



The Importance of Metadata

Metadata, which is basically data about data, is emerging as a significant new source of evidence, particularly as electronic evidence becomes increasingly important to each and every litigation. Metadata can provide a wealth of information about electronically stored documents and it can be utilized by attorneys to gain additional knowledge regarding the opposing side's electronic data, can help streamline the review of documents, and can be used to gain the upper hand in a litigation.

Metadata is embedded in a document by the software program used to develop the document. Metadata describes information about a document that may not otherwise be attainable, such as who created the document, when the document was created, and how the document was created, as well as whether the document was modified or transmitted. Unlike paper documents in which all information is literally printed in black and white, electronic documents are not quite as straight forward and the metadata contained within these electronic documents can provide insight into their history.

How Metadata Can Be Used

Attorneys are beginning to both request and use metadata on a more regular basis to assist in their cases. As it becomes more common to face and/or make such requests, it is vital for attorneys to understand what metadata has to offer.

Metadata is an integral part of the document in which it is contained, and a print out of an electronic document is often not considered by the courts to be full disclosure of the document in question. Technology is making it easier to preserve and review metadata, which is vital as changes are being made to case law and more courts are requiring metadata to be turned over in electronic discovery requests.

Types of Metadata

Metadata comes in many forms, but as it relates to electronic discovery, it is often the type of metadata that is often the most useful is that which is embedded in email. The metadata embedded in email contains information about the sender, recipient(s), creation date, and attachments, and as emails are sent back and forth between a string of users, all of the relevant information is stored within the email's metadata. As it is possible for such information to be altered on the email itself, metadata can be extremely useful when attempting to trace or reconstruct an email conversation. Metadata can also be used to determine the actual recipient of an email message, rather than simply the name that was in the address field, as many users may have multiple display names or email addresses that may be unknown by the attorney.

In addition, metadata can be used to connect an attachment with a particular email message, and preserving the metadata can result in the ability to identify the specifics of a document that has been attached and sent via email. Metadata as it relates to email attachments can be particularly

useful in the event that a dispute arises regarding how various recipients changed a document, as it reveals the recipients of the email and attachment, which is often required when dealing with a case that involves intellectual property theft, fraud, or negligent misrepresentation.

Although email and its metadata often make up the largest part of electronic evidence, metadata also exists in other files, such as Microsoft Word documents or Excel spreadsheets. The type of metadata contained within such documents include the document's name, where it has been saved, the author of the document, and whether anybody has modified the document. By obtaining the metadata, it may be possible to find alternate drafts of a specific document. Metadata can be used to settle factual disputes about the history of a document.

An example in which metadata was used to change the outcome of a case is one in which a plaintiff claimed that she was fired as retaliation for the sexual harassment claim she made. The defendant was able to refute the allegation of retaliation by producing a memo, with its metadata, that possessed a list of employees to be laid off, and the date of the memo was prior to the plaintiff's sexual harassment claim. The memo's metadata was used to confirm the date the memo was created.

Ease the Process of Reviewing Documents

Metadata can also be extremely helpful for attorneys when reviewing documents, as it allows for the documents to be searched electronically based on various keywords, such as the name, creation date, subject, or author's name of the document. This process can allow an attorney to quickly review millions of pages and eliminate irrelevant documents in a quicker and more efficient manner. Even when an attorney is reviewing electronic information to determine attorney-client privilege, metadata can be used to quickly locate the authors and recipients of the documents

Conclusion

Metadata can be used in a variety of ways, most importantly to build a client's own electronic evidence against the opposing party, but also to simplify the document review process. Its importance is increasing as electronic evidence is being used more frequently to win cases.