

EXHIBIT 2

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ROWENA SILVERA and)
ANDREW SANDERS,)
Individually, and on Behalf of all)
Similarly Situated Persons,)
Plaintiffs,)

Civil No. 3:11-cv-5821-SI

RE-NOTICE

**PLAINTIFFS' MOTION FOR ISSUANCE
OF A PRELIMINARY INJUNCTION
AGAINST DEFENDANT CARRIER IQ**

vs.)

CARRIER IQ, INC., SAMSUNG)
ELECTRONICS AMERICA, INC.,)
HTC AMERICA INC.,)
JOHN DOE MANUFACTURERS (1-10),)

**HEARING DATE: JANUARY 13, 2012
9:00 A.M.**

Defendants.)

**PLAINTIFFS' MOTION FOR ISSUANCE OF A PRELIMINARY INJUNCTION AGAINST
DEFENDANT CARRIER IQ PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 65**

Plaintiffs, Rowena Silvera and Andrew Sanders, individually and as representatives of a proposed class of persons who contend have been subject to illegal wiretap and invasions of privacy as alleged in the complaint, respectfully submit this Motion for Issuance of a Preliminary Injunction pursuant to FRCP 65. Accompanying this Motion is a Memorandum of Law and a Proposed Order pursuant to Local Rule 7-2.

1 WHEREFORE, Plaintiffs request that this Court schedule a hearing on this motion and
2 thereafter issue a Preliminary Injunction against Defendant Carrier IQ in the form attached hereto and
3 any other equitable relief deemed proper by this Court.
4

5
6 **SKIKOS, CRAWFORD, SKIKOS & JOSEPH,
LLP**

7 **Dated** December 8, 2011

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CERTIFICATE OF SERVICE

I, Andrea S. Hirsch, certify that I served the above document on the following parties via ECF

this 8th Day of December, 2011:

Carrier IQ

1280 Villa Street

Mountain View, California 94041

HTC America Holding, Inc.

13920 SE Eastgate Way

Suite 400

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Samsung Electronics America

85 Challenger Road

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JOHN DOE MANUFACTURERS (1-10),)

HEARING DATE: TO BE SCHEDULED¹

Defendants.)

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¹ Plaintiffs' counsel has not yet been able to secure a hearing date, however, counsel will immediately file a notice of hearing and serve all parties upon receiving a hearing date.

1 WHEREFORE, Plaintiffs request that this Court schedule a hearing on this motion and
2 thereafter issue a Preliminary Injunction against Defendant Carrier IQ in the form attached hereto and
3 any other equitable relief deemed proper by this Court.
4

5
6
7 **Dated** December 7, 2011

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13 Samsung Electronics America
14 85 Challenger Road
15 Ridgewood Park, New Jersey 07660
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17 /s/ Andrea S. Hirsch
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Civil No. 3:11-cv-5821-SI

**PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION FOR ISSUANCE OF A
PRELIMINARY INJUNCTION AGAINST
DEFENDANT CARRIER IQ**

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR ISSUANCE OF A PRELIMINARY
INJUNCTION AGAINST DEFENDANT CARRIER IQ
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 65**

Plaintiffs, Rowena Silvera and Andrew Sanders, individually and as representatives of a proposed class of persons who have been spied on by Defendants' use of spyware as alleged in the complaint, respectfully submit this Brief in Support of Plaintiffs' Motion for Issuance of a Preliminary Injunction pursuant to FRCP 65. Because Defendant Carrier IQ is, by all accounts the nexus between plaintiffs (and the classes they represent) and the defendants and others who are in violation of Federal Privacy laws, plaintiffs seek a preliminary injunction against Carrier IQ only.

1 **I. INTRODUCTION**

2 This action arises out of Defendants' wrongful conduct with respect to the alleged unauthorized
3 interception of electronic communications in violation of the Electric Communications Privacy Act
4 (also known as "ECPA" or the "Wiretap Act.") 18 U.S.C. § 2511, 2512 and the Computer Fraud and
5 Abuse Act 18 U.S.C. § 1030. *Amended Complaint, Counts I-III.1*

6 As a result of Defendants' past and continuing wrongful conduct, the legally protected privacy
7 rights of Plaintiffs and putative class members have been, and continue to be, violated. Because it is
8 believed that Defendant Carrier IQ acts as the conduit through which defendants collectively intercept
9 electronic communications and, in an attempt to cause as little harm to the defendants as possible,
10 Plaintiffs direct this motion for preliminary injunction against Carrier IQ only.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 In the past week, it has become clear that some of the leading cell phone manufacturers and
13 some of the largest service providers have used a program and software manufactured by Defendant
14 Carrier IQ to intercept private communications from their customers. *See* Articles attached hereto as
15 Exhibits 1-A through 1-G. As set forth in these various news reports, these revelations were prompted
16
17
18
19
20

21 The case is one of several filed in this District and throughout the country following the disclosure that
22 Carrier IQ software was widely installed on various cell phones and was being used to track user information.
23 Cases filed in this District include: *Silvera, et al. v. Carrier IQ, et al.*, 5:11-cv-5821-SI; *Kenny, et al. v. Carrier*
24 *IQ, et al.*, Case No. 5:11-cv-5774-PSG, *Steiner v. Carrier IQ*, 5:11-cv-5802-HRL, *Pipkin, et al. v. Carrier IQ, et*
25 *al.*, 5:11-cv-5820-HRL, *Thomas, et al. v. Carrier IQ, et al.*, 5:11-cv-5819-HRL, *Padilla, et al. v. Carrier IQ, et*
26 *al.*, 5:11-cv-5975-HRL. Plaintiffs in this case seek a status conference. *See* Plaintiffs' Request for Status
27 Conference. In so doing, Plaintiffs are mindful that a motion has been filed to create a centralized forum for all
28 of these cases. *See* MDL No. 2330, Motion of Plaintiffs for Transfer of Actions to the Northern District of
California Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings [Exhibit 2].
However, that hearing will not be held until January 26, 2012. Assuming that the motion is granted and further
assuming that an MDL Judge is identified and these cases are transferred to a central location, it is unlikely that
an MDL Judge will be in a position to hold even the first status conference until Spring 2012, at the earliest. Of
course, that would just begin the process. For reasons set forth below, it is simply untenable for the conduct
alleged in these complaints to continue for the next six months or longer.

1 by Trevor Eckhart who was able to capture and demonstrate the actions of this secret software and post
2 it on YouTube.²

3 Subsequent to these revelations, Carrier IQ has taken issue with some of Mr. Eckhart's
4 conclusions, including the scope of the information collected and disseminated. However, it
5 surprisingly does not dispute the central allegation—that software capable of collecting and distributing
6 all kinds of sensitive information was installed on most, if not all, of the smart phones sold in the
7 United States. Specifically, it is uncontradicted that the Carrier IQ program, also called a “rootkit,” is
8 installed on some of the most widely used smart phones, including Evo and Galaxy. It is also not
9 disputed that the program runs, undetected, and is capable of capturing keystrokes, websites, on-line
10 queries and texts.

11
12 The potential for serious harm created by this program has been noted by numerous computer
13 privacy experts and had even caught the attention of the Chairman of the United States Senate's
14 Subcommittee on Privacy Technology and the Law, Senator Al Franken. As Senator Franken stated in
15 a letter written only last Thursday to defendant Carrier IQ:

16
17 I am very concerned that your company's software—preinstalled on
18 smartphones used by millions of Americans—is logging and may be
19 transmitting extraordinarily sensitive information from consumers' phones
20 ...[and] that this software runs automatically every time you turn your
21 phone on. *It also appears that the average user would have no way to*
22 *know that this software is running—and that when the user finds out, he*
23 *or she will have no reasonable means to remove or stop it.*

24 * * *

25
26
27
28 ² See http://www.youtube.com/watch?v=T17XQI_AYNo (a copy of this video has been loaded onto a DVD and will be filed with the Court as Exhibit 3)

1 I understand the need to provide usage and diagnostic information to
2 carriers. I also understand that carriers can modify Carrier IQ's software.
3 ***But it appears that Carrier IQ's software captures a broad swath of***
4 ***extremely sensitive information from users that would appear to have***
5 ***nothing to do with diagnostics-including who they are calling, the***
6 ***contents of the texts they are receiving, the contents of their searches,***
7 ***and the websites they visit.***

8 ***These actions may violate federal privacy laws, including the Electronic***
9 ***Communications Privacy Act and the Computer Fraud and Abuse Act.***
10 ***This is potentially a very serious matter.***

11
12 *See Letter from Senator Al Franken, Chairman, Congressional Subcommittee on Privacy Technology*
13 *and the Law to Larry Lenhart, President and CEO Carrier IQ, Inc. (Nov. 30, 2011)[Exhibit 4].*

14
15 The private information surreptitiously collected from cell-phone users is sent to co-defendants
16 presumably through Carrier IQ's servers. *See, United States Patent No. US 7,609,650 B2 (October 27,*
17 *2009) [Exhibit 5]. As admitted by CIQ itself, the information can be used for, among other things,*
18 *marketing:*

19
20 For example, some query structures 500 are concerned only with
21 information that would be of interest to the marketing department such as
22 the prevalence of applications used. As another example, an accounting
23 department, either alone or in connection with a marketing department,
may desire to utilize a query correlating the various service plans with
particular groups of end users and the behavior of those end users.

24 Exhibit 5, Patent, Column 14.

1 **III. ARGUMENT**

2 In order to obtain a preliminary injunction, plaintiffs “must establish that [they are] likely to
 3 succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary
 4 relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.”
 5 *Winter v. Natural Resources Defense Council*, 129 S.Ct. 365, 374 (2008) (citations omitted). “The
 6 proper legal standard for preliminary injunctive relief requires a party to demonstrate [1] ‘that he is
 7 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
 8 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the
 9 public interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.2009) (citing *Winter*, 129
 10 S.Ct. at 374)). The Ninth Circuit recently reaffirmed that within this framework a preliminary
 11 injunction also is appropriate when a plaintiff demonstrates “that serious questions going to the merits
 12 were raised and the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing
 13 district courts to preserve the status quo where difficult legal questions require more deliberate
 14 investigation. *Alliance for the Wild Rockies v. Cottrell*, 613 F.3d 960 (2010).

15
 16
 17 Based on the facts alleged herein, it is clear that Defendants must be immediately enjoined from
 18 further accessing Plaintiffs’ electronic communications without their consent.³

19 **1 PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

20 In order to prevail in their motion for a preliminary injunction, Plaintiffs must establish they are
 21 likely to succeed on the merits in at least one of their causes of actions against Defendant Carrier IQ.
 22 As noted recently by this Court, “at the preliminary injunction stage, the district court may rely on
 23 otherwise inadmissible evidence, including hearsay evidence.” *Fidelity Nat. Title Ins. Co. v. Castle*,

24
 25
 26 ³ In anticipation of the hearing and to facilitate a fair and proper ruling, Plaintiffs file contemporaneous
 27 with this motion a Motion entitled “Plaintiffs’ Motion For An Expedited Status Conference.” Plaintiffs seek an
 28 early conference—either in person or by telephone—so that a hearing may be scheduled and the court can decide
 what additional information defendants should disclose. Such information may include basic information about
 the CIQ software, including, for example, the user manuals, and information on what information is sent, how it
 is sent and to whom information is sent. *Id.*, at 4.

1 2011 WL 5882878, 3 (N.D.Cal., 2011)(internal quotations and citations omitted). For purposes of this
2 motion, Plaintiffs will only address their claim that Defendants' interception of key strokes violates the
3 Electronic Communications Privacy Act, 18 U.S.C. § 2511.

4
5 The paramount objective of the Wiretap Act is to protect effectively the privacy of
6 communications. *Gelbard v. U.S.*, 408 U.S. 41, 48, 92 (1972); *accord U.S. v. Vest*, 813 F.2d 477, 481
7 (1st Cir. 1987); *see Bartnicki v. Vopper*, 532 U.S. 514, 523-24 (2001); *In re Pharmatatrak, Inc.*, 329
8 F.3d 9, 18 (1st Cir. 2003). In 1986, Congress enacted the Electronic Communications Privacy Act
9 ("ECPA"), 18 U.S.C. § 2701 et seq., to protect against the interception and disclosure of information
10 contained in electronic communications. *See U.S. v. Hambrick*, 55 F.Supp.2d 504, 507 (W.D. Va.
11 1999).

12
13 In relevant part, the ECPA prohibits the intentional interception of electronic communications
14 without consent. Electronic communications is defined as follows:

15 (12) "electronic communication" means any transfer of signs, signals,
16 writing, images, sounds, data, or intelligence of any nature transmitted in
17 whole or in part by a wire, radio, electromagnetic, photoelectronic or
photooptical system that affects interstate or foreign commerce...

18 18 U.S.C. § 2510.

19
20 As the House report made clear, Congress intended to give the term "electronic
21 communication" a broad definition:

22 The term "electronic communication is intended to cover a broad range
23 of communication activities.... As a rule, a communication is an
24 electronic communication if it is neither carried by sound waves nor can
25 fairly be characterized as one contained the human voice (carried in part
26 by wire). Communications consisting solely of data, for example ...
27 would be electronic communications.
28

1 H.R. Rep. No. 99-647 (1986) at 35. The ECPA also provides that “‘contents,’ when used with respect
2 to any wire, oral, or electronic communication, includes *any* information concerning the substance,
3 purport, or meaning of that communication.” 18 U.S.C. ¶ 2510(8)

4 The Plaintiffs allege that their smart phones contain a spyware device called Carrier IQ (“CIQ”).
5 This device is designed to contemporaneously intercept keystrokes and other electronic
6 communications. As noted in CIQ’s own words, this spyware device is capable of intercepting
7 electronic communications “at the point of delivery and use.” CIQ also promotes the fact that its
8 spyware device is capable of “*profiling* to an advance level with multiple levels of granularity, from the
9 entire population, to comparative groups, *down to individual users – all at the touch of a button.*”
10

11 (Emphasis added).



News Release

Carrier IQ Adds Experience Manager to Analytics Products

- Gives carriers & manufacturers real insight to customer experience -

Mountain View, CA , March 25, 2009 – Carrier IQ, the global leader in Mobile Service Intelligence solutions for wireless carriers and device vendors, today launched *IQ Insight Experience Manager* which adds to the Carrier IQ suite of analytics products and brings even greater visibility to the service experience of mobile device customers.

IQ Insight Experience Manager gives wireless carriers and mobile device manufacturers an unprecedented, objective view into what is actually happening on mobile subscribers’ devices – including quality of service, application usage and the related experience – as it occurs, at the point of delivery and use.

“A rich understanding of the overall customer experience is increasingly viewed as *the* key differentiator in the mobile market. Experience Manager gives service providers, device vendors, and application and content developers the ability to offer compelling products and services that customers truly value based on a vast amount of objective data. Experience Manager can directly contribute to enriching the overall customer experience and thus the mobile companies’ success in this extremely competitive market,” said Mark Quinlivan, CEO of Carrier IQ.

“IQ Insight Experience Manager overcomes the drawbacks of traditional techniques of user testing such as focus groups, where sample size is small and the process is slow. Experience Manager takes customer experience profiling to an advanced level with multiple levels of granularity, from the entire population, to comparative groups, down to individual users– all at the touch of a button,” he continued.

IQ Insight Experience Manager uses data directly from the mobile device to give a precise view of how the services and the applications are being used, even if the phone is not communicating with the network.

The solution can be applied by Carrier IQ’s existing customers to their own deployed base of handsets which already have the company’s core technology embedded in the device, and it can also be applied to new devices as they are introduced. In total, Carrier IQ’s core technology is already embedded on more than 35 million handsets globally.

Carrier IQ News Release dated March 25, 2009 [Exhibit 6].

There is little doubt that, as advertised by CIQ itself, this device violates the federal Wiretap Act, 18 USC §§ 2510 and 2511 which prohibits the interception, storage and use of electronic communications without plaintiff's knowledge. *See*, Complaint Count I. While there may be questions about the scope and breadth of spying using CIQ, there is no question that spyware was installed on Plaintiffs' smart phones without their knowledge and that these acts violated at least one, if not all of the federal statutes cited above.

2 PLAINTIFFS WILL SUFFER IRREPERABLE HARM IF DEFENDANT CARRIER IQ IS NOT RESTRAINED

Although the parties may disagree whether or not CIQ's conduct violates the federal Wire Tap Act, it is axiomatic that until Plaintiffs are assured that their privacy is secure, they will suffer irreparable harm. *E.g. Elrod v. Burns*, 427 U.S. 347, 373 (1976)(Court must assume irreparable harm if a constitutional right is being threatened or impaired).

The very fact that the interception of electronic communications is also a criminal statute subjecting the wrongdoer to prison and substantial fines, establishes there is a victim and a serious harm. The fact that the conduct alleged in this action, if found to be true, would subject defendants to punitive damages, establish a real and concrete harm. *See also FTC v. CyberSpySoftware, LLC*, (M.D. FL. 11/25/2008) (Case No. 08-cv-1872)(unpublished order attached as Exhibit 7).

There will be no dispute at the hearing that Carrier IQ's software is *currently* installed and *actively* running on a large potentially millions of smart phones used in the United States today. Unless CIQ is shutdown at the source, Plaintiffs must either stop using their cell phones, or live in constant fear that at any moment they will be spied on. These are not just private personal cell phones, but also the phones used in business and in government. Putting aside the emotional distress, the fact that this software greatly increases the risk of unwanted disclosure of personal, business and government information Plaintiffs may also submit evidence at the hearing that this software adversely affects the

1 integrity of the smart phone making it more vulnerable to viruses and decreases the functionality of the
 2 device in general. Unless Defendant CIQ is restrained from collecting and distributing unauthorized
 3 and private information to others (including co-defendants), plaintiffs will suffer irreparable harm.

4
 5 **3 EVEN IF THERE ARE SERIOUS QUESTIONS ON THE MERITS, THE**
BALANCE OF HARDSHIPS TIPS SHARPLY IN PLAINTIFFS' FAVOR

6 As shown in Sections 1 and 2 above, plaintiffs have established their entitlement to a
 7 preliminary injunction pursuant to Fed R.Civ. P 65 by showing the probability of success on the merits
 8 and the possibility of irreparable injury. In addition, Plaintiffs are entitled to a preliminary injunction
 9 because a balance of hardships tips sharply in their favor.
 10

11 Plaintiffs do not dispute that if CIQ has to halt intercepting Plaintiffs' electronic
 12 communications CIQ's business will be impacted.⁴ It is not Plaintiffs' intention to deprive anyone
 13 their right to engage in a legitimate business. However, no one, including defendants, has the right to
 14 violate the law. Should the court determine that Plaintiffs are substantially likely to show that
 15 Defendants' use of CIQ's software violates the law; the Court does not need to even consider the
 16 hardship, if any, to Defendants. *Frazier v. Boomsma*, 2007 WL 2808559, 19 (D.Ariz., 2007).
 17

18 **4 THE PUBLIC INTEREST FAVORS PLAINTIFFS' REQUESTED RELIEF**

19 A preliminary injunction may also be entered upon a showing that the public interest favors the
 20 requested relief. *Funds for Animals, Inc. v. Lujan*, 962 F.2d 1391 (9th Cir 1992). In this case, there can
 21 be little question that unrestricted and unauthorized spying is against the broader public interest. *See*
 22 *generally Fidelity Nat. Title Ins. Co.*, 2011 WL 5882878 (the public has an interest in being protected
 23 from fraudulent acts).
 24

25 In evaluating whether the public interest supports preliminary injunction based on a statutory
 26 violation, Courts may look to the underlying substantive policy of the governing statutes. *Amoco Prod.*

27
 28 ⁴ Importantly, if the motion is granted the impact would be borne by CIQ. It is not likely that the services
 provided to the public by the communications carriers (like AT&T or Sprint) or the cell phones manufactured by
 the manufacturing co-defendants would be effected at all.

1 *Co. v. Vill. of Gambell, Alaska*, 480 U.S. 531, 544 (1987). In this case, the statutes referenced above -
2 the Federal Wiretap Act and CFAA—serve important public interests and are based on protecting the
3 public from unscrupulous and harmful activities through electronic spying. The public’s interest is
4 evident not only by the enormous response from the media, but in particular Senator Al Franken’s letter
5 to Carrier IQ where he expresses his concern over these charges and demands prompt answers to the
6 charges of electronic spying. *See* Letter from Senator Al Franken, Exhibit 4.

7
8 If the scope of spying is as widespread as what Plaintiffs and others in the relevant industry
9 believe, the issues in this case are serious ones of personal privacy. Simply stated – Defendants cannot
10 continue to enjoy unfettered and unrestricted access to private and sensitive electronic data at the
11 expense of the consuming public.

12 The public interest strongly favors plaintiffs requested relief.

13 **CONCLUSION**

14 For all of the reasons set forth above, Plaintiffs’ Motion for Issuance of a Preliminary Injunction
15 Pursuant to Federal Rule of Civil Procedure 65 should be granted.

16
17
18 **SKIKOS, CRAWFORD, SKIKOS & JOSEPH,
LLP**

19 **Dated** : December 7, 2011

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WASHINGTON, DC 20510-6275

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KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

November 30, 2011

Mr. Larry Lenhart, President and CEO
Carrier IQ, Inc.
1200 Villa Street, Suite 200
Mountain View, CA 94041

Dear Mr. Lenhart,

I am very concerned by recent reports that your company's software—pre-installed on smartphones used by millions of Americans—is logging and may be transmitting extraordinarily sensitive information from consumers' phones, including:

- when they turn their phones on;
- when they turn their phones off;
- the phone numbers they dial;
- the contents of text messages they receive;
- the URLs of the websites they visit;
- the contents of their online search queries—even when those searches are encrypted; and
- the location of the customer using the smartphone—even when the customer has *expressly denied* permission for an app that is currently running to access his or her location.

It appears that this software runs automatically every time you turn your phone on. It also appears that an average user would have no way to know that this software is running—and that when that user finds out, he or she will have no reasonable means to remove or stop it.

These revelations are especially concerning in light of Carrier IQ's public assertions that it is "not recording keystrokes or providing tracking tools" (November 16), "[d]oes not record your keystrokes," and "[d]oes not inspect or report on the content of your communications, such as the content of emails and SMSs" (November 23).

I understand the need to provide usage and diagnostic information to carriers. I also understand that carriers can modify Carrier IQ's software. But it appears that Carrier IQ's software captures a broad swath of extremely sensitive information from users that would appear to have nothing to do with diagnostics—including who they are calling, the *contents* of the texts they are receiving, the *contents* of their searches, and the websites they visit.

These actions may violate federal privacy laws, including the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act. This is potentially a very serious matter.

I ask that you provide answers to the following questions by December 14, 2011.

- (1) Does Carrier IQ software log users' location?
- (2) What other data does Carrier IQ software log? Does it log:
 - a. The telephone numbers users dial?
 - b. The telephone numbers of individuals calling a user?
 - c. The contents of the text messages users receive?
 - d. The contents of the text messages users send?
 - e. The contents of the emails they receive?
 - f. The contents of the emails users send?
 - g. The URLs of the websites that users visit?
 - h. The contents of users' online search queries?
 - i. The names or contact information from users' address books?
 - j. Any other keystroke data?
- (3) What if any of this data is transmitted off of a users' phone? When? In what form?
- (4) Is that data transmitted to Carrier IQ? Is it transmitted to smartphone manufacturers, operating system providers, or carriers? Is it transmitted to any other third parties?
- (5) If Carrier IQ receives this data, does it subsequently share it with third parties? With whom does it share this data? What data is shared?
- (6) Will Carrier IQ allow users to stop any logging and transmission of this data?
- (7) How long does Carrier IQ store this data?
- (8) Has Carrier IQ disclosed this data to federal or state law enforcement?
- (9) How does Carrier IQ protect this data against hackers and other security threats?
- (10) Does Carrier IQ believe that its actions comply with the Electronic Communications Privacy Act, including the federal wiretap statute (18 U.S.C. § 2511 et seq.), the pen register statute (18 USC § 3121 et seq.), and the Stored Communications Act (18 U.S.C. § 2701 et seq.)?
- (11) Does Carrier IQ believe that its actions comply with the Computer Fraud and Abuse Act (18 U.S.C. § 1030)? Why?

I appreciate your prompt attention to this matter.

Sincerely,



AL FRANKEN

Chairman, Subcommittee on Privacy
Technology and the Law

D | All Things Digital.

Mobile

RIM, HTC, Google on Carrier IQ: Blame the Carriers

Published on December 1, 2011
by John Paczkowski

If Carrier IQ is running on your smartphone, it's likely not the device manufacturer that put it there.

Smartphone manufacturers are fast lining up to distance themselves from the Carrier IQ privacy debacle. Responding to reports that Carrier IQ's smartphone diagnostics software has been found on their handsets, Research In Motion and HTC issued statements today denying responsibility for it, and Google said it had no control over the matter.



FIG. 54.

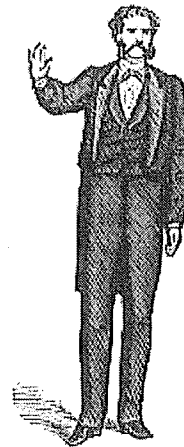


FIG. 55.

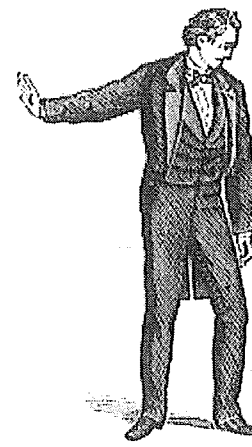


FIG. 56.

None of them admitted to installing or authorizing their carrier partners to install the software which security researchers have shown to log essentially every keystroke made on devices on which it is running.

RIM claimed to have nothing to do with Carrier IQ on its devices.

"RIM is aware of a recent claim by a security researcher that an application called 'CarrierIQ' is installed on mobile devices from multiple vendors without the knowledge or consent of the device users," the company said in a statement. "RIM does not pre-install the CarrierIQ app on BlackBerry smartphones or authorize its carrier partners to install the CarrierIQ app before sales or distribution. RIM also did not develop or commission the development of the CarrierIQ application, and has no involvement in the testing, promotion, or distribution of the app. RIM will continue to investigate reports and speculation related to CarrierIQ."

HTC went one step further, fingering the carriers outright. "Carrier IQ is required on devices by a number of U.S carriers so if consumers or media have any questions about the practices relating to, or data collected by, Carrier IQ weâ€™d advise them to contact their carrier," the company said, stressing that it is not a customer or partner of Carrier IQ. "HTC is investigating the option to allow consumers to opt-out of data collection by the Carrier IQ application," it added.

Google also disclaimed any connection, saying, "We do not have an affiliation with CarrierIQ. Android is an open source effort and we do not control how carriers or OEMs customize their devices."Â

Carrier IQ and Sprint haven't yet returned requests for comment. AT&T said simply, "In line with our privacy policy, we solely use CIQ software data to improve wireless network and service performance."

Verizon claims not to use Carrier IQ, though telecom industry sources tell me it almost certainly uses something similar to it.

Related Posts on Carrier IQ:

- Carrier IQ: How to Hack Back Your Phone
- Carrier IQ Speaks: Our Software Monitors Service Messages, Ignores Other Data
- Apple: We Stopped Supporting Carrier IQ With iOS 5
- RIM, HTC, Google on Carrier IQ: Blame the Carriers
- Carrier IQ Improves My Wireless Service by Logging My Keystrokes? Please Explain.

[Full Carrier IQ Coverage »](#)

Return to: RIM, HTC, Google on Carrier IQ: Blame the Carriers

URL: <http://allthingsd.com/20111201/rim-htc-on-carrier-iq-blame-the-carriers/>

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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **ROWENA SILVERA** and)
13 **ANDREW SANDERS,**)
14 Individually, and on Behalf of all)
15 Similarly Situated Persons,)
16 Plaintiffs,)

Civil No. 3:11-cv-5821-SI

PROPOSED ORDER

17 vs.)

18 **CARRIER IQ, INC., SAMSUNG**)
19 **ELECTRONICS AMERICA, INC.,**)
20 **HTC AMERICA INC.,**)
21 **JOHN DOE MANUFACTURERS (1-10),**)
22 Defendants.)

PROPOSED ORDER GRANTING PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION

23 AND NOW, this ____ day of December, 2011, upon consideration of the Plaintiffs' Motion for
24 Preliminary Injunction filed by Plaintiffs, and after conducting an evidentiary hearing, consideration by
25 the Court and upon concluding a Preliminary Injunction must be issued in order to avoid immediate and
26 irreparable harm to Plaintiffs and to preserve the status quo ante, and as Plaintiffs have no adequate
27 remedy at law,

1 IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction is hereby Granted
2 in its entirety;

3 IT IS HEREBY ORDERED that entry of this Preliminary Injunction is essential in order to
4 avoid immediate and irreparable harm to Plaintiffs and to preserve the status quo ante;

5 IT IS HEREBY ORDERED that:

6 Defendant Carrier IQ is hereby enjoined during the pendency of this action from collecting and
7 distributing electronic communications comprising of unauthorized and private information from
8 Plaintiffs and the Proposed Class without their consent.
9

10 IT IS HEREBY ORDERED that:

11 Defendant Carrier IQ is further enjoined from disseminating any information already collected
12 to any third parties including co-defendants.
13
14

15 BY THE COURT:
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