

## Considerations for Social Media and Web Site Captures

Article By:

Electronic Discovery at KL Gates

---

Social media and web site content may serve as key evidence for many types of legal matters, including trademark infringement litigation, defamation cases, and employment matters related to harassment and workers' compensation. However, capturing screenshots of such content as a means of data preservation for subsequent production in those legal matters may lead to issues related to their proper authentication.

A number of software tools are available to assist in capturing social media and web site content, and many such tools also provide self-authenticating documentation regarding the particular content collected, the date of its collection, and the individual performing the collection. Depending on the content being collected, multiple tools may be needed to perform all of the social media and web site content collections for a specific matter because of the limitations inherent in particular tools.

When selecting tools for capturing social media and web site content, the technologies employed in the targeted repositories must be evaluated carefully. The software programs involved in social media and web site architecture are ever-changing, and new social media platforms spring up frequently. As a result, tools to capture data from these repositories are constantly evolving to keep pace. At times, particular tools may not yet be able to capture all such content readily. Additionally, many tools may not be adept at capturing content from social media and web site applications that are older and/or less popular.

When performing social media and web site content collections, it is imperative to address relevant ethical and privacy considerations. For instance, ethical rules applicable to attorneys (and, in turn, those individuals whose work is supervised by attorneys) prohibit misleading others as to one's identity as part of a client representation. This restriction limits the use of impersonation accounts to join private or closed social media groups in order to capture content from these repositories. Also, privacy laws may, in some contexts, require a court order prior to undertaking the collection or redaction of third-party personal information from social media or web site content.

Time is also of the essence when performing social media and web site content captures. For example, Instagram has a twenty-four hour deletion cycle established for stories posted on the platform. Therefore, content within such stories is only available for capture prior to the end of that deletion cycle, assuming that the account owner does not affirmatively delete the content before that time.

Copyright 2024 K & L Gates

---

National Law Review, Volumess XII, Number 273

Source URL: <https://natlawreview.com/article/considerations-social-media-and-web-site-captures>