

Recording Online Meetings: A Guide to eDiscovery Best Practices

Because of the potential for exposure that recorded calls may have, it is important to understand when and where recordings can be used and if the risk of recorded online meetings is something you need to mitigate against.

By **Gina M. Vitiello and Patrick Kennedy** | November 08, 2019 at 11:09 AM



Gina M. Vitiello (left), shareholder in the Atlanta office of Chamberlain Hrdlicka, and Patrick Kennedy, director of eDiscovery at Andrews Myers. (Courtesy photos)

Using online meeting software is commonplace in business. If you haven't hosted a meeting using GoToMeeting, WebEx, Zoom or a host (no pun intended) of other software products, chances are you have likely attended an online meeting yourself, as it's increasingly necessary for individuals to meet online and share screens, video feeds, documents and side-conversations with up to hundreds of people at a time.

While online meetings can save companies time and travel expenses, the ability to record such meetings presents a unique challenge when litigation is involved. A quick review of the major meeting software products listed above shows that all include the ability for meetings to be recorded and saved for later use. Most allow the recording to capture not only what the speakers on the call say, but any screens that are shared, side conversations that occur in the “chat” window and a full list of participants who have logged into the meeting.

What happens to those recordings after the call ends? That depends largely on how the software administrator and/or individual host has set it up. Recorded files are saved either to the local machine of the person who hosted the call or on the server where the software resides; the host of the session makes this choice.

These records can cause issues on both ends of the call cycle. Firstly, when a meeting invitation is issued, users may not be aware that the meeting is being or could be recorded; therefore, a disclaimer may be necessary when an invitation to such a call goes out. Secondly, where the resulting recorded file is saved could affect which custodians and servers need to be included in an eDiscovery request.

As for the first issue, we recommend that all online meeting invitations be accompanied with a disclosure statement similar to the following:

“IMPORTANT NOTICE: Please note that this {Name of Meeting Software} service allows audio and other information sent during the session to be recorded, which may be discoverable in a legal matter. By joining this session, you automatically consent to such recordings. If you do not consent to being recorded, discuss your concerns with the host or do not join the session. Rules regarding the recording of communications differ from jurisdiction to jurisdiction. Please check the rules on this topic in your respective jurisdiction.”

This prompts any potential attendees to ask if a recording will be made and opt out of the call if they feel it is problematic for any reason. Alternatively, potential attendees will have the option to request that the host not record.

To the second point, eDiscovery hinges on collecting the right electronically stored information from the right places. Those places can include such things as email boxes and network share drives from individuals who are involved in the suit. But as we have learned, eDiscovery professionals should also ask where meeting software file recordings are stored so that those locations can also be included the collection.

We have personally hosted or attended over 200 of such meetings, and that number could likely be exponentially larger for others. Because of the potential for exposure that recorded calls may have, it is important to understand when and where those recordings can be used and if the risk of recorded online meetings is something you need to mitigate against.

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