



702 Technology/Knowledge Management Solutions for the Small Law Department Practitioner

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Faculty Biographies

Paula K. Goldman

Paula K. Goldman is vice president and general counsel for Gelco Information Network, Inc., located in Reston, Virginia, a company providing outsourced expense management and reimbursement services.

Prior to joining Gelco, Ms. Goldman served as senior counsel for PeopleSoft's education and government division, as general counsel for Digicon Corporation, and as an associate at Schnader, Harrison, Segal & Lewis.

Ms. Goldman received an A.B. from Cornell University, a M.S. from the University of Wisconsin-Madison, and her J.D. from George Washington University.

Jason P. Hood

Jason P. Hood is vice president, general counsel, and secretary for Wright Medical Group, Inc. and its principal operating subsidiary Wright Medical Technology, Inc., a global orthopedic medical device company specializing in the design, manufacture, and marketing of reconstructive joint devices and biologics located in Arlington, Tennessee. He serves as the chief legal officer of the company. Mr. Hood was involved with the company's recapitalization and its initial public offering.

Prior to joining Wright, Mr. Hood was an attorney with Sedgwick Noble Lowndes, a division of Sedgwick, Inc. which is now part of Marsh, Inc. Prior to becoming an in-house counsel, he was in private practice with Glankler Brown, PLLC in Memphis, where he concentrated his practice in civil litigation and labor and employment law and served on the firm's technology and hiring committees. Before he became a lawyer, Mr. Hood was an executive with an international, specialty chemical manufacturer where he held positions in strategic planning and human resources development.

He serves as the program co-chair for ACC's Small Law Department Committee and is a member of the executive committee of the Tennessee Bar Association's corporate counsel section. Mr. Hood previously served as president of the Memphis/Mid-South chapter of the Federal Bar Association. He serves as a volunteer on a local and national basis with the Boy Scouts of America.

Mr. Hood received a B.A. from Rhodes College and a J.D. from the University of Tennessee College of Law.

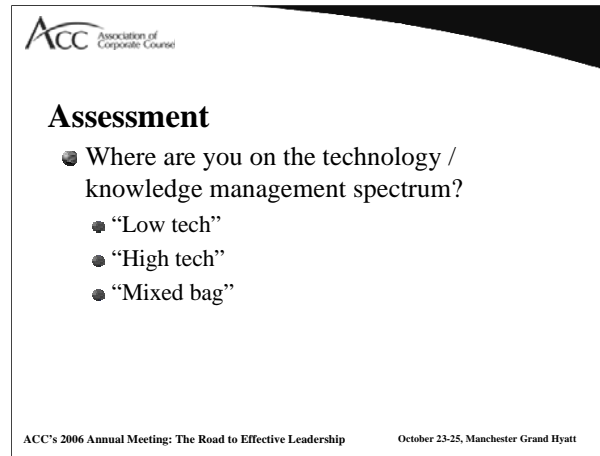
Magali Sosa-Tirado

Magali Sosa-Tirado is the general counsel for Pamplin Communications Corporation, its subsidiaries, and affiliates in Portland, Oregon. Her responsibilities include providing legal counsel to these organizations in the areas of employment law, corporate compliance, intellectual property, broadcasting, hospitality, media, retail, mergers and acquisitions, contracts, and managing outside counsel.

Prior to joining Pamplin Communications, Ms. Sosa-Tirado worked with an immigration law firm in Salem, Oregon. She began her legal career in San Juan, Puerto Rico where she worked with a construction law firm and with the Department of Justice.

She is a fellow of the 2006 Oregon State Bar Leadership College, a member of the MACG people of color caucus, serves on her parish's pastoral council, and is a children's catechist.

Ms. Sosa-Tirado received her B.A. from the University of Puerto Rico, her J.D. from the Interamerican University of Puerto Rico School of Law, and her LLM from Georgetown University Law Center.



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Assessment

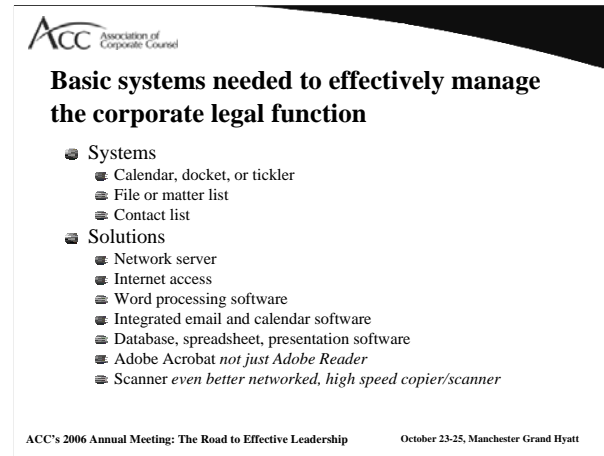
- Where are you on the technology / knowledge management spectrum?
 - “Low tech”
 - “High tech”
 - “Mixed bag”

Where are you on the technology-knowledge spectrum?

“Low tech” suggests you have basic, manual systems such as a filing system, calendar, tickler method, rolodex, and matter listing.

“High tech” suggests you have a matter management system, document assembly software, intranet, extranet, electronic billing, and other virtual systems.

“Mixed bag” means you have some manual and some technological solutions applied to managing your legal function.



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Basic systems needed to effectively manage the corporate legal function

- Systems
 - Calendar, docket, or tickler
 - File or matter list
 - Contact list
- Solutions
 - Network server
 - Internet access
 - Word processing software
 - Integrated email and calendar software
 - Database, spreadsheet, presentation software
 - Adobe Acrobat *not just Adobe Reader*
 - Scanner *even better networked, high speed copier/scanner*

Pamplin’s legal department provides services to several entities and each of these entities is involved in a different area of law .

To track down pending matters and administer contracts, we still use a manual calendar to follow-up deadlines. The calendar is reviewed at least once every week and a list of pending matters is sent via email to the specific business unit for action.

We use basic technology tools like telephones, fax, personal computers, printers, a central network server, scanners, internet connection, word processing, electronic mail, spreadsheet, presentation, adobe, and a small intranet.

The software we use includes Microsoft Office Word, Microsoft Office Outlook, Microsoft Office Excel, Microsoft Office Document Scanning, Microsoft Internet Explorer, Microsoft Power Point, Adobe Acrobat, Adobe Reader, Adobe Designer, and Windows Media Player.

Communications between the legal department and management is conducted mostly via telephone and email. The intranet is used to provide general information to employees. The only legal document posted in the intranet is the confidentiality agreement, that must be signed by employees with access to sensitive information. In case there is a need to grant access to other legal documents, we place the specific document in a designated drive that can be shared with that particular employee.

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Strategies for implementing technology solutions

- ☛ Assess and prioritize your needs (*plan for the future*)
- ☛ Consider your resources *and maximize them*
- ☛ Establish effective manual systems before you automate or digitize a flawed system
- ☛ Use corporate standard software if possible
- ☛ Keep informed of evolving solutions
- ☛ Use advanced features of off the shelf software
- ☛ User your file system to manage knowledge not just for (lost) archives
- ☛ Involve your frontline in creating solutions
- ☛ Be a part of the IT/office equipment specifications team

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Off the shelf solutions

- ☛ Use your network drive(s)
 - ☛ Establish a secure "Legal" subdirectory
 - ☛ Alternatively use stand-alone drives
- ☛ Effectively use office equipment
 - ☛ High-speed, networked copier, scanner, printer
 - ☛ Multi-function fax, scanner, printer, copier
- ☛ Use standard, integrated office suite applications
- ☛ Use databases like Microsoft Access or FileMaker Pro
- ☛ Scan documents in a useable format such as Adobe's portable document format (PDF) *and attach to database*
- ☛ Consider using free internet services that offer group calendaring

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Going “High Tech”

- Software specifically designed for legal applications
 - Matter/case management software
 - Document assembly/management
 - Corporate entity software/registered agent
- Use of an intranet and/or extranets (*into the Ether . . .*)
- Internet enabled platforms; hosted solutions
- The biggest challenge: finding solutions that work for a small law department at an affordable cost
- Another challenge: finding a solution that is designed for corporate legal departments in the first place

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Intranets

- If you have a network, you can have an intranet site
- Determine the use and audience
 - Departmental use only (*home page*)
 - Organizational use
- Content
 - Department use: communication, common work space, forms, etc. (*front end interface*)
 - Organizational use: department info/contacts, forms, intellectual property information, compliance, policies/procedures, training, links, FAQs (*virtual, always available extension of your function*)

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Intranets can be used for a wide variety of uses. Some Legal Departments will choose to use an intranet to communicate within the Legal Department by using an intranet as a collaboration tool or “front end interface.” Other departments use intranets as a virtual extension of the Legal Department. You can provide links to company information (corporate information, product information, policies, procedures, compliance, etc.). An intranet can also be useful for training.

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Intranet Case Study

- Example site map of a Legal Department intranet
 - Welcome page with department mission statement
 - Main page

Contacts Legal Department staff, titles, contact info.	Presentations Trademark; Risk Management; Staffing; ESPP; and others
Points of Contact Who to contact for what and their backups	Links ABA Daily Life Issues: www.abalawinfo.org Other topical sites
Forms Commonly used forms or request forms	Stock Insider Trading Policy; ESPP; Plan documents; Investor info.; Compliance; Notice of Exercise; etc.
Intellectual Property List of active trademarks; link to IP page	Policies/Procedures Code of Business Conduct; Insider Trading; Etc.
Compliance Code of Business Conduct; other policies	Frequently Asked Questions ESPP and others

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Extranets

- Litigation work spaces, especially for discovery, and especially for complex litigation
- Due diligence. The virtual data room
- Secure space for online communication, collaboration, training, and dissemination
- Board of directors work spaces

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Extranets are secure websites accessible over the internet.

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Other internet applications

- Research
- Matter management
- Virtual litigation and due diligence
- Board work spaces

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The internet has become an essential research tool for lawyers. This is especially true for in-house lawyers with limited budgets. Both WESTLAW and LEXIS/NEXIS offer subscription packages that can be tailored to individual, organizational needs.

There are several free research services available as well. Look at state bar association, government agencies, and law school sponsored websites for useful sources of legal information.

Consider publishing (sharing) your list of favorite legal research and information websites within your department and with other colleagues.

Here are *few* useful legal search engines and websites you may want to explore.

FindLaw (www.find.law.com). This is a free online legal research directory. There is a special section devoted to corporate counsel and registered users can customize their own page based on legal interests, industry, etc.

Catalaw (www.catalaw.com). A catalog and directory of legal web pages.

Hieros Gamos (www.hg.org). Worldwide legal directory.

Katsuey's Legal Gateway (www.katsuey.com). Another legal directory

The Virtual Chase (www.virtualchase.com). A site produced by a legal librarian that provides tips and resources on conducting legal research online.

LLI, Legal Information Institute (www.law.cornell.edu). Site maintained by Cornell Law School.

Law.com. (www.law.com). Comprehensive site seeking to be a one-stop website for lawyers sponsored by the American Lawyer Media group (ALM).

Society of Corporate Secretaries & Governance Professionals (<http://www.governanceprofessionals.org>). A very good website for those with corporate secretary responsibilities. Much of the information is limited to members only.

RefDesk (refdesk.com). A general reference desk website with all sorts of search engines and index links.

The internet is also being used as a collaboration tool or outsourced data network for all sorts of applications. Many services and applications are now available and hosted by internet based companies. While some have concerns about security and control, others welcome the freedom from the burden of maintaining equipment and software and being tied to one physical location.

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Case Study: NDAs

- Nondisclosure agreements are good candidates for technology solutions
 - repetitive, standardized, high frequency
- Different technology approaches
 - Templates • document generators • request forms
 - Self-service approaches
 - Use of intranet

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Each panelist will discuss the approach their department took to handling NDAs.

We will discuss models involving “push-pull” technology use where clients request NDAs by completing and submitting a request form and then receive their completed NDA. We will also discuss self-service approaches using templates and instructional material.

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Personal Productivity

- Make effective use of tools you have or can get for free or nearly free
- Use power user features in your word processor: autotext, macros, templates, tables, style sheets
- Google desktop to search your own and network drives
- Adobe for more secure forms

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ACC members use many different word processing programs. Almost any modern word processing program has these features; consult either your help desk or the help feature within your program to learn how to use them.

Autotext allows you to use abbreviations for frequently used text blocks or entire documents. For example, at Gelco there is an autotext entry for a standard addition to an assignment clause which permits assignments to corporate successors. The text "assign" plus the F3 key generates the entire clause. Autotext can be extremely useful for litigators; the standard text for "admit," "deny," and "lacks sufficient information," responses to complaints can be put into autotext.

Templates are a means of making sure that your master documents are never modified by accident. You generate individual contracts from the template, rather than by copying the master document and hoping you remember to "save as" before you accidentally make changes to the master document. Templates can also be set to allow text to be entered only into certain sections. However, unless some form of document locking requiring a password for changes is used, be aware that a customer can usually copy the entire text and paste it to another document for editing. Templates can also be used when documents are sent to the field for completion along with training about why they should always use the template rather than their last contract.

Tables are an efficient way of presenting information and are more flexible than cutting and pasting cells from a spreadsheet into a document.

Style Sheets are sets of formatting characteristics applied to text in a document to quickly change its appearance. Applying a style is applying a group of formats in one simple task. Styles can be used to help standardize formatting in contract documents.

Google Desktop is freeware that compiles an index of your hard drive (you can designate specific parts to be indexed) and of specified network drives. Once the initial index is complete, Google Desktop runs in the background to keep the index up to date. Google Desktop allows you to search your desktop with standard Google searches; it is generally much faster than the built in Windows search features.

Adobe allows the creation of secure forms; the user opens the form and can only type into the permitted fields. Not all versions of Adobe support this feature.

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When Technology Goes Bad

- Security
- Backups
- Disaster recovery
- Misuses of redlining
- Defeating document protection

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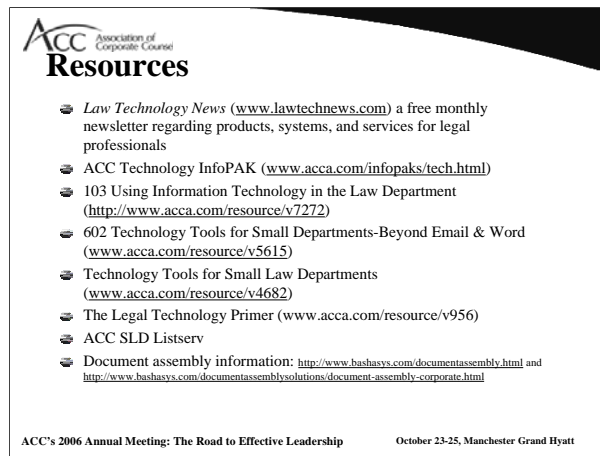
Security: The legal department has special security concerns and needs to work closely with the IT department to make sure that sensitive documents are not at undue risk. Are shared legal drives accessible by others within the company? What about your backups? If a laptop from the legal department is stolen, can data be read from its hard drive? Some laptops include automatic hard drive encryption. To prevent access to legal information, some legal departments save all of their documents to a network drive managed by a corporate IT department. Access to the shared drive is limited to specific individuals.

Backups: Who is responsible for backing up legal documents, and how often? Again, work closely with your IT department. If individual users are responsible for backing up their own computers, consider a department-wide backup regimen and testing to be sure it is happening. You don't want to wait until your attorney's laptop is stolen to discover that the attorney has not been saving all documents to the network drive as required or making regular backups.

Misuses of Redlining: Every person in your organization should know how to redline and how to accept or reject changes. Some people use the options to just not show changes on the screen or in the printed document rather than accepting changes. This can result in considerable embarrassment (not to mention potential breaches of confidentiality) when the recipient of the document turns on those options and can see all changes. There's nothing quite like receiving a contract and seeing what your prospective supplier offered to their last customer because they sent you a document that shows you all the changes.

Metadata: Metadata is hidden, automatic redlining of changes to virtually every computer document. Someone with a metadata reader may be able to see the changes you made to your document, even if you did make a correct acceptance of changes. For a discussion of metadata and MicroSoft Word, see http://www.metadatarisk.org/document_security/doc_security_overview.htm. If you do not use templates or have a very sensitive document situation, consider looking into a metadata cleaner.

Defeating Document Protection: Unfortunately, electronic documents are susceptible to being copied and changed, and there are ways around most standard document protection. It is generally possible to take even locked documents and manage to cut and paste their text into a fresh, editable document. There are even programs that convert Adobe PDF documents back into word processing files. If you have serious concerns about the other party making undisclosed changes and signing a document, consider sending the document out on raised, colored letterhead, which requires considerable effort to counterfeit.



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Resources

- ☛ *Law Technology News* (www.lawtechnews.com) a free monthly newsletter regarding products, systems, and services for legal professionals
- ☛ ACC Technology InfoPAK (www.acca.com/infopaks/tech.html)
- ☛ 103 Using Information Technology in the Law Department (<http://www.acca.com/resource/v7272>)
- ☛ 602 Technology Tools for Small Departments-Beyond Email & Word (www.acca.com/resource/v5615)
- ☛ Technology Tools for Small Law Departments (www.acca.com/resource/v4682)
- ☛ The Legal Technology Primer (www.acca.com/resource/v956)
- ☛ ACC SLD Listserv
- ☛ Document assembly information: <http://www.bashsys.com/documentassembly.html> and <http://www.bashsys.com/documentassemblysolutions/document-assembly-corporate.html>

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Additional Materials About Metadata

In this context, metadata means data embedded in a computer file that is not ordinarily viewable as part of the text. This is information that may show up with the use of a metadata viewer and can include the name of the author, the originating company, the name of the network server or disk where the document was saved, file properties and summary information, non-visible portions of embedded objects, the names of previous document authors, document revisions, document versions, template information, hidden text, or comments.

Both Microsoft Word and WordPerfect generate metadata. Each publisher provides some guidance about what sorts of metadata might be embedded and how to minimize them.¹ In addition, both Excel and PowerPoint generate metadata, which may be of keen interest to your client organizations as no one really wants a prospective customer to see what was presented to another customer.

Metadata offers an unhappy opportunity to make an inadvertent disclosure of confidential material. While the recipient may have an ethical obligation to notify the discloser that the disclosure has occurred, they have no ethical mandate to return or destroy the confidential materials thus disclosed.

Both the ABA and the New York State Bar have specifically stated that lawyers have a duty to prevent disclosure of metadata with confidential information; the Florida State Bar is considering a similar ruling.² Furthermore, the metadata embedded in documents may result in unexpected disclosures during discovery.

On a practical basis, what does this mean to you? It might be a good idea to use a metadata reader on a sample of your department's own documents to understand what sorts of metadata are embedded. Check with your IT department to see if your company already has a metadata reader or scrubber. For the low budget initial approach for Microsoft products, there are several trial versions of utilities offered for free.³

¹ Microsoft provides information about metadata in Word at <http://support.microsoft.com/?kbid=237361>, while Corel provides information about metadata in WordPerfect at http://www.corel.com/content/pdf/wpo12/Minimizing_Metadata_In_WordPerfect12.pdf#search=%22metadata%20wordperfect%22

² NY Bar Ethics Opinion 782 http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Ethics_Opinions/Opinion_782.htm, Comments 15 and 16 to Rule 1.6 of the ABA Model Rules of Professional Conduct, and Proposed Advisory Opinion 06-2, [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/53EDED5599019138525719A006DCE1B/\\$FILE/06-2%20pao.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/53EDED5599019138525719A006DCE1B/$FILE/06-2%20pao.pdf?OpenElement)

³ <http://esqinc.com/index.php?p=downloads> offers Idiscover and <http://www.workshare.com/go/metadata-software.aspx> offers a trial version of its Workshare product.

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Managing Your Practice

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Metadata:

Danger or delight?

By Sheila Blackford

Although most attorneys and law firm staff have heard of "metadata," most don't fully understand how it can work for you or against you.

In the proper context, metadata is harmless and extremely helpful for collaborative writing and editing work. But if the document you are transmitting to opposing counsel contains comments and notations that have been affixed to the document, you may have inadvertently waived the attorney-client privilege and work-product doctrines, violated ethics rules about client confidentiality and committed malpractice with your computer.

Not likely to happen to you, right? Consider the following scenario. You send your client a finished legal document as a Word e-mail attachment. Your client opens the document and learns that the document was drafted by your paralegal by cutting and pasting from a prior client's document and edited by a first-year associate. The client also discovers that the total editing time tracked in the document doesn't match the total hours billed by the billing attorney, whose name and billing rate don't match the names and billing rates of those who actually did the work. Document statistics such as the last 10 authors, the amount of time spent editing, and file dates can create awkward situations such as this.

Metadata may cause problems in other areas you hadn't considered. Much hype has surrounded metadata ever since the March 4, 2004, CNET News.com disclosure that SCO Group's lawsuit against defendant DaimlerChrysler for alleged violation of their Unix software agreement was initially prepped as a lawsuit against Bank of America for copyright infringement. You may have enjoyed the benefit of using a suite of programs like Microsoft Office, especially because it is easy to pull data from one program into another, such as copying part of an Excel worksheet into a Word document. However, if you do this from the Edit menu using the "Paste Special" feature and selecting "Microsoft Excel Worksheet Object," you may be in for a surprise. Double-click on the Excel worksheet object in your Word document and you'll discover that the entire worksheet document is visible, including other worksheet tabs that may contain sensitive information. The entire Excel worksheet is known as an embedded object and is metadata that travels with the Word document. Thus, the full Excel worksheet can be viewed by the receiver of the Word document, even though you didn't intend that result. The detriment of exposing more than a select portion of an Excel spreadsheet may be exponential if the additional figures pertain to your negotiation strategy on settlement offers or disclose profit projections for complex financing plans.

In complying with discovery requests, you are required to provide only the documents and data set out in the discovery demand. Beware — if supplying electronic versions of your documents

— that you are not providing more information than required by inadvertent disclosures in document metadata.

Metadata has been almost totally linked with the Microsoft Word program. It also exists in Microsoft Excel and Microsoft PowerPoint. It chiefly has been cited as a problem with word processing documents. Some people erroneously believe that it does not affect Corel WordPerfect or Adobe Acrobat PDF documents. There may be less metadata, but it is there, nonetheless. Even less commonly used programs such as Lotus Word Pro 9 and the former king of spreadsheets, Lotus 1-2-3 (part of the Lotus SmartSuite) contain metadata. Metadata exists in many other software programs as well.

Some metadata is readily accessible and visible to anyone opening your document in the application program in which it was created. Other metadata might not be immediately apparent when you view the document in your application program but is accessible by opening the document in a low-level binary file editor. To check for basic metadata, open a new document, select "Properties" from the File menu, and you will see an assortment of metadata that stays with the document.

Metadata That May Be in Your Document

Some metadata is fairly innocuous, while other metadata is the potential electronic smoking gun. Here is a quick list of what may be in your document, depending on which program created the document.

- Authors
- Comments
- Company or firm name
- Computer name
- Document revisions
- Document versions
- Embedded objects or non-visible portions of embedded OLE objects
- Fast saves
- File location
- File properties
- Headers and footers
- Hidden text
- Hyperlinks
- Initials
- Linked objects
- Matching font
- Network or server name
- Personalized views
- Revisions
- Small font
- Summary details
- Styles

- Template information
- Tracked changes
- Undo/redo history
- Versions

Options for Handling Metadata

No central place addresses all metadata issues in all programs. You can turn off some features that create metadata in the "Options" dialog boxes by selecting "Settings" under the Tools menu. Other programs have an Options menu and include "Security" settings to address some metadata issues. Good places to look are the pull-down menus under File, Edit, View, Insert, Format, Table and Tools. Visit the website of the software publisher for possible articles on metadata and search for "metadata" or "minimizing program X metadata." Programs include metadata for a variety of legitimate purposes to facilitate editing, viewing, filing and retrieving capabilities. You will likely just want to turn off the features that create metadata before sharing the document in an electronic format.

One option is to save your document to RTF (Rich Text Format) before attaching it to an e-mail. Under the File menu, select "Save As" and, in the dialog box for the File Type, select the option of saving your document in RTF Rich Text Format. Documents in this format will show ".rtf" at the end of the file name.

Another option is to print your word processing document and then scan it and turn it into a Portable Document File or PDF format using scanning software such as ScanSoft PaperPort. You then select the document, which now will have a ".pdf" file name extension, before sending it as an e-mail attachment. Right-click on the PDF document and select the "Send To" option and "Mail Recipient." This automatically opens your e-mail program and attaches the PDF document to the blank e-mail. You are sending an image PDF document, which cannot be edited by the recipient (unlike text PDF), and which will contain some metadata, such as the date the PDF document was created. But any metadata that existed in the document prior to converting to PDF format will not be transferred to the PDF document.

WordPerfect 12 users are likely smiling that they can turn their WordPerfect document into a PDF document under the File menu by selecting the "Publish to" option and then selecting "PDF." You might want to be cautious about the properties of the PDF you are creating. Check the tabs in the "Publish to PDF" window, such as the General tab where you can remove the author name that automatically fills in from the converted WordPerfect document. Under the Document tab, you may deselect "include hyperlinks" and deselect "generate bookmarks" if these are metadata that you do not wish to share.

Metadata Cleaners

You may decide to invest in a metadata cleaning program. At the Microsoft Web site, you can find a lot of information about metadata and download a free utility to scrub the metadata from your documents. The Office 2003/XP add-in "Remove Hidden Data" allows you to permanently remove hidden data and collaboration data, such as track changes and comments from Microsoft

Word, Excel and PowerPoint files. Microsoft cautions that "Remove Hidden Data" has not been tested on Microsoft Windows 2000 and that it cannot be installed on Windows 98 or the Windows Millennium Edition. This is another reason to update your Microsoft operating system and to install Microsoft Service Packs and Security Patches as they become available. (www.microsoft.com/downloads/) Programs such as Metadata Assistant for Word, Excel, and PowerPoint are available from the Payne Consulting Group website. (www.payneconsulting.com/products/ProductDetail.asp?nProductID=34) The website promotes it as the most popular metadata cleaner on the market, with over a million users worldwide. Another choice is the BEC LegalBar Metadata Scrubber available from the BEC (Business Equipment Company) Legal Systems website. (www.beclegal.com/lsy/lsylegspeclegbarmetadata.asp) Appligent's utility family includes software components such as "APSetDocInfo" that enable you to modify the metadata of a PDF document. See their PDF utilities at www.appligent.com/products. The principle behind these metadata cleansing programs is to give the software user the ability to identify and either modify or remove metadata. Since metadata becomes an issue with sending electronic versions, you should be sure that the metadata cleansing program works with your e-mail program, whether it's Microsoft Outlook, Eudora or Lotus Notes.

Ethical Considerations

Should an attorney be able to view metadata contained in opposing counsel's electronic document? Should metadata be discoverable? If the metadata is not readily apparent, is it ethical to use a program such as Princeton Software's "Meta Data Reviewer," which allows the user to search, explore and export 41 fields of information about each file (and which can be purchased for \$19.95 at www.princetonsoftwarecompany.com)? Interestingly, Appligent sells a program "APGetInfo" that enables the user to get metadata from PDF files for \$149 which includes the ability to retrieve XML metadata from PDF documents that support the Adobe Extensible Metadata Platform (XMP). This program is also located in the Utilities at the Appligent Web site.

Computer forensics experts and electronic discovery service providers may provide the expertise if you are on the offensive. But if you are representing the defense, you would be prudent to consider the full ramifications before stripping or scrubbing metadata from discovery documents. It might be viewed as spoliation and could result in an ethics violation. You may need to get a protective order that permits the scrubbing of metadata from documents that are subject to discovery. In fact, some discovery requests now include metadata along with requests for the documents, treating it the same as postmarked envelopes and fingerprint dusted documents. Increasingly, courts are addressing the issues around metadata and electronic discovery and rules are being adopted in various jurisdictions. For example, New York has published *Opinion 79-12/14/01:DR 1-102(A)(4), DR 1-102(A)(5), DR 4-101, DR 7-102(A)(8), Canon 4, Canon 7, EC 4-1*, advising that "Lawyers may not ethically use available technology to surreptitiously examine and trace email and other electronic documents." Attorneys in Oregon have treated the concept of metadata as an inadvertently sent document and thus view the guidance of ethical conduct by the *Oregon Rule of Professional Conduct* Rule 4.4 Respect For the Rights of Third Persons; Inadvertently Sent Documents (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person,

or knowingly use methods of obtaining evidence that violate the legal rights of such a person. (b) A 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.

You don't need to stay awake at night worrying about metadata. Just become more mindful when you are sharing or delivering documents electronically. The savvy way to practice is the safe way to practice.

ABOUT THE AUTHOR

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