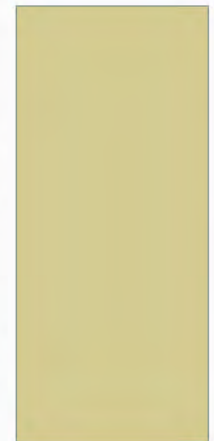


METADATA CASE STUDIES



DESTRUCTION OF METADATA LEADS TO SANCTIONS

PACIFIC COAST MARINE WINDSHIELDS LTD. V. MALIBU BOATS, LLC, 2012 WL 10817204 (M.D. FLA. NOV. 30, 2012).

- **Facts**: The parties were in dispute over who had created the original design for a new ski boat windshield and could thus claim patent rights. When ordered to produce his computer for inspection of metadata to determine when the files were created, Malibu's designer ran CCleaner, a file-deletion program, and data experts were unable to determine when the files were created.
- **Holding**: Malibu was sanctioned for destroying metadata solely to deter others from doing so when the true creation date of these files was critical to the plaintiff's proving its case.

METADATA SEARCH UNCOVERS LAWYER'S CREATE FALSE DOCUMENTS

"OH WHAT A TANGLED WEB WE WEAVE WHEN FIRST WE PRACTICE TO DECEIVE." SIR WALTER SCOTT.

IOWA SUP. CT. ATTORNEY DISCIPLINE BD. V. MCGINNESS,
844 N.W. 2D 456 (IOWA 2014)

- **Facts**: Iowa attorney attempted to backdate discovery requests to make it appear as if he has served the requests months before. Opposing counsel hired an expert to uncover metadata and prove the documents were never sent. He then filed for sanctions.
- **Holding**: Following a hearing held during his principle trial, the attorney was suspended from practice of law for six months.

BUT WHAT HAPPENS WHEN METADATA IS INCONCLUSIVE:

THE FLORIDA BAR V. MACNAMARA, 132 SO. 3D 165 (FLA. 2013)

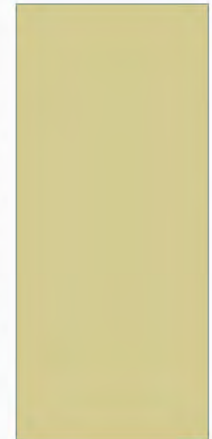
- **Facts:** After receiving several extensions of time to file decedent's estate taxes, and then several past due notices after he still failed to file, attorney MacNamara sent the IRS a “duplicate” copy of a tax return, which included a cover letter asserting the return had actually been filed months before. The estate representative eventually filed a Bar complaint.
- **Holding:** The results of the metadata were not conclusive and both experts testified metadata could be unreliable. But Mr. MacNamara was nevertheless suspended for 90 days for failing to promptly return phone calls and produce documents on request.

METADATA IS PART OF A PUBLIC RECORD IN ARIZONA

LAKE V. PHOENIX, 218 P.3D 1004 (ARIZ. 2009)

- **Facts**: City employee suspected that public records he received in conjunction with his public records request had been backdated when prepared on a computer. The trial and appellate courts both held the metadata was not part of the public records. The Arizona Supreme Court, sitting en banc, reversed.
- **Holding**: “Metadata is not an electronic orphan” and the electronic version of a record, including any embedded metadata is subject to disclosure under Arizona’s public records law.

SOCIAL MEDIA AND DISCOVERY



HOW DO I GET INFO FROM SOCIAL MEDIA OUTLETS?

- ISP List is a database of Internet service and other online content providers that will help you get the information you need for your case.
- <http://www.search.org/resources/isp-list/>
- There is an extensive dropdown menu of ISPs with contact info, retention times, and instructions needed to serve subpoenas, court orders, and search warrants.
- You can sub posts, friend lists, etc.

Select an ISP from the drop-down menu to access contact information:

ISP Quick Search



Facebook, Inc.

Contact Name: Facebook Security LE Response Team

Online Address: 1601 Willow Road

Service Address: Menlo Park, CA 94025

Note(s): Please note: Facebook will NOT accept legal process addressed to Facebook.com, it must be Facebook Inc.

Facebook has transitioned from accepting and responding to preservation and records requests via e-

SUBPOENA

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO. 2015CF2951

STATE OF FLORIDA
vs.

Investigation,
Defendant(s).

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

TO: **Facebook Security**
LE Response Team
1601 Willow Road
Menlo Park, CA 94025

YOU ARE HEREBY COMMANDED to appear before Honorable William N. Meggs, State Attorney, Second Judicial Circuit, Leon County Courthouse, Tallahassee, Florida, to testify in the above-styled cause and to have with you at said time and place the following:

- Subscriber information
 - All posts, chats and friend lists
 - Dates, times, and content of posts and chats
- For the Facebook account bossaidoit@yahoo.com

PURSUANT TO AN OFFICIAL CRIMINAL INVESTIGATION OF A SUSPECTED FELONY, YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS REQUEST.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.


G. Capleman
ASSISTANT STATE ATTORNEY
Attorney for STATE OF FLORIDA

November 10, 2015

Fax: 888-888-8888

Facebook Security
LE Response Team
1601 Willow Road
Menlo Park, CA 94025
REF: bossaidoit@yahoo.com
Case # 2015CF2951

Dear Custodian of Records:

The account listed above is the subject of an ongoing criminal investigation which is being conducted by the Office of the State Attorney. We are requesting the following information associated with the above mentioned account(s) be preserved pending the issuance of a subpoena or other legal process seeking the disclosure of such information:

- Subscriber information
- All posts, chats and friend lists
- Dates, times, and content of posts and chats

Due to the time period, we are concerned with the requested data from November 10, 2015.

If you have any questions, concerning this request, please contact me at (850) 606-6000.

Sincerely,

Jason Newlin
Investigator for the Office of the State Attorney
301 S. Monroe St. Suite: 475
Tallahassee, FL 32399
850.606.6000

HOW DO I GET THESE RECORDS ADMITTED INTO EVIDENCE?

- First, establish **relevance**,
- Then establish authenticity:
 - By **stipulation**.
 - As business record through a **custodian** or person with knowledge:
 - Is the record made and kept in the ordinary course of your business?
 - Was the record made at or near the time of the event(s) it records?
 - Was the record made by a person with knowledge of the event(s)?
 - As business record via **certification** or declaration that complies with 90.803(6) and 90.902(11) (satisfies the rules in the State in which it was executed) or the federal equivalent, 803(6) and 902(11). See U.S. v. Hassan, 742 F.3d 104, 132-134 (4th Cir. 2014) (affirming admission of Facebook pages and Youtube videos as self-authenticating business records).

AUTHENTICATION

WILLIAM N. MEGGS
STATE ATTORNEY



OFFICE OF
STATE ATTORNEY
SECOND JUDICIAL CIRCUIT OF FLORIDA

10th COUNTY COURTHOUSE
301 S. MONROE STREET, SUITE 475
TALLAHASSEE, FLORIDA 32399-1560
TELEPHONE: 850.606.6005
FAX: (850) 606.6001

November 10, 2015

To: Facebook

RE: bossaidoit@yahoo.com

This agency is requesting records for the above mentioned account. If records are currently held by Facebook that will be provided as part of a court order or subpoena, we are asking they be certified through a business records certificate. A records certificate often used by this office is attached should Facebook not have a corporate authentication notice.

Your cooperation in this matter is greatly appreciated. Thank You.

Please contact me if there are any issues:

Inv. Jason Newlin
Office of the State Attorney
301 S. Monroe St. Suite 475
Tallahassee, Fl. 32399
FAX: 850.606.6005
Desk: 850.606.6000
Thanks,

Certification and/or Declaration of Authenticity as Business Record pursuant to 90.803(6)

I hereby certify and declare that the attached records containing _____ pages
are records kept in the Ordinary Course of Business of _____
located at _____

The records were made at or near the time by a person with knowledge of the events
and have been kept in the ordinary course of business at the above location. These
reports and records are made as part of the regular business practice.

I, _____, am the custodian of the records
and reports at the above business and hereby certify and declare them to be true and
accurate copies of the reports and records kept at _____
located at _____

(Signature of Custodian of Records)

(Printed name of Custodian of Records)

(Official Capacity of above Employee)

WHAT IF IT'S JUST A SCREENSHOT?



HOW DO I ADMIT A SCREENSHOT?

- Treat a screen shot of a photograph like any photograph:
- Establish relevance
- Establish that the screenshot is a fair and accurate representation of what was on the particular Facebook, Instagram, etc.
- This can be done through any witness with knowledge that the screenshot is a fair and accurate depiction of what appeared on the outlet at a particular time.

- Authentication of screen shot or print outs containing text (i.e. a website, blog, etc.) is less clear.
- Some courts accept testimony of creator that it a fair and accurate representation if accompanied by indicia of reliability such as webpage URL address and the date. See Camowraps, LLC v. Quantum Digital Ventures, LLC, 74 F. Supp. 3d 730, 736 (E.D. La. 2015); Randazza v. Cox, No. 2:12-cv-2040, 2014 WL 1407378, at *2 (D. Nev. Apr. 10, 2014).
- Other courts require the additional testimony of a webmaster or other person with knowledge of the website to authenticate to whom the posted information is attributable. See Wady v. Provident Life & Accident Ins. Co. of Am., 216 F. Supp. 2d 1060, 1064-65 (C.D. Cal. 2002); Nightlight Sys., Inc. v. Nitelites Franchise Sys., Inc., No. 1:04-cv-2112, 2007 WL 4563875, at *6 (N.D. Ga. May 11, 2007).

QUESTIONS?

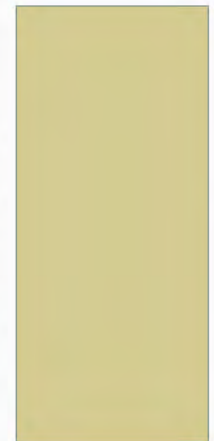


Instagram



kik.

CLEANING UP SOCIAL MEDIA



CLEANING UP SOCIAL MEDIA



My client's social media pages
are a mess. What do I do??

PROFESSIONAL ETHICS OF THE FLORIDA BAR

OPINION 14-1

JUNE 25, 2015

(APPROVED BY FLA. BAR BOARD OF GOVERNORS OCTOBER 16, 2015)

- A lawyer may advise a that a client change privacy settings on the client's social media pages so that they are not public.
- A lawyer may advise a client to remove information relevant to the foreseeable proceeding from social media pages so as the social media information or data is preserved.
- The general obligation of competence may require a lawyer to advise a client regarding the removal of relevant information from the client's social media pages.