

# MAKING THE MOST OF METADATA – A LITIGATOR’S PERSPECTIVE

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**“Understanding what metadata needs to be specifically preserved and produced represents one of the biggest challenges in electronic document production.”**

- Introduction to the *Sedona Canada Principles*, p.3

# How to think about metadata

- **Value-added information about the content, context or structure of a document**
- *Content: what the document contains or is about*
- *Context: who, what, why, where, how aspects associated with the document's creation*
- *Structure: the formal set of associations within or among individual documents*

# Kelly's Rule for metadata production

When an electronic document is relevant and not privilege, and is therefore, being produced,

- metadata must be produced, unless
  1. the parties agree it is irrelevant; or
  2. the parties agree it is privileged; or
  3. a court has pronounced that it does not have to produced
- metadata might be producible, *even if irrelevant*, if particularly useful for sorting and searching

# Jurisprudence?

1. Leading U.S. case on metadata: *Williams v. Sprint* (D. Kan., Sept. 29, 2005).
  - Held: Where the Court orders a party to produce an electronic document in the form in which it is regularly maintained, ie, in its native format or as an active file, that production must include all metadata unless that party timely objects to production of the metadata, the parties agree that metadata should not be produced, or the producing party requests a protective order.
  - Real lesson: They ought to have known the metadata was relevant.

# Jurisprudence?

2. *Sedona Canada Comment 8.a.* (p.30)  
“Production of electronic documents and data should be made only in electronic format unless the recipient is somehow disadvantaged and cannot effectively make use of a computer, or the volume of documents to be produced is minimal and metadata is known (and agreed by all parties) to be irrelevant.”
3. *Cholakis v. Cholakis* (2005), 198 Man.R. (2d) 128 (Man. Q.B.)
4. *Wilson v. Servier Canada Inc.*, 2002 CanLII 3615 (Ont. Sup. Ct.)

# Jurisprudence?

## 5. Principle 12 of the (US) *Sedona Principles Addressing Electronic Document Production*

“Absent party agreement or court order specifying the form or forms of production, production should be made in the form or forms in which the information is ordinarily maintained or in a reasonably usage form, taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case.”

## 2 key questions from the Rule

1. When will metadata be relevant to your litigation such that it must be preserved and produced along with the associated relevant documents?
2. When will metadata, though not strictly relevant to a particular issue, be helpful to you and/or your opponent in sorting and reviewing the relevant documents?

# Relevance of metadata

- The pleadings
- Examples
  1. The electronic contract
  2. Claims of privilege
  3. Metadata-crucial cases
    - *Electra Entertainment Group v. Does 1-9* (S.D.N.Y. Sept. 7, 2004);
    - *Experian Information Solutions, Inc. v. I-Centrix, LLC* (N.D. Ill. July 21, 2005)

# Caveats

- Is it static in that it never changes once created; Is it dynamic such that it may change with use or manipulation of the information object?
- Proportionality.
  - Expense/time/burden vs. potential probative value and amount/importance of issues in the litigation

# Useful reading on metadata

- The *Sedona Canada Principles Addressing Electronic Discovery* (January 2008) and the *Sedona Principles Addressing Electronic Document Production*, online: The Sedona Conference® <<http://www.thededonaconference.org>> under “Publications”
- Anne J. Gilliland, *Setting the Stage, in Introduction to Metadata, Pathways to Digital Information*, Online Edition, Version 2.1
- Craig Ball, *Beyond Data About Data: The Litigator’s Guide to Metadata* (2005), available at <<http://www.craigball.com/metadata.pdf>>

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