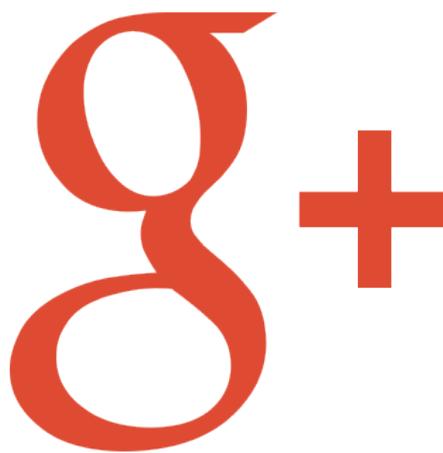


PRESERVING GOOGLE CONTENT

by Craig Ball



A key responsibility of in-house and litigation counsel is to ensure that potentially responsive information is preserved facing litigation. Counsel must advise and supervise a client's efforts to preserve information deemed favorable as well as information that is helpful to the other side. It's a duty owed to the court under common law.

Attorneys have seen harsh criticism from courts and borne the brunt of monetary sanctions for failing to act promptly and prudently to preserve electronically stored information (ESI). The duty to preserve ESI attaches to every case, including those where parties lack the wherewithal to hire technical experts. Moreover, absent an agreement or court order, parties are not free to degrade the forms of the ESI preserved and produced, such as by printing ESI and destroying its electronic searchability.

Meeting these obligations is challenging and even more so when the data resides with third parties like cloud and web mail services. Millions of clients depend on Google tools to manage email, contacts, documents, calendars, photos, and more. That's a lot of potentially relevant evidence, and

it's often sensible or necessary to preserve cloud content by collecting it.

In the past, Google made it easy to find content but hard to get that content in forms that preserved utility and integrity. Happily, the geniuses at Google have since introduced a truly simple, no-cost way to collect Google cloud content — from services like Gmail, Google Drive, Calendar, and others — for preservation and portability. It sets a top-flight example for other cloud service providers and presages how we may use the speed, power, and flexibility of Google search as a culling mechanism before exporting for e-discovery.

This is a development worth cheering because, until now, you had two choices when it came to putting Gmail on legal hold: either you'd instruct your client not to delete anything (and cross your fingers they'd comply) or you had to hire someone to download the data. Now, Google does the Gmail collection gratis and puts it in a standard MBOX

format that can be downloaded and sequestered.

Google incorporates custom metadata values that reflect labeling and threading. You won't see these unique metadata tags if you pull the messages into an email client, but e-discovery software will pick them up. I tested this using Nuix and, the \$100 marvel, Proof Finder. Both parsed the Gmail metadata handily, enabling the messages to be threaded and paired with their Gmail labels.

MBOX might not have been everyone's choice for a Gmail file, but it's an inspired choice. MBOX stores the messages in their original Internet format, now called RFC 5322, a superior form for e-discovery preservation and production. Google Data Tools (google.com/settings/datatools) Armed with login credentials and client permission, the only hard part of preserving a client's Google content is navigating to the right page.

After logging in to the user's account, you can access Google Data Tools by following these steps:

- Go to the "Account settings" page,
- Find the "Account tools" section
- Select "download data"
- Next, you'll see a menu where you choose the Google content to archive and the option to download all mail or just items bearing selected labels.

The ability to label content within Gmail and archive only labeled messages means that Gmail's powerful search capabilities can be used to identify and label potentially responsive messages, obviating the need to archive everything. It's not a workflow suited to every case; yet, it's a promising capability for keeping costs down in the majority of cases involving just a handful of custodians with Gmail.

A lot of discoverable data is moving to Google-owned products—Gmail, Drive, Calendar, and YouTube. Kudos to the company for turning a task that's been hard into something so simple that anyone can do it well. That it costs nothing at all—thank you, Google!

Craig Ball is a trial lawyer, computer forensic examiner, noted authority on electronic evidence and law professor in Austin, Texas. He writes about various technology topics on his blog [Ball in Your Court](#).

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TIP JAR

- Let your voice be heard! Participate in our law firm survey by visiting www.surveymonkey.com/s/DDQL5W5.
- Remind your staff that having a good relationship with clients is the best preventative measure that can be taken against malpractice, and that they play a critical role in this relationship.
- Encourage your staff to treat clients as though they were guests in their own homes, including greeting every guest with a smile, and offering a cup of coffee. Also, remind your staff to answer phone calls quickly and professionally.
- Read about protecting your firm's technology at www.onguardonline.gov.
- To switch to a digital *AttPro Ally*, go to www.attorneyprotective.com/contact-us and choose "switch me to digital newsletter" on the form.