

Confidentiality and Microsoft Word

In the new economy lawyers have become accustomed to working with electronic documents. Increasingly documents are e-mailed back and forth during negotiations. However, without proper precautions, electronic versions of documents may unintentionally disclose more information than just the text on the screen or paper.

For example, many word processing programs, including Microsoft Word, track certain information about the document and its creator but do not necessarily display such information unless prompted. When a new document is created, the author's name and company are imported from Windows and stored as part of that document's "properties." The original file name of the document is also stored as the document's "title." Additional information can also be optionally entered.

These attributes can be displayed by selecting "File" and "Properties" from the menu bar. Certain portions may also be displayed when the cursor is placed over the document in a "File Open" dialogue box.

Unless deleted or modified, these attributes remain with the document as it is modified and re-used. Even if a document is simply used as the starting point for a completely new document, with most or all of the text replaced, these attributes will remain.

When a document from another company (or law firm, in the case of attorneys) is used in this manner, significant embarrassment can result.

A more significant but com-

mon problem results from improper use of Word's revision tracking feature. This feature, when turned on, causes Word to track all changes made to a document. It can be extremely useful to track and show changes made to a document as it passes back



Bits and Bytes

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and forth between negotiating parties. The default changes for Word cause any such revisions to be displayed on screen and with any printed copies.

Certain users, intending to send a "clean" version of the document, simply turn off the display of the revisions on the screen instead of instructing Word to actually clear out those changes (technically, "accept all" changes). However, a recipient of such a document can simply toggle on the display of tracked changes to see the changes last made to a document.

The disclosure of document changes can be particularly significant when a document has been passed around among multiple people internally. Each person's changes are separately tracked. Even the same person's changes between multiple internal drafts may be separately tracked if made on different computers (home/office or manager/secretary). In such cases it can show the negotiating position of at least one person on a particular party's team. Also, since each person's changes are marked with their name (which is pulled from their copy of Word), the identity of a behind-the-scenes assistant can be inadvertently disclosed.

Reviewing document changes

is particularly useful when the document is a draft contract based on a previous version negotiated with another party. In such cases, the negotiated contract is revised to make it more favourable to the party intending to re-use it.

Toggling on the display of recent changes instantly shows the recipient what the disclosing party had previously agreed to in the last transaction where the document was used (and of course, the identity of the previous business partner). This makes for a great starting point for new negotiations.

Another area of risk is the tendency of some word processing programs, including Word, to continue saving deleted text in newer versions of documents (presumably for performance reasons). Such text is not visible when the document is retrieved using Word, but can be displayed (in somewhat cryptic form) if the Word document is retrieved using another program (such as the Notepad program included with Windows). Thankfully, this problem can be cured by a simple change to Word's default save options.

Here are a few suggested best practices for document transfers:

- When you send or receive a document always toggle on the "highlight changes on screen" and "highlight changes on printed document" functions;
- If you wish to send a "clean version" of a document, run the "accept all" change function;
- When you wish to instruct an assistant to send a "clean version" of a document, explain what you really mean;
- If you wish to conceal the identities of all persons that may have contributed editing

changes, save a separate clean version (with all changes "accepted") of the initial and revised drafts, load the revised draft, turn on the "track changes" feature and then run Word's "compare documents" feature to compare the clean copy of the revised draft against the clean copy of the initial draft (all changes will then be associated with the person performing the final comparison);

- Change the default save options to turn off "allow fast saves";
- When it is not necessary for the recipient to edit the document, consider sending the document in Adobe Acrobat PDF file format (however, where changes are expected, doing so will simply slow down the negotiating process until an editable version of the document is provided);
- Consider the use of third-party utilities before sending out electronic versions of documents to help strip out unnecessary information contained within such documents. For instance, see Payne Consulting's MetaData Assistant <http://www.payneconsulting.com/MetaDataAssistant>. ■

Additional useful information is available from Microsoft's Knowledgebase at: <http://support.microsoft.com/support/kb/articles/Q223/7/90.ASP>

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