



2016 CLM Boston Conference
July 14-15, 2016
Boston, MA

Internet Presence Investigations 101

I. The stats on social media and how much we have changed in the last 10 years

The evolution of social media

In 1978 Ward Christensen and Randy Suess launch the first public dialup bulletin board system. The two unleash the kernel of what would eventually spawn the world wide web. In August 1991, the World Wide Web became publicly available and has grown to a medium that many of us could not imagine. The impact on our lives may be greater than we actually can acknowledge. The way we communicate, shop, research and interact with each other has been changed forever for good and bad. Many refer to Mark Zuckerberg as the inventor of social media, but I think we began communicating socially through AOL in the chat room. Remember “You’ve Got Mail”? A term said over and over again by your computer when you logged on to AOL and the “world wide web”. Tom Hanks and Meg Ryan made the term popular in a movie that described a lonely widower raising his son in Seattle who reaches out to a lonely single female living in New York through an AOL chat room. It was the beginning of mating over the internet and it has become a multi-million dollar industry with sites like match.com and harmony.com. Today approximately 100,000 people get married after meeting through a dating service on the internet. How we manage today is another example of the way. Remember when your parents used to wonder about TV time, well now not only do we spend time watching TV, but the average for North Americans logging on to the internet daily is just over 300 million.

Users of Social Media are from young to old, male and female that are mainly looking for communication and self-satisfaction. Studies show that we as humans use social media because we get satisfaction from it. Social media triggers the part of the brain that proves self-satisfaction like what we feel about food and money. It is that feeling that causes some people to use this medium as a constant pacifier for allowing us to feel good about ourselves. 80% of all posts on social media are about the poster. We crave it and is for that reason social media will never die and most will not privatize their Facebook page,

because they want you all to know how great they are. We in the investigative world capitalize on a growing need to be known. The Internet has changed our lives and how we communicate. It has also changed how we investigate questionable claims.

II. Internet Presence Investigations

What is Metadata?

Metadata is "data that provides information about other data". Two types of metadata exist: structural and descriptive. Structural metadata relates to the containers of data such as a URL, which have specific rules in order to access certain information. Descriptive metadata uses individual instances of application data or the data content. It provides information such as time, date and device that may have taken or uploaded a picture or a post. This is commonly described as raw data. So when an opposing attorney asks for the raw data he or she is really asking for the metadata.

Some websites to get you started

There are many websites that are free and can be helpful in a novice's search to obtain information that can help in a case. The first that comes to mind is a reverse image site named Tineye.com. This site allows you to upload a photo and let Tineye search social media for a match. It could find the photo on a person's Facebook site, but more importantly, could find the photo on other sites.

Other sites that can be somewhat effective are peekyou.com and spokeo.com. Both of these sites can be used to get some background information on an individual such as the family structure, religion or an employer.

Examples of why it is now important to have the Metadata, Exchangeable Image File (EXIF) and Geotag information to authenticate a screenshot.

Many lawyers use social media to discover levels of activity by the plaintiff in order to improve a settlement for their client. In the case *Gatto vs. United Airlines*, Frank Gatto the plaintiff destroyed evidence from Facebook and in turn was sanctioned by the Judge. As a result Mr. Gatto lost his case to United Airlines and the Judge awarded United Airlines costs and attorney fees associated with discovery and the filing cost of an instant motion. The passage below is the decision handed down by the court.

THIS MATTER comes before the Court on joint motion of defendants United Air Lines, Inc., (hereafter, "United") and Allied Aviation Services, Inc., (hereafter, "Allied"; collectively, "Defendants") for spoliation sanctions related to the deletion of plaintiff Frank Gatto's (hereafter "Plaintiff") Facebook account. [D.E. 33]. Specifically, Defendants request that this Court: (1) enter an Order issuing an instruction at trial that the jury draw an adverse inference against Plaintiff for failing to preserve his Facebook account; and (2) award Defendants with expenses, including attorneys' fees, associated

*with discovery and the filing of the instant motion. Id. Plaintiff opposes Defendants' motion. [D.E. 34]. The Court has considered the parties' submissions and, for the reasons set forth herein, Defendants' motion for sanctions is hereby **GRANTED IN PART and DENIED IN PART.** GATTO v. UNITED AIRLINES, INC.*

In this case, because Mr. Gatto violated the spoliation request, he suffered a loss of not only his case, but a fiduciary loss as well. A result like this can be achieved if you act quickly on a claim that could face litigation. However, if the attorney didn't have previous knowledge that there was Facebook material that was deleted there would be no victory. Obtaining and storing social media evidence can be invaluable to your case, but storing the information in the correct way is key.

On multiple occasions, I have seen claims personnel take a screen shot of a Facebook page with the URL displayed, but because it is a partial URL you do not have the evidence you need for determining that the page came from Facebook. To properly document a URL it should be copied in its full form and pasted just below the screen shot.

To fully protect yourself all metadata should be extracted from each page, which is time consuming and cumbersome. It takes software to effectively and efficiently extract the pages and the metadata that will hold up in court and arbitration. One of the biggest mistakes made on potentially large exposure cases is waiting to check social media. Even when it is known almost from the outset that the case could go to litigation, six months to a year could go by before anything is done. By not checking social media early, an opportunity to reduce the exposure could be lost.

Monitoring Social media when users are obsessed with posting daily.

Monitoring social media is a culmination of techniques and software to provide the best opportunity in obtaining information useful in breaking a case wide open. When doing cyber investigations you need to first locate the internet presence of a subject. This is what is called an Internet Presence Review. Through search engines and search techniques on social media sites, we find the subject's presence even when not using their real name. Social media sites keep data like email addresses and cell phone numbers. Using one of these in the search bar can usually find someone that is not using their real name for their Facebook page. We need to be diligent when data mining. The rule is that on any search engine you use such as Google, Yahoo and Bing you need to go a minimum of 5 pages deep to confirm a subject's presence. It is that type of tenacity that will develop the best possible results. It is encouraged to check at least the top three search engines mentioned above.

Categorizing a subject is to identify his or her interest and then proceed by checking the sites that focus on those interests. For example, if someone is an avid sport bike rider, Sport Bike Forum, a golfer would be Golf.com and a bowler would be Bowl.com to obtain their speed, handicap or bowling scores. An investigator that is doing cyber

investigations will have a deeper arsenal that will usually have at least 3 different sites in each interest. So many people miss opportunities to get information from public sites such as many Department of Natural Resources that will post purchased hunting and fishing tags and sometimes indicate the type of animal killed and the weight.

Once the presence is identified and it is determined that the individual maintains a daily or weekly social media presence those are the plaintiff's you want to monitor. You can do it manually, but a use of sophisticated software, combined with human intervention is the most effective. Some software products that police and Federal agencies use can monitor multiple sites and look for posts that have keywords such as accident, pain, vacation and party that can highlight areas of interest. The posts still have to be reviewed by the human eye, but this way we can make monitoring cost effective for the client.

Software that extracts data at a rapid rate.

Sophisticated software can now extract pages from social media sites at a rapid rate. While pulling pictures, posts, videos and cataloging them in dedicated folders it is also pulling metadata that will protect your evidence when a plaintiff attorney may want to contest it. This extremely valuable and it should be stressed that metadata be obtained and stored when the decision to go to trial has been made.

How extracting the data can be helpful in locating a person

So we talked about extracting metadata, which is important for an evidence trail, but that is not the only thing you can use it for. When we obtain geotagging from posts on Facebook and Twitter we can sometimes locate where the plaintiff may be residing. For example, a person posts on Twitter, "just chillin' at home", we extract the metadata and obtain a latitude and longitude that pinpoints the subject to the exact spot he or she was standing at the time of the post. We have found individuals that way. An additional use is when trying to relocate a subject you may have lost sight of when working a surveillance. Same concept for use of geotagging. By checking the individual's social media presence they may post something, but do not post their location. Obtaining the geotag for Facebook, Myspace, Twitter, Google + and Instagram we may be able to relocate them.

III. Results of Internet Presence Investigations

Screenshot and how the Metadata is displayed.

The proper way to obtain a screenshot is not just by selecting a photo or post and hit print screen on your computer keyboard. You need to include the URL on the page and you could include the date and time at the lower right corner of most laptops. The mistake people make is sometimes the URL is longer than what is displayed. So when doing a

screenshot make sure to copy the entire URL and place it at the bottom of each screen shot. Without that information you could be in jeopardy of losing your evidence.

Video's from YouTube, Instagram etc.

There are currently over 350 social network sites on the internet. Out of those, the top 3 sites visited are LinkedIn with over 255 million monthly visitors, Twitter with over 310 million monthly visitors and Facebook with over 1.4 billion monthly visitors.

Because there are now literally billions of people using social media, several things have happened. "Selfie" has been included in the Merriam-Webster Dictionary, there are approximately 350 million pictures and videos uploaded to Facebook on a daily basis, approximately 58 million pictures and videos are uploaded to Instagram on a daily basis. There are now more photos taken every second of the day than in the entire 18th century. YouTube has become the second largest search engine in the world and over 100 hours of video is uploaded every minute of every day. There are now more people connecting to the Internet with smart phones and tablets than desktop computers.

Over six billion hours of video is viewed on YouTube every month. That's SIX BILLION HOURS of video.

Making sure that any photos and videos of your subject are saved properly will have a huge impact on the case's mitigation.

In conclusion, the Internet is an endless source of information and extremely effective in helping mitigate potential fraudulent claims. Care and ethical investigative standards must be taken into account to validate and authenticate Internet presence evidence. As musician Axel Rose was quoted saying "Regarding social media, I really don't understand what appears to be the general population's lack of concern over privacy issues in publicizing their entire lives on the Internet for others to see to such an extent... but hey it's them, not me, so whatever."