

The logo for the Legal Research Center Zone is set against a dark, starry space background. The text "LEGAL RESEARCH CENTER ZONE" is written in a white, stylized, slightly slanted font.

LEGAL
RESEARCH CENTER
ZONE



Legal Tech Talk Series

Episode 5: Metadata

Time: Thursday, October 30
12-12:50pm

Place: WH 2A

Featuring: What you don't know about metadata can hurt you! Learn about professional ethics around metadata and how to strip privileged metadata from documents.

Food Included!

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Dangers of metadata for the uninitiated attorney



Opposing Counsel



Professional responsibilities implicated



- Duty of confidentiality
- Duty of competence
- Duty as officer of the court

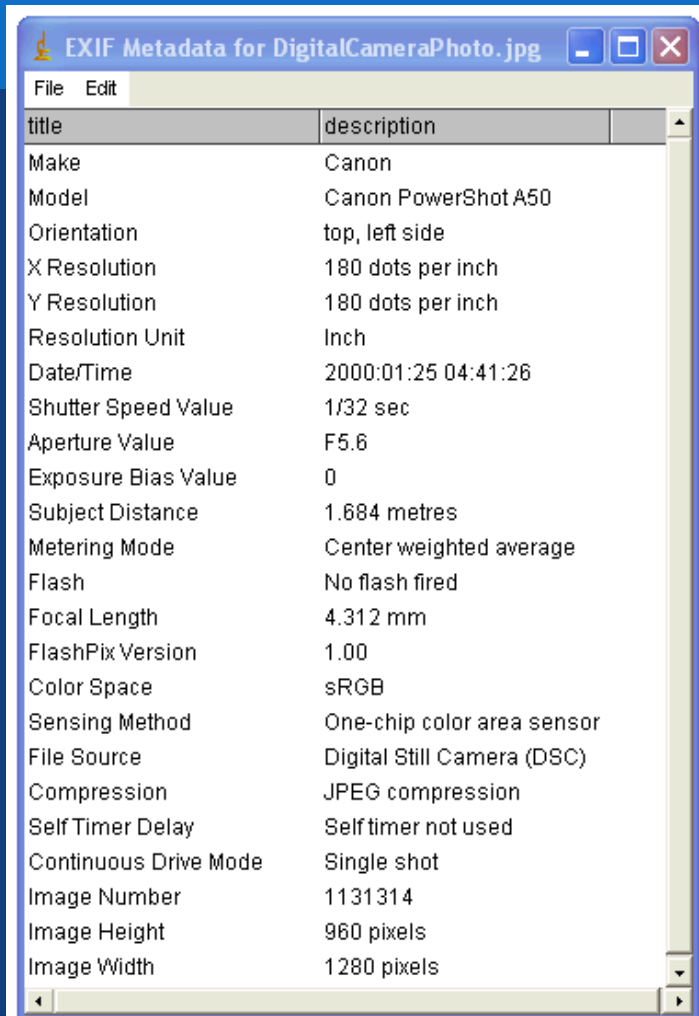
What is metadata?



- Data about data
- Information about a document aside from its actual content
- “**Information** describing the history, tracking or **management of an electronic document.**”
- 2 categories of metadata
 - Structural metadata—“**data** about the containers of **data**”
 - Descriptive metadata—“**data** about data **content**”

Examples of metadata

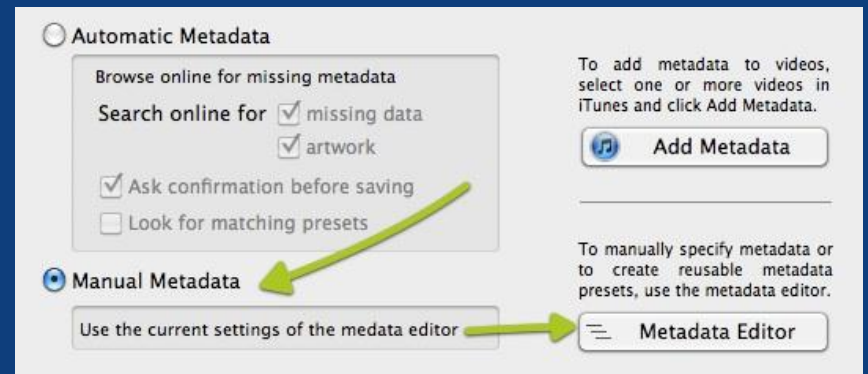
Photo



EXIF Metadata for DigitalCameraPhoto.jpg

title	description
Make	Canon
Model	Canon PowerShot A50
Orientation	top, left side
X Resolution	180 dots per inch
Y Resolution	180 dots per inch
Resolution Unit	Inch
Date/Time	2000:01:25 04:41:26
Shutter Speed Value	1/32 sec
Aperture Value	F5.6
Exposure Bias Value	0
Subject Distance	1.684 metres
Metering Mode	Center weighted average
Flash	No flash fired
Focal Length	4.312 mm
FlashPix Version	1.00
Color Space	sRGB
Sensing Method	One-chip color area sensor
File Source	Digital Still Camera (DSC)
Compression	JPEG compression
Self Timer Delay	Self timer not used
Continuous Drive Mode	Single shot
Image Number	1131314
Image Height	960 pixels
Image Width	1280 pixels

Music



Automatic Metadata

Browse online for missing metadata

Search online for missing data
 artwork

Ask confirmation before saving
 Look for matching presets

Manual Metadata

Use the current settings of the metadata editor

To add metadata to videos, select one or more videos in iTunes and click Add Metadata.

To manually specify metadata or to create reusable metadata presets, use the metadata editor.

Annotations: A green arrow points from the 'Look for matching presets' checkbox to the 'Manual Metadata' radio button. Another green arrow points from the 'Use the current settings of the metadata editor' button to the 'Metadata Editor' button.

Examples of metadata

Episode5-Metadata-2014.pptx - PowerPoint

Jane Larrington



Info

New

Open

Save

Save As

Print

Share

Export

Close

Account

Options

Info

Episode5-Metadata-2014

C: » Users » jlarrington » AppData » Local » Temp » LCFEM » {71CF176E-4EC5-4B7F-B171-C8B6E5E42512}

Episode5-Metadata-2014.pptx Properties

General Summary **Statistics** Contents Custom

Created: Saturday, September 28, 2013 12:55:49 PM
Modified: Wednesday, October 29, 2014 12:04:25 PM
Accessed: Wednesday, October 29, 2014 12:04:25 PM
Printed: Monday, October 27, 2014 2:14:05 PM

Last saved by: Jane Larrington
Revision number: 135
Total editing time: 926 Minutes

Statistics:

Statistic name	Value
Slides:	41
Paragraphs:	167
Words:	1483
Notes:	0
Hidden slides:	0
Multimedia clips:	0
Presentation format:	On-screen Show (4:3)

OK Cancel

Properties



Show Document Panel

Edit properties in the Document Panel above the presentation.



Advanced Properties

See more document properties

Tags	Add a tag
Comments	Add comments
Multimedia clips	0
Presentation format	On-screen Show (4:3)
Template	Civic
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Specify the company

Related Dates

Last Modified	10/27/2014 2:23 PM
Created	9/28/2013 12:55 PM
Last Printed	10/27/2014 2:14 PM

Related People

Manager Specify the manager

Author



Jane Larrington

Add an author

Metadata for text documents



- **author's** name or initials
- company or organization name
- names of other authors
- information about revisions, including other versions
- hidden text or cells
- comments
- time spent editing the document
- name of your computer, network server or hard disk where you saved the document
- non-visible portions of embedded objects
- template information
- headers, footers, and watermarks
- personalized views

Track changes

Guidelines - Redlined Version - 10 2 14.docx [Read-Only] [Compatibility Mode] - Word

PAGE LAYOUT REFERENCES MAILINGS REVIEW VIEW

A A Aa A AaBbCcDc AaBbCcDc AaBbCc AaBbCc AaB Title Subtitle Subtle Em... Emphasis Intense E... Strong Q

Paragraph Styles

1 2 3 4 5 6 7

Information, including issues related to the trustworthiness of the information as it moves from the content originator to the end user. In states publishing primary legal material online, it is critically important that state officials take steps to ensure that the electronic legal information they publish is unaltered and can be verified as authentic. AALL recommends that states select and implement a digital authentication solution that ensures the user that the material is trustworthy and has not been altered. **Catherine Dunn, 10/2/2014 1:16:00 PM inserted: guidelines** trusted source.

These **best practices guidelines**, which stem from analyses of other studies and discussions with experts in the field,¹ are designed to help cut through the confusion related to the selection, implementation, and maintenance of a digital authentication solution for the electronic publication of official legal materials. AALL created them primarily for use by those charged with implementing and investigating digital authentication solutions, but they may also be of interest to anyone interested in digital authentication.

¹ Some of these studies can be found at <http://www.aallnet.org/Documents/Government-Relations/UELMA>.

1

Note, finally, that the primary focus of these **best practices guidelines** is digital authentication. Issues such as preservation and providing for permanent public access to such materials are of critical importance in ensuring continuous access to trustworthy legal material, but they are not addressed at length as part of these **best practices guidelines**.

Document Properties

Description Security Fonts Custom Advanced

Description

File: Authentication-Guidelines-FINAL-10.7.14.pdf

Title:

Author: Sarah Gotschall

Subject:

Keywords:

Created: 10/7/2014 12:03:23 PM

Modified: 10/28/2014 1:04:42 PM

Application: Microsoft® Word 2010

Advanced

PDF Producer: Microsoft® Word 2010

PDF Version: 1.5 (Acrobat 6.x)

Location: F:\LRC\LRC PUBLIC SERVICES\Jane L\

File Size: 941.86 KB (964,463 Bytes)

Page Size: 8.50 x 11.00 in

Number of Pages: 20

Tagged PDF: Yes

Fast Web View: Yes

OK

Cancel

4 contexts in which metadata issues arise



1. Documents you create and send
2. Documents your client creates, which may be subject to discovery
3. Documents sent to you by opposing counsel
4. Documents you receive during discovery (created by opposing party or 3rd party)

Documents You Create & Send



1. Avoid inadvertent or inappropriate disclosure



ABA model rules

- Model Rule 1.6(c): “**A** lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”
 - [Cmt. 18] ... Factors ... **include**, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost [and] difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the **lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)**. ...
 - [Cmt. 19] ... **This** duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. ...

More from the ABA



- Model Rule 1.1: **“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”**
 - [Cmt. 8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
- A 2006 ethics opinion specifically recommends "scrubbing," negotiating a confidentiality agreement, or sending the file in a different format

1. Avoid inadvertent or inappropriate **disclosure**, cont'd



- California
 - not explicitly mentioned in rules or commentary; no case law yet
- Colorado
 - “**Sending** Lawyer may not limit the duty to exercise reasonable care in preventing the transmission of metadata that contain Confidential Information by remaining ignorant of technology relating to metadata or failing to obtain competent computer support.”
- New York
 - “[I]awyers have a duty under DR 4-101 to use reasonable care when transmitting documents by e-mail to prevent the disclosure of metadata containing client confidences or secrets.”
- **Many other states have similar “reasonable care” rulings**

Best practices



- **Buy an “e-scrubber”** program
- Remove the metadata manually
- These options remove some but not all metadata:
 - Print to PDF or create an image of your document (.jpg, .tif, .png)
 - Copy & paste your content into a fresh document before sending

E-scrubber or metadata removal software



- Depending on where you work and the types of documents you deal with, you may consider:
 - Batch metadata removal tools, which can process multiple files.
 - E-mail client add-ins, which are designed to remove metadata from e-mail attachments just before they are sent.
 - Server based systems, which are designed to automatically remove metadata at the network gateway.
- A few examples:
 - [Microsystem 3BClean](#)
 - [Techlawyergy Metadata Assistant](#)
 - [Workshare](#)
 - [**Litera's** Metadact-e](#)
 - [Brightfort Doc Scrubber](#)
 - [Pointstone Document Metadata Cleaner](#)
 - [BEC MetaReveal](#)
 - [Esquire Innovations iScrub 7 EP1](#)

Removing metadata from Word documents



- **“Document Inspector”** – MS Word 2010 & 2013
 - **Important:** It is a good idea to use the Document Inspector on a copy of your original document, because it is not always possible to restore the data that the Document Inspector removes.
 - In the copy of your original document, click the **File** tab, and then click **Info**.
 - Under **Prepare for Sharing**, click **Check for Issues**, and then click **Inspect Document**.
 - In the **Document Inspector** dialog box, select the check boxes to choose the types of hidden content that you want to be inspected. Review the results of the inspection in the **Document Inspector** dialog box.
 - Click **Remove All** next to the inspection results for the types of hidden content that you want to remove from your document.

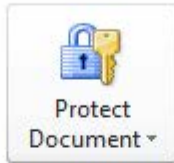
- Save
- Save As
- Open
- Close

Info

- Recent
- New
- Print
- Save & Send
- Help
- Options
- Exit

Information about Metadata-Example

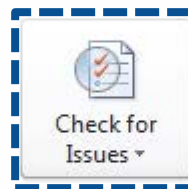
F:\LRC\LRC PUBLIC SERVICES\Jane L\Metadata-Example.docx



Protect Document ▾

Permissions

Anyone can open, copy, and change any part of this document.

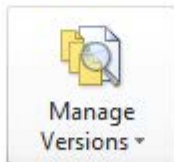


Check for Issues ▾

Prepare for Sharing

Before sharing this file, be aware that it contains:

- Comments and revisions
- Document properties, author's name and related dates
- Footers
- Characters formatted as hidden text
- Custom XML data
- Content that people with disabilities are unable to read



Manage Versions ▾

Versions

There are no previous versions of this file.



Properties ▾

Size	699KB
Pages	100
Words	19321
Total Editing Time	63 Minutes
Title	Add a title
Tags	Add a tag
Comments	Add comments

Related Dates

Last Modified	Today, 4:51 PM
Created	Today, 4:51 PM
Last Printed	4/8/2013 4:31 PM

Related People

Author	Kathy Carlson Add an author
Last Modified By	Jane Larrington

Related Documents

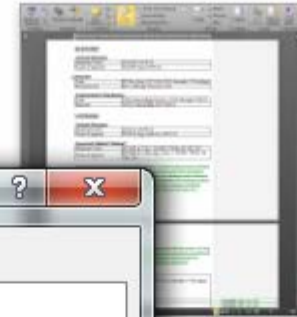
Open File Location

[Show All Properties](#)

- Save
- Save As
- Open
- Close
- Info**
- Recent
- New
- Print
- Save & Send
- Help
- Options
- Exit

Information about Metadata-Example

F:\LRC\LRC PUBLIC SERVICES\Jane L\Metadata-Example.docx



Document Inspector

To check the document for the selected content, click Inspect.

- Comments, Revisions, Versions, and Annotations**
Inspects the document for comments, versions, revision marks, and ink annotations.
- Document Properties and Personal Information**
Inspects for hidden metadata or personal information saved with the document.
- Custom XML Data**
Inspects for custom XML data stored with this document.
- Headers, Footers, and Watermarks**
Inspects the document for information in headers, footers, and watermarks.
- Invisible Content**
Inspects the document for objects that are not visible because they have been formatted as invisible. This does not include objects that are covered by other objects.
- Hidden Text**
Inspects the document for text that has been formatted as hidden.

Inspect Close

699KB
100
19321
Time 63 Minutes
Add a title
Add a tag
Add comments

Today, 4:51 PM
Today, 4:51 PM
4/8/2013 4:31 PM

Kathy Carlson
Add an author
By Jane Larrington
ments
Location
[Show All Properties](#)

Information about Metadata-Example

F:\LRC\LRC PUBLIC SERVICES\Jane L\Metadata-Example.docx

- Save
- Save As
- Open
- Close
- Info**
- Recent
- New
- Print
- Save & Send
- Help
- Options
- Exit

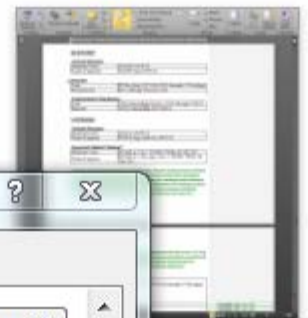
Document Inspector

Review the inspection results.

- Comments, Revisions, Versions, and Annotations** Remove All
 The following items were found:
 - * Revision marks
 - * Comments
- Document Properties and Personal Information** Remove All
 The following document information was found:
 - * Document properties
 - * Author
 - * Related dates
- Custom XML Data** Remove All
 Custom XML data was found.
- Headers, Footers, and Watermarks** Remove All
 The following items were found:
 - * Footers
 Headers and footers may include shapes such as watermarks.
- Invisible Content**
 No invisible objects found.
- Hidden Text**
 No hidden text was found.

Note: Some changes cannot be undone.

Reinspect Close

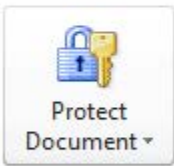


699KB
100
19321
Time 63 Minutes
Add a title
Add a tag
Add comments
Today, 4:51 PM
Today, 4:51 PM
4/8/2013 4:31 PM
Kathy Carlson
Add an author
By Jane Larrington
ments
Location
Show All Properties

- Save
- Save As
- Open
- Close
- Info**
- Recent
- New
- Print
- Save & Send
- Help
- Options
- Exit

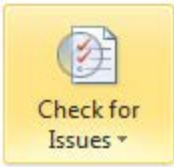
Information about Metadata-Example

F:\LRC\LRC PUBLIC SERVICES\Jane L\Metadata-Example.docx



Permissions

Anyone can open, copy, and change any part of this document.



Prepare for Sharing

Before sharing this file, be aware that it contains:

- Characters formatted as hidden text
- Content that people with disabilities are unable to read
- A setting that automatically removes properties and personal information when the file is saved

[Allow this information to be saved in your file](#)



Versions

There are no previous versions of this file.



Properties

Size	699KB
Pages	100
Words	19321
Total Editing Time	63 Minutes
Title	Add a title
Tags	Add a tag
Comments	Add comments

Related Dates

Last Modified	Today, 4:51 PM
Created	Today, 7:28 PM
Last Printed	Never

Related People

Author	Add an author
Last Modified By	Not saved yet

Related Documents

Open File Location

[Show All Properties](#)

Removing data from PDFs



- **Can't do it with the free Adobe Reader**
- Use Adobe Acrobat (Standard or Pro) or another commercial product (e.g., [FileManagerSoft](#))



Document Properties

Description Security Fonts Initial View Custom Advanced

Description

File: A9R91A8.tmp

Title:

Author: Kathy Carlson

Subject:

Keywords:

Created: 10/23/2013 9:16:46 AM

Modified: 10/23/2013 9:16:46 AM

Application: Adobe Acrobat Pro 11.0.4

Additional Metadata...

Advanced

PDF Producer: Adobe Acrobat Pro 11.0.4

PDF Version: 1.6 (Acrobat 7.x)

Location: C:\Users\LABUSE~1\AppData\Local\Temp\

File Size: 3.45 KB (3,530 Bytes)

Page Size: 8.50 x 11.00 in

Number of Pages: 126

Tagged PDF: Yes

Fast Web View: No

Help

OK

Cancel

Click on Tools, Sign, and Comment to access additional features.

Document Properties

Description Security A9R91A8.tmp

Description

File: A
Title:
Author: K
Subject:
Keywords:

Created: 10
Modified: 10
Application: A

Advanced

PDF Producer
PDF Version
Location
File Size
Page Size
Tagged PDF

Click on Tools, Sign, and Comment to access

Description

Document Title: [Dropdown]
Author: Kathy Carlson [Dropdown]
Author Title: [Dropdown]
Description: [Text Area]
Description Writer: [Dropdown]
Keywords: [Text Area]

Commas can be used to separate keywords

Copyright Status: Unknown [Dropdown]
Copyright Notice: [Text Area]
Copyright Info URL: [Text Area]

Go To URL...

Created: 10/23/2013 9:16:46 AM
Modified: 10/23/2013 9:16:46 AM
Application: Adobe Acrobat Pro 11.0.4
Format: application/pdf

Help OK Cancel

Powered By xmp™

Print to PDF or image your document



- Install a free PDF printer utility (e.g., [CutePDF](#))
- Just keep in mind, your file may retain info about creator, date, and original file format

- Install a free text to image conversion utility
- **If it's a 1-page document**, you could also:
 - take a screenshot
 - copy to Paint and save as picture file

Documents your client creates,
subject to discovery



**PRESERVING EVIDENCE AND
DISCOVERY PRODUCTION**

2. Documents your client creates, subject to discovery



- **What's at stake:**
 - Duty to client
 - Duty as officer of the court
- Responsibility to preserve electronically stored information (ESI) – **prevent “spoliation” (wrongful destruction of evidence)**
 - Sanctions for spoliation can be severe, including case dismissal, default judgment, contempt of court
 - Some jurisdictions impose sanctions even for negligent spoliation
 - **It's really easy to inadvertently spoil metadata**—sometimes simply opening a document can alter the metadata
- **E-discovery in native file format vs. “flattened” format like an image**
- Software available to prevent spoliation (forensic disc imaging)

Documents sent to you by opposing counsel



3. Documents sent to you by opposing counsel



- **What's at stake:**
 - Duty as an officer of the court
 - Your professional reputation & working relationship with other legal professionals
- Jurisdictions differ
 - **Some say it's fair game** – ok to datamine
 - Some say you must notify sender and destroy or refrain from examining
 - Some say you need only notify sender
 - **Some say it's a case-by-case** determination

All's fair in negotiation & litigation



- **Colorado:** "a Receiving Lawyer generally may ethically search for and review metadata embedded in an electronic document that the Receiving Lawyer receives from opposing counsel or other third party."
- **Maryland:** "Subject to any legal standards or requirements (case law, statutes, rules of procedure, administrative rules, etc.), ... **there** is no ethical violation if the recipient attorney ... **reviews** or makes use of the metadata without first ascertaining whether the sender intended to include such metadata."

Arizona



- Lawyers "should refrain from conduct that amounts to an unjustified intrusion into the client-lawyer relationship that exists between the opposing party and his or her counsel"
- "A lawyer who receives an electronic communication may not examine it for the purpose of discovering the metadata embedded in it."
- Metadata "may be discovered by the recipient through inadvertent or relatively innocent means" and they "do not mean to imply that all such activity necessarily rises to the level of ethical concern." Nonetheless, if a recipient "discovers metadata by any means, and knows or reasonably should know that the sender did not intend to transmit the information, the recipient has a duty to follow the procedures set forth in [Ethical Rule] 4.4(b)."
- Ethical Rule 4.4(b) requires that the recipient in such a situation "promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures."

New York



- "in light of the strong public policy in favor of preserving confidentiality as the foundation of the lawyer-client relationship, use of technology to surreptitiously obtain information that may be protected by the attorney-client privilege, the work product doctrine or that may otherwise constitute a "secret" of another lawyer's client would violate the letter and spirit of these Disciplinary Rules."
- an attorney who receives a communication and is exposed to its contents "prior to knowing or having reason to know that the communication was misdirected ... is not barred, at least as an ethical matter, from using the information"
- but "it is essential as an ethical matter that a receiving attorney promptly notify the sending attorney of an inadvertent disclosure in order to give the sending attorney a reasonable opportunity to promptly take whatever steps he or she feels are necessary to prevent any further disclosure."

ABA Rules



- ABA Formal Opinion 05-437
- Rule 4.4(b): “**lawyer** who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.”
- **Opinion: Rule 4.4(b)** “**obligates** the receiving lawyer to notify the sender of the inadvertent transmission promptly” but “does not require the receiving lawyer either to refrain from examining the materials or to abide by the instructions of the sending lawyer.”

Pennsylvania



- Attorneys must determine whether to use metadata on a case-by-case basis, factoring in their duties to the client under Rules 1.1, 1.2, and 1.4 in light of relevant substantive and procedural law."
- The Committee concludes that a receiving lawyer:
- "(a) must then determine whether he or she may use the data received as a matter of substantive law;
- (b) must consider the potential effect on the client's matter should the lawyer do so; and,
- (c) should advise and consult with the client about the appropriate course of action under the circumstances."

California



- Not explicitly mentioned in Rules, no case law yet
- In **California**, the “**State Fund**” rule may apply to metadata:
 - **upon receiving documents or materials the “obviously appear”** to be confidential or privileged (or attorney work product) and to have been provided inadvertently or by mistake, a lawyer must:
 - Refrain from examining the materials anymore than essential to ascertain if the materials are privileged
 - Immediately notify the sender
 - Resolve the situation by agreement with sender or by enlisting the help of the court

Documents you receive during discovery



**DOCUMENTS CREATED BY OPPOSING PARTY
OR 3RD PARTY**

4. Documents you receive during discovery (created by opposing party or 3rd party)



- Generally, the metadata in these documents are appropriate to review—may even provide key evidence
- Using the metadata can make document review more efficient

More resources



- [Metadata Ethics Opinions](#)
- http://apps.calbar.ca.gov/mcleselfstudy/mcle_home.aspx?testID=27
- http://www.cobar.org/repository/Inside_Bar/Communications/07Nov_TechLawPrac.pdf
- http://www.abajournal.com/magazine/article/metadata_minifield/
- <http://www.llrx.com/node/2130/print>
- <http://mattersofpractice.com/blog/hide-and-seek-metadata-mining-and-scrubbing/>
- <http://mattersofpractice.com/blog/metadata-what-it-reveals-could-cost-you/>
- <http://mattersofpractice.com/blog/metadata-and-discovery-5-best-practice-tips/>

Next up in our Legal Tech series



- **Episode 6: Link rot & preserving web content**

Thurs., November 11th, 2014

WH 2B

12:00pm–12:50pm

Questions?



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- **LRC Reference Desk**

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619.260.4612

Chat: <http://www.sandiego.edu/law/library/>