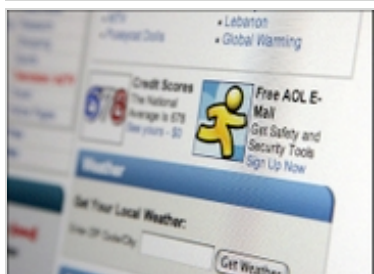


New rules compel firms to track e-mails



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WASHINGTON - U.S. companies will need to keep track of all the e-mails, instant messages and other electronic documents generated by their employees thanks to new federal rules that go into effect Friday, legal experts say.

The rules, approved by the Supreme Court in April, require companies and other entities involved in federal litigation to produce "electronically stored information" as part of the discovery process, when evidence is shared by both sides before a trial.

The change makes it more important for companies to know what electronic information they have and where. Under the new rules, an information technology employee who routinely copies over a backup computer tape could be committing the equivalent of "virtual shredding," said Alvin F. Lindsay, a partner at Hogan & Hartson LLP and expert on technology and litigation.

James Wright, director of electronic discovery at Halliburton Co., said that large companies are likely to face higher costs from organizing their data to comply with the rules. In addition to e-mail, companies will need to know about things more difficult to track, like digital photos of work sites on employee cell phones and information on removable memory cards, he said.

Both federal and state courts have increasingly been requiring the production of relevant electronic documents during discovery, but the new rules codify the practice, legal experts said.

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experts said.

The rules also require that lawyers provide information about where their clients' electronic data is stored and how accessible it is much earlier in a lawsuit than was previously the case.

There are hundreds of "e-discovery vendors" and these businesses raked in approximately \$1.6 billion in 2006, Wright said. That figure could double in 2007, he added.

Another expense will likely stem from the additional time lawyers will have to spend reviewing electronic documents before turning them over to the other side. While the amount of data will be narrowed by electronic searches, some high-paid lawyers will still have to sift through casual e-mails about subjects like "office birthday parties in the pantry" in order to find information relevant to a particular case.

Martha Dawson, a partner at the Seattle-based law firm of Preston Gates & Ellis LLP who specializes in electronic discovery, said the burden of the new rules won't be that great.

Companies will not have to alter how they retain their electronic documents, she said, but will have to do an "inventory of their IT system" in order to know better where the documents are.

The new rules also provide better guidance on how electronic evidence is to be handled in federal litigation, including guidelines on how companies can seek exemptions from providing data that isn't "reasonably accessible," she said. This could actually reduce the burden of electronic discovery, she said.

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