier rather than harder* for information thieves to work their mischief on your machine. For example, only 34 percent to 58 percent of notebooks are configured for encryption to protect sensitive data. Moreover, a shocking 56 percent of employees who have encryption on their notebooks *disengage the encryption solution*. The Absolute site touts its solution, in partnership with Intel, as delivering "a new level of data and device security through integrated hardware and software technologies." Absolute customers can leverage the combined power of patented Computrace® and Intel® Anti-Theft technologies for all devices in their Computrace deployment that have the Intel technology designed into the system hardware. (A list of supported devices is provided on the Absolute website.) Intel Anti-Theft provides tamper-resistant hardware-based technology so that Absolute customers can rapidly respond to a device that may



be at risk—with or without a network or Internet connection. Absolute customers can take the following steps:

- disable a notebook that doesn't call into the Absolute Monitoring Center within a pre-defined period of time;
- send a poison pill to lock down a device and prevent the operating system from booting;
- trigger an Intel Anti-Theft lock—using real-time technology within the Absolute Customer Center—by sending a text message to the computer and invoking the Intel AT lock system almost immediately. (To take advantage of this text-message-only immediate lock functionality will require that you own an Intel Anti-Theft supported laptop containing one of the new Intel Quad Core i3, i5, or i7 chips.)

The combined technologies—hardware and software—provide Absolute customers with a unique, enhanced level of protection even when the computer hard disk is encrypted, the computer is turned off, or the operating system is down. (And, by the way, a locked device can be easily unlocked once the safety of the computer is established.)

For those looking for less formidable and more adaptable and affordable options, consider LoJack™ for laptop computers. The software is made by Absolute and is a software solution that offers several

sensible data deletion options that target sole practitioners and smaller law firms. LoJack is available for Windows™-based computers, with several solutions available. For computers running Mac OS X™, LoJack offers only a single solution.

For cellular phones, the options are pegged to the brand of your phone. If you have an iPhone, consider MobileMe™ (www.me.com). Kaspersky offers Mobile Security 8.0™ for SymbianS60™ systems and for those that operate under Windows Mobile™ (www.kaspersky.com). For those who live and work in a Blackberry® (with Motoblur™ technology), Symbian™, or Windows Mobile environment, a fairly inexpensive, modestly effective solution is available at www.smobilesystems.com. For Motorola Android™ users, a package that includes backup, various security features, and remote deletion is available at www.motorola.com/mymotoblur. For all Blackberry users, a free security app—Lookout Mobile Security—is available at appworld.blackberry.com/webstore/content/8469. The site says it will pinpoint where your lost phone is on a map, activate a loud alarm to find it nearby, and/or remotely delete your data if your phone is gone for good. And, finally, for Palm Pri™ and Palm Pixi™ users, remote deletion functionality is available through

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Nominations are now being accepted for the Federal Bar Association

Sarah T. Hughes Civil Rights Award



Named after the renowned federal district judge from Dallas, Texas, the Sarah T. Hughes Civil Rights Award was created to honor that man or woman who promotes the advancement of civil and human rights amongst us, and who exemplifies Judge Hughes' spirit and legacy of devoted service and leadership in the cause of equality. Judge Hughes was a pioneer in the fight for civil rights, due process, equal protection, and the rights of women.

CRITERIA AND PROCESS:

The award will be presented at the Presidential Installation Banquet to an attorney or judge whose career achievements have made a difference in advancing the causes that were important to Judge Hughes. Such work may include either ground-breaking achievement or a body of sustained and dedicated work in the area of civil rights, due process, and equal protection.

The nominee should: have at least ten years of practice; either be a member in good standing of a state bar association or retired; demonstrate sustained and verifiable excellence in the legal profession; and be of good character.

The nomination package should have the following:

1. A resume and biography of the nominee.
2. A two- to three-page description of the career achievements of the nominee as a lawyer or a jurist in the area of civil rights, due process, and equal protection.
3. No more than three testimonials or letters of recommendation.
4. No more than three articles about the nominee. Any such articles must be primarily focused on the nominee's work in civil rights, due process, and equal protection.
5. A list of the other awards the nominee has received.

All nomination materials must be received at FBA Headquarters by close of business on July 30, 2010. The award recipient will be expected to attend the Presidential Installation Banquet in New Orleans to accept the award in person on Sept. 25, 2010. The FBA will reimburse the award recipient's reasonable travel and hotel expenses in connection therewith.

The nomination deadline is July 30, 2010.

hoc cost-benefit analysis—including the price of the deductible—it has become an asset that firms in certain litigious markets are increasingly examining.

IP Abatement Insurance

Based on a basic legal and economics model, IP abatement insurance has the potential to afford a stronger negotiation position and increase licensability of IP assets because it (1) creates the potential to reduce the pressure to settle because of a limited resource of funds; (2) may discourage potential infringement by demonstrating the financial ability to enforce rights to intellectual property; (3) could help maintain market share by allowing for quicker decisions and actions with respect to potential infringers; and (4) has the tendency to increase the value of intellectual property because that value is intrinsically tied to the quality of intellectual property, which is inherently tied to enforceability. Like IP defense insurance, the benefits and effects of IP abatement insurance have been studied. One study has gone so far as to conclude that, for an innovative company already holding some market share, and with all other factors remaining constant, obtaining IP abatement insurance always provides more utility to the company than not obtaining insurance.⁵ As mentioned above, however, the truly interesting upshot is that IP abatement insurance has the tendency to increase the market value of intellectual property in the hands of its owner. After all, the value of intellectual property is unequivocally tied to the quality of the IP, and IP quality is the sum of the market opportunity for the IP and its defensibility or presumption of validity. One factor in measuring the defensibility of a patent in the hands of its owner is the amount of money the owner is capable of spending to enforce its IP rights. Of course, owning IP abatement insurance increases this factor, which implicitly raises the presumption of validity for that intellectual property, in turn enhancing the quality and value of the IP.

The benefits of IP insurance to certain innovative companies are real, depending on their portfolio and market position, but the merits of the model of subsidizing litigation and incentivizing settlement negotia-

tions are yet to be completely examined. The IP insurance market is still somewhat new—and it is growing. Surely, there will be debate about whether insurance will give false courage to those in weaker legal positions, thereby creating what has been termed “excessive litigation.” On the other hand, IP insurance has the potential to create an even playing field and balance the seesaw of bargaining positions, thereby letting legal sufficiency talk instead of pocketbooks. In this light, IP insurance could have a deterring effect on litigation, positively affecting the marketplace for IP because, as stated above, IP insurance has the potential to enhance licensability and thereby increase the frequency of IP transactions.

In sum, it may be prudent to simply advise clients that intellectual property insurance is available. Moreover, that advice could be just as helpful if it is given only to help a client realize that the other side may be insured, and a foray into litigation could turn into a “be careful what you wish for” situation. **TFL**

Ian McClure is a member of the Intellectual Property Service Team in the Louisville office of Wyatt, Tarrant, & Combs LLP. He is also the author of ipprospective.com, an informational site for intellectual property management and monetization issues.

Endnotes

¹Garard Llobet and Javier Suarez, *Patent Litigation and the Role of Enforcement Insurance* (2008), available at www.cemfi.es/~llobet/PLpaper.pdf (last visited May 24, 2010).

²*Id.*

³Alan Ratliff, presentation to the In-House Counsel Institute on Damages, AIPLA (American Intellectual Property Law Association) Annual Meeting (2007), available at www.aipla.org/Content/ContentGroups/Speaker_Papers/Annual_Meeting_Speaker_Papers/200717/Ratliff-paper.pdf (last visited May 24, 2010).

⁴Llobet and Suarez, *supra* note 1.

⁵*Id.* at 25–26.

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preinstalled software that becomes available when a user creates a profile on a new device.

Conclusion

It is better to be safe than sorry, to be sure. Clearly, some of the above-mentioned solutions provide much more protection than others, but *every lawyer who leaves his or her office door open at night should erect at least some sort of anti-information-theft barrier*. It can be very cold out there in Cyberia, as my colleague

with the missing iPhone quickly discovered! See you next issue. **TFL**

Michael J. Tonsing practices law in San Francisco. He is a member of the FBA editorial board and has served on the Executive Committee of Law Practice Management and Technology Section of the State Bar of California. He also mentors less-experienced litigators by serving as a “second chair” to their trials (www.Your-Second-Chair.com). He can be reached at mtonsing@lawyer.com.