

eDiscovery Advantage, Volume 5, Issue 1

SPRING 2019

The Winston & Strawn LLP eDiscovery & Information Governance Group (the “eDiscovery Group”) is pleased to be able to offer our insights into the decisions and developments that have taken place in the first quarter of 2019 in the e-discovery, information governance and privacy arenas. We hope that the following summaries and information will continue to aid your understanding of these important and rapidly evolving areas of law, and we look forward to helping you stay abreast of upcoming e-Discovery developments.

Over the course of the past three months, there have been a number of developments in the e-Discovery and privacy practices, including:

- Courts are struggling to apply rules consistently when analyzing spoliation claims involving video evidence.
- Courts continue to hold that a requesting party is not entitled to direct access to, or a forensic examination of, the producing party’s electronic systems without a showing that the producing party has engaged in evasive discovery conduct or a deficiency in the production.
- The Middle District of Louisiana held that a defendant had possession, custody, or control of text messages that were stored with his service provider, even though the defendant no longer possessed the cell phone from which the text messages were sent or received and he no longer used the service provider’s services.
- The Northern District of California held it is common practice to prohibit redactions of non-relevant information from produced documents, and that while there are situations where such redactions may be allowed, those situations are very limited.
- The Northern District of Alabama reinforced past case law and the Committee Notes to the Federal Rules of Civil Procedure Rule 26(f), noting that preservation orders should not be routinely entered by courts.
- Data protection authorities are starting to file complaints and, in some instance, levy fines against companies for violations of the GDPR.
- U.S. senators recently introduced the “Commercial Facial Recognition Privacy Act of 2019”, which would prohibit the use of facial recognition software without consent.

- The Public Comment period concerning the proposed amendment of Rule 30(b)(6) closed on February 15, 2019. The Committee received nearly 1,800 comments.
- There has been continued consolidation of and funding for e-discovery service providers, including HackstackID's acquisition of eTERA Consulting and OpenText's acquisition of Catalyst.

2 Min Read

Related Locations

Charlotte

Chicago

Houston

Los Angeles

New York

San Francisco

Silicon Valley

Washington, DC

Related Topics

eDiscovery Advantage

Forensics

Data Protection

Text Message

Related Capabilities

eDiscovery & Information Governance

Litigation/Trials

Related Regions

North America

Related Professionals



Jason Moore



John Rosenthal