

Posted date: 11/20/2006

Metadata in Electronic Documents OK to Use in Court, ABA Rules

By **MICHELLE MOWAD**

SAN DIEGO BUSINESS JOURNAL STAFF

Attorneys receiving electronic documents are free to use so-called "metadata" and other information embedded in those documents, the American Bar Association has ruled.

The ABA said metadata includes such information as the last date and time that a document was saved and by whom, data on when it was accessed, the name of the owner of the computer that created the document and the date and time it was created, as well as a record of changes made to the document or related written comments.

Google recently inadvertently leaked financial projections and the U.S. Justice Department revealed Social Security numbers through metadata.

According to the ABA's Standing Committee on Ethics and Professional Responsibility, information obtained from this buried data is free game for establishing the who, what, when, where, why and hows relating to litigation.

The ABA committee said the only provision is that its rules of professional conduct require the recipient to notify the sender when they "receive what the lawyer should reasonably know were inadvertently sent documents."

Businesses or attorneys sending, producing or providing documents to opposing counsel can limit the likelihood of transmitting metadata by saving documents as a PDF file, communicating via facsimile, through the use of software or using several other security tricks.

http://www.sdbj.com/industry_article.asp?aID=060269.9113936.1395680.299919.377934.850&aID2=107351