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TECHNOLOGY MAY-RATHON

**Leveraging E-Discovery Tools to Find Key
Evidence in Newer Locations and Unsearchable
Files**

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Presenters



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Topics Covered

- How to find key evidence in newer IT platforms (e.g., Collaboration Tools) and traditionally unsearchable files (handwritten notes, emojis, audio, image, video)
- The Latest E-Discovery Search Techniques:
 - Addressing Versioning to capture document versions in Collaboration Tools
 - Handwritten Documents
 - Emojis and Tapbacks
 - Audio Recordings
 - Images and Videos

Collaborative Tools

The background features a dark blue gradient with numerous vertical lines of varying heights and colors (blue, purple, red, green) that appear to glow. At the bottom, there is a series of wavy, horizontal lines that create a sense of depth and movement, resembling a stylized horizon or a data visualization.

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Discovery is More Than Email: Collaborative Tools & SMS

- Slack
 - Microsoft Teams
 - Amazon Chime
 - Google Hangout
 - Facebook Messenger
 - Salesforce Chatter
 - Trello
 - JIRA
 - Microsoft FLOW
 - Traditional SMS
 - iMessage
 - WhatsApp
 - WeChat
- ... and the List Goes On

Collaborative and SMS Tool Issues

- Identifying What Collaborative Tools / Channels an Individual is a Part of Can Be Challenging
- Collection from Collaborative Tools
 - Need to Identify Locations of Linked Materials
- Collection of SMS, iMessage Requires Device and/or Account Access
 - Implicates Control Issues
- Processed Version May Look Different and Require Matching Up Information
 - Beware of Changing Channels
- Searching for Shorthand / Emojis
- Review and Production Issue – When does a message start and stop?



Addressing Versioning to Capture Document Versions in Collaboration Tools

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Versioning

Not all versions get searched in the first instance



FIRST VERSION

Only if a hold is in place when it is first created



INTERIM VERSION

Only the interim version that exists when a hold is put in place



LAST VERSION

This gets searched in each instance.

Which Version is "The Version"?

Real World Example of Modern Attachments

- Jennifer works for hours on a document and there are 5 versions auto-saving



[link to document.v5](#)

- Jennifer sends a link to Lorraine and Scott to edit so different people can work on it
- Lorraine looks at the email at 2:00 p.m., opens v.5 and saves updates to v.7



- Scott then opens the link sent by Jennifer to document at 5 p.m. but sees v.7

What to do about Versions?

- Advanced eDiscovery Search in Office 365 will pull the current version of the document when you pull a message with a link.
 - *Updates are allowing you to pull the version linked*
 - *But this does not pull the version viewed if different*
- If a version is hit by a search term, there may be an option to pull all versions from SharePoint or OneDrive using Advanced eDiscovery Search
 - *But this does not work if only the message is hit*
- If the version hits but not the message sending it, only the version is pulled in, not the message.

Handwritten Documents

The background features a dark blue to black gradient. It is filled with numerous vertical lines of varying heights and colors, including blue, purple, and red. These lines are topped with small, glowing dots. In the lower half of the image, there is a series of horizontal, wavy lines that create a sense of depth and movement, resembling a stylized horizon or a data visualization. The overall effect is futuristic and digital.

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eDiscovery Tools for Handwriting

- Tools have been developed that essentially transcribe handwriting.
- Coordinate with your e-discovery team to identify appropriate tools for your matter.
- Consider using in cases with large volumes of handwritten documents.

eDiscovery Tools for Handwriting

- APIs are available to detect and OCR handwriting.
- Check with your technology experts. New tools are being developed constantly.
 - OneNote has a handwriting tool that extracts and OCRs text.
- Morgan Lewis eData has an automated AI tool that transcribes handwriting into searchable text.

AI for Handwriting

Example of Original

MSAL 4J

Enables applications to integrate with the Microsoft Identity Platform
to allow you to sign in users or apps with Microsoft identities
(Azure AD, Microsoft Account and Azure AD B2C accounts) and obtain
tokens to call MS APIs such as MS Graph or your own API registered
with the Microsoft Identity Platform. It is built by using OAuth2 and
OpenID connect protocols.

Supported Architectures

- Native / Desktop
- Web apps and Web API

OCR

MSAL 4J

Enables applications to integrate with the Microsoft Identity Platform

It allows you to sign in users or apps with Microsoft identities (Azure AD, Microsoft Account and Azure AD B2C accounts) and obtain tokens to call MS API such as MS Graph or your own API registered with IS identity platform. It is built by using OAuth2 and OpenID connect protocols.

Supported Architectures

- 1 Native / Desktop
- Web apps and Web API

Issues with Handwriting OCR Tools

- The accuracy of the OCR is directly linked to the clarity of the handwriting.
- General accuracy scores in the industry average 70 - 80% based on validated, side-by-side testing of sample data.
- Some tools may require flagging as handwritten at the time of scanning or before OCR application.

Emojis and Tapbacks

The background is a dark, almost black, space filled with a dense field of vertical lines of varying heights. Each line is topped with a small, glowing dot in a variety of colors, including blue, purple, pink, and red. The lines themselves are thin and appear to be made of many small segments, giving them a shimmering, digital quality. The overall effect is that of a vast, interconnected network or data stream.

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Emojis Have Evolved Over Time Creating Misunderstandings Among Users



iOS 9





iOS 10

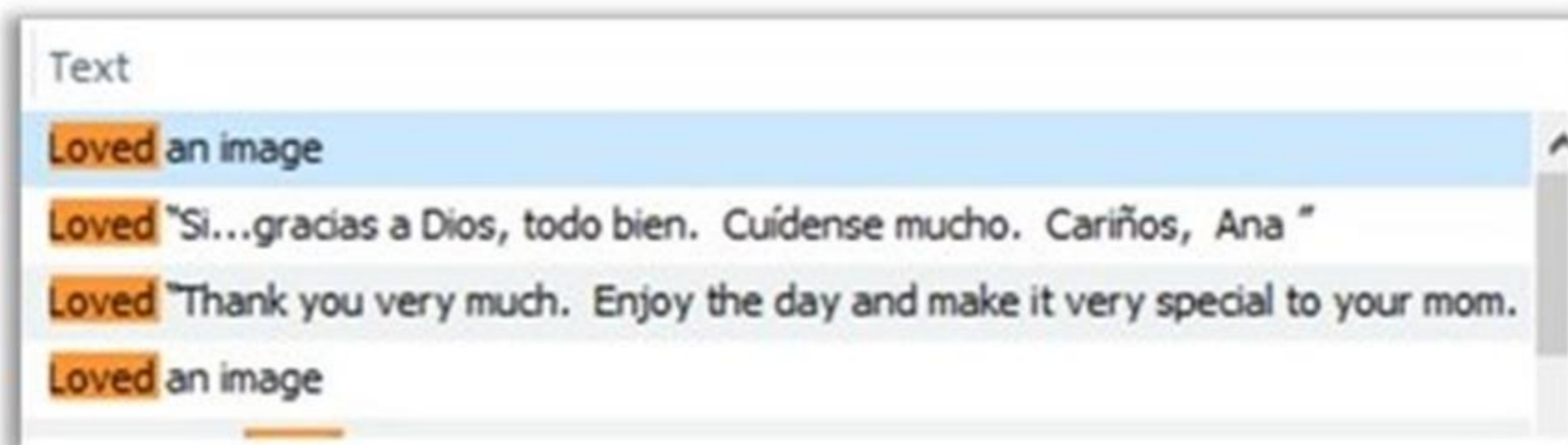
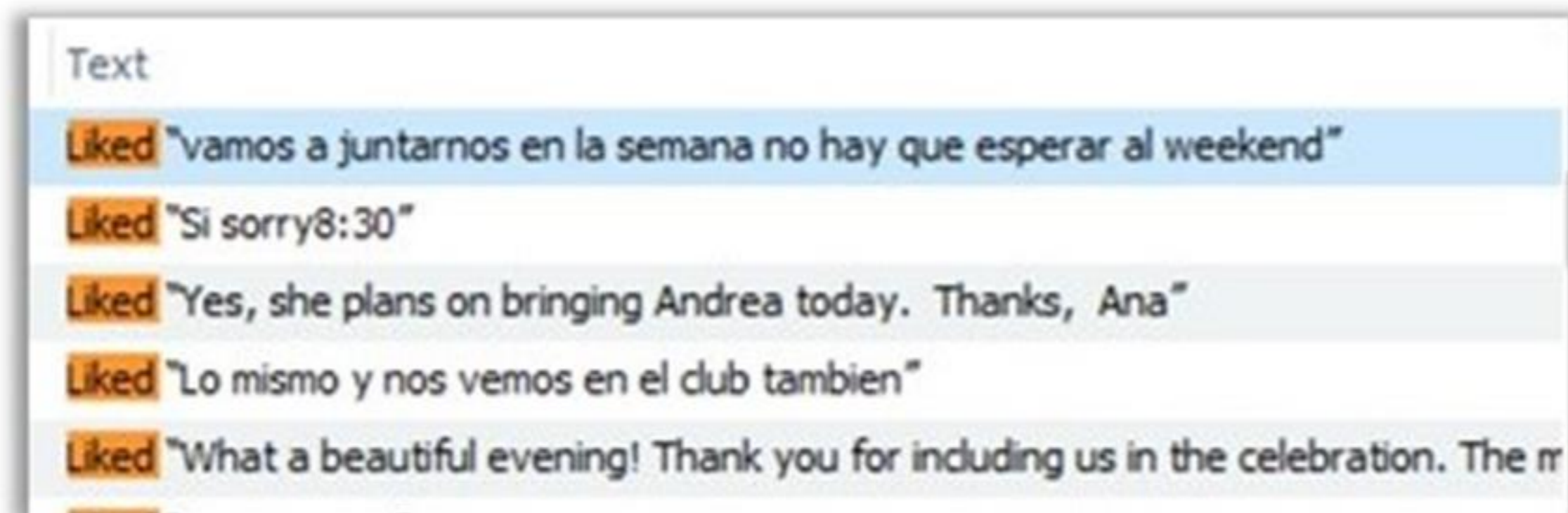
Emojis Can Have Different Meanings



Hold and Search of Emojis and Emoticons

- Search for the Emoji by Term Name
 - :+1:
 - :blush:
- Or You Could Copy the Related Emoji in the Search Tool Bar in Some Tools:
 
- But Emojis and Emoticons Present Other issues:
 - Need to Collect an Emoji as It Was
 - Might be able to prove when communication was created via Emojis
 - **Note:** Emoticons are not retained when you use retention policies for Teams

Tapbacks – Thumbs Up or Hearts



Can an Emoji Create a Contract?

Sewell v. Daniel, 2020 WL 1800935 (N.D. Ga. Mar. 4, 2020)

- Option to Purchase Expired
- Parties continued to exchange text messages regarding purchase of property
- Plaintiff responded it was going to buy
- Defendant responded with thumb's up
- Fact issue existed whether lapse of option period waived

Audio Recordings

The background features a dark blue to black gradient. It is filled with numerous vertical lines of varying heights and colors, including blue, purple, and red. Each line ends in a small, glowing dot of the same color. The lines are arranged in a way that creates a sense of depth and movement, as if they are rising from a wavy, undulating surface at the bottom of the frame.

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eDiscovery Audio Recording Tools

- The tool creates a searchable transcript
- Output is often a CSV file with start and end times and transcribed text.
- Many of the tools integrate with popular document review platforms such as Relativity.
- Many tools handle foreign language audio/video files.

eDiscovery Audio Recording Tools

- Most eDiscovery tools for audio search WAV & MP3 audio file types (e.g., Relativity, Nuix, Everlaw, Veritone)
 - There are some free tools that do not integrate with e-discovery review platforms but may be a good option depending on the need, especially one-off tasks (e.g., 360 Converter, Virtual Speech)
 - There are other low-cost tools that also do not integrate with e-discovery platforms but may be a good option depending on the need (e.g., Sobolsoft, Sonix)
- **Important Side Note:** For those on Teams, recorded voice memos from the Teams mobile client are not retained when you use retention policies for Teams.

eDiscovery Audio Recording Issues

- Audio Quality
- Understanding of accents
- Foreign languages
- Handling Redactions of Audio

Images and Videos

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AI Tools to Analyze Images

- There are several AI tools on the market that analyze images.
- Among these tools are mobile device forensic tools that will analyze and categorize images.
- For example, Oxygen (a mobile device collection and analysis tool) has a built in feature that can process and categorize images

Tools that Categorize Images - Used by Law Enforcement

| | |
|-------------------------|------------------------|
| Alcohol | ID/ Credit Card |
| Chat | Maps |
| Currency | Nudity |
| Drugs | QR Barcodes |
| Extremism | Vehicles |
| Gambling | Weapons |
| Graphic Violence | Documents |

Issues with AI for Images



Sloth or Chocolate Croissant
Quiz - By sproutcm



Chihuahua vs. Blueberry
Muffin



Labradoodle or Fried
Chicken

Ethical Issues with AI for Search

- Studies show that AI can learn from implicit and explicit bias in data
- Data Privacy

Locating Key Evidence in Video Files

- It depends on what you are looking for:
 - Conversations
 - People, Places, Things
 - Dates and Times When Acts Occurred
- The audio tools we discussed earlier may be suitable for what you need to locate.
- There are several Video AI tools that can categorize video content.
- Check with your eDiscovery experts for tools to meet your case needs.

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| Cybersecurity, Privacy and Big Data | Global Commerce | Regulating Tech |

Biography



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Jennifer helps clients develop and implement efficient ways to manage increasingly challenging electronic discovery processes. She advises clients on end-to-end discovery processes, including litigation holds and preservation, ESI protocols, collection strategies, data culling and iterative search term processes, and the overall document review and production process. Jennifer works closely with clients to implement best practices for information governance, including data privacy, data retention and disposition, and strategies to protect key information assets.

Biography



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Lorraine counsels companies in complex litigation, including intellectual property (IP) litigation, particularly as it relates to electronic discovery (eDiscovery). A litigator with appellate, bench, and jury trial experience, she represents clients in US state and federal courts, domestic and international arbitrations, and government investigations. As part of her practice, Lorraine works with companies to develop tailored eDiscovery plans and strategies to cost-effectively and defensibly handle all aspects of eDiscovery.

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