

Metadata and Embedded Data

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eDRM-2 Panel

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I. Introduction

A. What is Metadata?

- **“Metadata, commonly described as ‘data about data,’ is defined as ‘information describing the history, tracking, or management of an electronic document.’”**
 - *Williams v. Sprint/United Mgmt.*, 2005 U.S. Dist. LEXIS 21966 (D. Kan. 8/31/05) <www.ksd.uscourts.gov/opinions/032200JWLDJW-3333.pdf#page=10>
 - *Cf. Defining Metadata* (LJN e-Discovery Law & Strategy 11/1/05) <www.ljnonline.com/pub/ljn_ediscovery/2_7/news/145513-1.html>
 - *See also What is Metadata Anyway?* (P.G. Lewis 11/1/05) <www.pglewis.com/newsletter/Nov05/Nov2005RecentDecisions.html>



Categories

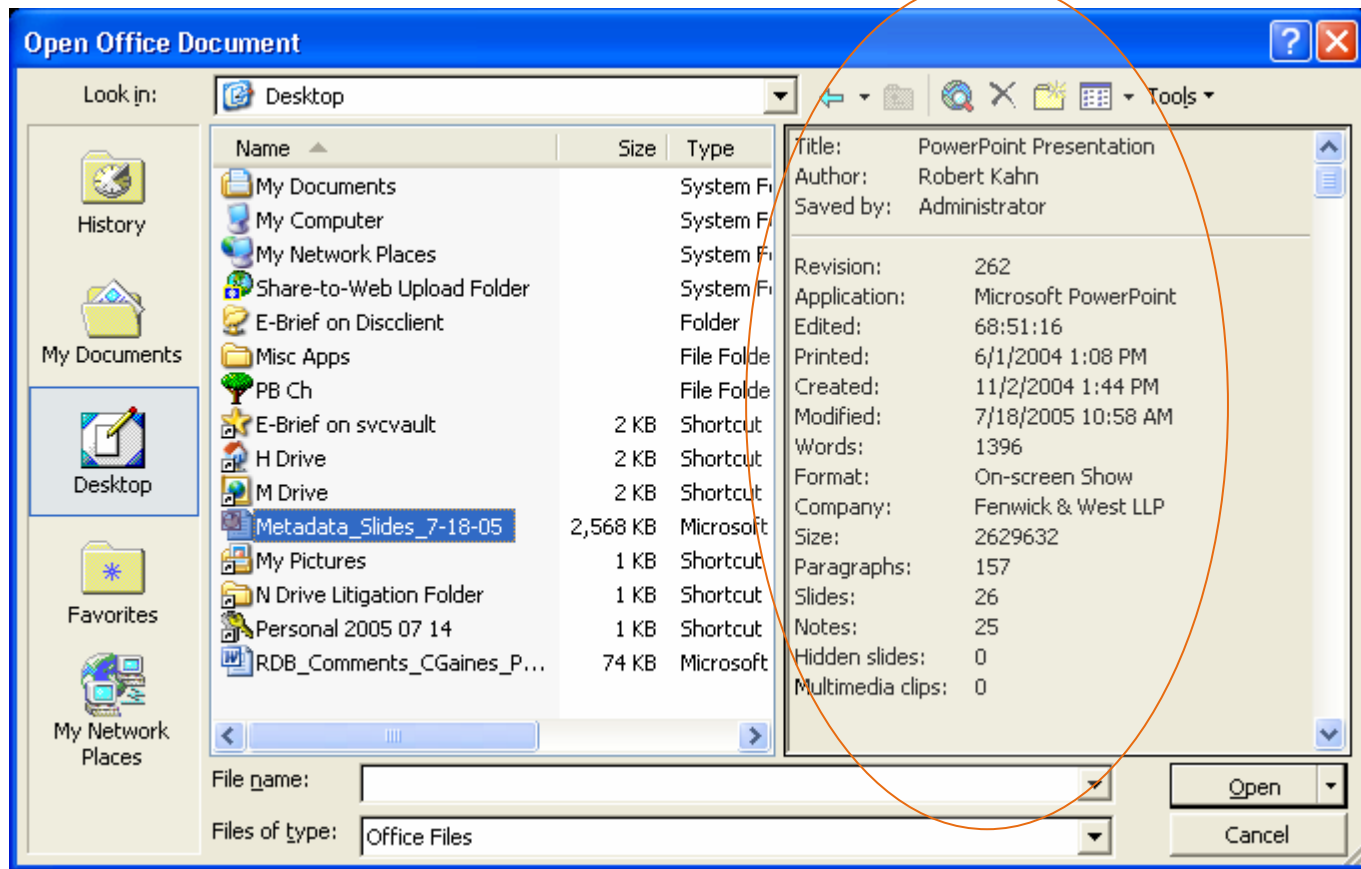
- **By design, MS Office files create two metadata types**
 - D. Karpman, *Metadata can bite you where it hurts, law-wise* (Cal. Bar Journal 11/1/05) <<http://Metadata-CalBJ-11-1-05.notlong.com>>

- ***File System Data* = file name, creation date, last modified date, size, author, location/path of storage, template used to create it, etc.**
 - Workshare, "*Dangers of Document Metadata*" (2004) <www.workshare.com/collateral/misc/Dangers_of_Document_Metadata.pdf>

- ***Document (Imbedded/Embedded) Data* = results of revisions in various drafts of a file**
 - “Deleted” text, footers, white text, small text, macros

File System Metadata in MS Office Files

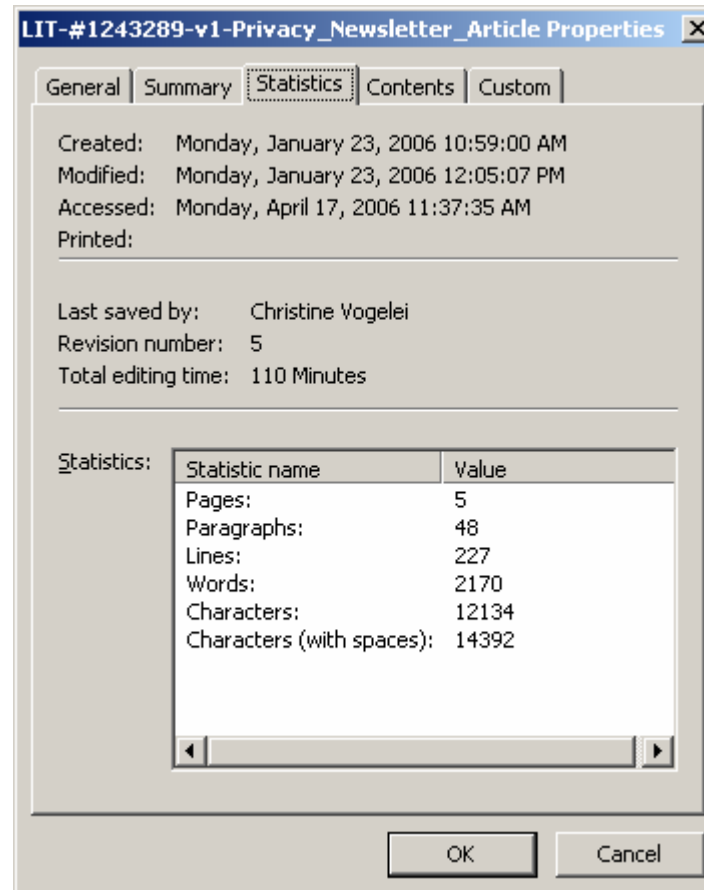
Ex 1:





File System Metadata in MS Office Files

- Ex 2: choose "Properties" from "File" menu:





Document Metadata (Embedded/Imbedded Data)

- Can yield more surprises
- Can track/capture:
 - changes made
 - reviewers' name
 - order of changes
- Not necessarily revealed when file opened
- ***BUT CAN BE revealed in various other ways.***





I. B. Metadata Leaks in the News

1. UN's Hariri Report

- **October 2005 Report by German prosecutor on Syria's suspected involvement in assassination of ex-Lebanon Prime Minister Rafik Hariri**
- **UN Secretary-General Annan had promised not to alter report before giving it to Security Council**
- **Word processing file distributed in electronic form**

"UN office doctored report on murder of Hariri" (Times Online 10/22/05)
<<http://www.timesonline.co.uk/article/0,,251-1837848,00.html>>

I(B)(1). Metadata Leaks UN Report (c't'd)



- **Prior draft: named four members of Syrian President's inner circle (brother, brother-in-law, et al.) and named one Lebanese official**
- **Final draft: "senior Lebanese and Syrian officials"**
- **Timing of those changes on Thursday 10/19:**
 - **11:37 A.M. – Meeting; Prosecutor Detlev Mehlis began presenting report to Annan**
 - **11:38 A.M. – Final edits began**
 - **11:55 A.M. – After meeting ended, names removed**

Id.; 11/7/05 NYT article

Content at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/563/67/PDF/N0556367.pdf?OpenElement>

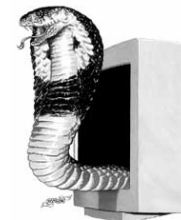


I(B). Metadata Leaks In the News

2. Soc. Sec. Privatization

- Derrick A. Max, head of two business groups favoring Admin's privatization plan
- On request from Senate Democratic Policy Committee, Max e-mailed in his testimony
- Un-scrubbed Word file included editing and advice from an associate SSA commissioner
- Democrats expressed outrage
- "The real scandal here," Max told L.A. Times, "is that after 15 years of using Microsoft Word, I don't know how to turn off 'track changes.' "

Tom Zeller Jr., "*Beware Your Trail of Digital Fingerprints*"
(NYT 11/7/05) <<http://Metadata-NYT-11-7-05.notlong.com>>



I(B). Metadata Leaks In the News

3. Others Bitten by Metadata

- Merck
- Pentagon
- British Prime Minister's office . . .
 - Brian Bergstein, *Hidden data comes back to bite* (AP 2/25/06)
<www.thecouriermail.news.com.au/story/0,20797,18258230-8362,00.html>
 - D. Kennedy, et al., *Mining the Value from Metadata* (1/1/06)
<www.discoveryresources.org/04_om_thinkingED_0601.html>
 - Gene Koprowski, *Networking: Not-so-secret documents* (UPI 2/6/06)
<www.upi.com/Hi-Tech/view.php?StoryID=20060206-083838-3339r>





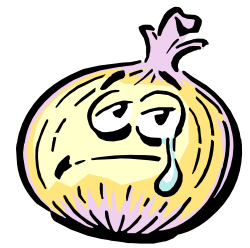
II. Metadata in Attorney-Created Files

- **Different approaches by national, state and local bar associations.**
 - *See generally* David J. Stanoch, " 'Finders Weepers?'," 74 Temp. L. Rev. 657, 657-58 (2002)
<http://Stanoch-Temple-2002.notlong.com>
(LEXIS ID/password needed)
- **Concerns for**
 - Litigators
 - Transactional Lawyers



II. Attorney-Created Files

A. Litigators



- **Two key concerns:**
 - Documents drafted solely by one side
 - Documents drafted by both sides
- **Hot button issue primarily because of ability of recipient to manipulate MS Office files to:**
 - peel back onion layers; OR
 - go farther and use tool to extract metadata in searchable form



Pleading Horror Story – SCO

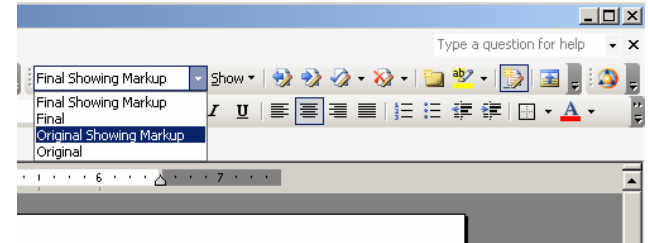
- Litigators representing π SCO chagrined when file metadata (tracked changes) in Word version of Complaint revealed their thought process as to target Δ 's, etc.
<http://news.com.com/2102-7344_3-5170073.html?tag=st.util.print>

Deleted: CENTRAL DISTRICT OF
Deleted:
Deleted: CALIFORNIA
Deleted: MICHIGAN¶
Inserted: MICHIGAN
Deleted: ¶
Deleted: _____
Deleted: _
Deleted: BANK OF AMERICA,¶ a National Banking Association

Editing marks in a Word document show that SCO's lawsuit against DaimlerChrysler initially listed Bank of America as a defendant.



Horror Story (c't'd)



- **Hidden gems in the Complaint's Word file:**
 - **2/18/04 11:10 a.m. Bank of America removed as defendant**
 - **2/18/04 11:13 a.m. this comment removed: "Are there any special jurisdiction or venue requirements for a NA bank?"**
 - **2/27/04 Location for filing switched from state of BofA's home (California) to Daimler- Chrysler's home (Michigan)**
- **"90[%] of documents in circulation began as something else"**
 - **See above CNET SCO Article (citing Vanson Bourne study, "*Cost of Sharing*")**

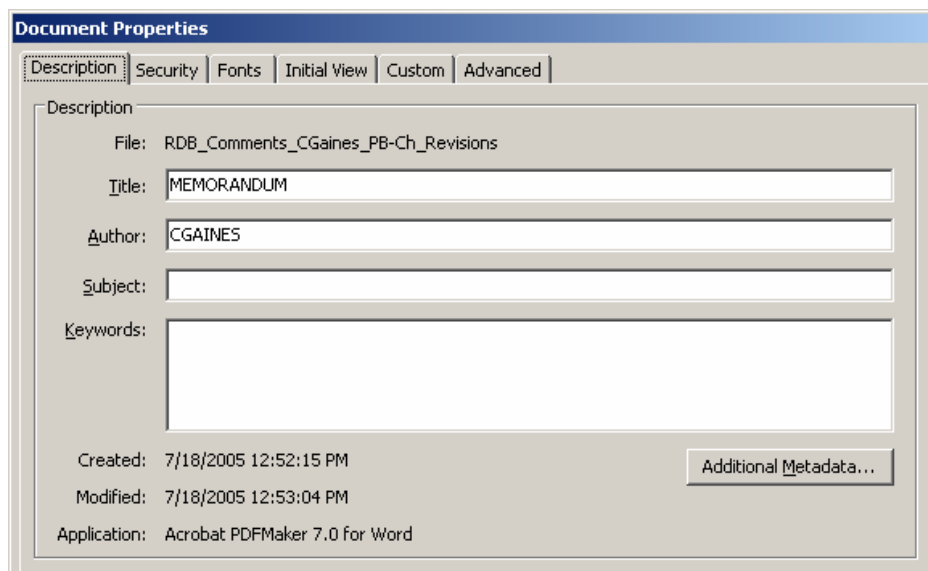


TouchUp Text Tool (T)

|Correct textual mistakes with this advanced tool. |

EFilings – Word-to-.PDF Automated Conversions

- Some metadata migrates. Exs. . . . Just press **Ctrl+D** and see Title, original Author, etc.



- Best to **SCRUB METADATA BEFORE/WHILE** convert to .PDF
- ALSO, if concerned about untrustworthy recipient being able to "**touch-up text**," use Acrobat Security settings

Jointly Drafted Litigation Documents



- **Exs: Settlement Agreements and Stipulations**
- **Same concerns as in below transactional context.**
- **In sum, CANNOT UN-RING BELL:**
 - “[W]ill have learned confidential information that cannot simply be erased from memory”
 - “[L]awyer receives a one-page fax [or a revised Word file originally] saying, ‘Offer \$100,000, but you have authority to settle for up to \$300,000’”
 - *Formal Op. 2003-04, 2004 WL 837937 (NYC Ass’n B. Comm. Prof. Jud. Eth. 4/9/04) <www.abcny.org/Ethics/eth2003.html>*



II. Attorney-Created Files

B. Transactional Attorneys

- Privilege waiver a concern
- 20-50 attachment-transmitting e-mails per deal?
 - See Helen Leah Conroy, “*How to Send Clean Deal Documents*” <www.helenconroylaw.com/law_resources/articles.htm>
- E-mail attachment may have originated in prior deal
- Former client, current client and colleague(s) may all have drafted, revised and commented
- Final version from prior deal likely result of compromise; but now want to start stronger





Ethical Obligations of an E-mail Sender

- "[D]uty . . . to use reasonable care . . . to prevent the disclosure of metadata containing client confidences or secrets."

NYSBA Op. 782 (Comm. on Prof'l Ethics 12/8/04)

<http://NYSBAOp782.notlong.com>

- "Reasonable care" factors include:
 - based on "template" used in other matter for other client
 - multiple drafts with comments from multiple sources
 - client commented on the document

Id.

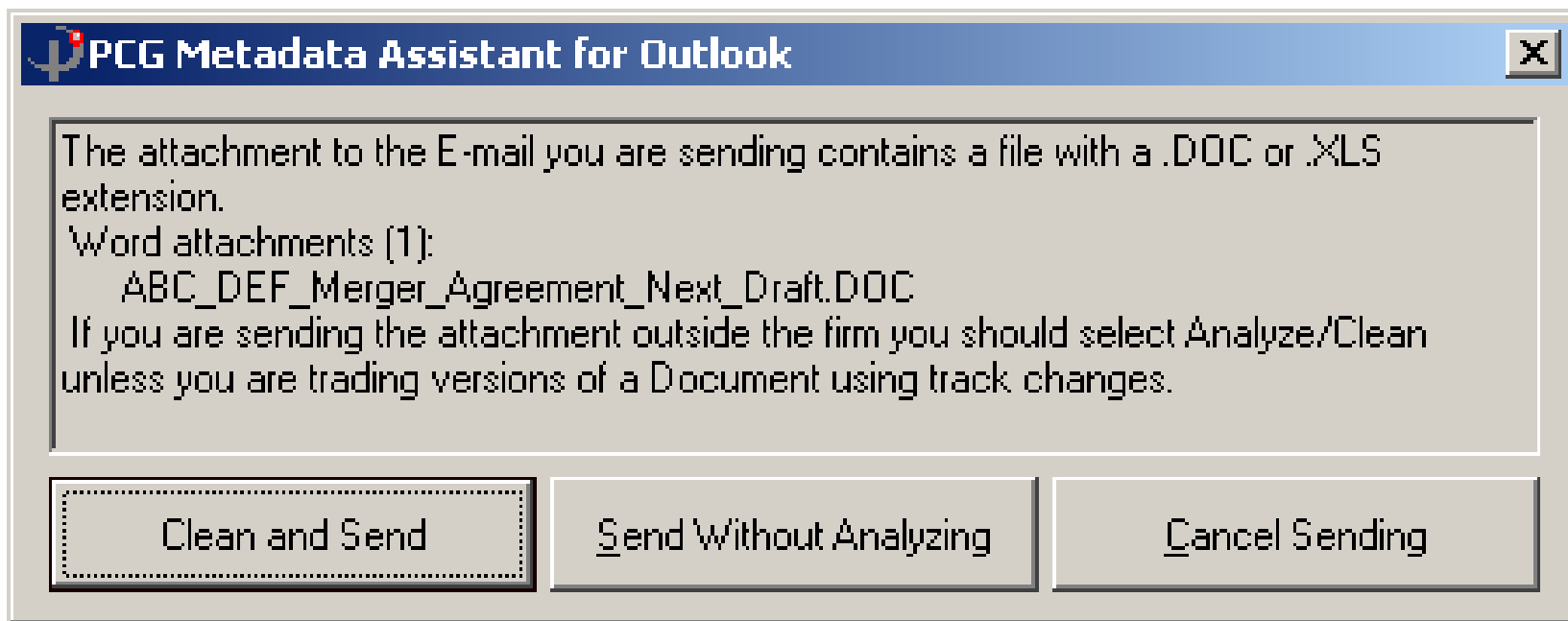


What to Do?

- **Clean attachment before it is e-mailed via METADATA SCRUBBING SOFTWARE.**
 - **Insufficient:** Microsoft's menu option; or free "Remove Hidden Data" (RHD) tool (batch removal)
 - **Basic:** PCG's *Metadata Assistant*
 - **Powerful:** Workshare's *Professional 4.5*
- **Neither MS tool removes all scary metadata**
- **RHD 1.0 has stability issues**
 - NSA, "*Redacting with Confidence: How to Safely Publish Sanitized Reports Converted From Word to PDF*" (2/2/06) [<www.nsa.gov/snac/vtechrep/l333-TR-015R-2005.PDF>](http://www.nsa.gov/snac/vtechrep/l333-TR-015R-2005.PDF)



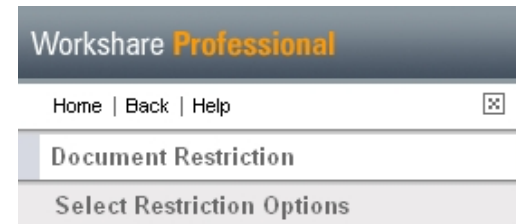
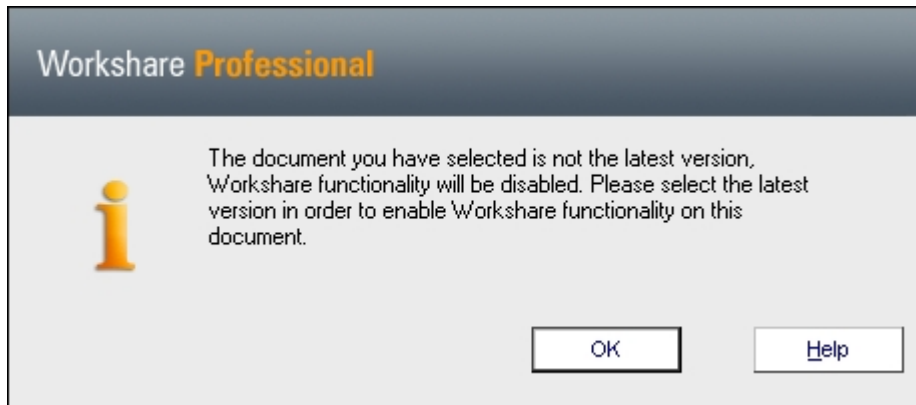
Sample PCG Prompt re: Scrubbing Metadata





More Advanced Security Features

- **Workshare . . . DMS integration plus**



- No Restriction**
This document is not restricted, and can be freely emailed to all recipients.
- External Restriction**
This document can only be emailed to people within your organization. Email to external recipients will be blocked.
- Full Restriction**
This document cannot be emailed to anyone. Any email containing this document will be blocked.

Please note: You will need to save the document after clicking APPLY to save the level of document restriction selected.



More Advanced Security Features *(c't'd)*



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Please select the hidden data you would like to clean:

There are no track changes
There are no comments

Attach Additional Documents

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Save Your Security Settings

- Full security
- Prohibit printing
- Prohibit modification of text
- Prohibit text or graphics being copied
- Prohibit comments being added

Password (Optional)

Confirm password

OK Cancel Help

Conclusion

- So, let's be careful out there . . .
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