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Evidence: Yes  
Comments:

Regarding proposed discovery changes, I am particularly concerned about the amendment that would read as follows:

"Rule 37. (f) Unless a party violated an order in the action requiring it to preserve electronically stored information, a court may not impose sanctions under these rules on the party for failing to provide such information if: (1) the party took reasonable steps to preserve the information after it knew or should have known that the information was discoverable in the action; and (2) the failure resulted from loss of the information because of the routine operation of the party's electronic information system."

The effect of this rule would be the adoption of procedures at companies that would eliminate the ability of Plaintiffs to obtain relevant information. Companies could set unreasonably short purging times and purge potentially damaging information-- all without recourse.

The need for such a rule is obviated by the extremely low cost of storage as well. Cost per megabyte of storage is expected to be around \$0.01 per MB in 2005. An average email is 5-8kb. Even at the larger size, that would make the one-time storage cost of approximately 130 emails (1024 kb/MB, 8kb/email, thus approximately 130 emails stored per MB assuming they are all 8kb) one penny. This would not be a recurring cost... it is a one time cost of the storage. Even cheaper would be optical storage... "burning" the data to CDs or DVDs for storage. A single CD would hold (assuming 8kb emails) almost 82,000 emails, and a CD costs approximately \$0.10. A single DVD would hold almost 602,000 emails and costs a little over a dollar at today's prices

(probably less if, as the companies would likely do, they buy in bulk). Storage of emails and other messages on those optical formats, even if done daily, would only require the space about the size of a shoebox over the course of an entire year. In addition, storing the emails on a disc makes it easy for both sides to search for and find emails that comply with discovery requests, and would allow the companies to regularly purge their systems of old emails without destroying them entirely, and would leave open the remedy of spoliation if they destroy the archived copies of the emails.

There is very little cost to these methods of storing the data without destroying a Plaintiff's ability to discover relevant information. Considering the ease of storage, the extremely small cost (expecially considering the wealth and resources of companies most likely to be affected by the rule) and the need for a Plaintiff to have the ability to discover this evidence, there is no need whatsoever to open a door for people to have an automated digital shredder, a-la Enron, to protect themselves from liability.

Incidentally, a one terabyte hard drive (which would hold 128 million emails and could be overwritten and reused) costs, retail, only around \$900.00 even today. That is certainly not a burdensome cost for a company that has a volume of 128 million emails.

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