

# **Social Media Discovery:**

A Guide to Social Media Use and Discovery, 2017 Edition

by

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# 1 How People Use Social Media

For many people, especially to those immersed in it, social media can seem ubiquitous. #Hashtags are everywhere and on everything. On TV, people have their Twitter handles on display below their name. Everyone knows that everyone else is on Facebook. The Internet, and social media, are here in a big way.

Every year, Kleiner Perkins releases an Internet Trends Report by partner Mary Meeker. TechCrunch calls it “the ultimate compilation of essential tech statistics.” Suffice to say, if you want to get a handle on where Internet technology is going, it’s a must read. But it’s lengthy, and there is lots of superfluous information in there that we don’t need. Let’s break out the essentials.

According to the report, roughly 40% of the population is on the Internet in some manner.

## **That’s a lot of people.**

There are 2.8B Internet users, & 2.1B Smartphones with Internet data subscriptions. In a lot of emerging markets, Smartphones are becoming often the only means of accessing the Internet. But in other places, notably the United States, it means people are using multiple devices.

Of the 280 million Americans using the Internet, they spend an average of 5.6 hours a day on the Internet.

**That's a lot of time.**

And 51% of that time is now spent on mobile devices. So no wonder Google rolled out a big update that punishes websites who aren't mobile friendly. Technology companies are also increasingly mobile-focused Facebook, Twitter, Apple, Google, and Microsoft. Particularly in stand alone app development. Why? In 2013, Flurry released a study of how users spent time on mobile devices:

The average American is on their phones about three hours a day. Of that time, 80% is likely devoted to app usage. Probably more than that as the above data is from 2013.

The 2015 Internet Trends Report also made something else clear: Communication is King. Six of the top ten most used apps globally were messaging apps. Three were social media services. The odd app out was a video game.

Also worth noting, Facebook owns the top four spots. Facebook owns Instagram, Messenger is their messaging app, and they bought WhatsApp in early 2014 for \$19B.

The Internet, and social media, is now where most of the communication between people (and businesses) takes place. When engaged in any type of litigation, lawyers need to be sure to include social media as part of the discovery process.

## 2 Demographics of Social Media Use

Before we get into specific services, let's take a moment to look at the *type* of people are on these services. Just a few days ago, Business Insider teased out a bit of their demographic research that looked at a variety of social media services. Looking at their breakdown, as expected, younger people are increasingly spending their time on more “visual” social media services – ones that focus on pictures and video, almost to the exclusion of text (the exception being Snapchat, which is more a messaging app than a social media service). The older, established social media services have more diverse user bases.

The Pew Research Center has also been tracking Internet usage, generally, and on social media services for some time now. In a recent study, they shared their research on the demographics of what they identified as the “top five” social media platforms. This research is based on American adults (18+) who use the Internet. The “top five” social media services among adults identified in their surveys and research are:

- **Facebook**
- **Linkedin**

- **Pinterest**
- **Instagram**
- **Twitter**

Facebook, while easily the dominant platform, still faces some competition from these other services.

Another significant factor to consider is also how frequently people use these services. Are they the type of thing that people pay attention to everyday or once a week? Again, we see Facebook being the dominant platform.

**70% of online adults are on Facebook daily.**

Likely multiple times a day – between desktop and mobile devices. On the other services, daily usage falls off quickly, with LinkedIn coming in at only 13%.

Many adults only use one service (Facebook). To these people, Facebook IS social media. Nothing else is on their radar. But looking at the results from 2013 to 2014 it's clear that this is changing. As adults become more comfortable with social media, they are inclined to begin to explore other services. Children and young adults are likely already on multiple services already. The growth rate of using multiple services is among older adults.

But before we get into other services, let's start with the king: Facebook.

## 3 Facebook

The funny thing about Facebook at this point is that they sort of presume that you know what it is. That's how huge it is. Normally when you go to a new app, website, or service, they will have an "About" page explaining what it is. Or a video that gives an overview. Not with Facebook. If you visit Facebook not logged in, from a clean/no cookie browser, you get the following:

### **"Connect with friends and the world around you"**

There is an About link at the bottom of the page, which takes you to a PR/brand page devoted to Facebook. At this point, Facebook is so ubiquitous and confident that they run with just the basic copy on the above page, along with subheadings of "see photos and updates," "share what's new," and "find more." Pretty nebulous really, but also essentially what Facebook it is.

It's a place where people go to see what's going on in people's lives.

It's your sister complaining about cleaning her house. It's a co-worker talking about being at a ball game the night before. It's your neighbor's photos of their grandkids. You already know about it because everyone you know is already on it.

**Facebook is a record of the past.** It is a digital scrapbook of kid's birthday parties, vacation & wedding photos, and birthday wishes. Facebook is also the news for many people, but not breaking news. It can be stories of significance and substance (a post on the debt Greek crises from The Economist, shared by your uncle), or the banal and forgettable ("You Won't Believe These 7 Things To Do To Lose Weight," shared by that one person you went to high school with and wish you hadn't friended).

Regardless, for many it has become manner in which they interact with other people online. Facebook is what AOL wishes it had become: the default gateway for getting online – **but in the specific context of knowing what is going on in people's lives that are relevant to them.** Facebook attempts to do this by relentlessly tracking every single interaction on the service. It tracks who you look at, how long you look at it, where you click, what you like, etc. Then it feeds all that information into algorithms that attempt to show you the most relevant information on your main page (along with advertising of course).

[Read more about Facebook at their Wikipedia Entry.](#)

## 4 LinkedIn

LinkedIn describes itself as “the world’s largest professional network with 300 million members in over 200 countries and territories around the globe.” LinkedIn also has a mission statement that might help give some insight: “connect the world’s professionals to make them more productive and successful. When you join LinkedIn, you get access to people, jobs, news, updates, and insights that help you be great at what you do.”

Yet, as I stated earlier, it’s pretty much just people’s online resume. Headhunters and job placement services regularly use the service.

LinkedIn is not only your resume, there are groups to join and discussion areas. These can be as broad as “Lawyers,” to as narrow as you law school’s alumni or a specific practice area and region. Yet, the vast majority of people on LinkedIn don’t use groups. Joining groups and then participating in them is opaque at best. LinkedIn is just not very intuitive.

LinkedIn is also very vanilla and corporate. There are no grandkid photos here. The majority of the information on LinkedIn is relating to business in someway. Career updates. An article someone has written on a specific

industry. Job postings. It has become a sort of one-stop shop for news and information related to the users' careers.

LinkedIn is also important because it tends to rank very highly in search engines. When someone searches for a specific lawyer, "Jane Doe lawyer," a LinkedIn profile is often one of the top results.

[Read more about LinkedIn at their Wikipedia Entry.](#)

## 5 Pinterest

Pinterest describes itself as “a place to discover ideas for all your projects and interests, hand-picked by people like you.” In search results, their brief tagline is “Discover and save creative ideas.”

Pinterest offers brand new users to their service with unique splash pages. Right away, Pinterest attempts to give people a sense of what it is about. Gardening, cooking, travel. It's about much more than that really. Often times, **Pinterest is about the future.** It is where people place their hopes, dreams, and desires.

The garden they want to plant in their backyard, a recipe they hope to make, a destination they desire to travel to.

Pinterest is also heavily skewed towards women. The vast majority of users on the service are women. **Among adult women who use the internet, 42% of them have a Pinterest account.** That's significant for advertisers who want to reach women, especially when they are “pinning” their hopes, desires, and dreams for all to see.

Really, Pinterest is just a way for people to save things they like or want from around the web. It's a sort of visual bookmark system. Just like people used to save web pages they wanted to see again in their bookmark folder, now

many people use Pinterest instead.

For example, Attorney Alice has decided she wants a new desk to go with her new office chair. Alice begins to scour the web looking at desks. She some she likes on Amazon, and hits the “Pin-it!” button on her browser, the image of the desk and other information are immediately whisked away into a “Pin,” that Alice can review later. She looks at Pottery Barn and Office Depot too. Now she has 1/2 dozen desks too look at. She can also explore similar items on Pinterest and create of visual collage of possible interests. Here the thing, **if you were a desk retailer, wouldn't you want to advertise right next to this page?**

The answer, of course, is yes. But is that really relevant to lawyers and other providers of professional services? Do people create “divorce boards?” Are there corporate executives putting up “strategic catastrophe” boards where they list their companies weaknesses and fears? Not exactly.

But they might be posting information or ideas about what they are planning to do in the future.

[Read more about Pinterest at their Wikipedia Entry.](#)

## 6 Instagram

Instagram (“Insta”) is a mobile photo/video-sharing social media service that enables its users to take pictures and videos, and share them on Insta (it also integrates with a variety of social networking platforms, such as Facebook, Twitter, Tumblr and Flickr). Insta describes itself as the place to “Capture and Share the World’s Moments.”

What Insta really is, to be quite frank, is a set of photo “filters” that let people feel like they can take good photos. For a long time on all phones, not just smartphones, the camera application/utility was fairly basic. Only in the past few years have the sensors in phones become of a high quality enough to take decent pictures.

Even then, good photography requires talent. Framing, composition, arrangement all come into play. But these are things that can’t be corrected or fixed with software. Yet what you can effect with software is lighting, mood, and effects. These things used to be the sole purview of expensive photo editing software.

But when Insta came out, it came with “filters.” These are settings you can choose to overlay on a photo you take, in order to give it a different feel or mood. Suddenly, everyone felt like they could take artsy, comment worthy

photos. It also piggybacked onto already existing social media services like Facebook and Twitter by easily allowing Insta users to post one photo to multiple services easily. In just a few months Insta shot over one million users.

Insta is incredibly popular with younger people. Whereas many older people tend to post their pictures solely to Facebook, the opposite holds true for younger people. It's quite likely that younger people will post pictures exclusively to Insta and not anywhere else.

[Read more about Instagram on their Wikipedia Entry.](#)

## 7 Twitter

Twitter, while having the lowest penetration among adults among these top five social media services, punches well above it's weight.

Twitter is on everything. Twitter is where #hashtags come from. Twitter is where people are discussing Super Bowl while it is being played. People are talking about the concert they are at. People share the story they just wrote, or the picture they just took.

### **Twitter is now.**

More so than any other social media service, Twitter is real-time. If you want the latest in breaking news, Twitter is where you need to be because it turns every user into a reporter. How real-time? Back in 2011, a Twitter user inadvertently gave live updates during the assassination of Osama Bin Laden. He didn't realize it until nine hours later. Even then, when the news did break, it was on Twitter, not on cable.

When user makes a post on Twitter (a "tweet"), it might be their brief thoughts on topic (Twitter posts are limited to 140 characters), or a photo of their lunch, or a video of a parade they are attending. It is a window into a small slice of someone else's life.

People on Twitter tend to follow news sources, celebrities, friends, and acquaintances that share news and information relevant to their interests. And because Twitter is so fast and so powerful, it tends to attract sort of social media “power users,” people comfortable with managing and self-organizing their information.

Twitter is also more “open” than the other social media services. By default, a user’s profile is public and anyone can access it. So it is much easier to stumble into people and conversations that you aren’t a part of. This sort of “organic discoverability” sets Twitter apart from the other social media services. As a result, Twitter is an incredibly strong driver of traffic. If something becomes popular on Twitter, and there is a hyperlink to a particular website, that site can likely expect a high degree of traffic.

[Read more about Twitter on their Wikipedia Entry.](#)

## 8 Messaging Services

While many people might not think of texting as a social media service, increasingly it is. While older adults generally rely on the stock, built-in SMS messaging systems that come with their phones, younger people have flocked to third party apps. These services might focus on messaging at their core, but all of them continue to evolve into stand-alone social platforms.

### **WhatsApp**

WhatsApp is free to use for the first year, afterwards it costs \$0.99 a year. In countries that still charge fees per message sent, this is huge. The app is incredibly easy to use and has a broad array of features for all types of media messaging. It has an installation base of over 450 million people. Facebook paid \$19 billion to acquire the company.

### **Facebook Messenger**

Facebook has their own messaging app of course. Facebook Messenger is a dedicated messaging app that uses your Facebook account and friends. It just crossed over 700 million users a few weeks ago. If you use Facebook on your phone and ever want to message with other people, you use this app.

## **Line**

Line is another app that also reached a milestone, crossing into over 300 million users. Users can send free text and voice messages, record/share movies, and make free voice and video calls between users. Users can also call non-Line users for a fee. Big in Asia.

## **KakaoTalk**

KakaoTalk is a messaging app that is big in Asia, but is increasingly gaining foothold around the world. It has around 150 million users. Users can make free calls and send messages, as well as share photos, videos, voice messages, location, and contact information. It also enables users to play games, follow celebrities and brands, receive coupons and purchase real world goods.

## **SnapChat**

The reigning champion of self-destructing messaging, SnapChat is a media-rich messaging app that deletes users' "snaps" (messages) after 10 seconds. In 2014, Snapchat stated that its users were sending over 700 million photos a day. Huge with anyone under 20.

## **Telegram**

Telegram is for people who want to make their messaging secure. Telegram features encrypted chat messaging and client-server encryption for chats. There is also a Secure Chat mode that provides end-to-end encryption, preventing anyone from snooping on your messages. The app also has a "self-destruct" setting akin to SnapChat, which makes messages readable for only a short time before deleting themselves from both phones.

## **CyberDust**

Another entry in the security and privacy conscious realm of communication, CyberDust offers encrypted, self-destructing messages that can include a variety of media. Unlike some issues that have been reported with other self-destructing messaging apps, Cyberdust is adamant they store nothing and all data about a message is deleted after 30 seconds.

## 9 Multi-Media Services

You'll note that as we move through many of these services, that they won't seem to be "social media" as you might traditionally think of it (i.e. – Facebook, Twitter, etc). **But, that's because all media on the Internet is social. There is no non-social media online.** Even if a service has no community or sharing functionality built-in, people will build communities around it in other places. Turn off comments on a blog? People go to Twitter or Reddit to talk about it. Conversations about media spiral off into far corners of the Internet.

With that note, let's look at the media focused services.

### **Youtube**

At this point, everyone should be familiar with Youtube. It's the largest video sharing site in the world. Also, it's the second largest search engine in the world by number of queries it handles per day (behind its parent company, Google). How popular is Youtube? **It has over a billion users and they upload 300 hours of video every minute of the day.** There are other video centric services, but they all fall far short of Youtube. It's also popular among lawyers. Many lawyers record videos on topics related to

their practice (though most of these are bad), upload them to Youtube, and then display them on their firm website.

## **Flickr**

One of the oldest and largest dedicated photo sharing services, Flickr has been in continual operation for eleven years. It hosts over six billion images. Still popular but lagging behind due to Facebook, Google Photo and other services that host photos. Regardless, Flickr remains the best place to go for CC licensed images for use in social media or other projects.

## **Periscope**

Periscope enables you to broadcast live streaming video from your smartphone to the world.

Competitor Meerkat launched first, but Periscope offers lower latency (video is not delayed as much) and is backed by Twitter, giving it an immediate boost in popularity. These services allow anyone to be a live reporter of breaking news...or just broadcast themselves eating cereal. They also give rise to incredible piracy problems with movies and tv, but especially with live sporting events. Thousands of people watched the Mayweather-Pacquiao match on Periscope via users who simply pointed their smartphones at their TV.

## **Soundcloud**

Based out of Berlin, Soundcloud has become the leader in hosting audio-related content. There is a lot of music on the service, but it is also becoming a home for many podcasts. Users upload around 12 hours of audio every minute. It also lets people share unique URLs that link directly to a specific timestamp on a piece of audio. This

feature has made it popular for sharing on other social media services.

## 10 Discussion Services

While the hum of conversation is constant across all of social media, there are some services that dedicate themselves to conversations exclusively. These services attempt to become the centerpiece for people looking to talk about a variety of issues or topics. These services are largely text oriented and focused on in-depth conversations between users.

### **Reddit**

The self-described “frontpage of the internet” – and in many ways, it is. Any time you see a picture, meme, or video become popular on Facebook, it was likely on Reddit a couple of weeks ago. It has a discussion centric interface that leads to thousands of comments on any given post. That being, said it can also be difficult to penetrate its user interface and culture. Reddit is one of the top 100 websites in the world and hosts thousands of “sub-reddits.” These are forums dedicated to a single topic. These forums can be as broad as r/pics, with nearly 9 million subscribers, to the terrifically narrow such as r/TaydolfSwiftler, dedicated to pictures of Hitler with quotes from Taylor Swift superimposed on them (over 10,000 subscribers).

Lawyers might want to check out r/Law (40,000

subscribers).

## **Quora**

Quora is a discussion platform focused on Q&A. People submit questions and users can provide answers. It's attracted a fair bit of attention over the years, but has never really "broken through" to get mainstream attention. That being said, there are many well known experts in a variety of fields on the platform and it can be a good source of learning. There are a fair number of lawyers on the service.

## **Disqus**

This is a bit of an outlier, but Disqus is increasingly becoming more social and appearing on more sites across the web. Disqus is a commenting platform that replaces the default comment system on websites. Users can follow other users' comments not just on a single site, but around the web. If you've commented on websites in the past, there is a good chance you have a Disqus account even if you don't know it.

## **Slack**

Slack is a cloud-based team collaboration tool. It was originally patterned after older Internet Relay Chat. Now, Slack has morphed into an all-in-one communications and messaging platform that is heavily relied on by IT companies and distributed teams.

# 11 Anonymous Services

With all this social activity, much of it tied to an individual's real name and identity, people have realized they need to be careful how they conduct themselves online lest they become victims of the Streisand Effect. This is especially true for younger people who came to realize that being on Facebook, etc. is great...except that their parents, teachers, and everyone else they know is one there as well. **It's difficult to cut loose, gossip, and be yourself when all the adults in your life are looking over your shoulder.** This has given rise to Anonymous Social Media.

These services still provide social interactions, but no one is forced to use their real identity. Nor are you required to create any sort of profile. Simply download the app and you can jump right into conversations (you'll be assigned a randomized username). If you're in an office park and use one of these services, you might not see much on these services. But get near a local University or high school and you'll be deluged with posts.

## **Whisper**

One of the original anonymous social media services, Whisper lets you upload a few sentences in block letters over stock photography – think memes. Posts with

names are banned and it also allows you to only see posts by people within 1, 5, 15, 25, and 50 miles radiuses as well as popular posts on the service as a whole. The focus on close geographic proximity allows people to essentially “gossip” or blow off steam while the message still reaches people close to them – a huge boon in settings such as high school and college.

### **Yik Yak**

Yik Yak has had explosive growth since it launched and is hugely popular at colleges. Users are anonymous and can only interact with other users in a 10 mile radius by posting comments and voting them up or down. It was also popular in high schools but due to frequent reports of bullying and harassment, Yik Yak partnered with the company Maponics and the app is now geographically disabled at 85% of the high schools and middle schools in the US. Despite this, many grade school aged children remain frequent users of the service.

## 12 Blogs

Finally, we have blogs. Blogs are platforms that allow users to publish text, images, video, etc. on whatever topic they wish. Blogs leveled the playing field regarding news dissemination and have become a source of knowledge and expertise across almost every industry. For lawyers, a blog is sort of a “homebase.” You can be on Facebook, Twitter, and the like, but eventually you are going to want to point people back to a central point that you can control and display long form content. For example, these past few posts have all been over 2000 words. They wouldn’t fit on any social media service. Instead, the social media services are a means to promote and publicize this material, and funnel people to the blog. **For lawyers looking to use social media services as a means of displaying expertise or generating business, this is the manner in which you will use social media.**

### Medium

Medium has become quite popular in a short period of time due to its simple user interface and pleasing layout and themes. Posts are sorted by category and not by writer. It has a very organic “discovery” experience that naturally leads readers to new content. Nothing posted to Medium

exists independent from the Medium.com platform. That is, the content is hosted there and users have little control over it.

## **Tumblr**

Tumblr is one of the most popular blogging platforms for young people. In June 2015, they reported hosting 238.8 million blogs. These can range from extensive collection of a 90s cyberpunk future that never was, to Minecraft updates to drunk furniture and everything in-between. It's image/gif centric and users often "re-blog" other's updates. A library of rabbit holes for the Internet's hivemind.

## **WordPress**

WordPress is the largest blogging platform in the world, and used by more than 23.3% of the top 10 million websites as of January 2015.

Users can use the hosted WordPress.com service or install the WordPress software on a hosting provider of the user's choice. WordPress is the most robust blogging platform out there and users can do pretty much anything with it. At this point, the majority of all blogs are hosted on WordPress. If someone wants to start an independent blog, WordPress is what he or she'll likely go with.

# 13 Stored Communications Act (SCA) § 2701

This is the code section you will run into more than anything else when having problems with social media discovery. Become familiar with it.

## **18 U.S. Code § 2701 - Unlawful access to stored communications**

**(a) Offense.** - Except as provided in subsection (c) of this section whoever -

**(1)** intentionally accesses without authorization a facility through which an electronic communication service is provided; or

**(2)** intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

**(b) Punishment.** - The punishment for an offense under subsection (a) of this section is -

**(1)** if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State -

**(A)** a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

**(B)** a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

**(2)** in any other case -

**(A)** a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

**(B)** a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

**(c) Exceptions.** - Subsection (a) of this section does not apply with respect to conduct authorized -

**(1)** by the person or entity providing a wire or electronic communications service;

**(2)** by a user of that service with respect to a communication of or intended for that user; or

**(3)** in section 2703, 2704 or 2518 of this title.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 103-322, title XXXIII, §330016(1)(K), (U), Sept. 13, 1994, 108 Stat.

2147, 2148; Pub. L. 104–294, title VI, §601(a)(3), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–296, title II, §225(j)(2), Nov. 25, 2002, 116 Stat. 2158.)

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# 14 Electronic Communication Service v. Remote Computing Service

An **electronic communication service** (“ECS”) is “any service which provides to users thereof the ability to send or receive wire or electronic communications.” 18 USC § 2510(15). The other category is RCS. The term “**remote computing service**” (“RCS”) is defined by 18 U.S.C. § 2711(2) as “the provision to the public of computer storage or processing services by means of an electronic communications system.”

## **So which is social media?**

Unfortunately, there is no clear ruling on how courts classify social media sites into one category or the other.

The most in-depth analysis to-date is found in *Crispin v. Christian Audigier, Inc.*, 717 F.Supp.2d 965 (2010), wherein the defendant served subpoenas on numerous social media services and the plaintiff moved to quash, claiming protection under the ECPA. The judge held that social media services operate as both ECS and ECS providers:

*“After presenting background on the SCA, Judge Morrow addressed the primary issue of whether the subpoenas should be quashed under the SCA. Recognizing*

*that no court “appears to have addressed whether social-networking sites fall within the ambit of the [SCA],” the court took a two-step approach. First, the court determined whether Media Temple, Facebook, and MySpace qualified as ECS providers under existing case law. Second, the court asked whether the specific content on these services met the definition of “electronic communications.” Ultimately, it concluded that the services operate as ECS and RCS providers at different times, depending on the content at issue.” Harvard Journal of Law & Technology, 24 Harv. J.L. & Tech. 563, Spring, 2011.*

For **private messages** (Facebook private messages, DMs on Twitter, etc) on social media services, the court really focused on **storage**:

*“As respects messages that have not yet been opened, those entities [Facebook, MySpace, etc.] operate as ECS providers and the messages are in electronic storage because they fall within the definition of “temporary, intermediate storage” under § 2510(17)(A). As respects messages that have been opened and retained by Crispin, under the reasoning of Weaver and Flagg, and the dicta in Theofel, the three entities operate as RCS providers providing storage services under § 2702(a)(2).”*

*[See United States v. Weaver, 636 F. Supp. 2d 769, 770 (C.D. Ill. 2009), Flagg v. City of Detroit, 252 F.R.D. 346, 349 (E.D. Mich. 2008), & Theofel v. Farey-Jones, 359 F.3d 1066, 1070 (9th Cir. 2004).]*

For **wall posts and other public or quasi public postings**, the court found that, “in the context of a social-networking site such as Facebook or MySpace, there is no temporary, intermediate step for wall postings or comments.

Unlike an email, there is no step whereby a Facebook wall posting must be opened, at which point it is deemed received. Thus, a Facebook wall posting or a MySpace comment is not protectable as a form of temporary, intermediate storage.” *Crispin*, 717 F. Supp. 2d at 989-90. Eventually, the court came to the conclusion that what matters is whether content posted on social media services is “completely public” or not:

*Regardless of whether Facebook and MySpace are ECS or RCS providers, the Crispin court cautioned that “a completely public BBS does not merit protection under the SCA.” In order to be protected from disclosure, therefore, Facebook Wall posts and MySpace Comments must not be “completely public.” Judge Morrow distinguished Facebook and MySpace from “completely public” BBS by noting that the users of both websites can limit public access via privacy settings. Harvard Journal of Law & Technology, 24 Harv. J.L. & Tech. 563, Spring, 2011.*

# 15 Subpoenas

## Criminal Cases

Section 2703 of the SCA describes how the government can compel a social media service to produce "customer or subscriber" content and non-content information for each of these types of service:

- **Electronic communication service.** If an unopened email has been in storage for 180 days or less, the government must obtain a search warrant. There has been debate over the status of opened emails in storage for 180 days or less, which may fall in this category or the "remote computing service" category.
- **Remote computing service.** If a communication has been in storage for more than 180 days or is held "solely for the purpose of providing storage or computer processing services" the government can use a search warrant, or, alternatively, a subpoena or a "specific and articulable facts" court order (called a 2703(d) order) combined with prior notice to compel disclosure. Prior notice can be delayed for up to 90 days if it would jeopardize an investigation. Historically, opened or downloaded email held for

180 days or less has fallen in this category, on the grounds that it is held "solely for the purpose of storage."

Kerr, Orin S., *A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending it*. 72 *George Washington Law Review* 1208 (2004).. Available at SSRN:

<http://ssrn.com/abstract=421860> or  
<http://dx.doi.org/10.2139/ssrn.421860>

## Civil Cases

The courts have not looked favorably at issuing subpoenas for information stored on social media services in civil cases. As the SCA states, any “person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service,” with some exceptions. 18 U.S.C. § 2702(a)(1).

“Contents of communications may not be disclosed to civil litigants even when presented with a civil subpoena.” *O’Grady v. Superior Court*, 139 Cal.App.4th 1423, 1448 (Cal.App. 2006); accord The U.S. Internet Service Provider Association, *Electronic Evidence Compliance—A Guide for Internet Service Providers*, 18 BERKELEY TECH. L. J. 945, 965 (2003) ([No Stored Communications Act provision] “permits disclosure pursuant to a civil discovery order unless the order is obtained by a government entity. ... [T]he federal prohibition against divulging email contents remains stark, and there is no obvious exception for a civil discovery order

on behalf of a private party."); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D.Va. 2008) ("Agreeing with the reasoning in *O'Grady*, this Court holds that State Farm's subpoena may not be enforced consistent with the plain language of the Privacy Act because the exceptions enumerated in § 2702(b) do not include civil discovery subpoenas."); *J.T. Shannon Lumber Co., Inc. v. Gilco Lumber Inc.*, 2008 WL 4755370 (N.D.Miss. 2008) (there is no "exception to the [SCA] for civil discovery or allow for coercion of defendants to allow such disclosure."); *Viacom Intern. Inc. v. Youtube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) ("ECPA § 2702 contains no exception for disclosure of [the content of] communications pursuant to civil discovery requests."); *Thayer v. Chiczewski*, 2009 WL 2957317 (N.D.Ill. 2009) ("most courts have concluded that third parties cannot be compelled to disclose electronic communications pursuant to a civil--as opposed to criminal--discovery subpoena"); *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal. 2010); *Mintz v. Mark Bartelstein & Associates, Inc.*, 885 F. Supp. 2d 987, 991 (C.D. Cal. 2012) ("The SCA does not contain an exception for civil discovery subpoenas.").

But a case has disregarded the SCA and **allowed subpoenas to issue to social media providers**, see *Ledbetter v. Wal-Mart Stores, Inc.*, 2009 WL 1067018, (D. Colo. Apr. 21, 2009) (court found that the subpoenas were "reasonably calculated to lead to the discovery of admissible evidence as is relevant to the issues in this case.")

With that being said, seeking social media information through party discovery, not subpoenas, is a far better strategy.

## 16 Party Discovery

The current direction among courts is to **not** acknowledge or protect the privacy interests of parties who voluntarily use social media services.

In *EEOC v. Simply Storage Management, LLC* (S.D. Ind. 2010), the claimants alleged they suffered from post-traumatic stress disorder as a result of employment discrimination. At the defendant's request, the court ordered the claimants to produce all relevant "profiles, postings, or messages . . . and . . . applications" as well as photographs and videos on their social media sites. The court found that "a person's expectation and intent that her communications [on a social media site] be maintained as private is not a legitimate basis for shielding those communications from discovery." The court considered this simply "the application of basic discovery principles in a novel context."

Also of note is *Romano v. Steelcase Inc.* (NY 2010), where the court granted defendants access to plaintiff's "current and historical Facebook and MySpace pages and accounts, including all deleted pages and related information." The court concluded that allowing the

plaintiff to “hide behind self-set privacy controls on a website, the primary purpose of which is to enable people to share information about how they lead their social lives, risks depriving the opposite party of access to material that may be relevant to ensuring a fair trial.”

Discovery of social media content is regularly recognized as relevant and necessary in most litigation today, and is best sought through party discovery.

## 17 Authentication

As with all evidence, the offering party must demonstrate that the content from a social networking service is (1) relevant, (2) authentic, and (3) not subject to being excluded under the hearsay or best evidence rules.

Perhaps the most relied upon case for authentication of electronically stored information (ESI) is *Lorraine v. Markel American Ins. Co.* 241 F.R.D. 534 (MD 2007). The Lorraine court engaged in an analysis of the rules governing admissibility of ESI, under the Federal Rules of Evidence.

On December 31, 2015, in the New York case of *People v. Johnson*, 2015 NY Slip Op 25431, the judge directly applies the *Lorraine* analysis to Facebook data submitted to the Court. It is partially reproduced as follows and lays out a roadmap for authenticating any social media evidence you wish to introduce to court. The exact authentication language is in **bold**.

### *Authentication by Personal Knowledge*

“Courts considering the admissibility of electronic evidence frequently have acknowledged that it may be authenticated by a witness with personal knowledge, *United States v. Kassimu*, 188 FedAppx 264 [5th

Cir.2006] (ruling that copies of a post office's computer records could be authenticated by a custodian or other qualified witness with personal knowledge of the procedure that generated the records); *St. Luke's Cataract and Laser Institute PA v. Sanderson*, 2006 U.S. Dist LEXIS 28873, \*3–4 [MD Fla May 12, 2006] (To authenticate printouts from a website, the party proffering the evidence must produce some statement or affidavit from someone with knowledge [of the website] ... for example [a] web master or someone else with personal knowledge would be sufficient.' (citation omitted)); *United States v. Safavian*, 435 FSupp2d 36 at 40 n. 2 [DDC 2006] (noting that e-mail may be authenticated by a witness with knowledge that the exhibit is what it is claimed to be); *Wady v. Provident Life and Accident Ins. Co. of Am.*, 216 FSupp 2d 1060 [CD Cal 2002] (sustaining objection to affidavit of plaintiff's witness attempting to authenticate documents taken from the defendant's website because the affiant lacked personal knowledge of who maintained the website or authored the documents). Although Rule 901(b)(1) certainly is met by testimony of a witness that actually drafted the exhibit, it is not required that the authenticating witness have personal knowledge of the making of a particular exhibit if he or she has personal knowledge of how that type of exhibit is routinely made. (See JACK B. WEINSTEIN & MARGARET A. BERGER, WEINSTEIN'S FEDERAL EVIDENCE § 901.03 [2] (Joseph M.

McLaughlin ed., Matthew Bender 2d ed.1997)) hereinafter WEINSTEIN. It is necessary, however, that **the authenticating witness provide factual specificity about the process by which the electronically stored information is created, acquired, maintained, and preserved without alteration or change, or the process by which it is produced if the result of a system or process that does so**, as opposed to “boilerplate” or conclusory statements that simply parrot the elements of the business record exception to the hearsay rule, (Federal) Rule 803(6), or public record exception, Rule 803(8).” *Lorraine, supra* 241 F.R.D. at 545–546.

In the case at bar the defendant has no personal knowledge with respect to the management, security or corporate records of Facebook, nor does he have any personal knowledge that the proffered materials were created by the person to whom he has attributed them: his child victim. Defendant has not and cannot testify with respect to the maintenance of Facebook records, nor has he (or can he) testify with respect to the routine creation of such records, as he has failed to demonstrate any knowledge of the corporate policy or computer programs comprising Facebook. Because there has been no factual specificity offered in this case with respect to how the ESI at issue is created, acquired, maintained and preserved without alteration or change, he cannot authenticate the proffered

materials in this manner.

### ***Authentication by Comparison to Known Authentic Samples***

The *Lorraine* court also explained that the **ESI may be authenticated by comparisons made, by a fact-finder or expert witness, to known and authentic ESI**, *Lorraine, id.*, 241 F.R.D. at 546.

Defendant has not authenticated the materials now at issue in this way, by calling an expert or other witness with comparisons.

### ***Authentication Circumstantial Evidence Couple with Distinctive Characteristics***

Nonetheless, the *Lorraine* court further described a method “most frequently used to authenticate e-mail and other electronic records.” *Lorraine, id.*, 241 F.R.D. at 546.

This method, pursuant to Rule 901(b)(4) of the Federal Rules of Evidence, “**permits exhibits to be authenticated or identified by [a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances .**’ The commentary to Rule 901(b)(4) observes [t]he characteristics of the offered item itself, considered in the light of circumstances, afford

authentication techniques in great variety,' including authenticating an exhibit by showing that it came from a particular person by virtue of its disclosing knowledge of facts known peculiarly to him,' or authenticating by content and circumstances indicating it was min reply to a duly authenticated' document. FED. R. EVID. 901(b)(4) advisory committee's note.<sup>[1]</sup> § 901.03[8]. Courts have recognized this rule as a means to authenticate ESI, including e-mail, text messages and the content of websites. In *United States v. Siddiqui*, 235 F.3d 1318, 1322–23 the 11th Cir in 2000 allowed the authentication of an e- mail entirely by circumstantial evidence, including the presence of the defendant's work e-mail address, content of which the defendant was familiar with, use of the defendant's nickname, and testimony by witnesses that the defendant spoke to them about the subjects contained in the e-mail. See *Safavian supra*, 435 Fsupp2d at 40(same result regarding em-mail); *In Re F.P., supra*, 878 A.2d at 94 (noting that authentication could be accomplished by direct evidence, circumstantial evidence, or both, but ultimately holding that transcripts of instant messaging conversation circumstantially were authenticated based on presence of defendant's screen name, use of defendant's first name and content of threatening message, which other witnesses had corroborated); *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 FSupp2d 1146, 1153–54 [CD Cal 2002] (admitting website postings as evidence

due to circumstantial indicia of authenticity, including dates and presence of identifying web addresses).” *Lorraine, supra*, 241 F.R.D. at 546.

The *Lorraine* court explained modes of circumstantial authentication that could support the admissibility of ESI, “hash values” (241 F.R.D. at 546–547) and “metadata” (241 F.R.D. at 547–548), neither of which have been offered in support

Here the defendant has failed to authenticate the materials at issue by circumstantial evidence. Indeed, defendant, during his trial testimony, had denied knowledge that his victim had a Facebook account. Defendant's only claim to have associated the instant exhibit purportedly depicting an image of that account based upon the appearance of the victim's name and photograph thereupon. Federal courts have described these kinds of materials as “inherently untrustworthy,” and that “hackers can adulterate the content on *any* web-site from *any* location at *any* time.” (*emphasis added*). For these reasons, any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules ...” *St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 FSupp2d 733, 744–775 [SD Tex 1999]. Taken in conjunction with all of the circumstances attendant to defendant's testimony with respect thereto, defendant's purported authentication of the “likes” section of what

he purports to be a previously-unknown to him Facebook page of the victim via a name, which may be entered by any person creating an account and is not verified in any way by the operators of Facebook, and a picture (again, entered by any user and not verified in any way by the operators of Facebook), without any verification from any source that the victim was the operator of that specific Facebook account at any time, including at the time defendant purportedly captured an image thereof, weeks after his access to abuse the victim had been cut off, is wholly insufficient to authenticate that image. Furthermore, the remaining exhibits offered by defendant have not been authenticated by him that can in any way attribute or connect those images to the victim, including because of this inability to authenticate the purported image of the victim's Facebook page, as well as because those images do not appear, anywhere, on the purported image of the victim's Facebook page, and, instead, appear on a third- party site, and defendant has failed to establish that the victim ever viewed any of those images on the likes' sites. There is no circumstantial evidence demonstrating that the victim ever visited the third party site.

Thus, defendant has failed to demonstrate any circumstances supporting a conclusion that the Facebook page he attributes to the victim is authentic, having not established any indicia of reliability, such as

the existence of disclosed knowledge of any fact particularly known to the victim, nor any content nor circumstances indicting the victim was replying to any other known, authentic communication or document. Therefore, defendant has not satisfied his burden pursuant to this method of authentication as established by Courts in the U.S.

### ***Public Record or Reports as Authentication***

The *Lorraine* court recognized that the **public filing or recording of ESI may support its admissibility**. *Lorraine, id.*, 241 F.R.D. at 548–549.

Defendant has not, and cannot, advance this method as a means of authenticating the proffered materials.

### ***Accuracy and Reliability of a Process or System as Authentication***

The *Lorraine* Court further described authentication via **proof that a particular computer process or system produces an accurate and reliable result** (for example, computer-generated evidence). *Lorraine, id.*, 241 F.R.D. at 549.

Defendant has not, advanced this method as a means of authenticating the proffered materials.

## ***Self-Authentication***

The *Lorraine* court further described the variety of documents which are self-authenticating, and which include various forms of ESI, none of which have been advanced by this defendant in support of his application. 241 F.R.D. at 549–553. **Examples of self-authenticating records include** public records or reports stored in a public office: tax returns, weather bureau records, military records, social security records, INS records, VA records, judicial records, correctional records, law enforcement records, domestic public documents under and not under seal, foreign public documents, certified copies of public records, official publications of public authorities, newspapers and periodicals, trade inscriptions, acknowledged documents (for example by a notary public), commercial paper and related documents, and certified domestic records of regularly conducted activity.

## ***Internet Postings, Text Message/Chat Room Content***

Important to the law of evidence in New York the *Lorraine* court further engaged in a theoretical analysis of the authentication required to admit internet postings and text message or chat room content, concluding that “[b]ased on the [relevant] cases, the **rules most likely to be used to authenticate chat room and text messages, alone or in combination, appear to be**

**901(b) (1) (witness with personal knowledge) and 901(b)(4) (circumstantial evidence of distinctive characteristics)."** *Lorraine, id.*, 241 F.R.D. at 556.

Further, "authentication rules most likely to apply, singly or in combination, [to internet website postings] are 901(b)(1) (witness with personal knowledge) 901(b)(3) (expert testimony) 901(b)(4) (distinctive characteristics), 901(b) (7) (public records), 901(b)(9) (system or process capable of producing a reliable result), and 902(5) (official publications)." *Lorraine, id.*, 241 F.R.D. at 556.

Because the instant defendant has failed to demonstrate the existence of any evidence supporting any of the methods of authentication described by the *Lorraine* court, or the Federal Rules, he cannot meet any of the authentication burdens contemplated by the court for the admission of the purported Facebook "likes" of the victim, nor for the admission of the far more attenuated, third party sites.

Therefore, because defendant cannot demonstrate the authenticity of the proffered material, and because the material is utterly irrelevant with respect to any material fact at issue in this case, his application to admit those materials must be denied; additionally, the Court should preclude these items as inadmissible hearsay.

# 18 Litigation Preparation & Best Practices

You're getting ready to enter into litigation. The likelihood of there being information on social media regarding one of the parties to the lawsuit is incredibly high. Whether it is the opposing party, or your own client, you need to find this information quickly. Beyond that, you need to do a thorough job of finding and preserving this information.

## Research

Begin with Google as it is the best and most widely used search engine. But don't discount other search engines such as Bing, sometimes they may index material in different ways.

Be cognizant of search engines attempting to customize and optimize search results uniquely to you based on your IP and search/browsing history. For neutral, "clean" search results, perform searches while your web browser is set to anonymous/incognito mode. You can also utilize a proxy server to appear as though you are searching from different points on the globe, which may generate different search results.

When searching, specificity is essential. Searching for “real estate” will bring millions of result with little relevance. “Cheap short sale in Chandler Arizona” is likely to generate very specific results.

Finally, the addition of either the following words will likely generate very different search result they result in information that you otherwise would not find: “forum,” or “messageboard.” Again, searching for “real estate” generates very broad search results, usually for national real estate companies. “Real estate forum” returns search results for dozens of discussion sites *about* real estate. This is an incredibly useful tool for finding information that may be posted by someone to a forum/discussion site on a particular topic that is unlikely to show up in a traditional web or social media search.

### **Cultural/Language Differences**

As of 2015, English barely retains its position as the most used language on the Internet. By the end of 2016, the dominant language of the Internet will likely be Chinese (Mandarin). If a party to the litigation has any family or business connections that are non-English speaking, then it is advisable to expand your search beyond Google.

Chinese: <http://www.baidu.com>

Spanish: <http://www.google.es>

Arabic: <http://www.yamli.com>

Russian: [www.yandex.ru](http://www.yandex.ru)

Japanese: [www.google.co.jp](http://www.google.co.jp)

It would also be advisable to expand beyond the major American social media services and search culture and

language specific social media services. For example, *vk.com* is popular in Eastern Europe and Russia. *KakaoTalk* is used by over 90% of South Koreans. Even though they may reside in the United States, many foreign language speakers continue to use social media services that are popular in their native language. Don't ignore them.

## **Relevancy**

A roadblock to information collected on social media services will always be its relevance to the matter at hand. That is not to say that you should not collect every scrap of information you can find, but be prepared to narrowly tailor your requests to the period of time relevant to the suit at hand.

Also consider that many social media services allow users to “tag” other users with meta-data information. (IE – A user on Facebook posts a photo with another user, and then marks both their names on the photo.) This means that the data on a party to litigation may extend well beyond the scope of what they have actually posted to a social media service.

## **Ownership**

Social media services are a landmine of competing license agreements. Who actually owns the intellectual property posted to a service is often murky. Take the time to review the Terms of Service of social media services as to determine ownership of posted and/or shared material.

## **Ethics**

Just because a party utilizes a social media service, does not mean you have just cause to peruse information from them in any way you see fit. Be sure to review social

media services Terms of Use. Also be sure to review court rules and legislation regarding:

- Privacy legislation
- Duties of confidentiality and privilege
- Rules of Professional Conduct

### **Data Collection Types**

Audio, photos, text, and videos

Internal and external links

Embedded/Cloud content

Other types of user-created content

Metadata

# 19 Sample Interrogatories and RFPs

## Sample Instructions

“Electronically stored information (‘ESI’), including but not limited to social media content, must be produced and continue to be preserved in its original native format with all relevant metadata, including but not limited to any author, creation date and time, modified date and time, native file path, native file name and file type.”

## Interrogatories

1) Identify and describe any social media services you have used since DATE, including the URL for each specific services, as well as your username/ID on the service. This includes, but is not limited to, Facebook, Twitter, LinkedIn, Instagram, Pinterest, Snapchat, or similar social media services.

2) Identify and describe any social discussion services you have used since DATE, including the URL for each specific services, as well as your username/ID on the service. This includes, but is not limited to, Wordpress, Disqus, Reddit, Slack, or similar social discussion services.

3) Identify and describe any social multi-media services you have used since DATE, including the URL for each

specific services, as well as your username/ID on the service. This includes, but is not limited to, Youtube, Periscope, Soundcloud, or similar social multi-media services.

4) Identify and describe any social messaging services you have used since DATE, including the URL for each specific services, as well as your username/ID on the service. This includes, but is not limited to, Whatsapp, Facebook Messenger, Line, or similar social messaging services.

### **Requests For Production**

1) Provide a duly acknowledged and executed authorization granting \_\_\_\_\_ access to \_\_\_\_\_'s accounts on all current and historical social media services, including status updates, messages, events, groups, connections, media, feeds, and any deleted information or related information from DATE to DATE.

**\_\_\_\_\_ is required to preserve the content of these social media services and is requested that any process of document or content destruction, deletion, or change hereby cease immediately.**

## 20 How To Subpoena Amazon

While many do not think of Amazon when they think of social media – they should. Here is why:

Amazon.com is the largest online retailer in the United States. Its sales topped \$61 billion last year alone. They have customers in every state in the nation. These customers are purchasing almost every type of product you can imagine - from books to TVs to chainsaws. Customers are also using a wide variety of Amazon services: streaming movies with Amazon Prime, automating tasks with Mechanical Turk, and using Amazon S3 for cloud computing and storage. **All in all, Amazon sits on a vast database of information about their customers, users, sellers, vendors, services, and products.**

Furthermore, as more people transition their buying habits and activities online, it is highly likely that a majority of people will end up using some aspect of Amazon's services - even if they are unaware of it. There are also millions of user generated user reviews on Amazon. If a lawsuit is related in any way to a tangible product, there is a fair chance that it was reviewed on Amazon.

**Hundreds of the most popular websites and web services actually run on Amazon's S3 service.** As

lawsuits evolve in the 21st century, whether from online activity or items/services purchased online, it's a safe bet that Amazon could have some potential discoverable information about a lawsuit. So, how do you get this information from Amazon?

Unless Amazon is a party to the case at hand, you're looking at a third-party subpoena for deposition and/or documents. As you might imagine, Amazon is unlikely to be...cooperative in your request. The only information Amazon lists regarding service of subpoenas on them is the following:

*Please contact [subpoena@amazon.com](mailto:subpoena@amazon.com)*

Good luck with that. I suppose you could try calling them at their listed phone number, (206) 266-4064, but that just drops you straight to voicemail. If you navigate around the phone tree you can eventually get to an operator...who doesn't have the ability to transfer you to anyone. All in all, contacting Amazon is a bust.

### **Interstate Depositions and Discovery Act**

If you think you can just serve Amazon's registered agent in your state, I've got bad news for you. Amazon, that is, Amazon.com, Inc., a Delaware corporation with its primary place of business in Seattle, Washington is difficult to subpoena. They're going to reject service on a registered agent by default. You can fight this if you want, but far better to just to subpoena them in the correct, legal fashion right from the get go. Luckily, this has been made easier for most states with the passage of the Interstate Depositions and Discovery Act ("IDDA").

The IDDA is an act promulgated by the Uniform

Law Commission in order to provide simple procedures for courts in one state to issue subpoenas for out-of-state depositions with minimal judicial oversight. That is, to eliminate the need for letters rogatory, etc. Over 30 states have now enacted the IDDA, including Washington, Amazon's primary place of business. So it is likely that you can serve Amazon, or anyone else for that matter, with minimal hassle so long as your forum state has enacted the IDDA.

If your forum state has not, you've got to go the old-fashioned way. But even after obtaining letters rogatory and approval from the court, you'll still end up at needing to have the subpoena issued, which will put you right back at contacting the appropriate county clerk in Washington (See RCW 5.51.020: Issuance of subpoena).

### **Thurston County Clerk E-File System**

The appropriate clerk's office in Washington to issue a subpoena to Amazon is the Thurston County Clerk. To have the subpoena issued, you'll have to test and register with the Washington Superior Court filing system, and open a new case in Thurston County. They have a basic guide to getting started, but as it's actually a bit complicated, I'll lay it out here step-by-step:

#### **Preparing to E-file**

- If at any point you get stuck, just call the Thurston County Clerk's office at 360-786-5430, and they'll help you out. While some clerk's offices are uncooperative (or outright hostile), the people up in Thurston County are good folks.
- You have to be a court officer or in an attorney's

office to have a subpoena e-filed. If you're pro se, you're out of luck. But I repeat myself.

- Before you can file anything, you have to first pass a basic e-filing test. Yes, a test. This is done between 8 AM and 11 AM PST, Monday through Friday. If you submit your information after 11 AM PST, you have to wait to test until the next day.
- Before you are allowed to test you have to submit a multi-page, **Group Type 4 TIF file** that is configured for **200x200 dpi** (dots per inch), **Black and White**, Group Type 4 compressed.
- What??
- Thurston County does not accept PDF e-filings, and only accepts .tif file types. There are a few ways to generate these files.
  - Use scanner software that has the option for "FAX QUALITY" .tif images which generates the Group Type 4 200x200 dpi.
  - Use software such as Adobe Acrobat (Win/OS X, \$119) or Preview (OS X, free) to generate a multi-page, Group Type 4, 200x200 dpi, .tif file.
- Once you have a properly formatted .tif file, you will need to select a **primary contact**, for your office. This is the person will be responsible for uploading and receiving files to and from the Thurston County e-filing system.
- Email Thurston County at this address [tcclerk\\_efile@co.thurston.wa.us](mailto:tcclerk_efile@co.thurston.wa.us) with the heading "Our sample MULTI-page .TIF IMAGE of

a Superior Court document is attached. Our office is ready to begin e-filing and have included our Primary contact information" and **include the .tif file and contact information for your primary contact.**

- The clerk's office will respond with a temporary User Guide and login information to begin testing.
- NOTE: There is an image size limit of 7 MB. If your files are going to be larger than that, you will have to physically file a copy with the clerk's office, "Attention Civil Circuit Clerk" to:

*Thurston County Clerk's Office  
Main Courthouse  
2000 Lakeridge Dr SW Bldg #2  
Olympia, WA 98502*

### **Testing**

- Once you have received your login and Guide, you are ready to begin testing. **Once you begin testing, you must complete it one sitting.** You cannot save your place and come back at another time.
- You should have received the login information via email.
- Their e-filing system is really just a web-based FTP system, located at <https://ftp.co.thurston.wa.us/EFileoutside>
- The test is really quite simple - it's to force you to use their file name system. If you don't use it, anything you file won't work.
- Their file naming convention looks like this:

101123451-1\_Name SUBPOENA.TIF, where:

- The first 9 characters are the case number, followed by a dash (-).
  - The number of documents being e-filed, followed by an underscore ( \_ ).
  - The name is the filing party (Plaintiff/Party Name/etc.) and the title of the document.
- Once you've completed the test, they'll respond and let you know whether or not you've passed. You should hear back from them within half an hour.
  - You are officially registered to e-file documents in Thurston County Washington.

### **Obtaining a Case Number**

- Next you will need to register a new case number.
- First, complete a New Case Number Request form (PDF).
- Then email it to: newcase@co.thurston.wa.us with "newcase" in the subject line of the email (New Case Number requests must be received by the Clerk before 3:00 pm PST or they will be processed the next day).
- The case numbers will be returned back to you via email.

### **Paying The Filing Fee**

- Once you receive the case number via email from the Clerk you can login to setup the case.
- As of this writing, the filing fee is \$240, plus an online processing fee of \$16, for a total of \$256.00.

- Go to [www.thurstonclerk.com](http://www.thurstonclerk.com), which will re-direct you to the online payment system.
- Fill in your information and case number.
- Agree to the Terms of Use for their system.
- Enter your payment information (credit card) and Submit Payment.
- You now have a case filed in Thurston County Washington. Almost there!

### **Filing the Subpoena**

- Back to [www.thurstonclerk.com](http://www.thurstonclerk.com)
- Enter your contact information.
- Enter Case Title i.e. Plaintiff v Defendant.
- Click on down arrow on Type of Payment line and select payment type.
- Enter case number.
- Enter payment amount. (As of this writing, the subpoena fee is \$20).
- Hit submit and you're done!

Congratulations! You now have a valid subpoena from the Thurston County Clerk's office that can be served on Amazon via certified mail (certified mail guide) at:

*Amazon.com, Inc.*

*Corporation Service Company*

*300 Deschutes Way SW, Suite 304*

*Tumwater, WA 98501*

*Attn: Legal Department – Subpoena*

## 21 Online Resources

### Facebook

- [Facebook's subpoena/law enforcement page.](#)

### Instagram

- [Instagram's subpoena/law enforcement page.](#)

### Twitter

- [Twitter's subpoena/law enforcement page.](#)

### Google/YouTube

- [Google's subpoena/law enforcement page.](#)

### LinkedIn

- [LinkedIn's subpoena/law enforcement page.](#)
- [LinkedIn's information disclosure form. \(PDF\)](#)

### Tumblr

- [Tumblr's subpoena/law enforcement page.](#)

### Snapchat

- [Snapchat's subpoena/law enforcement page. \(PDF\)](#)

### WhatsApp

- WhatsApp doesn't provide a guide and instead buries their subpoena information in their Terms of

Service. See paragraph 2 under “When WhatsApp Discloses Information.”

### **Pinterest**

- Pinterest’s subpoena/law enforcement page.
- Transparency reports. Lists subpoena requests they have received, protective orders, etc.

### **Line**

- Line’s Terms Page. Note, Japanese version of Terms are binding.

### **KakaoTalk**

- Terms/Privacy Page. Includes retention policy on data collected. Note: A South Korean company.

### **Whisper**

- Whisper's subpoena/law enforcement page.

### **Yik Yak**

- Yik Yak’s subpoena/law enforcement page.

### **Telegram**

- Telegram's support page.
- abuse@telegram.org
- Telegram does provide a subpoena/law enforcement page.

### **Cyberdust**

- reportabuse@cyberdust.com
- Cyberdust does provide a subpoena/law enforcement page.

## **Medium**

- [Medium's Terms of Service](#)
- [terms@medium.com](mailto:terms@medium.com)

## **Tumblr (owned by Yahoo)**

- [Tumblr's Terms of Service](#)
- [Tumblr's Privacy Policy](#)
- [Tumblr's Abuse / Community Guidelines](#)
- [Yahoo's subpoena/law enforcement page.](#)

## **Flickr (owned by Yahoo)**

- [Flickr Privacy Page](#)
- [Yahoo's subpoena/law enforcement page.](#)

## **Yahoo**

Compliance Team

Yahoo! Inc.

701 First Avenue Sunnyvale, California 94089

Phone: 408-349-3687 Fax: 408-349-7941

## **Periscope (owned by Twitter)**

- [Periscope's Terms of Service](#)

## **Soundcloud**

- [Soundcloud's subpoena/law enforcement page.](#)  
Note: German company.

## **Quora**

- [Quora's Terms of Service](#)

## **Disqus**

- [Disqus Privacy Policy Page.](#) (Contains legal contact information)

## **Reddit**

- [Reddit's Privacy Policy](#)
- [legal@reddit.com](mailto:legal@reddit.com)

## **Slack**

- [Slack's User Data Request Policy](#)

## Also by Keith R. Lee . . .

*The Marble and The Sculptor: From Law School To Law Practice*

A federal judge said:

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Stay in touch with Keith at:

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