

## Computer detectives

### Computer forensics allows tech gurus to find valuable data, even if it's been erased

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David Bertola, Buffalo Business First Reporter

Footprints that one may leave on a sandy beach can be easily swept away in the wind or washed away by the tide.

In an instant, they completely vanish.

But those who delete emails, files or software from work computers, office servers or company-issued phones to cover something up unknowingly leave a trail of digital evidence that can be helpful in lawsuits.

Michael McCartney of West Seneca-based DIGITS LLC runs a company that recovers files long after they've been erased.

"We use computer forensics to recover every file you've touched, whether it's on your C drive, a Blackberry, the corporate network, whatever USB devices you may have plugged in, the files that were put on them or whatever you may have used Web mail for," McCartney said.

DIGITS accomplishes this with a team of tech experts who write software to dig for information when it appears there may not be any there.

Computer forensics is key in intellectual property cases, labor law cases and any major litigation where information can be uncovered about what an employee knew and when they knew it.

#### **Details of personal email accounts can be seen**

McCartney spent 22 years in law enforcement. He was an assistant chief investigator for the New York State Attorney General's Office and spent five years with the U.S. Attorney's Office for the Western District of New York.

He said he knows people won't use work email accounts to do something they know their boss or the government doesn't want them to do.

“We help clients look at data as detectives as opposed to looking at it as only data,” he said.

As an example, he said an internal information technology department may be able to only see that an employee visited a Yahoo or Gmail account throughout the day. McCartney’s team peels the onion and can find the precise nature of those correspondences.

In one case, an employee at an area company was allowed to work on her real estate business, but only during the lunch hour. When it was suspected she was doing more than one hour of personal work on company time, she was fired.

The company was sued for age discrimination, but DIGITS determined that photos of rooms inside properties that were up for sale had been uploaded and emailed throughout the day on her web mail account. McCartney said the case was settled out of court.

He said some companies’ IT departments can tell every time an employee plugs in a thumb drive.

“But they may not have all the resources or the checkbook to look at all activity; it only looks at the stuff that’s most important,” he said.

DIGITS can make a forensic copy of a cell phone and re-create activity of an employee for months leading up to an event such as theft.

### **Details of affair uncovered, case dismissed**

In another instance, after a female employee was fired, she sued her male supervisor for sexual harassment. Shortly after her termination, the company contacted McCartney.

Since her computer was available, management recovered files she deleted from the trash bin. They revealed correspondence between the employee and supervisor, and that they were having an affair. Among them were messages from him, telling her he wanted to end it.

As a result, the company got the case dismissed and countersued the woman for the cost of the investigation.

“That’s the type of evidence that can change the landscape of a case,” McCartney said. “If the computer had been gotten rid of and she had been gone three weeks, it would have been harder to retrieve the data.”

What about the supervisor?

“He kept his job,” McCartney said.

As a practice, he said, some companies send computers, phones and other devices to DIGITS to make copies and extract everything from them after an employee leaves. It may not be known for a while that something was stolen, but some companies call on DIGITS when they feel they’re losing more bids than normal to competitors.

Said McCartney: “When you’re having ice cream and cake in a conference room for someone’s goodbye party, you won’t know for eight to 10 months what that person did.”

# Catching wrongdoers

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Area lawyers who specialize in commercial litigation say forensic computing plays an important role in what they do.

“Nowadays, people should be smart enough to know they’ll be caught, and some are more savvy when it comes to being disloyal,” said Thomas Knab, partner at Underberg & Kessler LLP in Buffalo.

Using a company such as DIGITS, he said, his firm may be able to see communication to outside parties, as well as where an employee is sending confidential information.

“We also can see where data has been erased, changed and what’s been emailed out,” he said.

Knab said the kind of information that’s commonly sent is confidential proprietary data or customer lists that allow an individual to leave for another job, then compete with the former employer.

Teresa Bair, partner at Harris Beach PLLC in Buffalo, said once data has been collected, attorneys and firms can make the data searchable, so it can be better managed and categorized.

For commercial litigators such as Bair and Knab, using digital forensics is a welcome shift from the way they used to work.

“When I first started working in commercial litigation, we had rooms full of boxes that were full of documents to read, categorize and produce in discovery,” she said. “These days, we use computers, it’s more methodical and the process is more thoughtful.”

Bair said Harris Beach uses a consulting subsidiary, HB Solutions, which provides non-legal consulting services in various areas, including information technology. There are about 10 on the IT team, which includes certified computer examiners, to provide electronic data discovery, data forensics and related services.

Bair said that her firm would use a company such as DIGITS if there was an element of an investigation that required expertise beyond what HB Solutions could offer.