



Social Media & eDiscovery

Collecting Online Conversations for Litigation



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Social Media is Risky Business

Today, over 73% of the US population utilizes some type of online community.

In this moment in time, Facebook itself has more active users than China's entire population of 1.4 billion.

While much of this use is personal, businesses are equally capitalizing on social media's benefits of extended reach, flexibility and freedom as a means of communication. Across industries, organizations have jumped on the opportunity to use social media as a tool for branding, customer service, and sales — with a projection that digital sales could account for more than 40% of new inflow revenue within the next 5 years.

Yet organizations are putting themselves at serious risk by using these networks blindly. Seventy-six percent of businesses regard communications

on social media as formal business records, but alarmingly, an overwhelming 46% have no idea that they carry actual legal responsibility for their social media content. Regulatory purposes aside, lawsuits and investigations now require social media discovery more than ever, posing a number of eDiscovery challenges with the multifaceted nature of these networks. This calls for a serious reminder of the need to treat social media just like all other official forms of business communications; that must be collected, filed and protected.

This white paper covers the unique challenges of collecting social media evidence, must-know social media recordkeeping regulations, and best practices to help improve your ability to respond to legal and compliance issues with a proactive archiving approach.



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Social Media is Risky Business

Given the vast amount of information placed by individuals and businesses on websites, blogs and social media by the day, hour and minute - the internet is a rich resource of endless, up-to-date information and can provide great insight into an individual's or organization's intentions.

This is changing the eDiscovery landscape as we know it. Cases involving social media have continued to increase at a rapid pace, aiding cases all the way from workplace harassment to copyright infringement. A Lexis Nexis study found that 86% of investigators are using social media 2-3 times per

month in the course of their duties. Digital evidence relevant to all these cases can come in a variety of forms; such as tweets, social media chat logs, Instagram images, webpages, blog posts, LinkedIn connections and a litany of others.

As digital information is easy to create, fake or alter, how do investigators collect and preserve social media evidence? How do they ensure the chain of custody is unimpeachable? How can they authenticate the evidence so that courts will accept it without question?

Recordkeeping Expectations for eDiscovery

A screenshot or print-screen is a common first step, but the problem is that screenshots can easily be photo-shopped, and as a result is not an acceptable form of evidence as required by the Federal Rules of Evidence (FRE), Federal Rules of Civil Procedure (FRCP) and the E-Sign Act. A summary:



Federal Rules of Evidence

FRE Rule 901 requires that Electronically Stored Information (ESI) like social media content must be authenticated to verify it is what it claims to be. Collecting metadata is often an expectation to help authenticate content.



Federal Rules of Civil Procedure

The FRCP Rules 26 and 34 require organizations to collect, and be able to produce all necessary information for relevant to litigation if necessary. Rule 37 states that sanctions may be placed on parties who do not respond to discovery requests, or who fail to cooperate in the process.



E-Sign Act

The E-sign Act is a federal law that allows the use of e-signatures to validate the data integrity and authenticity of digital files, including emails, office documents, social media messages and webpages; satisfying legal and regulatory compliance requirements.

Check List

In summary, these laws state that for social media and webpage evidence to be valid and accepted:

- ✓ Original source code of the social media message, blog or webpage must be collected
- ✓ 3 Metadata must be collected
- ✓ 3 Digital signatures and timestamps must be placed on the data to provide evidence of data integrity & authenticity
- ✓ 3 Data should be prepared in EDRM-XML for easy processing & analysis in eDiscovery systems



The Unique Challenges of Collecting Social Media Evidence

Social media poses unique archiving challenges that need to be considered. Let's explore:

Multifaceted Nature

Unlike other forms of content, social media can often contain videos, images, comments and likes. For this reason, it's important to find an archiving solution that captures all this content.

Deeplinked Content

A good 30% of social media messages contain links to third party website content. These links can change easily over time, or, if shortened with a URL shortener, (i.e shortening a link: <https://www.intradyn.com/social-media-archiving/> to <http://ow.ly/6YM5307nQcY> or <http://bit.ly/2igFlt4>) will only be valid for a designated period time before they invalidate as links.

Also, web pages that are linked to can commonly be deleted or changed over time. This makes capturing actual URLs and linked web pages a difficult task. An ideal solution not only collects the social media messages, but is also able to look up the original URL and automatically collect the deep-linked web page for later reference.

Ever-Evolving Platforms

Although social media networks like Twitter, Facebook and LinkedIn may have much in common (like the ability to hashtag), they are also extremely unique. A common issue with archiving this content is that these platforms continue to change without any heads-up.

Once a method for collecting content is determined, another update, or rise of new social media platform develops. It is difficult to keep up and customize without knowing what's coming!

Real-Time Activity

The beauty of social media is the speed in which it operates. With content being posted on Twitter every second, archiving technologies need to be on the crawl regularly, capturing the absolute, most recent content as it comes about.

Integration Requirements

Since simple screen shots won't suffice in court, organization's need the APIs of these networks to be able to integrate with their own applications to gather the information needed. APIs are unique to each network.



The Intradyn Solution

With Intradyn, you can archive social media content for: Facebook, Facebook At Work, Twitter, LinkedIn, YouTube, Vimeo, Google+, Instagram, Pinterest, Tumblr, Flickr, Yammer, websites, and all blog platforms, including WordPress.

Collect Evidence in Real-Time

Intradyn uses social media APIs to gather data in near real-time, providing the most comprehensive capture of social media data as it occurs.

Produce Evidentiary Quality Archives

Intradyn captures all of your social media content in evidentiary quality, making the archives suitable for compliance and litigation preparedness purposes. All content is digitally signed (256-bit) and time-stamped, which satisfies legal requirements for submitting digital content as evidence according to the Federal Rules of Evidence, Federal Rules of Civil Procedure and E-sign act.

Find What You Need, Fast

Intradyn allows for powerful search functionality across all archived material. Discovering and analyzing specific archives is simple within Intradyn's browser-based console, which allows for detailed keyword searches and filtering commands across your entire archive or within specific site/date combinations. Unique calendar and timeline features help you perceive how your social media has changed over time.

Support for eDiscovery

With Intradyn, your data is yours and remains yours while offering ease and flexibility in how you use it. Our data exports support eDiscovery workflows to simplify the process of dealing with legal claims. If you ever require a physical copy of your files, you can export complete and accurate files and the file structure that existed on that specific date in PDF, HTML, WARC or EDRM- XML.

About Intradyn

Intradyn is a leading provider of website and social media archiving solutions to a wide range of industries including finance, legal, telecom, retail, utilities, government and post-secondary education. Intradyn is a SaaS (Software-as-a-Service) application that enables organizations and corporations of all sizes to permanently preserve their website and social media content in evidentiary quality and then access those archives and replay them as if they were still live. Uses for the archived data range from compliance with regulators such as the SEC, FINRA and the FDA to litigation preparedness, evidence capture, call center support and competitive intelligence.

Intradyn™, a privately held company, was founded in 2001 with a vision of creating a next-generation disk-based network backup and archiving appliance that could solve three common problems: no assurance of successful backup, unacceptably slow retrieval, and restore failure. In 2004, Intradyn introduced a first-of-its-kind email archiving appliance for small to midsized businesses.

Intradyn licenses its technology to leading vertical-market technology companies wishing to private label.

Now offering cloud archiving, hardware archiving and virtual appliance email archiving solutions. Intradyn boasts a seasoned management team and skilled developers with vast industry expertise and proven track records in information technology development.

Don't wait until your organization is at risk for litigation or eDiscovery. Start protecting your records and your business today with website and social media archiving.

Contact us to schedule a free Intradyn demo.

