

Contents

1. First, before you delete anything, or ask anyone else to, be sure to preserve all the evidence! Here is how.
2. Consider Whether To Include A Litigation Hold Request
3. Use Without My Consent's Evidence Chart

First, before you delete anything, or ask anyone else to, be sure to preserve all the evidence! Here is how.

Technology can be a tool for abuse. But, if you're savvy, it can also be a great tool for evidence preservation.¹ Take the opportunity to turn every harassing email, text, phone call, and website into an exhibit that can be presented as evidence in court, if needed. Here are some ways to preserve evidence:

- Save the webpages as PDFs.
- Take screenshots of the pages (and make sure to get the whole page, including the URL and time and date).
- Print the pages out and store them securely.
- If the content in question is a video, be sure to download the entire video to a secure hard drive.
- If you have text messages or email that may be relevant, make sure you save copies of all the messages that might be relevant in a reliable manner.
- Consider Whether To Include A Litigation Hold Request. If you might need evidence from intermediaries – like websites and email service providers – to unmask an anonymous defendant, you need to ask those online service providers to save that evidence for later use.
- Do It Yourself PDFs and screen shots are admissible in court. But, if you'd rather have a third party handle the capture and production of evidence, there's a service for that! Page Vault offers webpage capture services. A representative will work with you to capture, store, and produce webpage captures, which can then be attached to a police report, a restraining order application, or given to a lawyer for a consultation. Visit <http://page-vault.com> or email info@page-vault.com.

When preserving evidence, do not just preserve evidence that you believe is favorable to you – preserve all evidence that may be relevant to a dispute, including email, text messages,

correspondence, documents, photographs, videos, etc. Failure to properly preserve all the evidence – even if you believe it may be negative or unfavorable to you – may result in sanctions or adverse findings against you by a court.

For evidence you plan to present in support of your complaint, we recommend that you save: (1) a digital copy to a computer file; and (2) a printout to a binder. Take the binder with you when you go to your local police precinct, domestic violence clinic, or family court self-help center to file papers. Your printouts can then be attached to a police report or an application for a restraining order. The more organized you are, the greater the likelihood that law enforcement, restraining order clinics, online platforms, and prospective legal counsel will be able to help you.

Further reading: Josh Gilliland, *The Admissibility of Social Media Evidence*, American Bar Association (Winter 2013), perma.cc/MS7G-L5NK.

Consider Whether To Include A Litigation Hold Request

Some people simply want the content taken down, and have no interest in getting a restraining order, filing a criminal complaint, or speaking with a civil attorney.

If, however, you are considering legal action, you might need evidence from third parties who may have evidence relevant to your dispute. For example, in order to determine and/or prove who the perpetrator is, you may need evidence from intermediaries – like websites and email service providers – used by the perpetrator.

Intermediaries generally maintain logs of everyone who accesses their systems (for example, to post information or send an email). These logs may contain information that can identify a user or provide other important information, including the date and time a user accessed the site, or the user's IP address. An IP address is a numerical sequence – like "172.16.254.1" – assigned to every computer connected to the Internet that functions much like a street address or telephone number for the computer to

1. See *Protecting Domestic Violence Survivors and Children in California: Pro Bono Representation in Low-Income Domestic Violence Restraining Order Cases 2015 (Free)*, Domestic Violence 101 and Client Interview, Practicing Law Institute (June 2015), perma.cc/JK8E-VR2D.

which it is assigned. These addresses are automatically leased to internet users for a period of time by their internet service providers (ISPs). Thus, you can identify an internet user by asking a website for the IP address associated with the content, and then asking the IP address' owner (the ISP) who it was leased to at the time in question. Generally, websites will not give this type of information out without a subpoena; but even without a subpoena they will likely preserve it for a while if you or your lawyer sends them a hold letter.²

Unless requested otherwise, intermediaries may not keep data for very long (some may only retain data for a month or two; others longer). At the same time, it may take a while to find the right attorney or the proper detective to investigate your case. So, in many cases, a hold letter may serve to preserve crucial evidence and increase your chance of success at identifying the perpetrator and having necessary evidence to pursue a legal action.

The litigation hold letter should at a minimum: (1) inform the website that you are considering taking legal action; (2) provide links to the material, and (3) request that the website provide to you now, or, archive and hold all identifying information regarding the party or parties responsible for posting the material, including IP addresses. Here is an example of the type of information one might seek in a litigation hold request in a digital abuse case, seeking to identify an anonymous poster.

**Sample Litigation Hold Request for Information re:
Anonymous Poster**

Our firm represents [client's name]. Anonymous individuals are using [social media or tech company's name] to [insert facts]. Our client is planning to take legal action against these anonymous individuals, and we believe that you are in possession of important evidence regarding their identity. [Insert a clear description and screen shot of the event for which you are seeking IP data e.g., the anonymous web post or email.] We write at this time to request that you take steps to archive and hold any relevant associated files, logs, or other data that identify or may lead to the identification of the person(s) who [refer to content with respect to which you are seeking identification, for example, "posted the [quote] comment/content under the [fictitious name] on [date] at [time] at [insert URL]" – including but not limited to all:

- First and/or last names.
- Present or last known mailing addresses.
- Billing, subscriber, and/or user profile information.
- Telephone number(s).
- IP addresses used while accessing your service, along with the times and dates of such accesses.

- Alternate e-mail addresses (other than this address).

Failure to do so may lead to the spoliation of important evidence. In the alternative, if you would prefer, a production to this office of all records regarding the above-referenced posting, may make your continued archiving and maintenance of these records unnecessary.

Use Without My Consent's Evidence Chart

To help victims organize their evidence, Without My Consent recommends creating an evidence chart. WMC provides a sample evidence chart below so that you can see what a completed chart looks like. Here are instructions on how to create and fill in your own evidence chart. You can use your evidence chart as the table of contents for your binder. Later, if you are seeking legal action you or your attorney can use this chart and its attachments to create a declaration in support of your claim.

- Create a six-column chart.
- Title the columns:
 - **Date:** The date of the event you're describing. Try to list events in chronological order, so the chart will serve as a timeline of events, as well as a guide to the evidence you are marshaling in support of your claim. Use the chart to tell a story.

- **What Happened:** Describe each item/event briefly, but with enough clarity that someone who doesn't know much about it can understand it. Don't use vague descriptions like:

He's always texting me.

- Instead, state facts like:

He sent 7 texts between 10:00 p.m. and 4:00 a.m. The texts say, '[quote texts].' The texts are on my phone, which I'd be happy to make available for the judge to see. Screen shots of the texts are attached as Exhibit A. Attach your screen shots and printouts as exhibits to the chart.

- **Evidence That It Happened:** Identify the evidence that you already have. Is it a screen shot and PDF of a harassing post/email? Is it a voicemail message saved to your phone? Is it a statement you would be willing to make under oath that something happened the way you say it did? Is it a statement that you believe a third party witness would be willing to make under oath? Make high-quality, reliable copies of the evidence (e.g., if a web page make sure to capture the whole page, along with its URL and the date/time you captured it).

- **Who Do You Think Did It:** For each item, identify the party or parties responsible.

- **Evidence That They Did It:** Identify why you think this party or parties is responsible for the event listed. List

2. Note that although you can generally obtain IP address and other log information with a subpoena, a law called the Stored Communications Act, 18 U.S.C. 121 §§ 2701-2712, may limit your ability to request the contents of communications and/or certain other data. For further reading on the Stored Communications Act, see Orin S. Kerr, *A User's Guide to the Stored Communications Act - and a Legislator's Guide to Amending It*, 72 Geo. Wash. L. Rev. 1208, 1218-20 (2004).

any other contextual clues within the messages themselves that reveal the identity of the sender. For example:

Texts display sender's name and phone number.

Ex-partner has threatened me with the photos in the past. For example, [insert specifics].

The 4:00 a.m. text message states, "You'll be sorry."

The photos were posted to a webpage along with comments about me [or our relationship or him] that only he could know. [Insert specifics.]

- **Evidence Still Needed/Who Has It:** If you believe you will be able to obtain evidence for the items listed in 3 and 5, but do not have it yet, list it here. Describe briefly but clearly what you believe the evidence is, what you believe it will show, and where you think you will be able to obtain it. If you believe a third party may be in possession of important evidence, consider whether you should ask them for it sooner rather than later, or send a litigation hold request, to ensure it is preserved.

When you reach out for assistance, be prepared to talk about the three most recent incidents of abuse and the three worst incidents of abuse - those may be two separate things. If there are more than three incidents, continue to fill in the Evidence Chart until have documented every incident.

See Without My Consent's sample completed Evidence Chart at <http://withoutmyconsent.org/files/evidence-chart>.