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Small Payload, Big Payoff:

Micro-Content Takes Over the Modern Workplace; and it's Coming for eDiscovery Next

BY SARAH BROWN

Slack. Microsoft Teams. Skype. Facebook Workplace. Bloomberg chat terminals. Hipchat. WeChat. WhatsApp.

Workplace chat and collaboration tools are seemingly everywhere, and on the rise.

Micro-content tools fill a very real need in modern workplaces – and that's the need for informal communication that straddles the line between public and private, enables real-time collaboration and creates a searchable, semi-permanent record of decisions, conversations, motivations behind decisions, and even completed work and multimedia attachments.

These tools don't replace email – nor do they replace in-person conversations, phone calls, or watercooler office gossip – although they can and increasingly do contribute to a decrease in all of these other types of more traditional communication modes. The gap that message-level collaboration tools fill is for communication that is less formal than email, and less of a hassle than a phone call, meeting, or even getting and walking to a different part of the office and interrupting someone else at their desk.

When email first took hold, communication was very casual – but over the years, email communication has taken on more and more formal overtones – in some workplaces in particular, email fills the role that formal company memos used to fill. Companies encourage the formalization of email communication in security and compliance training and in company culture: Savvy workplaces know that email is an easily discoverable source of potentially litigious data, and the formalization of the email medium helps to reduce that inevitable risk.

The need for these tools is reflected in both the wild success of the startup companies behind tools like Slack and Hipchat, and the near-ubiquitous adoption of tools like Microsoft Teams in modern workplaces. In YEAR, Slack was valued at $XYZ Billion. And Microsoft Teams is in widespread use by XYZ of the Fortune 500 companies. Facebook Workplace is successful in its own right – touting XYZ users in the United States alone.

And if XYZ study by XYX organization is to be believed, the prevalence of this form of communication will only grow as the proportion of millennial employees eclipses previous generations – millennials are by far the "early adopters" of such technologies, and in fact often prefer this method of communication over more formally scheduled meetings, or stiffly composed emails.

Another factor contributing to the near-ubiquitious adoption of micro-content tools is the rise of the remote worker. Smart companies looking to do more with less

know that real estate is a non-negotiable piece of overhead that can be eliminated or reduced with a distributed workforce. And remote or flex work options make for a happier workforce, and a more successful recruiting and retention organization.

What this means for the litigation attorney

Like it or not, these tools – call them micro-content, collaboration, or workplace social media – are now capturing real business data. For businesses, the speed up decision-making processes and increase the efficiency with which employees can execute once those decisions are made. They record business decisions, the thinking behind them, and the motivations of individuals involved in decision-making.

And due to their casual, collaborative nature, this data can often contain more truth nuggets in terms of how businesses make and execute decisions than more traditional data storage troves like email, structured databases, or meeting minutes. Like email, these tools can create complex message threads, be sorted by topic and date, include metadata, and can often include attachments in the form of work product and multimedia messages. Unlike email, these tools encourage casual, message-level high-volume communication, emojis, jokes, and frank expressions.

Discovering Micro-Content: Message-Level Data and Corporate Litigation

"Slack" originally stood for "searchable log of all conversations and knowledge." If that sounds like a discovery nightmare to you, it's because it is. Or, it can be a nightmare. But it can also be a discovery dream. It depends on a few things: Which side of the litigation you're on, for one. But also, and perhaps equally important is how well-equipped you are to handle discovery requests for this type of data.

Micro-content created in workplace social media and collaboration tools is without question electronically stored information (ESI) subject to discovery in litigation. For all the reasons discussed above, it can also be an incredibly valuable cache of information useful to internal investigations, external litigation, and regulatory inquiries.

Savvy legal professionals – and especially litigation and discovery specialists – would do well to familiarize themselves with the changing landscape of micro-content tools and learn how to exploit these tools to gain an advantage in litigation and discovery projects.

Challenges in collecting, processing collaboration data and micro content

Volume: Collaboration tools can quickly generate vast amounts of "small payload data." Your average workplace using a chat collaboration tool can easily create millions of individual messages in a single workday. Associated metadata – just like email and document metadata – describing time and date stamps, channel information, edit logs, and so forth, can quickly balloons to triple or quadruple the size of the original message data.

On top of the micro content itself, many collaboration tools like Microsoft Teams, Slack, Trello and Facebook Workplace allow for attachments – either uploaded directly from employee desktops, filedrives, and the internet, or through integrations with OneDrive, SharePoint, and other sources – including apps. Attached information can range in content from silly internet memes to product documentation or sensitive company strategy databases or financial analysis spreadsheets.

Typically by default, both chats and attachments are stored forever, unless a company changes retention policies during the setup and rollout process. However, users have finely-grained control over editing their own messages. They can, for example, delete a particular piece of micro-content like a private chat or reply in a public thread, remove an attachment, or even just edit a comment after the fact. But most systems have a way to track these edits, and keep a record of these changes which can later become subject to litigation and ultimate discovery.

"Collaborative social data is by its very nature complex – whether it's in or out of the workplace."

Complexity: Collaborative social data is by its very nature complex – whether it's in or out of the workplace. The data is complexified in any number of ways, including but not limited to:

- **Scattered storage:** Data and conversations on a single topic or from a single custodian can easily be stored in multiple places. Conversations on a single topic can take place across different channels or teams – public discussion threads can move to one or multiple private chats, and can occur over the course of minutes, days, hours, weeks, or months.

- **Edits and alterations:** Every post, chat, group thread, and attachment is subject to edits and amendments starting from the time of posting right up until the moment a legal hold is placed. While most social collaboration platforms

create records of these edits, this creates ballooning metadata which must be collected, culled, and reviewed before a case team can fully understand the context of any particular communication.

- **Diversity of attachments:** Like email, micro-content social collaboration tools allow users to attach a variety of data types to an equally wide variety of communication channels. A user can send a gif image privately in a chat, attach an entire database to a public discussion thread, or upload a video to a semi-private limited-user channel.

- **Inconsistent retention policies:** Some small payload data platforms allow users to set their own retention and destruction schedules. As such, data may sometimes be lost forever without the application of a rigorous, corporate-wide policy.

- **Interpretive issues:** Nowhere is the swiftly changing way in which we communicate more on display than in the world of social media. And at their core, chat applications, workplace collaboration tools, and other types of microcontent tools are simply social media tailored for the workplace. Emojis, gifs, photos, and Unicode characters are just a few of the new data types that are now being left up to review attorneys to interpret. Tone in human communication is notoriously difficult to decipher – and adding new characters to the mix only adds to that difficulty.

The chicken or the egg: Handling Micro Content in Symmetrical Corporate Litigation

Many attorneys, when involved in symmetrical corporate litigation, avoid making discovery requests for social platform data.

Even when they know – or suspect – that the data they could uncover from a complete production of the opposing party's relevant Teams, Slack, Bloomberg chat, or HipChat data could give them an edge in the matter at hand, they still hesitate.

Why is that? The data payload may be small when it comes to excavating microcontent on workplace social media platforms, but the legal payoff is potentially huge. The casual nature and unmonitored "feel" of these tools means that if a smoking gun data is hidden anywhere, it'll be hidden somewhere in there. But it's a rare law firm or corporate legal team that's equipped with the tools, expertise, and experience needed to go digging for smoking gun data in the Wild West that is microcontent platform data.

On the legal service provider front – those organizations that exist specifically to solve these hairy data problems for the legal clients – very few software or service providers can handle the problem of micro-content with any elegance.

The reason most litigation teams don't ask for this data during discovery is because if they do, they worry that the opposing party will request theirs. And if that happens, they know they're not prepared to collect, cull, and review the data for relevance with any degree of certainty. Their fears are well-founded: Without experience, the costs for such an endeavor can quickly spiral out of control. And the risk of accidental over-disclosure or spoliation is high. It's safer to simply keep this type of data OUT of the courtroom.

"So which comes first: The tools and expertise, or the surprise discovery request from a regulator or a litigant?"

There's still no standard approach to this data. Just like when email was still maturing and email collections included a wide variety of data types – every microcontent collection is different and requires a bespoke approach.

So which comes first: The tools and expertise, or the surprise discovery request from a regulator or a litigant?

It's tempting to take an ostrich, head-in-the-sand approach to the problem: "If we don't request workplace social platform data, maybe no one will request ours. Maybe then we'll be safe."

Maybe in a world of respectful, symmetrical corporate litigants using the gentleman's agreement model of litigation, this approach could work. But we don't live in that world.

For one, regulators do not worry about the costs in time, technology, and review hours when making discovery requests – and recent legislation in the US alone shows that regulators have an increasing interest in these data types.

Secondly, any organization that learns to expertly handle this type of data during discovery gains a significant competitive advantage over opponents during litigation.

So savvy legal practitioners looking for a way to advantage their companies or firms should face the problem of corporate social media data head-on and look to proactively onboard both the software and the expertise needed to handle this data well in advance of when an urgent need arises.

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The legal practitioner's buying guide for microcontent discovery tools & services

TECHNOLOGY: WHAT TO LOOK FOR

- **Normalizing weird data:** When it comes to microcontent, the data might be weird, but the eDiscovery process needs to work normally: Ideally, it should work the same as it does for other more mature data types like email. What this means is that any tool you select should do a good job of "normalizing" the weird data. Look for a tool that can process all document formats and data across types, servers, and locations into a singularly formatted, reviewable HTML file with standard fields like date, subject, recipients all in the same location.

- **Humane document review:** Once data is collected, any tool you select needs to do a good job of displaying it for ease of use by document reviewers. Document reviewers look for a tool that uses alternating line styles to visually differentiate individual chats within a conversation thread. The best tools will use a variety of reader-friendly formatting options to help reviewers locate information quickly, simplify the output, and streamline the process. Fewer frustrated document reviewers, faster review, lower review costs, and higher accuracy overall.

Workplace collaboration tools aren't going away anytime soon. In fact, their adoption is increasing exponentially.

The increasingly multinational nature of business – and therefore data, including social data and microcontent – is reason alone to prepare for discovery of workplace social collaboration data. Don't wait for a regulator or litigation opponent to request this data – be proactive to future-proof your discovery process. **ILTA**

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