

Metadata: The Hidden Truth

by W. Everett Lupton



“I know it when I see it” is a famous line from U.S. Supreme Court Justice Potter Stewart’s opinion in the *Jacobellis v. Ohio* pornography case. Unfortunately, many attorneys take the opposite approach when dealing with metadata: they *don’t* see it, so they don’t know it even exists. Unfortunately, what you don’t know can really hurt you.

What is metadata? In short, metadata is data about data.¹ It is structured information about an electronic file that is usually invisible when looking at the document on screen or the printed hard copy. Metadata describes the characteristics, origins, usage, and validity of other electronic files. The following example is an illustration of metadata: “23510” is merely a number (i.e., data). By itself, it has no meaning. But when 23510 is assigned a name of “office ZIP code,” “office ZIP code” is metadata about data (i.e., “23510”).² Metadata also has become an important component of discovery following the most recent Federal Rules of Civil Procedure changes.

Here is why attorneys should be wary of metadata that is transferred with electronic documents.

Bad Day Scenario No.1: Jack represents a personal injury client. At the request of Oscar, opposing counsel, Jack decides to be courteous and e-mails a copy of the Demand to Oscar to forward to the insurance company. Jack forgets to clean, or “scrub” the metadata from his document. Oscar receives the demand and, using the metadata reading features of his word processor, discovers that Jack’s demand originally asked for \$156,000 instead of the current \$250,000. By being courteous but ignorant about metadata, Jack may have seriously undermined his ability to negotiate.

Bad Day Scenario No. 2: Betty e-mails a copy of her Interrogatories to plaintiff’s counsel Niles as a courtesy so that Niles does not have to retype all of the questions. If Betty did not scrub her e-file, all of her changes can be read by Niles. Betty’s thoughts and changes in her discovery questions may be an important insight to Niles in crafting his responses or developing trial strategy.

Application metadata is information not visible on the printed page, but embedded in the document file, remaining with the file if it is copied. Most versions of Microsoft Office and Corel WordPerfect Office embed many different types of metadata in word processing, spreadsheets and other applications, including e-mail. Metadata that is usually present in Microsoft Office files include comments, all document revisions, versions, title, subject, revision number, last print date, creation date, last save time, and total editing time.³

Once attorneys understand it, they may wonder if the discovery of metadata is ethical or proper. The American Bar Association advises that attorneys have no ethical duty to not review or use metadata in word processing documents, e-mail, and other electronic documents sent by and received from adverse parties or their counsel.⁴ Some state bars, such as Alabama and Florida, have taken contrary positions, finding such conduct to be unethical. Recently, the District of Columbia Bar has issued an opinion that seems to find it unethical if receiving counsel has “actual knowledge” that metadata was inadvertently sent.⁵ As of yet, there are no Virginia or North Carolina case law or ethics opinions that apply to “metadata mining.”

How do you avoid serious troubles such as those Jack and Betty encoun-

tered? First, you can just send all documents via fax or postal mail, avoid e-mail altogether. This approach is somewhat drastic and draconic in today’s legal world.

Another option is to scrub your electronic documents of most metadata. The latest versions of Microsoft Office and Corel WordPerfect Office have features that can remove most compromising metadata from a document.⁶

Ways to Avoid Metadata Pitfalls:

- “Scrub” your document before saving it.
- Save your document as an image file (i.e., PDF or TIFF file).
- Avoid sending documents electronically to adverse parties.
- Institute a metadata office policy.

There are several commercial third-party scrubbing applications available that work well and are fairly easy to use. Microsoft and Corel also offer a detailed list of how to manually remove or minimize metadata from a document using older versions of their Office suites.⁷ As a third option, you can convert a Word (.DOC) or WordPerfect (.WPD) file to an Adobe Acrobat Portable Document Format (.PDF) or Tagged Image Format File (.TIF). Both PDF and TIFF files are image files; the editable document is translated to a static photograph of the document.

Now you should have a working understanding of the dangers of metadata. In implementing specific office

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procedures, ask an information technology specialist for assistance in installing and using certain software. Finally, you might want to recommend this article to your clients to alert them to the dangers of metadata. ☞

Those attorneys who decide to ignore the realities of metadata are holding a tiger by the tail.

Endnotes:

- 1 WIKIPEDIA, *Metadata* (available at <http://en.wikipedia.org/wiki/Metadata>).
- 2 *See Id.*, citing William R. Durrell, DATA ADMINISTRATION: A PRACTICAL GUIDE TO DATA ADMINISTRATION (McGraw-Hill, 1985).
- 3 "Find and remove Metadata (hidden information) in your legal documents," Microsoft Corporation, 2007, available at [http://office.microsoft.com/en-](http://office.microsoft.com/en-us/word/HA010776461033.aspx)

[us/word/HA010776461033.aspx](http://office.microsoft.com/en-us/word/HA010776461033.aspx). (last visited Sept. 24, 2007).

- 4 ABA Comm. On Ethics and Prof'l Responsibility, Formal Op. 06-442 (August 5, 2006); *see also*, Robert L. Kelly, *The Tech Side of E-Discovery*, ABA BUS. L. TODAY, September/October 2007. Maryland has adopted the ABA approach.
- 5 *See* Sharon D. Nelson, Ride the Lightning, "Wacky, Wacky, Wacky: D.C. Speaks on Metadata Mining", <http://ridethelighting.senseient.com/2007/09/wacky-wacky-wac.html>, (Sept. 19, 2007, 14:56 EST).
- 6 MS Office 2007 has a feature called "Document Inspector" wizard to scrub documents of key metadata. Corel's WordPerfect X3 allows a user to save files without metadata. *See* Michael Gannotti, "Video: Stripping Metadata and Hidden Content from Office 2007 Documents," *Sharepoint+*, (Dec. 14, 2006), available from <http://sharepoint.microsoft.com>; *see also*, "Saving Documents without Metadata," available from <http://www.corel.com>.
- 7 *See* Knowledge Base Article No. 223396, How to Minimize Metadata in Office Documents, available

at <http://support.microsoft.com> (last reviewed Jan. 24, 2007).

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