Hot Tips

Meddlesome Metadata

Are your documents broadcasting much more than you ever intended?

By Kathleen Hogan

You think of yourself as a pretty smart lawyer who rides the wave of the future everyday. Not content with "snail mail," you send an important new client a letter acknowledging receipt of his retainer. You also send the letter as an MS Word attachment to the e-mail.

With a few keystrokes, your computer-savvy client can read, not only the version of the document you sent, but the following:

> Dear Mr. Moneybags (oops—make that BigBucks): This will acknowledge receipt of your retainer in the amount of $ (insert amount—use fancy letterhead if over $5,000). We will immediately devote our personal attention to your (divorce / custody / child support) matter.

Your new client, "Mr. Big Bucks," may also be able to discern that the letter was not created by you, but that it came from the forms file of another firm and was brought to your office by a recently hired associate.

E-filing oops

Shortly thereafter, you direct the preparation and filing of your client's complaint for divorce. The client is billed for an hour of your time in drafting the complaint. Because you are a cutting-edge practitioner, you file the complaint electronically. If your jurisdiction uses one of the major e-filing providers, not only your client but anyone else who purchases the document online may be able to discover in a few steps that your paralegal spent about fifteen minutes changing the names and dates in a complaint used for a prior client.

Compromising comments

On another routine day, you draft a settlement proposal offering a lump-sum property settlement. You send the draft to your client as an attachment to an e-mail. Before sending the document back to you, your client inserts a comment to the effect that settling for $100,000 would be a real home run, but he will go to $150,000 if that's what it takes to get this over with before he receives his next bonus. Because time is of the essence, you send the final version of the settlement letter to opposing counsel via e-mail. With a few keystrokes or mouse clicks, opposing counsel will be able to see your client's comment, which you so carefully deleted.

As the case nears its conclusion, you prepare a separation agreement (based largely on one drafted in a factually similar case you handled last year). To make negotiations and revisions easier, you e-mail your original draft to opposing counsel. Thereafter, several versions are sent back and forth, comments are added and deleted, and paragraphs from computers at both firms are ultimately incorporated into the final document.

Although invisible to the casual reader, the electronic version of the document may contain a wealth of information you never intended to disclose, including identifying information about prior clients whose agreements provided the backbone for this document; the uncomplimentary remarks about opposing counsel, which were circulated between you and your paralegal and then "deleted"; and the identities of the staff who worked on the document for which the client was billed at the senior partner's rate.

You have just been embarrassed by "metadata," the hidden comments, versions, revisions and other information that may reside in a Word document. Even more alarming, you may have revealed confidential information about one client to others and you have shared privileged attorney-client communications with the opposing lawyer. You also may have handed your client grounds for a grievance and/or fee dispute.

You can't see it

One of the most important things to know about metadata is that most of it does not appear on the printed page. As a result, the fact that you can't see it on the page (or the computer screen) does not mean it's not there. According to Microsoft support documents, the types of metadata that a Word document may contain include author's name; author's initials; author's company name; the name of the network, server, or disk where the document was saved; other file properties and summary information; nonvisible portions of embedded OLE objects; the names of previous document authors; document revisions; document versions; template information; hidden text; and comments to the document. These may be tracked back through many versions or revisions of the document.

How do you know if you are unwittingly disseminating information you never intended to share? Ask yourself (and any staff who prepare documents or share a network with you) the following questions: Do we use MS Word? Was a new template created for this document or was the document adapted from a form created for another client? Was the "Tracked Changes" feature disabled? Was the "Create Versions" feature disabled? Was the "Quick Save" feature avoided? If we use MS Word, do we have—and faithfully use—one of the commercial programs designed to scrub metadata from documents that leave the office via e-mail, disk, etc? If you don't know the answers to these questions (or you don't understand the questions), you may be at serious risk for the types of problems and embarrassments outlined above.

If you think things like this don't really happen, think again. British Prime Minister Tony Blair recently suffered huge political embarrassment when he posted a Word document

on his Web site setting forth his dossier on Iraq's security and intelligence organizations. The metadata in the document revealed that most of the information had been copied from Web-published documents by a U.S. researcher.

Similarly, the metadata in the complaint in a widely publicized action filed by computer giant SCO against DaimlerChrysler revealed that the suit had originally been prepared against a different defendant, in part on different legal theories, and that jurisdictional issues, among other things, had been the subject of comments by attorneys on the case.

If something similar has not happened to you, don't assume that means the metadata isn't there. It may simply mean that no one has looked for it yet. When metadata is concerned, what you don't know can hurt you.

Metadata footprints

If you want to check for the metadata you may be sending out, start by opening an MS Word document, selecting the "file" option from the toolbar, and clicking on the "properties" option. That will open a box with display tabs indicating some of the categories of metadata. You also can position your mouse over edited changes in a document. If the "track changes" feature was enabled, a balloon will appear showing when and by whom changes were made. It is similarly possible to view "deleted" comments in the document by selecting "insert" from the toolbar, and then clicking on the "comment" option. Far more sophisticated steps to reveal metadata also are possible. In addition, metadata viewer software has been developed and is available commercially and on the Internet.

Cure the ailment

To avoid or minimize the dissemination of metadata with your documents, scan and send documents as pdf files, instead of word processing documents; disable the various MS Word features designed to track document changes or versions; use a program designed to scrub the metadata from any document that leaves your office in an electronic format; or use Corel WordPerfect instead of Microsoft Word.

Kathleen Hogan is a principal of McGuane and Hogan, LLP, in Denver, Colorado, and a member of the Family Advocate Editorial Board.