

e-DISCOVERY: WHAT YOU DON'T KNOW CAN HURT YOU

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OLSHAN



SPEAKERS

Introductory Remarks:

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OUTLINE

- I. e-DISCOVERY BASICS
- II. e-DISCOVERY AND SOCIAL MEDIA
- III. e-DISCOVERY AND THE LAW

e-DISCOVERY BASICS

- What is e-Discovery?
- Who is involved?
- What litigation support options are available?

What is e-Discovery?

e-Discovery (electronic discovery): discovery in civil litigation or government investigations which deals with the exchange of electronically stored information (ESI)

e-Discovery: Stages of Process

- Identification
- Preservation
- Collection
- Processing
- Review
- Production

e-Discovery: Who is Involved?

- Lawyers
- Forensic Specialists
- IT Managers
- Records Managers

e-Discovery: FRCP Implications

- FRCP 16
- FRCP 26
- FRCP 26(b)(2)(B)

e-DISCOVERY and SOCIAL MEDIA



e-Discovery and Social Media: Facebook Statistics

- In 2012, Facebook reported 901 million active users, up from 680 million in 2010
- Approx. 300 million photos are uploaded to Facebook every day
- 3.2 billion Likes and Comments are posted daily

e-Discovery and Social Media: Litigation

Case Study: **Thompson v. Autoliv ASP, Inc.**, No. 2:09-cv-01375-PMP-VCF,
2012 WL 2342928 (D. Nev. June 20, 2012)

e-DISCOVERY and the LAW

- Ethical Issues
- Possible Sanctions
- Evolving Case Law

e-Discovery and the Law: Ethical Issues

- Competence in e-Discovery

Do lawyers have to be technical experts in order to manage e-Discovery, preservation efforts, or predictive coding (technology/computer-assisted review)?

- Supervision of e-Discovery

Does a lawyer's "supervision" requirement preclude the outsourcing of document review to entities that are not law firms?

e-Discovery and the Law: Possible Sanctions

- *Voom Holdings LLC v. EchoStar Satellite LLC*, --N.Y.S.2d--, 2012 WL 265833 (N.Y. App. Div. Jan. 31, 2012)
- *Sekisui Am. Corp. v. Hart*, 2013 WL 4116322 (S.D.N.Y. Aug. 15, 2013)
- *Logtale Ltd.v. IKOR, Inc.*, 2013 WL 3967750 (N.D. Cal. July 31, 2013)

e-Discovery and the Law: Evolving Case Law

The Use of Predictive Coding (Technology/Computer-Assisted Review)

- *Da Silva Moore, et al. v. Publicis Groupe*
- *Global Aerospace Inc. v. Landow Aviation Limited Partnership*

e-DISCOVERY: AUDIENCE QUESTIONS?

Thanks to:

ALLEN & OVERY

CHADBOURNE
& PARKE

GT GreenbergTraurig



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