

# Legaltech news

## Globanet's Merge1 Expands Collection to New Media, Citing FRCP Rules' Impact on Discovery

*E-discovery and information governance platforms like Merge1 move to expand their collection tools.*

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Call it a mixed blessing: while the **amendments to the Federal Rules of Civil Procedure (FRCP)** limited discoverable data to what is proportional, they also expanded the types of data that can be deemed discoverable.

Responding to the growing prevalence of new media in discovery, Globanet's Merge1 archiving platform recently released an upgrade "to archive custom messaging types with the same ease and efficiency as more conventional messaging formats," said Michael Swarz, information governance strategist at Globanet.

Merge1, which Swarz described as "archive agnostic," captures "nearly 25 types of social media, text messages, instant messages and financial communications" for e-discovery and compliance needs." Globanet also upgraded Merge1's interface to an HTML format and installed new dashboard feature, following the growing trend among legal tech providers to **focus on user experience**.

As new media evidence becomes more common in courtrooms, more legal tech companies are moving to upgrade their **platforms with wider collection functions**. At the **ACEDS's conference** earlier this year, Julie Brown, litigation technology manager at Vorys, Sater, Seymour and Pease, cited examples of such platforms including Nexpoint, Hanzo Archives, and X1 Social Discovery, but cautioned, "what you have to keep in mind is each tool does it a little bit differently, and they're not all the same. Some tools do a better job extracting metadata than other tools do."

While not the top discoverable content, new media still makes up a significant portion of what attorneys search for in discovery. The recent 2016 **Information Governance Survey by ZL Technologies**, for example, found that instant messages, social media and text messages are the fifth to eighth most-often discovered content, behind emails, database data and Sharepoint data, among others.

The increase in new media in discovery is in part due to the new amendments to the FRCP rules, which while limiting discoverable data to what is proportional also expanded the types of data that can be deemed discoverable.

Swarz noted that "social media, text messages, instant messages and financial communications are fully producible and discoverable to the other side in litigation and regulatory investigations. They are part and parcel of the e-discovery experience per the FRCP and case law. Rule 34 of the FRCP states that electronically stored communications (ESI) includes social type content."

He added that new media "is treated the same under the rules and is part of the Rule 16(b) scheduling order, Rule 26(a) meet and confer conference and Rule 26(f) discovery plan if applicable. That's for the FRCP rules how social, IM, text and financial messages are needed and used in litigation and regulatory investigations."

What's more, "case law says the same thing, that social, IM, text and financial data is needed too," Swarz said. "Shepherd v. McGee ruled that Facebook posts were evidence. UPMC v. Pittsburgh ruled that ESI includes instant messages. Lester v. Allied Concrete ruled that legal holds include social media."

In allowing new media into discovery, courts have potentially armed attorneys with a powerful new evidence source.

"Oftentimes, we can figure out where people were when they send a tweet," Brown said at the ACEDS conference. "If we get that Twitter page, we can almost create a map of the history of the date and times where a person was. ... I don't think people always realize all this data is out there."

Beyond e-discovery, Swarz said that the ability to collect new media is increasingly pivotal given the expanding purviews of international data transfer regulations.

"With an ever increasing global economy, there will be further ESI international considerations too for these streams of data as other countries develop their schemes to deal with the new technologies and the ever increasing volume."