

# CyberBytes



## **Subject: It's on the hard drive**

For those of you who still have lingering doubts as to whether relevant information and evidence is electronically stored on data storage devices that are in the custody of opposing litigants, I will wager that your preference for document production in paper format is still your first choice.

So long as your opponents perceive your discovery requests to be in the realm of limited documents and emails in paper form, you will continue to be the recipient of vast quantities of boxes stuffed with response materials of little consequence.

For the digital information aware litigators, the vast amount of electronic data stored within a commercial litigant's business represents a daunting challenge to say the least. While more and more companies have attempted to update their information technology systems on a regular basis, the sheer volume of data and email communications being generated has the potential of being injurious to an organization facing e-discovery in a civil case.

For the requesting party, the first challenge when considering e-discovery has to deal with assessing what types of digital information will be of interest in their requests. Next, it is essential to determine where this data is located and which specific computers, servers, back-up tapes and other devices the data is stored on. If this specific information is not yet available, you still need to be thinking about these details, perhaps for future statements of admissions or depositions, in which you can get the details you need for the crafting of an e-discovery request with the right amount of specificity to be effective in court.

But even before you start mapping out the e-discovery plan and strategy, you may

want to consider the importance of an Evidence Preservation Notice to be sent to opposing counsel and the specific litigants in certain instances. Due the volatile nature of digitized information, the potential for inadvertent destruction of evidence has increasingly become a primary concern for parties seeking relevant evidence in discovery.

The role of preservation letters continues to evolve, but it is safe to say that unless there is significant reason not to issue some notification to preserve all relevant data specific to the case, your opponents will not feel constrained in operating their computer systems on a normal basis with little regard for potentially overwriting the very evidence that you may soon be in pursuit of. Craig Ball's article, "The Perfect Preservation Letter", has been posted to our website to provide you a more detailed overview on the numerous ways in which the preservation notice can be leveraged.

CyberControls, LLC specializes in providing e-discovery and computer forensic advisory support and services to litigators who require professional assistance in the pre-trial discovery phase or throughout the acquisition, examination and final production phase. Our team of knowledgeable computer experts and forensic specialists are equipped with the most advanced techniques and evidence recovery tools to support small to very large projects across the country.

To discuss a particular matter that you might be considering e-discovery with, please feel comfortable in contacting our firm at 847-756-4890. Our litigation consultants will be happy to discuss whether your specific situation might benefit by including an e-discovery component in your strategy.