



SPRING 2025 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 headaches that come with hyperlinked files in eDiscovery and provide some welcome pain relief.

Courts View Hyperlinked Files Case by Case

Early lawyers may have had an easier time with discovery, but they probably weren't having as much fun. What's more fun for a litigator than the vigorous representation of their client's case, including their client's right to discovery of both exculpatory (of your client) and inculpatory (of the other side) evidence? That being said, the complexities of today's eDiscovery issues can make any litigation case team or the bench nostalgic for simpler times. In earlier years, eDiscovery didn't require splitting digital hairs as to whether hyperlinked files should be treated as attachments for the purposes of discovery. In this article, we'll review some important 2024 opinions regarding the eDiscovery of hyperlinked files.



Expanding Attachment in April

In *In re Uber Techs., Inc. Passenger Sexual Assault Litig.*, 2024 WL 1772832 (N.D. Cal. April 23, 2024), Judge Cisneros was tasked with determining just how far to expand the definition of attachment with regard to digital files. Judge Cisneros ruled that Attachment(s) shall be interpreted broadly and includes, e.g., traditional email attachments and documents embedded in other documents (e.g., Excel files embedded in PowerPoint files), as well as modern attachments, pointers, internal or non-public documents linked, hyperlinked, stubbed or otherwise pointed to within or as part of other ESI (including but not limited to email, messages, comments or posts, or other documents). This definition did not obligate Uber to produce the contemporaneous version of Google Drive documents referenced by URL or hyperlinks if no existing technology made it feasible to do so, reducing the burden to what was technologically current.

On the Contrary in May

While so far we see one 2024 opinion in favor treating hyperlinked files as attachments, *In re StubHub Refund Litig.*, No. 20-md-02951-HSG (TSH) (N.D. Cal. May 20, 2024), brings us a case that modifies a "yes on attachments," to a "no." Judge Hixson previously ordered the defendant to produce the linked documents as agreed in the ESI protocol or produce a Rule 30(b)(6) deposition witness to describe everything that the defendant tried to do to produce them. He ultimately

granted the defendant's Motion to Modify the ESI Order, removing references to hyperlinks within references to attachments and family groups. Judge Hixson also denied the plaintiffs' motions for sanctions with respect to FRCP Rule 37(b)(2), inherent authority and FRCP Rule 26(g).

Breaking the Tie in May

So far, we've got one yes and one no opinion with regard to treating hyperlinked files as attachments. In *In re Insulin Pricing Litig., No. 3:17-cv-0699 (BRM) (RLS), MDL No. 2080 (D.N.J. May 28, 2024)*, we have a second opinion for "not the same." Magistrate Judge Rukhsanah L. Singh ruled on several contested ESI issues related to the parties' respective proposed ESI Protocols, including hyperlinks, where she agreed with the defendants that "hyperlinks are not the same as traditional attachments." Judge Singh further stated, "Defendants have sufficiently proffered that such tools are either not feasible whatsoever or unduly burdensome to apply to their respective data environments," and denied the plaintiffs' request for additional meet and confers.

A Matter of Trust in August

In *UAB "Planner5D" v. Meta Platforms, Inc., No. 19-cv-03132-WHO (SK) (N.D. Cal. Aug. 28, 2024)*, Judge Sallie Kim denied a motion by plaintiffs to compel defendant to produce the documents that corresponded to hyperlinks that appeared within documents already produced. Plaintiffs argued that the hyperlinked files within the responsive documents were analogous to attachments, and as such, should have been produced, as would align with Judge Cisneros' determination above. Defendant argued to the contrary, citing the additional time and effort required to review hyperlinked files. Moreover, Defendant Meta asserted they had reviewed the documents and determined that they were not relevant. While acknowledging Meta's point regarding the extra time and effort, Judge Kim made her determination according to the idea that parties are trusted to review and determine relevance, and that courts are not the ones to make those determinations concerning individual documents. Motion denied. Score: 3-1 in favor of not treating hyperlinked files as attachments.

While this certainly doesn't constitute a preponderance of cases where the question of should hyperlinked files be treated as attachments arises, it is a look at what may turn out to be the ultimate prevailing opinion. With that in mind, ESI protocols will continue to require careful drafting to ensure that what litigation teams believe is relevant evidence remains discoverable. With technology being what it is, that goal may never be easily achieved.

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

UPCOMING INDUSTRY EVENTS

RSA CONFERENCE 2025

San Francisco, CA: April 28, 2025 - May 1, 2025

TiECON 2025

Santa Clara, CA: April 30, 2025 - May 2, 2025

CLOC GLOBAL INSTITUTE

Las Vegas, NV: May 5-8, 2025

IP COUNSEL CAFÉ
Palo Alto, CA: May 6-8, 2025

WIECON25 – WOMEN IN EDISCOVERY CONFERENCE 2025
Chicago, IL: May 12-14, 2025

[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.

DIGITAL MOUNTAIN, INC.

4633 Old Ironsides Drive, Suite 401
Santa Clara, CA 95054
866.DIG.DOCS

www.digitalmountain.com

Contact us today!

FOLLOW US AT:

