

E-DISCOVERY

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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One of the fascinating and challenging aspects of our fast-changing world is the impact of new technologies on litigation. Over the past few years, those involved with litigation have become increasingly comfortable with the production of e-mails and “loose files,” such as Word or Excel documents; however, there are a number of new technologies that are once again changing the e-discovery landscape. In this month’s update, we examine one of these newer technologies that more and more companies have begun implementing—Voice Over Internet Protocol (VOIP) and Integrated or Unified Systems, which attach voice mails to regular e-mails.

Traditional voice mail systems save an incoming message onto a tape system, which after a recipient listens to a particular message, is then held for a particular period of time and then deleted. With today’s integrated systems, however, voice mail appears in a recipient’s e-mail inbox. As such, these voice mail messages can be saved indefinitely either in an employee’s inbox and/or on backup media. Furthermore, these integrated messages can also be forwarded via the Internet to other users inside *or* outside the company.

Therefore, you should presume that any voice mail you leave will be saved and/or shared. Consequently, as with paper correspondence, you must remember that any voice mail message you leave may someday be produced in discovery and/or be quoted on a newspaper’s front page. Accordingly, it is wise to avoid careless language and to also be mindful of sharing confidential or proprietary information.

To the extent that litigation arises and a party has implemented a Unified System, dealing with these voice mails can be both difficult and expensive. Unlike having the ability to search for key terms within e-mails, which is now commonplace, there is very little software that even purports to have the capability to search voice mails for key terms. In most cases, a litigant would either have to listen to each individual message to determine if it was responsive or privileged or have each message transcribed so it could then be key-word searched. Obviously, either option is very time consuming and, as a result, expensive.

If a company implements a Unified System, it is very important that its retention policy address voice mail attachments. Furthermore, proper training and follow-up with the company’s employees is an integral step in the process. Without such a policy, a company may find itself unnecessarily maintaining a tremendous volume of data.

New technologies will continue to provide challenges for companies. The best practice is to have your IT and legal departments become better acquainted so that prior to the purchase of any new technology, the legal team can research and advise the company on the impact and legal implications of that technology.

Feel free to contact any of our attorneys listed below regarding these developments.

Bass, Berry & Sims Attorneys

Michael A. Brady
(901) 543-5703
mbrady@bassberry.com

Matthew M. Curley
(615) 742-7790
mcurley@bassberry.com

Wallace W. Dietz
(615) 742-6276
wdietz@bassberry.com

Anthony J. McFarland
(615) 742-6250
amcfarland@bassberry.com

Stephen W. Ragland
(901) 543-5917
sragland@bassberry.com

John C. Speer
(901) 543-5919
jspeer@bassberry.com

Kathryn Hannen Walker
(615) 742-7855
kwalker@bassberry.com

Amy C. Worrell
(901) 543-5706
aworrell@bassberry.com

Robert L. Brewer
(615) 742-7760
bbrewer@bassberry.com

Michael L. Dagley
(615) 742-7729
mdagley@bassberry.com

Samuel Lanier Felker
(615) 742-6219
sfelker@bassberry.com

Jody E. O'Brien
(615) 742-7750
jobrien@bassberry.com

Brian D. Roark
(615) 742-7753
broark@bassberry.com

Tara L. Swafford
(615) 742-7731
tswafford@bassberry.com

Clarence A. Wilbon
(901) 543-5927
sragland@bassberry.com

Kristen C. Wright
(901) 543-5907
kwright@bassberry.com

Kelly A. Cunningham
(615) 742-7745
kcunningham@bassberry.com

J. Page Davidson
(615) 742-6253
pdavidson@bassberry.com

John S. Golwen
(901) 543-5903
jgolwen@bassberry.com

Justin D. Pitt
(615) 742-7737
jpitt@bassberry.com

Todd J. Rolapp
(615) 742-6288
trolapp@bassberry.com

Overton Thompson III
(615) 742-7730
othompson@bassberry.com

Barry Willms
(615) 742-7810
bwillms@bassberry.com

Jeffrey P. Yarbro
(615) 742-7793
jyarbro@bassberry.com

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