

Discovering Text Messaging, Social Network Postings and other Non Standard Documents



Most people don't realize it but text messages, social network postings and twitter messages all may be discoverable in a litigation. Companies have tended to ignore non-office documents but as employees increasingly use web 2.0 technologies for business as well as personal interactions, having to collect such documents as part of a discovery process is going to become more common. For example, some businesses are now using Twitter to monitor and respond to customer complaints. But a message inadvertently making claims, or providing inaccurate information, may leave companies liable.

Compounding the problem is the fact few companies have implemented internal edis-

covery processes and since much of the growth of Web 2.0 applications inside companies is unsanctioned, tracking down documents and messages becomes significantly more difficult and more expensive.

Corporate CIOs are being advised to work closely with their Corporate Legal Department to set and manage employee expectations of privacy, to maintain a regular schedule of monitoring and to keep records to show consistency. Without these, judges can argue that access to text messages and social network postings violates privacy, even if undertaken during work hours on company computers and networks.

Some companies are creat-

ing specific policies for the retention and discovery of IM and social network postings or alternatively, locking down their employees' environments so they are not usable in the work place.

Last but not least, corporate legal departments are also being advised to consider employees' personal email and IM accounts when identifying data for collection. Whatever the official policy, people are increasingly conducting business emails on personal accounts. Even politicians do it! Sarah Palin is currently being sued to reveal messages sent through her personal accounts.

Searching & Reviewing Voice Recordings & Audio Files

While handling ESI as part of the discovery process is now common place, handling of audio/digital voice files is not. However, in light of the litigations likely to arise from the current financial crisis, an ability to collect, search and review audio files and voice recordings is going to become essential.

Voice recordings are created by a number of business systems including: cell phone, company phone & voice mail systems; support call centers; online web conferences and transaction/trading information. Most voice systems store discrete files for each conversation or call. They also provide metadata such as the date and time of the recording, the employee's name, phone number used to call in, transaction ID. The file formats used are often proprietary and can vary in size de-

pending on the bits per second used to create the recording and the compression techniques used.

Once an initial collection of audio files has been made, the challenge becomes how to search and review them. There are 4 methods that can be used:

- (1) Have the reviewers listen to each recording and select ones that appear responsive or privileged
- (2) Manually transcribe each recording and then search the resulting text
- (3) Use Automated transcription systems to convert voice to text and then search the resulting text
- (4) Index the phonemes (i.e. individual speech sounds) and then search for the phonemes.

The 1st method may look the most accurate but is less accurate than might be presumed because the attention of reviewers diminishes over time. It is also the most expensive. Methods 2 and 3 are less expensive but still error prone, particularly with Method 3 as automated transcription systems often struggle with individual speech patterns and accents. Method 4 is the more promising but at present there are few software systems available that can do it.

