



# Metadata in Discovery

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# Hot topics

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- Obligation to Produce
- Preservation
- Review
- Format



# Obligation to produce

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- FRCP
- Proposed Amendments to FRCP
- Case Law
- Sedona Principles



# Current FRCP

- FRCP 34

“A party who produces documents for inspection shall produce them . . .

→ as they are kept in the usual course of business

or

→ shall organize and label them to correspond with the categories in the request.”



# Proposed amendments to FRCP

- FRCP 34(b)(ii) Form of Production.  
“A responding party must produce the information in a form or forms . . .
  - in which it is ordinarily maintained
  - or
  - in a form or forms that are reasonably usable



## Case law

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- Two recent cases:
  - Williams v. Sprint/United Mgt. Co., 230 F.R.D. 640 (D. Kan. 2005)
  - Hagenbuch v. 3B6 Sistemi Elettronici Industriali, 2006 WL 665005 (March 8, 2006, N.D. Ill.)
- “Ordinary course of business” = native files with metadata
- “Reasonably usable” = tiffs with extracted text and metadata



# Sedona principles

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- Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age
  - [www.thesedonaconference.org](http://www.thesedonaconference.org)
- Principle 12:
  - “Unless it is material to resolving the dispute, there is no obligation to preserve and produce metadata absent agreement of the parties or order of the court.”
  - comment: “a modest legal presumption”



# Preservation

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- Preserve electronic files in their native format
- Avoid opening, printing, copying, forwarding
- Best practice: snapshot



# Review

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- Privilege review should include review of metadata
- Metadata can replace objective coding
- Best practice: electronic native review



# Format

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- Options:
  - Native production
    - Ordinary course
    - No ability to redact or bates label
    - No ability to “lock down” files
  - Image production with extraction of metadata and text
    - Reasonably usable
- Negotiate with opposing counsel





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