

You are an associate at a law firm in the Intellectual Property group. You've been assigned to a trade secrets matter. Your client is the plaintiff, ACME Widgets, a multinational corporation.

An internal investigation performed by an experienced electronic forensic analyst has shown that ten former employees of your client stole trade secrets regarding the highly profitable Widget 2200X. The investigation on the former employees and their new employers turned up enough evidence to bring a claim under the Defend Trade Secrets Act (DTSA) in federal court. The client has made reasonable efforts to prevent disclosure of the trade secret. The misappropriation occurred both while the individuals were employed over the last seven years and after they moved on to other employment where the secrets are being utilized by their competitors. The defendants include the ten individual defendants and their five current employers. All parties have retained counsel and multiple firms are involved, ranging from Am Law 50 firms to solo practitioners. You have been put in charge of managing the discovery for the matter.

Being a technology company, ACME Widget has a dynamic and technologically adept workforce. In your initial interactions with the client, you've learned that many of the individual defendants work in teams that take advantage of social platforms such as Slack and Teams for communicating about and collaborating on work product. While there is company email, the standard method of day-to-day communication takes place on text, including WhatsApp and Signal. While not provided for by your client, social media platforms like Instagram and Facebook were noted as being accessed by the employees. Employees have company provided Windows OS laptops and iPhones, several of the individual defendants utilized their own devices, some of them Mac and Samsung phone products. It is unknown whether individual personal email platforms were utilized. Finally, four of the ten individual defendants work outside of the United States and are based in Switzerland, Germany, Japan, and Ireland. The remaining six defendants are in the Seattle, WA area.

The internal investigation your client performed that led to the discovery of misappropriation yielded incriminating text messages and chats in Slack/Teams. Screen shots of these items have been provided to you. You note that individual defendants often communicated using emojis. Some of the emojis are represented with a ?. There appear to be identical patterns of specific emojis that appear in separate chats that muddy your understanding of the communication.

You begin to develop an index of the systems and devices used so you can begin preservation, analysis, and review of the potentially relevant data.

- 1) What are some of the technical pain points you may encounter in collecting and reviewing emojis?
- 2) What tools and vendors might be best for preservation and review? How might this impact the ESI agreement? Should a single platform be utilized or can all parties approach separately without issue?
- 3) How will you go about deciphering the patterns of emojis' noted? Does the location of the individual defendants come into play?