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inside

Smartphone Spyware

The very features that make smartphones useful make them vulnerable to snooping.

Page 20

Same-Sex Surrogacy

What Obergefell means for same-sex couples who use surrogates.

Page 24

Statutory Changes

Family code changes help make Texas a leader in child custody evaluations.

Page 26

Special Report



Beware of Smartphone Spyware

BY CINDY DIGGS

Domestic stalking and corporate espionage have existed as long as divorce and business competition, but thanks to technology, it's never been so easy to spy on a partner or a company—and get away with it. Few realize how easy it is to use a smartphone for surveillance.

The very features that make smartphones useful for users' daily lives also make them vulnerable to prying eyes. Smartphones, along with their corresponding apps, are increasingly designed for tracking people and sharing information. The same map software that helps a smartphone user drive to a destination knows where that phone—and its owner—is located. The software that enables its owner to share email, photos and the like with other devices can be accessed remotely.

Recently divorced from a bitter ex-partner, Susan Thomas (not her real name) thought it was strange

that her ex seemed to always know when she was out of town, or had the details to her upcoming social engagements. She noticed her phone's battery lasted less time than it used to, and her phone always seemed to be hot. After her ex asked her if she was planning to attend a wedding with a boyfriend—a wedding that the boyfriend hadn't invited her to—a sickening wave of understanding hit her. Her ex had every text, email or call she ever sent, and he also had her boyfriend's. As forensic detectives eventually found out, her ex did it without ever touching his ex-wife's or her boyfriend's phone. How did he do it? The answer is terrifying.

Spyware can be installed remotely and target any electronic device in 10-15 minutes. This invasion of privacy and security is particularly insidious now that cellphones are computers. And this spyware is easy

► See *Spyware*, page 22

Spyware

continued from page 20

to find and inexpensive. Just Google "smartphone spyware." Free options, as well as more advanced software for as little as \$50, are readily available.

Spyware Tools

Spyware programs can harvest and transmit screenshots, documents, web history, emails, text messages and financial information. They can be installed on all types of computers, including smartphones. Most programs harvest the information and transmit it over the Internet to be remotely stored, but others allow the perpetrator to remotely access real-time data.

Be aware of spyware tools that may be particularly problematic for smartphones:

- **Location:** Cell phone spyware can monitor GPS location, eavesdrop on calls and Internet activity, forward texts and emails—even access the camera to take a photo of the victim.
- **Bluetooth in a car:** This can be used to intercept a hands-free phone conversation or voicemail.
- **Bluetooth in a phone:** a motivated hacker within proximity of a phone or other device can set up a "Personal Area Network" (PAN) to access a device.

- **Public Wi-Fi:** beware the Pineapple, a small electronic device that tricks a device's Wi-Fi into connecting to it instead of the public "hot



spot." It saves or passes the victim's Internet traffic straight through.

- **Keyloggers:** track keys struck on a keyboard and so collect logins and passwords. They are often used for corporate spying, and are almost impossible to detect.

Cyberstalking Signs

Be on the alert if the flow of information from your device exceeds the amount coming in, because ordinarily, incoming Internet traffic is much higher. A bugged phone may lose battery

life or feel warm, even when not in use. If the phone screen suddenly lights up when no one is using it, be concerned.

But spyware is more sophisticated, and detection is often not so much digital as personal: competitors mysteriously have inside information about a business plan or product, or a spouse or ex-partner has information about you they could not possibly know.

Legal Remedies

Both state and federal laws, though older than the technology in some cases, are worded in a way that prohibits spyware use.

Two federal laws were passed in 2005. The Spy Act says requires permission to put computer programs on computers. The Internet Spyware Prevention Act imposes up to five years imprisonment on those who use software to illegally gain access to a computer.

Federal wiretapping laws may also apply. The Electronic Communications Privacy Act of 1986 prohibits the interception and disclosure of wire and electronic communications, and bans the use of such information. The Stored Communications Act prohibits the unauthorized access of stored communications. The Computer Fraud and Abuse Act prohibits accessing a computer without authorization, or exceeding authorized access and thereby obtaining certain governmental, financial, or consumer information.

Texas outlaws copying software or causing it to be copied, and has statutes

to prevent unauthorized access or damage to computers. Texas also has a civil cause of action available to the attorney general, webpage owners, and others.

Exterminating the Bugs

The best defense is always a good offense. Use mobile security programs and monitor privacy settings. Secure smartphones with a password. Where appropriate, keep mobile anti-virus programs running and up to date. It is possible to enable a remote wipe capability, so that if the smartphone is lost, all data on the hard drive can be erased remotely. (It is important to keep essential data secure elsewhere so the loss of all smartphone data isn't crippling.)

If it appears that the surveillance is still taking place, plant some false information and see if it leaks out. If so, upgrade security software and consider hiring a forensic expert. And remember, this cyber-spying activity is likely illicit, so consider enlisting the assistance of law enforcement. ■■■



Cindy Diggs is the managing partner of Holmes, Diggs & Eames with offices in Houston's River Oaks and the Energy Corridor. She has

practiced law for over 25 years, and is board certified in family law and civil trial law by the Texas Board of Legal Specialization.



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