

E-discovery may be costly and treacherous for the unwary



**TECHNOLOGY
AND LAW**

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Electronic evolution has become a modern way of life. One needs only look to the latest phones, computers or PDAs to see this in evidence.

Technology may make life easier, but it also exposes people and businesses to increasing demands — such as electronic discovery (the process of producing documents in electronic format). Good consultants, attorneys and clients are all necessary for the proper management of e-discovery.

As we all see daily, George Orwell was right: Big Brother really is watching. As society has progressed, terms such as “E-litigation” and “E-management” have emerged to describe some of the pains that have only come to be prevalent in the past 15 years.

As is always the case with newly evolving trends, clients and attorneys need to be aware of some pitfalls of this process:

1. Nothing is sacred anymore.

Electronically storing data is convenient but not 100 percent safe. What’s to keep a disgruntled employee from exposing the company’s information? Legal tools, such as nondisclosure agreements, non-competes and confidentiality agreements are at your disposal. Forensic reconstruction

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tion is also indispensable in the case of unforeseeable circumstances.

With forensic reconstruction, there is an increase in safety from theft or deletion. Maintaining a good preservation policy within the company keeps files from being deleted too quickly.

In case a company is sued, an employee may be concerned about erasing tapes and old data. Reviewing the electronic retention policies — especially those that concern the preservation of data — can help identify any custodians and select a discovery plan.

2. The days of dumping dozens of boxes at a copy shop are gone.

One hard drive stored with data can equal hundreds of boxes of paper. It is simply no longer feasible to do last minute mass production of documents. Processing and production will take longer than expected; be prepared to identify relevant data. Factors such as volume, number of locations and custodians all determine the amount of time it will take to produce documentation.

Lastly, consider the elements of defense for your case as well as production requests. Sometimes, you can take advantage of Big Brother.

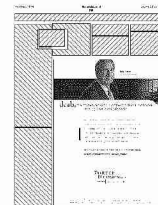
3. Employee actions have real implications in business.

In the workplace, infringement and copyright violations are common legal situations an employer may face.

Imagine an employee is redesigning the company’s website, only to realize that the pictures and music used are not original, nor did the company obtain the rights to use them. Now, there is potential that company and employee are violating the statutes of trademark law. Getting counseling on the law’s

provisions will better prepare a company in a potential case.

Businesses should be advised regarding the best way to protect their intellectual property through copyrights, patents, trade and service marks. Infringement suits are time consuming and costly, so consider mediation or arbitration instead.



If you notice your company's secrets in the hands of your competitors, beware of insider trading or the misappropriation of trade secrets. Fiduciary duties to a company, covenants not to compete and other contractual relationships can be used to prevent and/or prosecute double-agent employees.

In another scenario, a new hire seems to have the solutions that involve insider knowledge of competitors. This new hire is infringing on patents and/or copyrights, as well as breaching his covenant not to com-

pete. To resolve an issue like this, an employer will want to analyze the business relationship with competitors and investigate internal procedures.

Lastly, remember Miranda in the workplace, as everything you say and write in the workplace can, and will, be used against you in a court of law. ■

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