

Internet Evidence: Finding It & Getting It Admitted

Unique challenges and potential problems

Why attend?

The legal community is still trying to acclimate to the new world of electronic evidence and discovery under recently amended rules of procedure. Now that discovery of electronically-stored information (ESI) is becoming widespread, lawyers must understand how to use and authenticate ESI as evidence at trial and evidentiary hearings. Internet evidence provides an opportunity to gather a wealth of useful discovery in an efficient and cost-effective way. But it means nothing if you can't get it admitted.

Today's practitioner must know where useful electronic and digital information can be found to assist in an investigation and to prepare for hearing or trial. The proliferation of new electronic media and the resulting novel uses of electronic data create unique evidentiary challenges. Specifically, Internet evidence presents unique problems of reliability and trustworthiness, and lawyers must know the additional foundational requirements that are demanded depending upon the specific media and type of electronic data involved. These new evidentiary issues require practitioners to start thinking about the use and admissibility of ESI much earlier than they did when dealing with hard copy evidence. Expert assistance may be needed to present sufficient proof of the evidence's authenticity. Detecting modifications of electronic evidence can be difficult or impossible. Website content can change constantly, often with little or no audit trail.

This program identifies useful sources of discoverable electronic and digital information, and then walks through the evidentiary issues and foundations necessary to use this information successfully in court. The program also discusses other relevant uses of information on the Internet in court proceedings, such as a trial court's independent use of the web and specialized case applications.

You will learn...

- ▶ Where to look for useful digital evidence on the Internet
- ▶ How to determine authorship of Internet evidence
- ▶ Tools for proving authenticity under FRE 901(b)
- ▶ How technology can demonstrate authenticity, such as hashing, system metadata, encryption/digital signature, and trusted time stamping
- ▶ Foundational requirements to authenticate Internet and email evidence
- ▶ How Internet evidence fits within hearsay exceptions
- ▶ Non-hearsay uses of Internet and email evidence
- ▶ The problem of evolving evidence and inconsistent statements
- ▶ Evidentiary challenges presented by instant/text messages, chat room dialogues and blogs
- ▶ Relevance and admissibility of HTML codes
- ▶ Advantages and disadvantages of proffering Internet evidence in native v. static form
- ▶ Self-authentication of official publications posted by governmental entities
- ▶ Admissibility of system v. application metadata
- ▶ About the technology tools used to fabricate or manipulate Internet evidence, such as Timestamp and Transmogrify
- ▶ The use of testifying and consulting experts with Internet evidence
- ▶ Judicial view on the use and admissibility of Internet evidence and the propriety of a trial judge independently using the web to assist in the adjudication of matters before it

Agenda and written materials

- ▶ Sources of Discoverable Electronic and Digital Information
- ▶ Evidentiary Issues and Foundations
- ▶ Uses of Internet Information in Court Proceedings
- ▶ Spoliation and Sanctions
- ▶ "Ask the Experts" Q&A Session

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