

Slack: Understanding and Addressing Discovery Challenges



slack

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INTRODUCTION

Slack is a popular cloud-based team collaboration and messaging platform used by a wide variety of organizations. Similar to other workplace messaging platforms that have grown in popularity, Slack remains largely unknown to many counsel and the courts. Nevertheless, content from Slack—including business communications, records, graphics, and other information—is increasingly subject to discovery. A lack of knowledge about Slack can lead to complications with satisfying preservation, collection, and production obligations for relevant Slack content in discovery.

This paper provides information regarding the nature and features of Slack. It delineates challenges that may arise when dealing with Slack in discovery and identifies practical steps that counsel for both requesting parties and responding parties can take to address this source of discoverable information.

WHAT IS SLACK?

Cloud-based messaging and collaboration platforms like Slack have gained increasing prominence over the past several years. Slack is a leader in a class of technologies known as workplace collaboration tools. These technologies offer employees with a highly interactive and customizable platform to communicate with co-workers and share files. Many users believe these platforms provide a significant improvement over email or other messaging applications, which they perceive as less flexible and too “corporate.”

Among messaging and collaboration tools, Slack has proven to be especially popular. Billed as a secure communication app that can help “everyone save time and collaborate” Slack touts its multifaceted functionality of “public channels” for discussions among larger groups and “private channels” to communicate sensitive information to smaller groups. Users may send written electronic messages, audio and video feeds, and any number of file types to recipients through these different communication means. Once posted on a channel, that information is available to all other users subscribed to that channel. Slack also provides “direct messages” for one-on-one exchanges. Information shared through direct messages is only available to the sender and designated recipients.



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SLACK'S UNIQUE ELECTRONIC DISCOVERY ISSUES

Slack presents several unique issues in electronic discovery that can impact a party's preservation, collection, and review processes. Those issues include the nature of the party's Slack account; whether the party owns or controls the Slack account and channels in question; whether deleted messages from the Slack account can be identified or recovered; and the export format available for Slack data.

Nature of the Party's Slack Account

Slack offers users a menu of account options depending on their communication needs. The type of account the party selects will have a significant impact on its ability to subsequently export data from the Slack application and thereby satisfy discovery obligations in litigation.

Standard Export for "Free" and "Standard" Accounts

The entry-level accounts that Slack offers are known as "Free" and "Standard" plans. For Free and Standard accounts, Slack provides the "Standard Export" feature. Standard Export limits the collection of content to the retrieval of messages posted in public channels where the user owns the specific channel in question. If information is in a channel that is shared between different organizations, administrators for one organization can only export the information that was posted by users under that account.

The Standard Export feature does not allow users to automatically obtain private channel content or direct messages. Instead, they must submit an application to Slack for such content and legally justify the nature of their request in the application. Slack warns users that applications will be rejected unless they can demonstrate a valid legal process," "consent of members," or "a requirement or right under applicable laws in order to export data."¹

Finally, users may obtain links to files that were exchanged on Slack, but they cannot export the actual files. This ostensibly allows users to identify and separately collect those files, and then match them up to the original messages to ensure a family complete production of messages and attached files.

Corporate Export for "Plus" Accounts

For "Plus" plans, which are the next level of account service, Slack offers users Standard Export as well as the option to apply for access to the "Corporate Export" feature. The Corporate Export provides enhanced export features over Standard Export, though at first glance the respective export features might appear to be similar. Like Standard Export, Corporate Export enables users to automatically obtain messages from public channels that the user owns, along with links to files that were exchanged on Slack. And as with Standard Export, Corporate Export users may not obtain messages, file links, or other content from private channels and direct messages unless Slack approves a user-submitted application for such content.

However, the application to request content from private channels and direct messages substantially differs from Standard Export. Corporate Export users need only establish that "appropriate employment agreements and corporate policies have been implemented" and the use of exported data "is permitted under applicable law."² This is an easier benchmark to satisfy than the Standard Export application process. That an application should be granted as a matter of course is confirmed by Slack's representation that Plus account users can export "all messages."³ Once the request is approved, organizations may use the Corporate Export tool to schedule Slack exports on a daily, weekly or monthly basis.⁴



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Despite the enhanced export capabilities, Corporate Export does not include actual files posted in Slack public channels, private channels, or direct messages. As with Standard Export, Corporate Export may only obtain links to those files and then use those file links to identify and separately collect the corresponding documents.⁵

Discovery API export mechanism for “Enterprise Grid” Accounts

The top tier of account service that Slack provides is the “Enterprise Grid” plan. For Enterprise Grid accounts, Slack offers users true eDiscovery capabilities. This includes access to Slack’s “Discovery API export mechanism,” which allows Slack’s approved eDiscovery partners (that a party or its counsel has engaged) to efficiently export data from Slack for processing, review, and production.⁶ That data includes all messages from public channels, private channels, and direct messages. Data exports performed with the Discovery API also include files (accessible through “direct links”) exchanged by users who are members of the particular Slack organization or “workspace” from which the export has been performed. If messages or files are in a channel that is shared between different organizations, the Discovery API will only export the information that was shared by users for the exporting organization.

Summary

For parties who want to quickly and efficiently obtain Slack data for discovery, the best choice is to subscribe to the Enterprise Grid plan. For Free, Standard, and Plus account users, that may mean paying a fee to obtain the upgraded Enterprise Grid service. If users do not upgrade to Enterprise Grid, they will be forced to manage their Slack data through multiple stages of processing (with associated costs) to eventually upload the data to an eDiscovery platform. A party using a Free, Standard, or Plus plan will ultimately need to determine if the costs and delays associated with doing so would exceed the expense of upgrading to an Enterprise Grid account. In any event, litigants facing an upcoming discovery deadline or a production order may not have any other choice than to upgrade to an Enterprise Grid plan to achieve a timely production of documents.

Another export complexity that favors Enterprise Grid users involves file attachments. While Free, Standard, and Plus account users can separately collect those files, such a process—with multiple collection paths required to recreate family structure—can arguably increase the risk of error associated with retaining the metadata and family organization of messages and files. All of which can lead to subsequent authentication and admissibility challenges if the evidence must be presented in dispositive motion practice or at trial.

By leveraging an Enterprise Grid account, collections of all relevant Slack data can be automated. This will facilitate the preservation and review processes for such data. While axiomatic, it is certainly true that litigants will get what they pay for in terms of eDiscovery export options with Slack.

Account Ownership

Another complexity associated with the discovery of Slack content involves account ownership. Slack restricts authorization to export account data to certain designated people, depending on the nature of the account in question. As a result, a party wishing to export data from Slack for discovery purposes must hold a particular level of authorization or it could be stonewalled in its attempt to obtain that data.⁷



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For Free and Standard accounts, Slack allows “Workspace Owners” or “Admins” to authorize the export of data from the application.⁸ For Plus accounts, Slack limits data export authorization to Workspace Owners.⁹ Workspace Owners are individuals who have been given the highest level of authorization among users and administrators for a specific workplace.¹⁰ They typically control public channels and generally make most channels in the Slack environment available for export. In contrast, Admins are responsible for administrative tasks.¹¹

Enterprise Grid accounts have additional restrictions. Slack limits exports under these accounts to “Org Owners,” who are individuals that hold the highest level of authorization among users and administrators for an account.¹²

Deleted Messages

Slack does not archive deleted messages or provide a way to recover deleted information. Once a user deletes a particular message, that message is gone forever.¹³

Nevertheless, Slack may still retain information about deleted messages that can be included in an electronic discovery export. If Workplace Owners (for Standard and Plus accounts) or Org Owners (for Enterprise Grid accounts) set message retention within Slack to the “Keep Everything” setting,¹⁴ Slack will generate and maintain a log of deleted and edited messages from public channels.¹⁵ Only Enterprise Grid accounts can obtain message deletion and edit logs from private channels and direct messages.¹⁶

Slack deletion logs could serve any number of purposes, both for the party responding to discovery and for the requesting party. A deletion log could aid a responding party by demonstrating that unavailable messages were deleted long before a duty to preserve attached. Deletion logs could conversely benefit a requesting party by showing that users deleted messages from Slack after the duty to preserve triggered. Because a placeholder is inserted to show where the deleted message fell in a particular Slack discussion, the requesting party may be able to establish the importance of that message and the impropriety of its destruction depending on the nature of the surrounding content.

Export Format of Slack Data

When a user exports Slack data, it is generally provided in JavaScript Object Notation or .json format (“JSON”).¹⁷ JSON is a non-proprietary, standardized file type that a user may read without licensed or customized software. However, Slack data is difficult and time-consuming to review in raw JSON format.

To remedy this issue, Slack data can be translated from JSON into other formats—if the party has an Enterprise Grid account. Enterprise Grid account users can transfer data to one of ten Slack-approved eDiscovery partners through Slack’s Discovery API.¹⁸ After taking possession of the exported Slack data, the eDiscovery partner can facilitate modifications of the data needed to upload the data for review purposes into an eDiscovery platform.¹⁹ They can also place all content in a third-party archive system, which can facilitate preservation of the data and may offer additional export formats for the user.



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PRACTICAL STEPS FOR ADDRESSING SLACK DISCOVERY

Understanding the unique discovery issues with Slack is essential for both responding parties and requesting parties who wish to efficiently produce or obtain relevant Slack content in discovery. Counsel for responding parties and requesting parties can also take several practical steps to better ensure their clients are able to produce or obtain Slack materials.

Responding Parties

Relevant Source Checklist. Counsel should place Slack on their checklist of relevant sources for custodians. This will more readily ensure that custodians for responding parties identify Slack as a source of relevant information. Counsel can then follow up with the client on exporting particular channels or messages for preservation and review.

Determine Account Status. If Slack is a source of relevant information, counsel should specify Slack on the litigation hold and then determine the nature of the Slack account in question that the responding parties are using. If the client is using a Free, Standard, or Plus account, consider whether an upgrade is needed in order to obtain a full eDiscovery export of Slack data.

Confirm Retention Settings. Counsel should next ascertain what retention settings (if any) the client has enabled for its Slack account. If the Keep Everything setting is enabled, counsel should request copies of the deletion and edit logs from the client so they can be reviewed and analyzed in advance of a document production or any meet and confers with litigation adversaries.

Approved eDiscovery Partner. Either counsel or the client should ensure the client has engaged an eDiscovery provider on the list of approved Slack partners in order to facilitate an efficient and usable export of Slack data.

Dealing with Litigation Adversaries. Requesting parties may range from the unsophisticated to exceptionally savvy when it comes to Slack discovery. Counsel for responding parties should consider a meet and confer with litigation adversaries regardless of their sophistication to better address Slack production questions. For recalcitrant adversaries, counsel should consider making reasonable productions of Slack data and then seeking judicial relief from unreasonable demands.

Requesting Parties

Identify Slack in Preservation Demand Letters. Counsel for requesting parties should consider specifying their interest in obtaining relevant Slack data during discovery in a preservation demand letter to the responding parties.

Provide Clear Definitions and Instructions. In their requests for production of documents, counsel should provide definitions that clearly describe Slack, the nature of the Slack channels from which discovery is being sought, and the nature of the Slack content being requested. Production instructions should also delineate with clarity the requested production format (JSON) and the need for a load file compatible with counsel's eDiscovery platform. The instructions should also specify that Slack data be produced in an organized format, i.e., by day, date, and with specific channel information, together with metadata fields reflecting user identification details and the date and time for messages.

Dealing with Litigation Adversaries. Responding parties may or may not have sophistication with Slack discovery. Counsel for requesting parties should consider a meet and confer with opposing counsel to better ensure their production needs are satisfied. In federal court, requesting parties may consider using early Federal Rule of Civil Procedure ("FRCP") 34 production requests to signal their interest in obtaining Slack data. Doing so may result in a dialogue with adversaries at the FRCP 26(f) conference about obtaining Slack data in discovery, including specific channel information and production format details.

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ABOUT INNOVATIVE DRIVEN

Founded in 2001, Innovative Driven, has built its reputation as the top eDiscovery solutions provider by excelling in complex data challenges. In 2009, Innovative Driven launched ONE as the first eDiscovery software platform to handle Processing, ECA, Review, Production and Case Management in a single environment. This background of innovation has resulted in Innovative Driven developing tools, creative workflow, and a highly secure and scalable infrastructure.

Innovative Driven's mission is to provide the best of breed technology to its clients while delivering solutions with full case lifecycle support guided by expert eDiscovery consulting, world-class processing and hosting services, and managed document review. Innovative Driven provides the most comprehensive solution in the market for large-scale eDiscovery data management and cost reduction.

Innovative Driven is a unique hybrid of a software manufacturer, world-class service provider, and eDiscovery consultancy. This makes Innovative Driven a true information management company and allows it to support its customers across the data lifecycle. Our view is to excel at reducing the cost and risk associated with discovery by shrinking data footprints and creating a more graceful discovery process. Innovative Driven's goal is to help our clients increase efficiency, decrease cost, and gain a competitive edge.

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ABOUT THE AUTHOR

Philip Favro is a Chambers-ranked lawyer, Band-2 USA-Nationwide Litigation Support/eDiscovery, who serves as a trusted advisor to organizations and law firms on issues relating to electronic discovery and information governance. Phil serves as a special master and an expert witness on cases involving electronic discovery issues. He also provides clients with guidance on data preservation practices, litigation holds, data collection strategies, and ESI search methodologies. Phil additionally offers direction on records retention policies, litigation hold policies, and the need to manage dynamic sources of information found on messaging applications and workplace collaboration tools.

Phil is a nationally recognized thought leader and legal scholar on the discovery process. He actively contributes to The Sedona Conference, where he serves as a member of the Steering Committee for Working Group 1 (Electronic Document Retention and Production). Phil has led various Sedona drafting teams including The Sedona Conference Primer on Social Media, Second Edition (2019), for which he served as editor-in-chief. He is currently leading the development of a commentary for Sedona Working Group 6 (International Electronic Information Management, Discovery and Disclosure) addressing international data protection and cross-border discovery issues relating to ephemeral messaging.

Phil is a licensed attorney and member of the Utah and California state bars. Prior to joining Innovative Driven, Phil practiced law in Northern California where he advised a variety of clients regarding business disputes and complex discovery issues. He also served as a Judge Pro Tempore for the Santa Clara County Superior Court based in San Jose, California.



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