

Wary spouses seek cyber-dirt

Split-ups in the Information Age

Monday, October 01, 2007

BY J. SCOTT ORR
Star-Ledger Staff

In the digital age, "Kramer vs. Kramer" is becoming more and more like "Spy vs. Spy."

According to the U.S. Census, nearly 40 percent of Americans 55 years old or younger have been divorced at least once, fueling a thriving industry for divorce lawyers, private investigators and others who facilitate the marriage end game.

In recent years, that industry has undergone a transformation, with unhappy spouses using new technologies to dig up digital dirt on each other. And experts warn couples bound for divorce court they need both offensive and defensive tech strategies to protect themselves.

"The 'E' in e-mail is for evidence," said Bonnie Russell, who tracks divorce case law for her Web site www.familylawcourts.com. "What is on a spouse's hard drive quite often becomes exhibit A," she said.

Years ago, spouses had to rely on decidedly low-tech means of catching cheating partners: a telltale strand of hair on a lapel, lipstick on a collar, gumshoe work by private investigators. Today, spouses are checking e-mails, Web site visits and cell phone records, recording phone calls and even using global positioning satellite technologies to virtually tag along during extramarital wanderings.

Perhaps surprisingly, spouses have little expectation of privacy in their online travels or cellular telephone communications, particularly when the devices are shared among family members.

"I know of one wife who took the family computer in to an investigator during the daytime when he was at work. She filed for divorce the next day," said Russell, a legal media consultant based in San Diego.

For the spied-upon, the idea that their lives are open to secret surveillance can be a frightening revelation, especially when spouses, or exes, are willing to go beyond mere snooping on the family laptop.

"I'm not just frightened, terrified would be a better word," said a wife whose husband not only tracked her cyber-activity, but went so far as to hide a GPS-enabled cell phone in her car to track her movements. The woman, who lives in the New York-New Jersey area, agreed to speak only on the condition she not be named because her divorce case is headed for court and she remains afraid of her husband.

Stacy Phillips, a Los Angeles divorce lawyer who has represented celebrities and professional athletes, said examining computer hard drives for signs of bad behavior is now a staple of her profession.

Judges who once frowned on cyber-sleuthing spouses have come to accept digital evidence as a common part of today's divorce proceedings. Recently, Phillips said, she was able to persuade a judge to allow her to seize the computer of a husband who had faced drug and weapons charges, without first notifying him.



"It has now become a huge part of what I do. ... It's very rare to get an order without notice where a sheriff knocks on the door and takes the computer, but we want to preserve whatever we can. There are ways that you can wipe clean a computer hard drive," said Phillips, the author of "Divorce: It's All About Control: How To Win the Emotional, Psychological and Legal Wars."

Phillips said data found on computers and in e-mails does not always center on cheating. Sometimes it reveals other kinds of evidence like one spouse trying to hide assets from the other or making secret plans relevant to the coming breakup.

"It's not unusual to find on a computer e-mails to other people saying, 'This is what I'm going to do, help me move this money,' or opening side businesses, or opening accounts around the world," she said.

Still, Phillips said, laws have not kept pace with technology and accessing your spouse's computer can be "a minefield" if the computer is solely the property of one partner, or is owned by an employer, or if it contains files and accounts that are password-protected or encrypted.

"In one case, my client had his computer password-protected and kept it in a locked office in the home. His wife broke in and hired a private investigator to take stuff off his computer. We're going to have separate civil litigation about this," Phillips said.

Another gray area arises when spouses install spyware that can record all keystrokes entered into a particular computer. E-mail, for example, is protected communication under wiretap laws as it moves among computers, but is open to inspection by other users of the computer once it is saved to a hard drive.

It's not just computer data that is open to spying. Phone bills, logs of calls on cell phones and saved text messages also are finding their way into divorce proceedings.

"It used to be just the phone bills, with the list of all the phone numbers that have been called. Then it was the cell phone bills. In the past three years or so it's really everybody's Blackberries, Trios and the instant messages and the software they contain," said New York divorce lawyer Nancy Chemtob.

At the same time communication devices are yielding tons of sometimes damning data, recording telephone conversations surreptitiously has never been easier. At least one company offers a service that allows you to record all your phone calls from any type of phone and replay them later on your computer.

While divorce lawyers salivate at the wealth of information technology can provide, they also urge their clients to be aware that this sword has two edges.

"As attorneys we're much more careful about what we say in e-mail and generally how we communicate with clients. We urge our clients to be careful as well," Chemtob said. The safest form of communication, she said, is the ultra-low-tech face-to-face meeting in a secure setting like a lawyer's office.

Danine Manette, a San Francisco-based private detective and author of a how-to book for spying spouses call "Ultimate Betrayal," said partners contemplating divorce also must devise defensive strategies to protect themselves against ever-evolving high-tech spying technologies.

She cautioned those who have things to hide to stay away from shared devices and accounts that courts have said are open to spousal scrutiny: "Laws are still evolving on this, but as it stands now, anything on the hard drive of a shared computer, or on a shared cell phone, you have no expectation of privacy."

"It's virtually impossible, because of the technology, to tell if you are being spied on or not. It can be a very scary world at a very scary time," she said.

J. Scott Orr may be reached at sorr@starledger.com.

