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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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Great Summary of Louisiana E-Discovery Developments

As a technology junkie, I've always had an interest in the development of E-Discovery. The Louisiana Law Blog just posted an outstanding summary of recent e-Discovery developments in Louisiana federal courts. It's so impressive that I had to link to it from the Construction Law Monitor: [Recent Developments in E-Discovery in Louisiana](#).

E-Discovery is an important concept for our clients and those in the construction industry. Everyone in the industry understands how much documentation and correspondence goes into every project. So, think about all of this documentation and ask yourself:

How is that documentation created? On a computer. How is that correspondence sent? By email.

The electronic nature of the way we do business and communicate is inescapable. If a dispute arises and proceeds to litigation, the litigants ought be prepared to produce all of these emails and electronic documents in their native formats (i.e. not on paper!).

To give you a bit of background on the e-Discovery concept, I'll give a brief explanation and point you to some great resources.

The Explanation:

The 2007 Louisiana legislature made a number of amendments to the Louisiana Rules of Civil Procedure that mirror contemporaneously-made amendments to the Federal Rules of Civil Procedure governing the production of electronic documents and files. In large part, La. C.C.P. art 1462 governs the situation facing the parties

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today. Therein, art 1462(A) allows a party to specify in a requests "the form or forms in which information, including electronically stored information, is to be produced."

If a specific form is not requested, La. C.C.P. art 1462(C) requires that parties shall produce ESI "in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

In jurisprudence regarding the FRCP language (substantially similar to Louisiana's amendments), the form in which files are "ordinarily maintained" is commonly called 'native format.' A "reasonably usable format" is not paper or PDF printouts of the electronic documents, as such an interpretation has been rejected by the courts. See [White v. Graceland Coll. for Lifelong Learning, Inc.](#), 2008 WL 3271924 (D. Kan. Aug 7 2008) (paper print out of PDF is not 'reasonably usable format' under FRCP).

In August 2007, the Louisiana Eastern District rejected an argument that the production of ESI in "native format" was overly burdensome. [Auto Club Family Insurance Company v. Ahner](#). 2007 U.S. Dist. Lexis 63809 (E.D. La. 2007). In this case, Magistrate Wilkinson stated he will "not automatically assume that an undue burden or expense may arise simply because electronic evidence is involved." The magistrate cited the seminal Zubulake decision in support of the observation that "Electronic evidence is frequently cheaper and easier to produce than paper evidence because it can be searched automatically, key words can be run for privilege checks, and the production can be made in electronic form obviating the need for mass photocopying." Id. citing [Zubulake v. USB Warburg, LLC](#), 217 F.R.D. 309 (S.D.N.Y. 2003).

A plain english definition of the term "[native format](#)" can be found on [Wikipedia](#).

Great Resources:

Now, for the resources. Here are two great places to go when you're looking for information (or help with) e-Discovery issues:

- [Ernie the Attorney](#): A Louisiana lawyer and friend of mine, Ernie has an impressive grasp on e-Discovery law and technology, as he is a leading expert in the country on how lawyers use or should use the PDF. Check out his blog: [PDF For Lawyers](#).
- [K&L Gates E-Discovery Blog](#). This is the best e-Discovery blog out there, and even has information specific to Louisiana (as well as all the other states).