

Metadata

- What is it?
- What are the risks?
- What can you do about it?

KTC Examples

- A client has used the File, Send To feature and received an Subject line with a different client's name revealed.
- Track changes – even if you follow all procedures correctly it will sometimes still reveal changes you didn't want. We have seen documents come in with inadvertent disclosure of track changes.

Horror / Humorous Stories

- Hidden text shows SCO prepped lawsuit against Bank of America <http://snipurl.com/kc7p>
- Readers 'declassify' US Pentagon document <http://snipurl.com/kc7p>
- Microsoft's Annual Report – Made on Macintosh <http://snipurl.com/kc8c>
- Spidering Microsoft Word files for embarrassing metadata <http://lcamtuf.coredump.cx/strikeout/>

What is Metadata?

- Data about data
- Webster's Collegiate Dictionary:
 - "Metadata (noun): data that provides information about other data"
- Good and bad

File System Metadata in Office Documents

- File Name
- Directory (file location)
- Title
- Created Date and Time
- Last Saved Date and Time
- Last Saved By
- File Size
- Revision Number
- Total Editing Time
- Last Printed Date and Time
- Statistics

Other Types of Metadata

- Bookmarks
- Built-in Properties
- Comments
- Custom Properties
- Field Codes
- Hidden Text
- Linked Objects
- Formulas
- Range Names
- Server Information
- Tracked Changes
- Multiple Drafts including deleted info (Fast Saves)

The Dangers of Fast Save

- Fast Save allows Word to keep every version of your document all saved in one file
- Keep Fast Save Turned Off!

Email Metadata

- Often not even viewable in application used to create email
- Variable – depends on the email system
 - Amount of metadata tracked
 - How and where metadata is exposed
- The Basics
 - To, From, CC, BCC, Date Sent, Date Received

Email Metadata, cont'd

- Lots of additional metadata displayed only by digging deeply into Outlook messages
- Can provide additional info re:
 - Route message traveled over Internet
 - Sender's domain
 - Where delays may have occurred between sending and receipt

Metadata in Other Types of Files

- File System metadata is in all files
- PDF's / E-Filing
- PowerPoint and Excel
- eCopy blackout / whiteout marks

Why Do We Care?

- Sharing your document electronically means sharing your metadata too
- Once you send a document it is out of your control. You may trust your intended recipient but do you trust where it might go from there?
- You could give your client more information than intended on how his or her document was created
- You could give the opponent your case strategy or inadvertently disclose confidential information

Metadata ignorance = risk

- Inadvertent disclosure
- Waiver of privilege
- Malpractice
- Expense

Ethical considerations:

- Washington RPC, 1.6
- ABA model rules, 1.6
- A lawyer shall not reveal confidences or secrets relating to representation of a client...

Evolving ethical standards

- New York 749 (2001)
Prohibits using software to surreptitiously “get behind” visible documents
- New York 782 (2004)
Imposes duty on lawyers to monitor against improper disclosure of metadata

Metadata and discovery: rules are a work in progress

- Sedona Conference
- ABA Civil Discovery Standards
- Proposed Federal Rules Amendments
- Case Law

Williams v. Sprint

Williams v. Sprint/United Mgmt. Co., 2005 U.S. Dist. LEXIS 21966 (D. Kan. 2005)

- Cites to Sedona Principle 12 and to proposed federal rules
- General presumption against the production of metadata
- Clear caveat when producing party is aware or should be aware that metadata is relevant

What Your IS Team Does

- Set Office installations to no Fast Saves
- Provide education for users
- Provide non-Adobe PDF converter
- Provide Metadata Removal Tool for Word

What Can You Do About It?

Word -

- Use PDF Format
- Send a fax
- Send paper documents
- Copy & Paste
- Manual Removal
- New class of software
 - Metadata Removal Tools (also called Metadata Strippers; Metadata Scrubbers)

eCopy -

- make blacked out/whiteout marks permanent

Demo

Payne Metadata Assistant

KTC Best Practices

- Keep it clean – remove metadata each time you save
- ALWAYS strip metadata before emailing, saving to floppy; burning a CD
- Don't alter the settings to allow Fast Save
- At Home – see Training Corner for more info

What to Do at Home

- Check Your Office Settings
 - Remove Ability to Do Fast Saves
 - In newer versions look for Tools, Options, Security, Privacy Settings
 - Remove personal information from this file on save
 - Warn before printing, sending or...
- Convert to PDF if possible (PDF Factory)
- Send a Fax
- RTF Format
- Copy and Paste

See Training Corner for More Information

<http://training.karrtuttle.com>

click on *Special Topics*

- ALAS info from loss prevention manual
- KTC Best Practices
- Instructions for Using Metadata Assistant
- What formats are safer than Word
- What to do at home including settings
- PowerPoint Slides
- Horror stories
- Other Resources
 - Sedona Conference
 - Ethics sites
 - Case Law
 - Discovery Standards and Federal Rules

Questions?