



WINTER 2022 E-NEWSLETTER

At Digital Mountain, we assist our clients with their electronic discovery, digital forensics, cybersecurity, and data analytics needs. For this E-Newsletter, we discuss the collaboration software market and various eDiscovery nuances such as file links within communications.

Court Grapples with eDiscovery in Collaboration Software Suites

The boon for organizational productivity from collaboration software suites such as Slack, Microsoft Teams, Google's Workspace (formerly known as G Suite), and Zoom is ushering in a new and exponential growth spurt in stored data. Messaging, file sharing, calendaring data, as well as graphics, video, and audio data are created, manipulated, stored, and deleted daily in vast amounts. While most organizations are not in the business of preserving data for potential litigation, there is no question that when the occasion arises, eDiscovery within collaboration software suites has everyone grappling with questions of how to deal with the new volumes of data now subject to discovery. In this article, we'll look at one case where two timely questions provide wisdom for those heading into discovery from collaboration software suites.



The type of data and the format of the material produced in collaboration software suites can cause parties to return to the courts with new requests during the discovery phase. In *Nichols, et al. v. Noom, Inc.*, 2020 1:20-cv-03677 (LGS) (KHP) (US Dist. Ct. SDNY March 11, 2021), Judge Katharine H. Parker was asked to resolve a dispute over whether hyperlinked internal documents (the Court's choice of wording for hyperlinked files) were considered attachments for production purposes. Judge Parker decided that hyperlinked documents stored on Noom's Google Drive storage were not inherently subject to discovery production as requested by Plaintiffs because the hyperlinked internal documents were (1) not previously defined as attachments initially; (2) not necessarily relevant and therefore required for production; (3) not easily produced within Google Vault, the tool already in use for data production; and (4) producible individually upon appeal to the court if the Plaintiffs could make the case for relevancy and importance. The issue of collecting hyperlinked data or documents isn't a new one – experienced eDiscovery providers have come to anticipate the existence of hyperlinks as part of discoverable data and have become increasingly proficient at assembling relevant collections.

The second issue presented to Judge Parker was a request to re-run discovery using a different tool than Defendants had already used. Plaintiffs requested that eDiscovery be re-run using their preferred tool, FEC, instead of Google Vault. Both parties submitted Declarations by eDiscovery practitioners on the merits and detractions of the tools in question. Judge Parker denied the Plaintiffs' request citing issues of cost, time, and proportionality and identified Google Vault as the industry standard. eDiscovery practitioners know that while the industry standard is a reasonable criterion on which to base tool selection, especially if the discovery is already underway, it may not be the latest, most comprehensive, or even the most efficient tool for the job. Once discovery has already started, courts are reluctant to grant a request for a do-over without a solid justification. By including a reputable eDiscovery professional in your initial eDiscovery strategy planning, you can potentially save subsequent trips to the court for modifications, new orders, and costly additional steps.

In what Judge Parker later alludes to as being a "fulsome written decision," the Order states, "In this Court's experience, only a fraction of the documents produced in discovery will be material to the litigation and the Court indicated to the parties the above-described procedure should be sufficient to address Plaintiffs' concerns about identifying key hyperlinked documents." In other words, no, and don't ask again. eDiscovery practitioners will most likely recognize that Slack, Microsoft Teams, G Suite tools, and Zoom aren't the first apps to present eDiscovery issues of hyperlinked information and debate over which tool will work best. Not unlike wise judges, who recognize that answering the questions that arise from eDiscovery of collaborative tool suites still requires adherence to the standards of proportionality, wise parties will carefully consider how the courts are likely to respond when approached for a second or third time with the same request – and start their planning with the assistance of eDiscovery professionals from the beginning.

Please direct questions and inquiries about electronic discovery, digital forensics, cybersecurity, and data analytics to info@digitalmountain.com.

UPCOMING INDUSTRY EVENTS

THE SEDONA CONFERENCE WORKING GROUP 1 TOWN HALL ON SEARCH AND
RETRIEVAL METHODS 2022

Virtual, January 20, 2022

NETDILIGENCE CYBER RISK SUMMIT CONFERENCE 2022

Fort Lauderdale, FL: January 31, 2022 - February 1, 2022

ABA TECHSHOW 2022

Chicago, IL: March 2-5, 2022

11TH ANNUAL ASU-ARKFELD EDISCOVERY, LAW AND TECHNOLOGY
CONFERENCE

Phoenix, AZ: March 8-9, 2022

LEGALWEEK 2022

New York City, NY: March 8-11, 2022

[Click here to see more upcoming events and links.](#)



Digital Mountain, Inc. Founder and CEO, Julie Lewis, will be presenting at various upcoming industry events. Please send requests for speaker or panel participation for her to marketing@digitalmountain.com.

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