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BNA INSIGHTS

Mobile devices such as Smartphones and, with the introduction of the iPad, tablet PCs, are now viable alternatives to the laptop for the mobile business user. 3BView's Cathy Brode discusses some new business risks, including inadvertent metadata disclosure, that necessarily accompany the adoption of this technology.

Mobile Devices: Effective Business Tools With New Risks



BY CATHY BRODE

Remember when Web access to e-mail and/or a laptop was liberating, allowing you to work away from the office? With the increase in applications available on Smartphones, and particularly the introduction of iPad 3G, these devices are now a cost effective and lighter alternative (the latter being a criterion high on my personal requirement list) to laptops for the legal professional.

However, the adoption of mobile device usage brings new risks to businesses, including the risk of inadvertent metadata disclosure.

Document metadata includes items such as track changes, dates of modification and creation, and authors.

The risk of disclosure of such information is well understood by the legal industry, but many firms' metadata removal application is limited to a desktop applica-

tion. In that typical situation, mobile users do not have access to the removal application, and thus operate without this vital protection.

The Evolution of Mobile Devices. Blackberry was the original Smartphone of choice for the legal professional and other business users. Its position was usurped in June 2009 by the iPhone 3GS. Then new models of other Smartphones with similar 'form factors' (size of screen) and memory multiplied, and they are now routinely used by legal professionals, alongside Blackberries.

The iPhone 3GS effect on the Smartphone business market looks as if it will be replicated by the iPad 3G on the use of tablet PCs as a business tool.

Stats on Usage. The ABA Tech Survey 2009 reported that 82 percent of its respondents use PDAs, Smartphones, or Blackberries when away from the office, rising to 95 percent among large law firms.

The October 2009 3BView survey of legal professionals on use of mobile devices for business purposes showed an uptake of iPhone for business usage with, of the 236 firms represented, 84 percent reporting usage of Blackberries, with iPhone the second most popular device at 52 percent.

I confidently predict that the 2010 results of these surveys will show both an increase in use of mobile devices and a wider variety of mobile devices used for business purposes.

Legal Implications. From an e-discovery perspective, awareness of the use of mobile devices as business tools has not escaped the attention of the courts. Cases such as *Southeastern Mechanical Services, Inc. v. Brody*, M.D. Fla., No. 8:08-CV-1151-T-30EAJ, 8/31/09, where sanctions were imposed due to the wiping of Blackberry devices, illustrate that mobile devices cannot be excluded from a litigation hold and should therefore be included in litigation readiness policies.

There are also numerous regulations and ethics opinions that firms must comply with. New ones include the Minnesota Lawyers Professional Responsibility Board Opinion No. 22, regarding document metadata (March 2010), and Massachusetts 201 CMR 17.00, currently the most stringent U.S. data protection regulation, that came into effect on March 1, 2010. To comply, an organization needs to have policies, procedures, and measures in place that specifically include mobile devices.

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How are Business Users Using These Devices?

Stepping back, the main business applications for mobile devices include:

E-mail. At the latter part of 2009, e-mail was the main business application for mobile users. The ABA Tech Survey 2009 showed business e-mail usage of mobile devices at 86 percent. This finding is backed up by the 3BView survey, where 89 percent of all respondents reported using a mobile device for business e-mails.

The 3BView survey also reported:

- 84 percent of respondents forward e-mails with documents attached via their mobile devices, with 69 percent doing so on a daily or weekly basis.

- 43 percent of the legal professionals surveyed reported attaching a document to an e-mail sent out through their mobile device at least once per month.

- 26 percent of the respondents claim to attach a document to an e-mail on a daily or weekly basis.

Document Review. The review and editing of documents is also an accurate indicator of the usage of mobile devices as an alternative to laptops: 67 percent of 3BView survey respondents reported reviewing documents via their mobile, with 50 percent doing so on a daily or weekly basis.

A quarter of the respondents indicated they are editing documents on their mobile device; a surprising result at that time, reflecting the improvements in features and user experience for iPhone 3GS and equivalent new Smartphones.

Editing of documents on mobile devices is another area that I predict will significantly rise this year, particularly with the uptake in the use of the iPad 3G.

Access to Business Documents. Businesses are now able to provide their mobile workforce with access to many of the business tools available on their office-based computers. Much of this access is via a Web interface, including documents stored by the firm on a centralized system. More than half of 3BView survey respondents have such access and regularly attach business documents to e-mails sent from their mobile devices.

What should not be ignored is the significant storage capabilities of these mobile devices. This means that keeping a local copy of a document is not an issue; 39 percent of 3BView survey respondents reported storing business documents on their mobile devices.

Desktop Security Measures Are Not Sufficient. No security measure limited to a desktop application will cover mobile devices.

Looking at this from a document metadata perspective: a business e-mail picked up via a Smartphone and forwarded to an external address bypasses any desktop based metadata removal system. Therefore, any document metadata resident within the originating document will be exposed to the recipient.

Similarly, attaching a document from a central store or one stored on the mobile device itself to an e-mail while away from the office is not protected by a desktop metadata removal solution.

These scenarios expose the weakness of any desktop metadata removal solution that might be in place, particularly because the widespread adoption of mobile de-

vices and their many and varied uses is not fully appreciated by the legal industry.

New Risks Require a New Systematic Solution. To address the risks described above, firms should consider a systematic approach; specifically, a server-based metadata removal solution for documents sent from the desktop, the mobile device, and from the Cloud.

There are different metadata removal applications on the market today. Features that should be considered when investing in this technology include:

- Wide e-mail server spectrum—Supports any e-mail client, mobile or desktop, and e-mail server (Blackberry, PDA, iPhone, etc.).
- Multiple format support—MS Office, PDF or OpenDocument Format.
- Automated system with low operational costs—Metadata is removed automatically according to centrally set rules. No user training or ongoing technical

support is required, substantially reducing the application life cycle costs.

- Reduced risk of leakage—No user intervention required, ensuring a consistent service level, reducing the risks of inadvertent data leakage.

- Application resides on network—An automated system providing a service that is transparent to the user, and works reliably, out of sight, on the company network. Removing metadata from documents is a processor-intensive application for desktop or laptop computers, which can cause users issues, and severely degrade employee productivity. Transferring this processing to the network or via SaaS is therefore especially important for organizations that send large quantities of documents via e-mail.

- Ease of integration—Well-documented APIs enabling ease of integration into Data Loss Prevention (DLP) systems and Document and Content Management Systems.