

iProblems with MP3 Players

Consider this...

A mother bought her daughter an MP3 player from Wal-Mart. Mom thought the MP3 player was new, but Wal-Mart sells used MP3 players as new products without disclosing the fact they are used.[1]

The 12 year old daughter started using her "new-to-her" MP3 player. To her shock, the device contained sixty-two photos and six and a half hours of video of hardcore gay porn.[2] Mom was not happy and sought legal counsel. Shortly thereafter, the corporate counsel for Wal-Mart was really not happy.

One MP3 player landed a nationwide corporation in Federal court facing a possible class action suit over selling used MP3 players as new products. This is but one example of the legal troubles a portable music device can cause.

But wait, there will be more.

If the key evidence in a case is an MP3 player and its data, what do you do with it? The device is essentially a hard drive that can hold many different types of electronically stored information. This ESI (Electronically Stored Information) is subject to the Federal Rules of Civil Procedure (FRCP) and Federal Rules of Evidence (FRE). This makes a media player under an inch long and a few centimeters thick subject to preservation, requests for production, and even spoliation.

The duty to preserve electronically stored information might require an expert to make a mirror image of the data off an evidentiary MP3 player. Moreover, Courts may treat these situations to copying a personal hard drive, requiring a neutral third party to copy the MP3 player, give the producing party an opportunity to review for privilege, and then produce to the demanding party.[3]

Litigation involving MP3 players is just at its dawn. Knowing that MP3 players contain ESI and are subject to the Federal Rules of Civil Procedure will empower you to be ready for these cases.

[1] *Martin v. Wal-Mart Stores, Inc.*, Slip Copy, 2007 WL 4374175 (N.D.Ill.)

[2] *Martin*, 1.

[3] See generally, *Advante International Corp., et al., v. Mintel Learning Technology, et. al.*, 2006 WL 3371576 (N.D.Cal) and *Ameriwood v. Liberman*, Slip Copy, 2006 WL 3825291 (E.D.Mo.)