

WRITE TECH, WRONG TEXT

Practitioners must understand censorship methods in word processing to protect sensitive information.



Redaction and track changes are commonly used in the legal profession to obscure or edit information in documents. Recent events tell us that practitioners should not make any assumptions about their own or other people's level of competence in effectively using these methods.

Redaction

Practitioners' failure to properly redact text in electronic court documents has resulted in third parties uncovering and reading text that should have been deleted.

These problems occur when a highlighting tool is used to block selected text out with black shapes. This hides text from view on the screen or when the document is printed, but the text remains in the electronic document and can still be copied and pasted. Where the document is converted to a searchable PDF, the shaded text can still be searched.

The Federal Court of Australia's Guide to redacting documents in electronic form explains how to redact text from electronic documents effectively. Some of the key points are:

- use the word redacted in square brackets [Redacted] to completely replace relevant text
- do not use black shading over text being redacted, and do not change the text colour to white, as the text will not be removed
- use Microsoft Word's Inspect Document function to remove metadata from the document
- another method is to delete the relevant text from a copy of the document, copy and paste the remaining text into Notepad (a Microsoft Windows tool), search to ensure the redacted text is removed, then copy and paste the remaining text back into the document
- when you have a scanned document, make a copy and use the redaction tool in Adobe Acrobat Professional or a redaction software package (Adobe Reader does not have this feature)
- do not use Adobe's annotation tool to create black boxes over the relevant text, as the text can still be found.

Track changes

Many practitioners use track changes when negotiating or collaborating on documents and marking changes up for clients, themselves and third parties. However, use of track changes has risks including:

- numerous changes making a document difficult to read
- unintended changes to formatting such as paragraph numbering
- the tendency to artificially quarantine the tracked content and subsequently failing to consider its effect on the rest of the document
- track changes not being turned on when a client or other party makes amendments.

Always establish a common understanding with your client and other parties about how and when changes will be marked up. Be alert to the possibility that changes made by others may not be marked up. Check the final document to ensure that all intended changes have been incorporated. When moving clauses around, indicate if there are also internal amendments to a clause and consequential changes to the document.

Case study

One case LPLC saw involved a dispute regarding the meaning of a clause that had been moved from a deed of settlement to a side deed during negotiations. The practitioner who moved the clause also made material changes to it. The whole clause, not just the changes, was "red-lined" because it had been moved to a new document. The practitioner did not draw attention to the changed wording in his accompanying email.

The practitioner argued the red-lining indicated an entirely new clause and a competent solicitor could be expected to read a red-lined clause closely beyond the covering letter or email. However, the court found the practitioner should have drawn his opponent's attention to the change because it introduced a substantially different commercial element to the settlement. It rectified the document on the ground of common mistake.

Redaction requires a certain level of skill to execute effectively. Failure to redact effectively could result in the public exposure of sensitive information and an unwanted claim. Likewise, don't take track changes for granted. Ensure you have the necessary technical proficiency and never assume there is common understanding about the use of mark-ups. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

TIPS

- Ensure staff have appropriate WP competency and training.
- Do not use black shading or change font colour to redact text.
- Read the Federal Court's guide to redacting documents.
- Be aware of the risks of using track changes.
- Be alert to the possibility that changes inadvertently may not be marked up.
- Ensure your mark ups and covering correspondence are clear about all types of changes you made to the document.
- Check that all intended changes have been incorporated in the final document.