Bring Your Own Device Security and Privacy Legal Risks

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Introduction

Information Law Group, LLP

- National boutique firm with focus on information law
- Experienced, nationally-recognized privacy, technology, media, advertising & information management attorneys
- Clients include: Financial institutions, Fortune 10 multinational corporations, Energy, Media companies, payment processors, retailers, start-ups, non-profits
- Co-Chair American Bar Association’s Information Security Committee
- Certified Information Privacy Professional (IAPP)
- Former in-house lawyer for eBusiness Risk Group of multi-national insurance company based in New York

Chris Paschke

- Experience working in federal and state government
- Background in system management and IT security auditing
- Specialises in IT security management and incident response
- Currently manages IT security for a large Colorado school district.

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Road Map

- Introduction
- BYOD Basics
- Information Security and BYOD
- Privacy and BYOD
- Incident Response and Investigation of Personal Devices
- Personal Device Use Policies

BYOD Basics

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BYOD Drivers

- **Mobile device explosion**
  - 76 percent of people have Internet mobile device, and 68 percent have a desktop or laptop (Source: Ad Age)
  - But don’t forget laptops and desktops
- **Employee satisfaction**
  - Too many devices
  - Consumerization of IT (“COIT”)
  - Generational aspect

BYOD Drivers

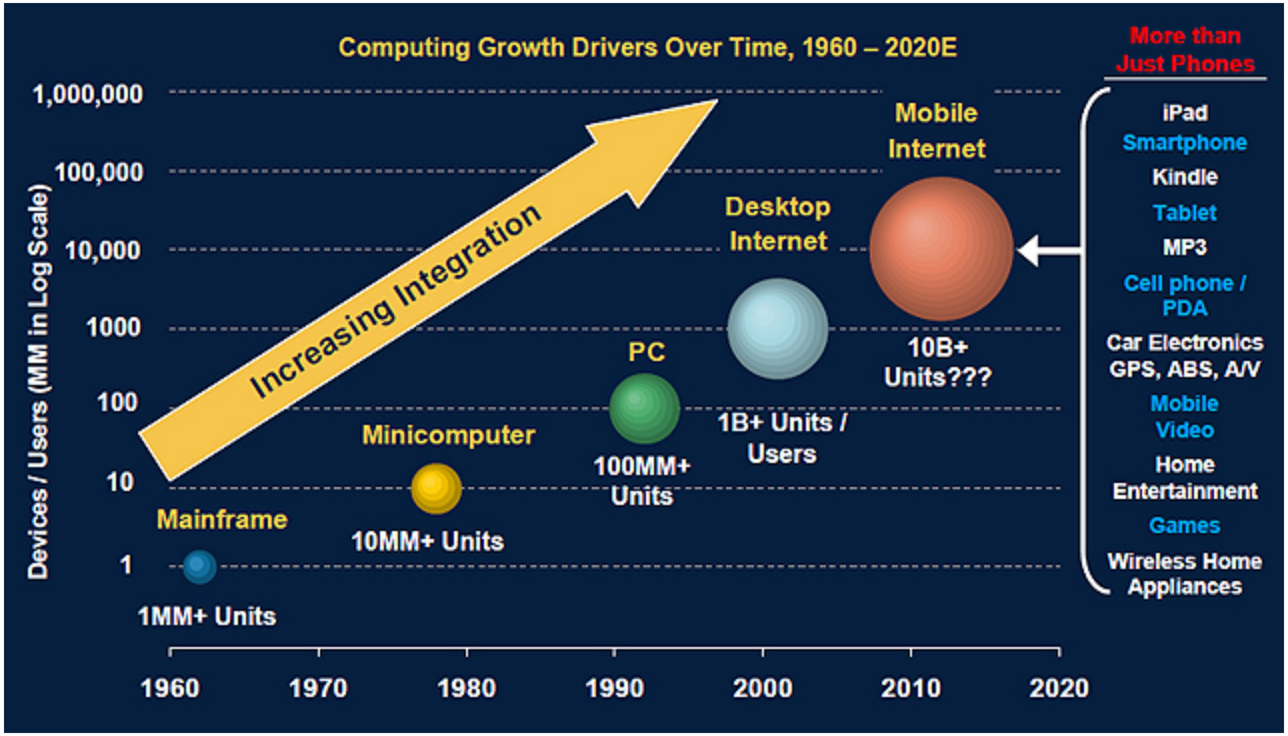
- Efficiency/productivity
- Cutting-edge technology

BYOD Drivers -- Perceived Cost-Savings

- Device costs
- Data costs
- IT management costs
- Inefficiencies
- True cost savings?

BYOD Statistics

Mobile Web to Rule by 2015



Source: Morgan Stanley Study / Mashable Tech (http://mashable.com/2010/04/13/mobile-web-stats/)

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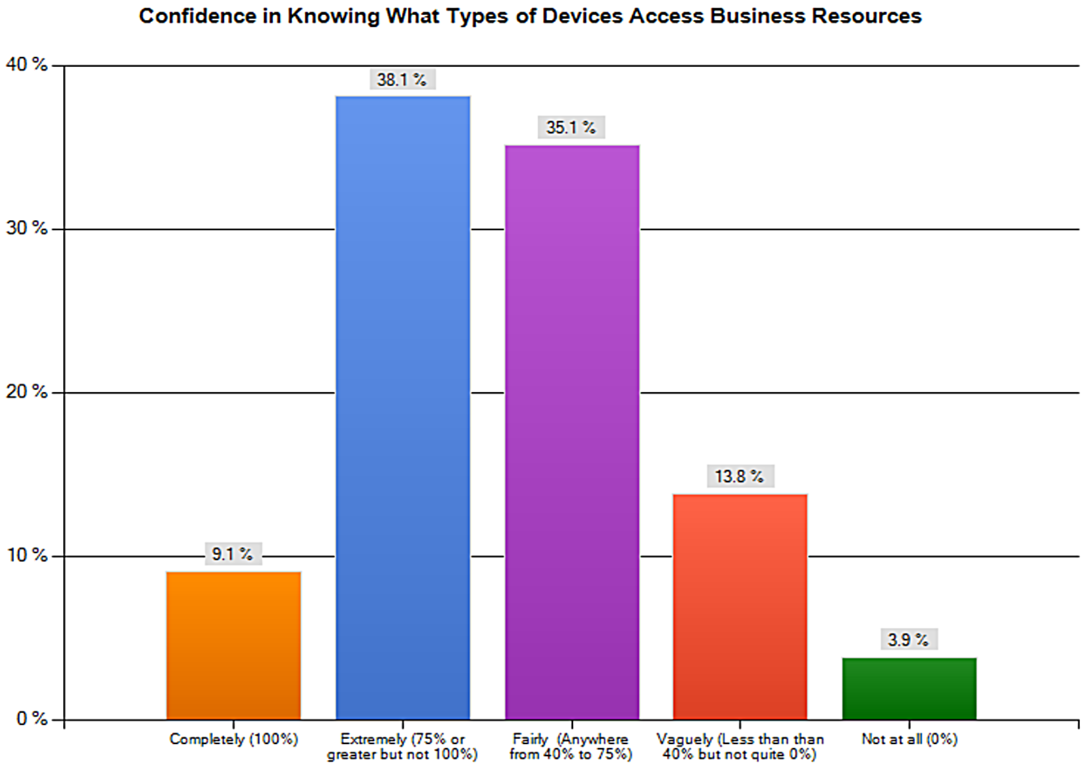
BYOD Statistics



Source: SANS Mobility/BYOD Security Survey, March 2012

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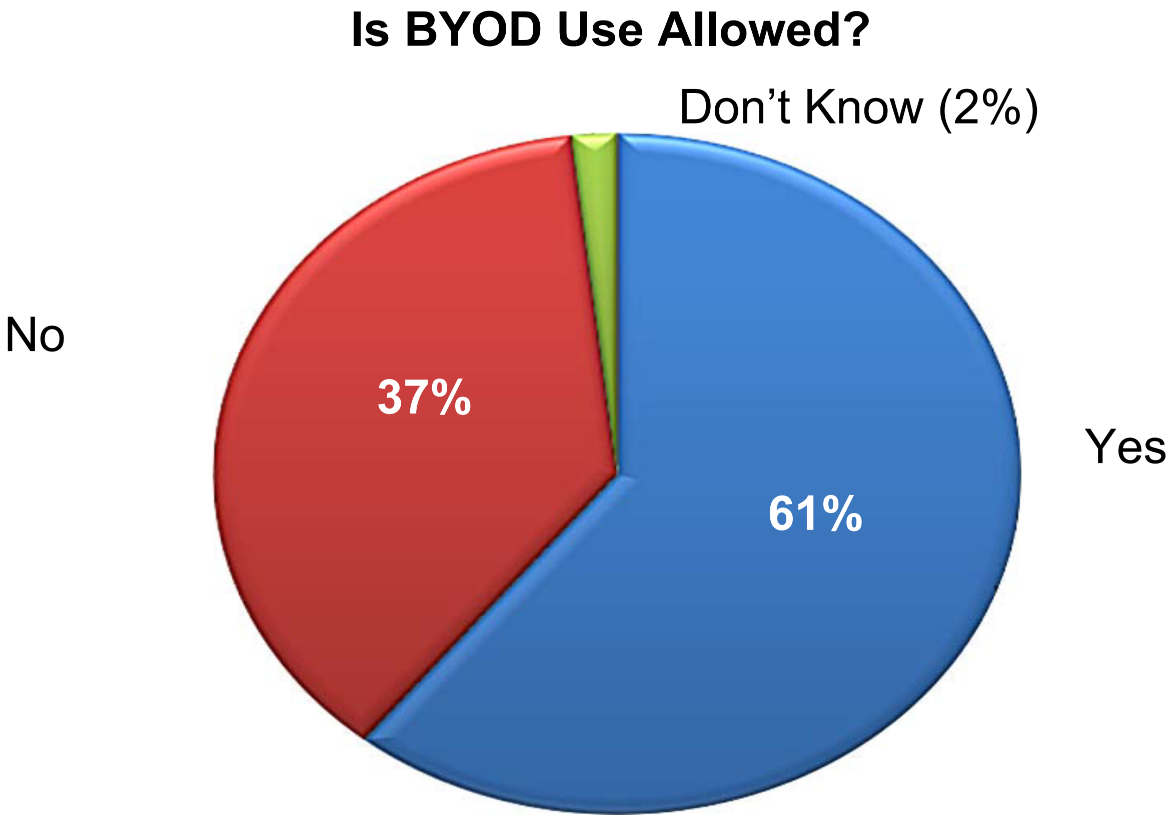
BYOD Statistics



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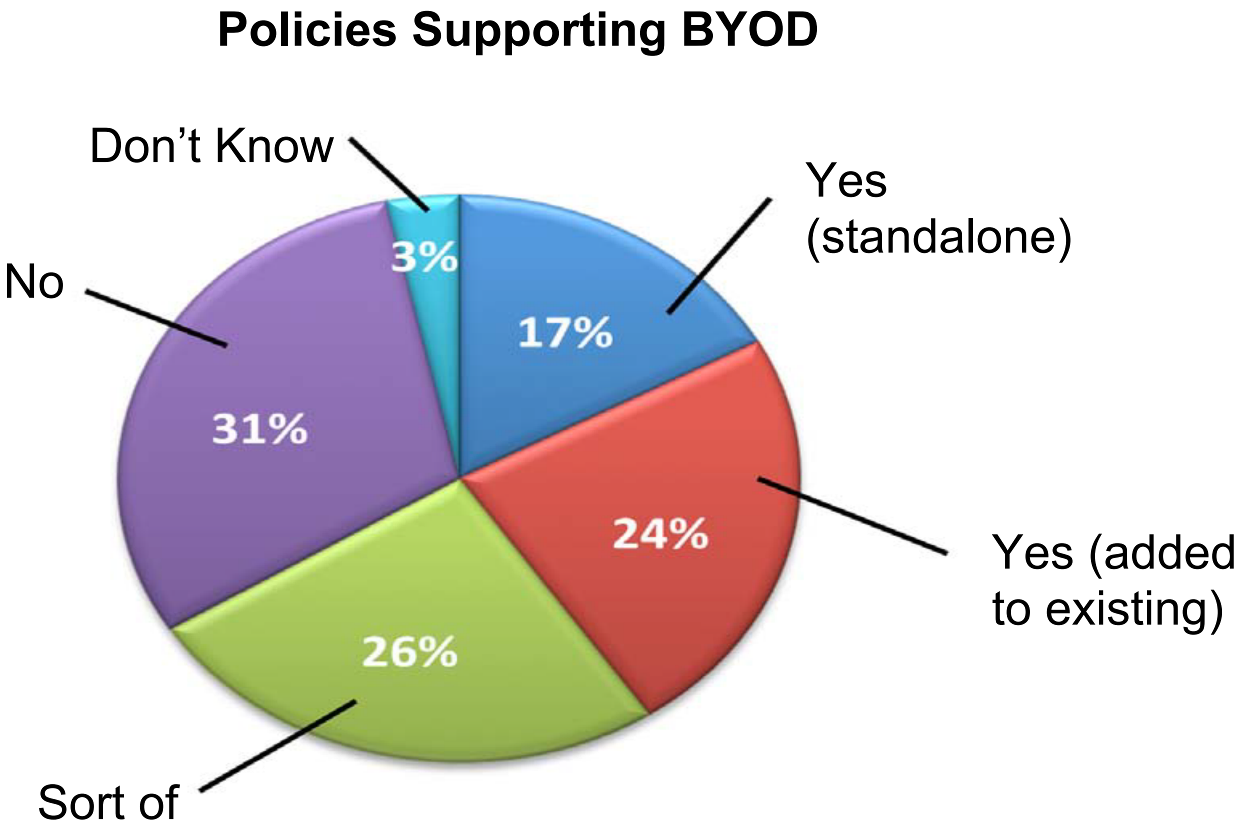

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Information Security and BYOD

Addressing BYOD Security Risk Strategy

- Not addressing the risk
- Prohibiting BYOD
- Limiting BYOD (e.g. limited employees; limited data; limited connectivity; limited devices)
- “Traditional” technological security controls

Traditional Security Measures

- Determine and limit the type of devices that can be used
- Implement minimum system requirements and configurations
- Install security-related software to the device
- Encrypt company data on the device
- Apply security patches
- Monitor the use of the device to detect misuse, hacking or malware
- Dictate how the device connects to the company's network
- Install and update anti-virus software
- Provide support for the device
- Obtain/access the device for purposes of an investigation (because the company owns the device).

Security Challenges

- **Mobile nature / lost devices**
- **Personal use = riskier use**
  - More opportunities to pick up virus/get hacked
  - Shared devices
  - Lack of IT / security knowledge sophistication (e.g. configurations, patching, anti-virus)
  - Riskier environments
  - Always in use
- **Multiple device-types and operating systems**
  - May need to be treated/configured/secured differently
  - May pose different levels of security risk
  - Constant change -- new devices getting popular all the time

Security Challenges

- **Jailbroken/modded devices**
- **Think beyond the device**
  - Offsite data transfer (“the Cloud”; auto back-up)
  - Applications
  - Social media access and social engineering/social media hacking
  - Device as portal to entire company network
- **Lack of control over device, data and security**

Security Challenges
Consistency and Legal Risk

- **Reasonable security factors**
  - Sensitivity of the personal information,
  - Foreseeability of risks
  - Likelihood of damage
  - Medium and format of the record
  - Potential harm from an incident
  - Cost of preventive measures
- **Specific security controls required by law or contract**
  - Mass personal information protection law
- **Comply with own policies**
  - acceptable risk
  - subjective reasonableness

Addressing BYOD Security Risk Strategy

- Acceptable Use Policies (e.g. email, mobile devices, Internet, etc.)
- Security Policies (e.g. mobile, encryption, password, anti-virus)
- Social Media Policy
- Wireless Access Policy
- Remote Access Policy
- Remote Working Policies
- Employee Code of Conduct (or other HR Policies)
- Incident Response Policies
- Privacy policies (or PII Handling Policies)

Addressing BYOD Security Risk Strategy

- Authorization and inventorying process
- Compensating controls
- Encryption
- “Sandboxing”
- Mobile Device Management (“MDM”) software
- Tracking/wiping/bricking
- Personal device use policies
- Training

Key legally: *being able to explain that despite security being different, level of protection/risk is the same*

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Privacy and BYOD

Privacy Challenges

- **Personal nature of device and expectation of privacy**
  - Is prohibited web surfing on a company device allowed on the personal device?
  - Personal data: pictures, videos, personal emails, bank statements, tax returns, social security numbers, chat histories, user names/passwords, medical information
- **Mobile nature of the devices**
  - Remote working and travel (checking to see if employee is where they are supposed to be)
- **The employee "creep out" factor** (see e.g. requiring employees to provide Facebook password)

Privacy Challenges – Employee Monitoring

- **Monitoring of company-owned devices**
- **Where monitoring may occur on a personal device:**
  - While connected to the network
  - Data in transmission between personal device and network
  - Monitoring of “sandboxed” or company area of mobile device.
  - Monitoring of entire device (e.g. key stroke logger; recording browser history, etc.)
- **Data collection about usage may be monitoring (e.g. logging)**
- **Location, location, location**

Privacy Challenges – Investigations

- Investigations (internal, criminal, audits)
- Security breach response – forensic investigations
- Litigation holds
- eDiscovery (searching for, preserving and collecting data)
- Information requests/demands/subpoenas/regulatory investigations

Problem: difficult, impracticable/impossible, harmful to try to limit collection and access to non-company information on/from a personal device

Privacy Challenges – Expectation of Privacy

- *U.S. Supreme Court -- City of Ontario, California v. Quon*
- **4th Amendment – unreasonable search and seizure**
- **Search concerning personal use of a company device**
- **Applies to public entity, but instructive to private**
- ***Was there a reasonable expectation of privacy?***
  - Not ruled upon; assumed by the Court
  - Employee policies are a factor in setting expectation
- ***Was the search reasonable?***
  - Work-related purpose existed
  - Scope and intrusiveness of the search was limited

Privacy Challenges – Specific Laws

- **Computer Fraud and Abuse Act**
  - Unauthorized access/use of computer
- **Electronic Communications Privacy Act --Stored Communications Act**
- **Computer Trespass**

Incident Response and Investigation of Personal Devices

Incident Response and Investigation Challenges

- Loss of control
- Inability to remotely access device
- Obtaining physical possession of a device
- Investigation of employees themselves
- Incident detection (lost devices v. breached devices; actual v. reasonably suspected breach)

Incident Response and Investigation Challenges

- Investigations (internal, criminal, audits, customers)
- Security breach response – forensic investigations
- Litigation holds
- eDiscovery (searching for, preserving and collecting data)
- Information requests/demands/subpoenas/ regulatory investigations (either to company or employee directly)

Incident Response and Investigation Challenges

- **Obtaining access to the device and data thereon**
  - Physical possession
  - Unlocked/login credentials
  - Unencrypted
- **Remote wiping, bricking of a device**
- **Timing issues**
  - Incident detection
  - Litigation holds/spoiliation of evidence

Incident Response and Investigation Challenges

- **Damage to the device**
  - Installation of software may be required
  - Data loss
  - Software corruption
  - Loss of use
- **Privacy issues**
  - Cooperation issue
  - Ability to tie to business need and limit scope

Personal Device Use Policies

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PDUP – Key Considerations

- **Relationship to other policies**
  - Scope of existing policies
  - Conflicts with existing policies

- **Key definitions**
  - Personal device
  - Security incident
  - Prohibited information

PDUP – Key Considerations

Privilege v. requirement

Personal device system requirements, configuration and limitations

- Remote connectivity
- Device support
- Software installation
- Expectation of privacy

PDUP – Key Considerations

- **Security requirements**
  - May vary by device
  - No sharing devices
  - Software/configuration requirements
- **Security incident response**
  - Detection
  - Notice
  - Cooperation
  - Investigation
  - Remote wiping

PDUP – Key Considerations

- **Investigations**
  - Internal, assessments and audits
  - Subpoenas
  - e-Discovery/Litigation holds
- **Damage and Liability**
- **Consent and waiver**

Q&A

Thank You!

David Navetta, Esq., CIPP
InfoLawGroup LLP
303.325.3528
dnavetta@infolawgroup.com
www.infolawgroup.com

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