

iPhones and E-Discovery

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Law Technology News

January 24, 2011



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As the number of iPhone users has skyrocketed since the smartphone was introduced in 2007, one concern has been security. Experts have issued warnings that the iPhone is not secure simply because forensic experts have had the ability to access information on it. This led some people to suggest that lawyers should not use the iPhone. That's absurd; it's like saying that forensic experts know how to access data on a laptop computer running Windows, therefore it's unsafe for any lawyer to use a laptop running Windows.

It's a given that if a skilled professional thief with ill motives gained access to any smartphone or any computer (or for that matter, gained entry to my law office), confidential information could be compromised. But this doesn't mean lawyers should stop using smartphones or computers, or that lawyers should stop writing things down on legal pads that might be stolen one day. Nor does it mean that lawyers should advise their clients to do the same. At the same time, lawyers need to be careful, and we should advise clients to be careful with confidential information. This means using passwords, keeping things locked up, being extra careful not to leave a briefcase in a taxi, etc.

As I learn more about forensic tools, such as the one mentioned in the recent Guidance product announcement, I have the following thoughts: (1) lawyers conducting e-discovery should remember to ask for smartphones in addition to computers if they think the devices would contain relevant, discoverable information; (2) lawyers advising clients on how to appropriately keep information confidential should remind their clients that information on a smartphone is subject to discovery and is no different than if it was on a computer or in handwriting somewhere; (3) lawyers should be aware that if law enforcement and forensic companies are using this software, then the "bad guys" out there have the ability to use it as well, and thus we need to use common sense regarding what information we keep on a device that can be lost or stolen, whether it is a smartphone like the iPhone or a laptop computer or a thumb drive.

Jeff Richardson is the author of the iPhone J.D., a Law.com blog network affiliate, and a leading site for lawyers using iPhones. He practices law out of the New Orleans office of Adams and Reese.