

Law firms should establish metadata policy

By LISA KOVACH
Special to the Daily Transcript

Within all documents and files, there is hidden data called metadata. Although metadata can be useful during the construction and editing of documents, it can also be a real security concern — one often overlooked by law firms.

Unintentional disclosure of this “hidden data” can be awkward or even raise malpractice concerns if misunderstood. Microsoft Word, Excel and PowerPoint include automated features to aid in document production and collaboration. Within these programs are elements of metadata, which can reveal the identity of those who edited the document (revision authors); track the time, date and frequency of edits (track changes and revisions), reveal inserted comments and the document template, and other data employed to control the document’s text and format. In some cases, even deleted text remains part of a document’s electronic file history.

Suppose an attorney needs to create a contract for a new client. The contract requires some standard language. Since the attorney has prepared similar contracts before, the attorney opens up a contract created previously for another client in Microsoft Word. Using “Save As” she saves the document under a new name, makes edits as needed and e-mails it to the client. Upon receipt, the client opens the document and, since familiar with metadata, opens file properties to view any data. By viewing the document’s file properties, the client can see the actual date the document was created, as well as the name of the client for which the document was created.

For a client, this information can be quite troublesome. The client may believe the company is billing him/her for the creation of the document. Additionally, the client may also be able to view confidential

information regarding the previous client, for whom the document was originally created.

“When creating documents for clients, lawyers need to consider the implications and impact of metadata in all documents sent to a client,” said Randall Farrar, president of Esquire Innovations, a leading provider of Microsoft Office integration software for law firms. “Clients need to feel confident that they are in good hands with their lawyers and that all information is kept confidential.”

Another example of metadata is tracked changes. There have been high-profile cases where tracked changes inadvertently left in a document have had embarrassing, not to mention legal, consequences. This mistake can be easily made. An attorney switches on “Track Changes” to make edits to a document. After editing and finalizing the document using the tracked changes tool, the attorney sends the document to the client for review. The client opens the document to see all of the tracked changes displayed.

Metadata also exists in Excel files. Examples include formulas left in cells, hyperlinks to other workbooks, hidden rows, columns or worksheets. All can reveal information not intended for general distribution.

In PowerPoint, you may not want to share presentation notes or comments attached to a presentation. You can also embed hyperlinks to graphs or excel workbooks in a presentation that, if left, will link back to the original document.

A rule of thumb when understanding metadata is that every time a document is opened, edited and saved, metadata is added by the application, the operating system or the user.

Opinions on whether there is a significant risk with metadata and, if so, what must be done to address that risk, often vary between attorneys, IT

departments and management. There have also been many diverse ethical opinions published by the American Bar Association, state bar associations and at the federal level about the implications of revealing and mining for metadata.

Proactively enforcing a metadata policy can be challenging due to the controversy surrounding metadata. Yet, while opinions may vary, it is important that firms maintain a metadata policy to reduce financial risk and potential legal liability as part of attorney-client privilege procedures.

There are many ways in which a firm can establish a metadata policy. The following are several tips.

- Educate yourself about metadata and gather information on ethical opinions published by relevant state bar associations.

- Review firm documents (on internal networks and published on external networks). Is your firm inadvertently sharing confidential information?

- Involve attorneys and your IT department, and establish a firm approach based on your findings.

- If necessary, bring in a consultant to advise your firm on a metadata policy.

- Review your policy on a routine basis to address any new rulings on metadata.

There are many software applications available to help remove metadata. Consider purchasing metadata management software. The software you choose should be flexible enough to execute firm policy, automated enough to enforce firm policy and easy enough for users to understand and utilize.

Microsoft (Nasdaq: MSFT) has added a metadata tool to the latest MS Office program called Document Inspector. Since Microsoft applications add metadata to files, it pres-

ents a somewhat contradictory position for Microsoft to provide a tool for removing that metadata. Firms that already practice a metadata policy have found the main weakness with Document Inspector is the lack of automation. The onus is on individual users to “inspect” documents and then decide the metadata to remove, proving to be ineffective in enforcing a metadata policy throughout an organization.

Metadata management software, on the other hand, removes metadata more thoroughly and is designed to help firms automate and therefore enforce metadata policies. The most popular products available for metadata management can be found by searching for “metadata management software” in Google.

Farrar’s Esquire Innovations offers a metadata management program for Microsoft Office documents that has become the industry standard for metadata management. iScrub offers an out-of-the-box solution for metadata management that users find flexible and easy to use. The latest version offers metadata management for Word, Excel, PowerPoint and PDF files, the ability to scrub e-mail attachments and a metadata reporting component, among other features.

The success of any metadata policy hinges on your firm’s execution, and will be more successful if staff can grasp what metadata is, when it can be harmful and how to manage the metadata in documents.

You should also consider extending information about metadata to your clients. The implications of metadata mismanagement extend to every business and individual.

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Source Code: 20090501crk

Obama promises major investment in science

By RANDOLPH E. SCHMID
The Associated Press

WASHINGTON — President Barack Obama promised a new era of science and technology for the nation, telling the National Academy of Sciences on Monday that he wants to devote more funds to research and development.

America has fallen behind other countries in science, Obama said.

“I believe it is not in our character, American character, to follow — but to lead. And it is time for us to lead once again. I am here today to set this goal: we will devote more than 3 percent of our gross domestic product to research and development,” Obama said in a speech at the annual meeting of the National Academy of Sciences.

That 3 percent would amount to about \$420 billion.

“We will not just meet but we will exceed the level achieved at the height of the space race,” he said.

That pursuit of discovery a half century ago fueled the nation’s prosperity and success, Obama told the academy.

“The commitment I am making today will fuel our success for another 50 years,” he said. “This work begins with an historic commitment to basic science and applied research.”

And he set forth a wish list including solar cells as cheap as paint; green buildings that produce all the energy they consume; learning software as effective as a personal tutor; prosthetics so advanced that you could play the piano again and “an expansion of the frontiers of human knowledge about ourselves and world the around us.”

“We can do this,” Obama said to applause.

In recent years, he said, “scientific integrity has been undermined and scientific research politicized in an effort to advance predetermined ideological agendas.”

He then drew chuckles, commenting: “I want to be sure that facts are driving scientific decisions, not the other way around,” Obama said.

“At such a difficult moment, there are those who say we cannot afford to invest in science, that support for research is somehow a luxury at a moment defined by necessities. I fundamentally disagree,” Obama said.

“Science is more essential for our prosperity, our security, our health, our environment and our quality of life than it has ever been,” he said.

Obama said he plans to double the budget of key science agencies over a decade, including the National Science Foundation, Department of Energy Office of Science and the National Institutes of Standards and Technology.

He also announced the launch of the Advanced Research Projects Agency-Energy. It is a new Department of Energy organization modeled after the Defense Advanced Research Projects Agency, that led in development of the Internet, stealth aircraft and other technological breakthroughs.

And he said the Energy Department and the National Science Foundation will offer programs and scholarships to encourage American students to pursue careers in science, engineering and business related to clean energy.

Source Code: 20090501crk

BLM, Forest Service sued over air pollution

By SUSAN MONTOYA BRYAN
The Associated Press

ALBUQUERQUE, N.M. — Environmentalists are taking aim again at the U.S. Forest Service and the Bureau of Land Management, accusing the agencies in a lawsuit of failing to curb air pollution in the San Juan Basin — one of the largest natural gas fields in the nation.

WildEarth Guardians, Dine CARE and Carson Forest Watch filed their lawsuit Wednesday in federal court. It’s the latest in a string of protests and other complaints filed over the past year regarding the impacts of energy development on the region’s air quality.

“These agencies are turning

their backs while the San Juan Basin chokes on pollution,” said Jeremy Nichols, WildEarth Guardians’ climate and energy program director. “It’s time to start confronting the impacts of dirty energy development.”

The lawsuit targets the BLM’s decision to lease 28,510 acres through three separate lease auctions in 2008. The groups contend the decision could lead to the development of 712 new oil and gas wells with no safeguards for limiting ground-level ozone.

It also targets the Forest Service’s decision regarding surface management of gas leasing and development on nearly 5,000 acres of the

Jicarilla Ranger District. The groups claim the decision clears the way for more than 700 new wells.

The Forest Service did not immediately respond to messages seeking comment.

Tony Herrell, the BLM’s deputy state director for minerals, said Wednesday he could not comment on the lawsuit. However, he said the agency prepared an environmental impact statement and an air quality model before approving a resource management plan for the area.

Herrell added that air pollution is a complex global issue and that not all countries have regulations as stringent as the

See **Air pollution** on 6



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To sign up for Taste of North County, visit www.homeaidssd.org or call 858-793-6292. Single ticket donation of \$50 is 50% tax deductible.

Tickets can be purchased at the door.

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Cash management and your law firm: Three key questions to ask your bank

As the largest bank headquartered in San Diego, **California Bank & Trust** serves many area law firms. Our experience suggests that there are three key questions you should ask when evaluating a bank’s cash management solutions.

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