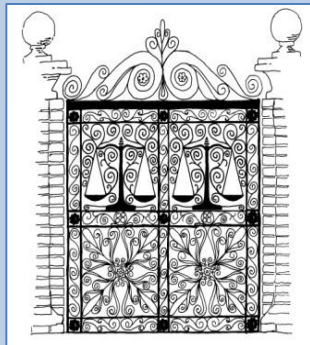


# Safety and Security in a Digital Age

**AAML Mid-Year Meeting  
March 19, 2013  
Las Croabas, Puerto Rico**



**Melissa F. Brown**  
**Melissa F. Brown, LLC**  
145 King Street, Suite 405  
Charleston, SC 29401  
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Shareholder  
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[www.raggiolaw.com](http://www.raggiolaw.com)

# Anecdotal Fact Situation 1

Questions are asked that you and your client agree that there is no way the other side should know to inquire about unless they had access to confidential communications with the lawyer.

What is going on?



# SPYWARE



## What is it?

- Collects personal information, monitors browsing habits, and takes snapshots of screens
- Can be installed on computer without consent of owner



# Recorded Information Activity Sheet



# •FILM CLIP

## THE NET

•(SANDRA BULLOCK)



# TIPS TO HELP PROTECT YOUR CLIENT

- Install anti-spyware programs
- Do not open emails or click on links from unknown sources
- Activate privacy settings for phone and Bluetooth
- Change computer passwords and PINs frequently
- ANY more tips included in article!



# Password Security—for everyone

- Don't leave password lists lying around on Post-Its
- Use different passwords everywhere to protect your vitals better
- Have a PASSWORD PROTECTED list of passwords on your computer that NO ONE KNOWS the password for
- Keep that super-password in your sole access safety deposit box
- iPhone app called 1Password

# PRIVATE INVESTIGATORS

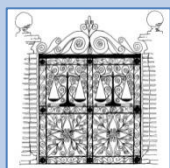
- **Generally in civil cases**, PIs can install GPS devices onto ANY car as long as the PI does not:
  - trespass
  - use vehicle's power, or
  - enter a closed compartment
- Examples of GPS use in divorces and the different rules that apply:
  - Between spouses
  - For use on paramour's vehicle





# “Nanny Cams”

- Expectation of privacy
- Restrictions
  - Areas
  - Audio



# Anecdotal Fact Situation 2

Your client, W, suspects that H has an interesting personal & financial life outside of her knowledge as a stay-at-home mom.

W sees 2nd page of their tax return - every year for 12.5 seconds. She knows that her husband keeps his laptop computer with him everywhere, but she does not know whether he owns it personally or whether his employer owns it



Who owns the computer?

How does ownership affect Wife making a copy of the hard drive?

Do her actions violate any laws?



# Where are the lines drawn?

What if the computer is owned by H's business?

What if Husband owns the business & it is a marital asset.

What if Husband is just an employee?



# How does Lawyer protect himself?

# How does Lawyer protect Wife?



# Anecdotal Fact Situation 3

Wife is sure that her husband is not only smoking dope/cheating on her/whatever, and tells him she has proof of same - in writing.

Husband accuses her of hacking his email/Facebook/My Space pages.

What do you advise your client?



1. First, explain legal v. illegal means to obtain spouse's information re: emails, Facebook, MySpace, texts, LiveChat, etc.
2. Determine if spouses are living together.
  - a. How did W obtain H's password?
  - b. If W did not have password, but H's Social Media account was was left open, is W ok?
3. If spouses are separated, how does this impact the situation?
4. What if W guessed H's password? Ok?
5. What if W used spy software or keystroke software?



# Anecdotal Fact Situation 4

Husband suspects wife is having an affair. He decides to follow her.

What are the legal ways Husband can follow Wife?





# FILM CLIP

## EAGLE EYE

### (SHIA LABEOUF)



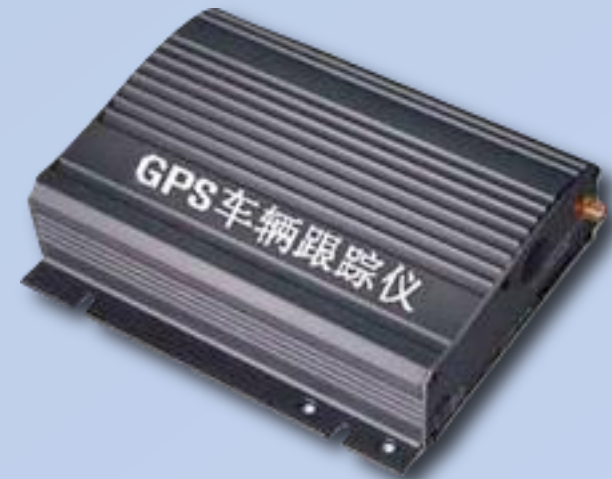
# LEGITIMATE USES OF GPS DEVICES

Cell phones and other electronic devices can be used as GPS devices to keep track of children, employees, and spouses.



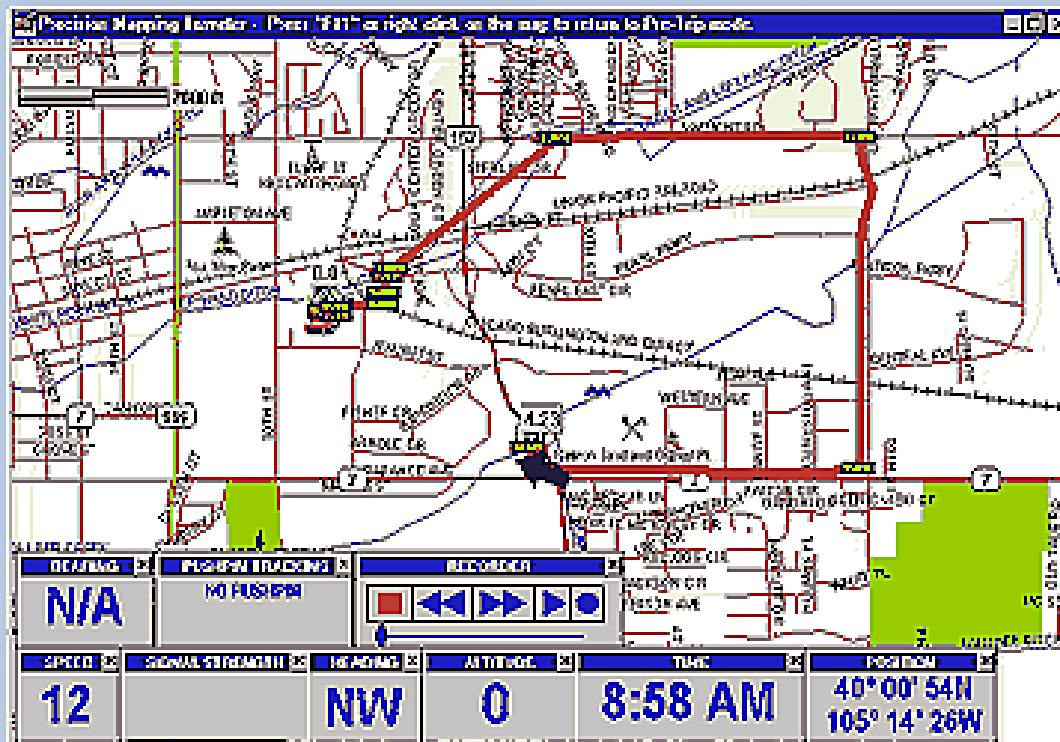
# Various GPS Devices

Variety of sizes depending on whether device is a real-time tracker or a recorder



# Real-Time Location Tracker

## Screen Shot of Sample Report



# Sample Report--Summary

## Summary Statistics:

Total stop time (d:hh:mm)	0:01:01
Number of stops	3
Average stop time (hh:mm)	00:20
Maximum stop time (hh:mm)	00:52
Minimum stop time (hh:mm)	00:03
Total duration of in-transit times (d:hh:mm)	0:00:54
Number of in-transit runs	3
Average in-transit time (hh:mm)	00:18
Maximum in-transit time (hh:mm)	00:27
Minimum in-transit time (hh:mm)	00:01
Total distance traveled (miles)	48.3
Average speed traveled (mph)	53.0
Maximum speed traveled (mph)	77.7



# Detailed Report

## Activities Report

Created October 6, 2002

Filename: C:\Program Files\Precision Mapping Traveler 4.0\test2.gps

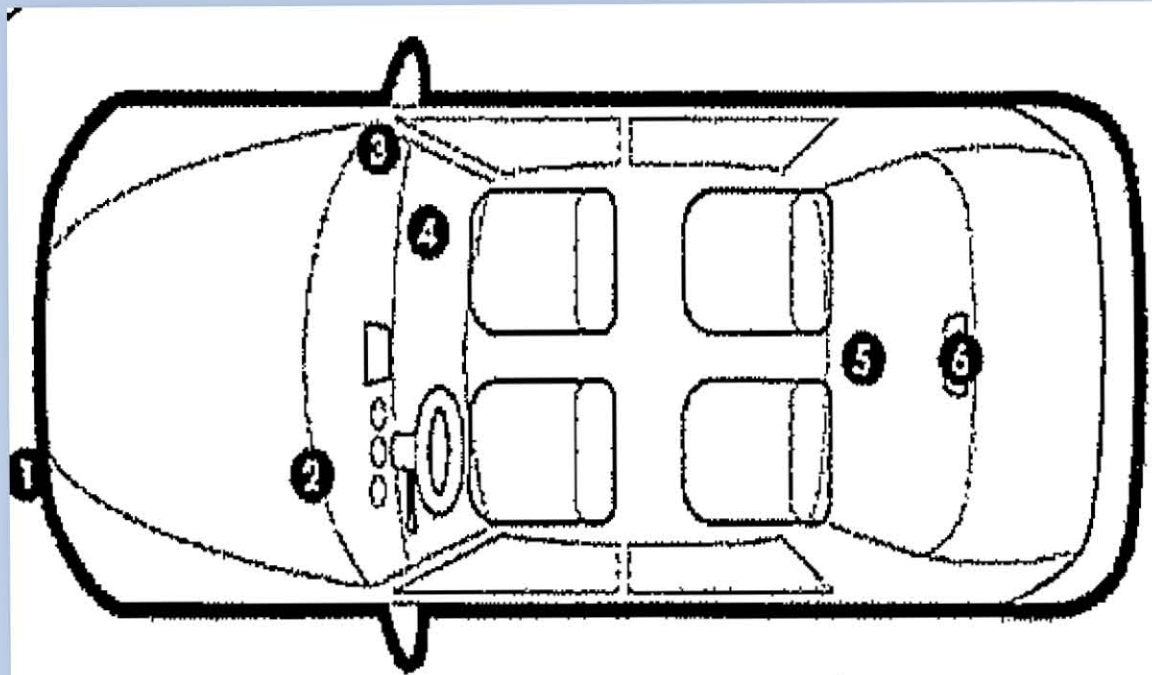
Vehicle ID: Test Vehicle

Date	Action	Begin	End	Duration	Mileage	Max Speed	Location
06/12/2002	Power On	10:09:13	-	-	-	-	-
06/12/2002	Stopped	10:09:13	10:14:26	0:00:05:13	-	-	Lat: 33.9426 Lon: - 117.2443
06/12/2002	InTransit	10:14:26	10:15:33	0:00:01:07	0.0	15.4	-
06/12/2002	Stopped	10:15:33	10:19:03	0:00:03:30	-	-	Lat: 33.9425 Lon: -





# PLACES TO HIDE A GPS DEVICE



[1] Inside plastic bumper [2] In gap between window and hood [3] Inside stereo speaker [4] In front dash [5] Under rear-dash fabric [6] In rear dash or third brake light



# FEDERAL GPS LAW



## *US v. Garcia*

- 7<sup>th</sup> Circuit, 2007
- Examined Fourth Amendment as it related to law enforcement use of GPS
- No “search” if vehicle located on a public road
- No “seizure” if GPS device did not use power from vehicle or otherwise alter its driving capabilities
- US Supreme Ct denied cert
- DC Circuit Court declined to follow 7th Circuit & found law enforcement’s use of GPS a violation of 4th Amendment, *US v. Maynard*, August 2010





# *US v. Knotts*

U.S. Supreme Court, 1983 (Still good law)

- Law enforcement’s surveillance using digital beeper basically the same as following an automobile on public streets.
- A person traveling in an automobile on public roads “has no reasonable expectation of privacy in his movements.”
- Not followed by Oregon on state law grounds



# Federal Wiretap Act

18 USC 2510(12)(C): “electronic communication” means any transfer of signs, signals, writing, images, sounds, data . . . transmitted in whole or in part by a wire, radio . . . system that affects interstate or foreign commerce, but **does not include...any communication from a *tracking device*...**” (emphasis added)



# Anecdotal Fact Situation 5

W discovers H's affair.

H admits affair & admits he communicated by email with his paramour.

W informs daughter-in-law who knew H's Yahoo email account & correctly guesses H's password & security questions to access the account.

Daughter-in-law copies emails & gives to W's attorney.

H sues W, daughter-in-law & attorney alleging violations of the  
\$ Communication Act & violations of state law.



# ***Jennings v. Jennings***, No. 27177, \_\_ S.E.2d \_\_ (S.C. filed Oct. 10, 2012)

SC Supreme Court held:

Not a violation of the Stored Communication Act to access another's email account through an account provider & print copies of emails ***previously read*** by the recipient.

Emails ***not temporary & not in transmission***----only copy of such email, could not constitute a backup of such communication.

Therefore, emails that read & not in transmission does not meet definition of electronic storage.



# Anecdotal Fact Situation 6

Post divorce child custody dispute.

911 call that armed robbery in progress at Mother's apartment where child lives.

Swat team arrives, knocks, & busts down the door.

Surprised Mom tells the cops nothing is happening & no one made the call.

Police make sure mom & child not in danger & search the place.

Find graphic evidence of Mom's new career as an oil wrestler.

Evidence found that Father spoofed the 911 call?

THOUGHTS?

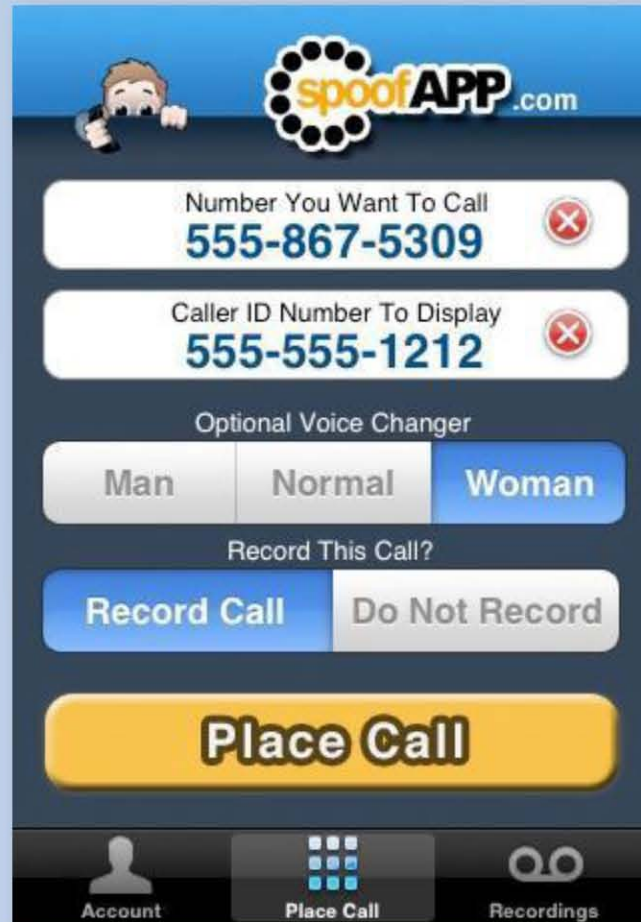


# SPOOF CARDS

Prepaid phone cards that allow the user to change what someone sees on their caller ID display when they receive a phone call.



# Available as an iPhone Application



# POTENTIAL FRAUDULENT USES

- Authenticating stolen credit cards
- Spoofed emergency calls
- Breaking into another's voicemail
- Harassment between divorce litigants
- Falsifying text messages
- Falsely calling in prescriptions





# More SpoofCard Abuse

- Telling a friend he lost his job or his professional license was revoked
- Spoofing call from Planned Parenthood with “test results” that one is pregnant
- Faking call to spouse’s phone as if it came from a lover to strengthen fault allegations
- Ex’s spoofing call as if in victim’s home or victim’s relative’s home
- Calling in fake prescription for opposing party





# SPOOF CARD CASES

- Federal Truth in Caller ID Act (“TCIA”) 2009
- 
- So. District of MS held MS’s 2010 caller ID anti-spoofing act violates Commerce Clause, *TelTech Systems v. Barbour*
- *TelTech v. Bryant*, US Ct of Appeals, 5th Cir., December 10, 2012



# Spoofing

Visited  Getting Started  iPad Apps for Trial  Latest Headlines  Texas House of Repres...

## 'Spoofing' likely cause of 911 calls from phone line belonging to Katie Couric's late husband

At least 10 bogus emergency calls have come from Couric's residence and are likely because a third party is hijacking the calls, tricking caller IDs into thinking a certain number is making the call.

BY [JOE KEMP](#) / NEW YORK DAILY NEWS

THURSDAY, FEBRUARY 14, 2013, 10:09 PM



9



7



1

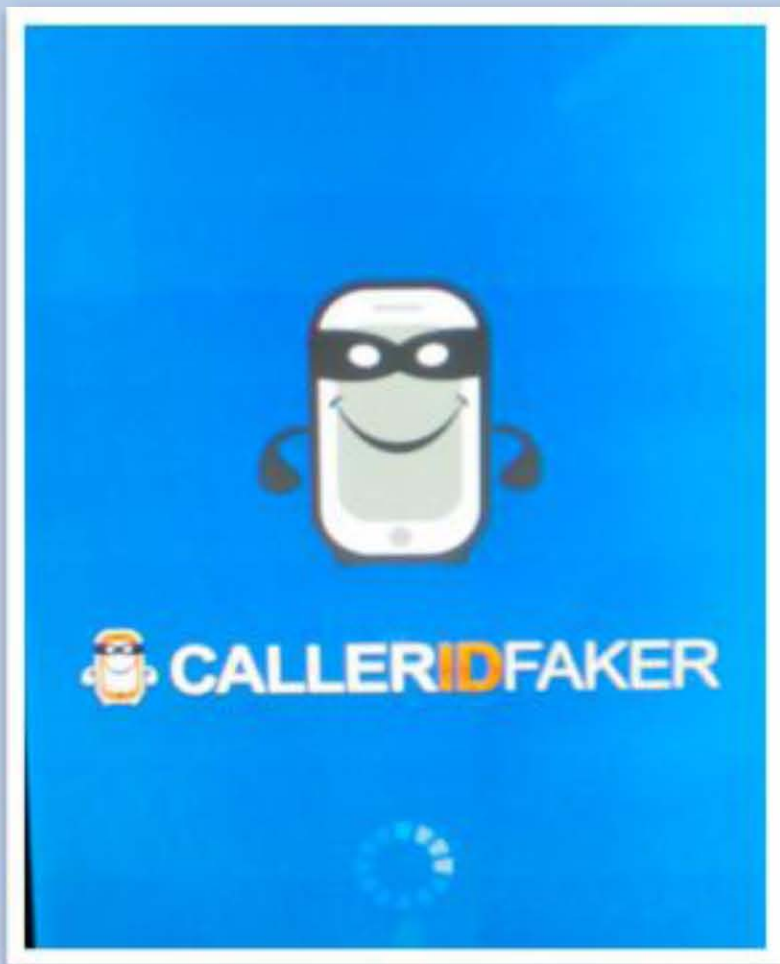



+1












 **CALLERIDFAKER**

LOGIN Free 2 Minute Call Mode

 Buy credits to send internationally

Number To Call 

False Caller ID 

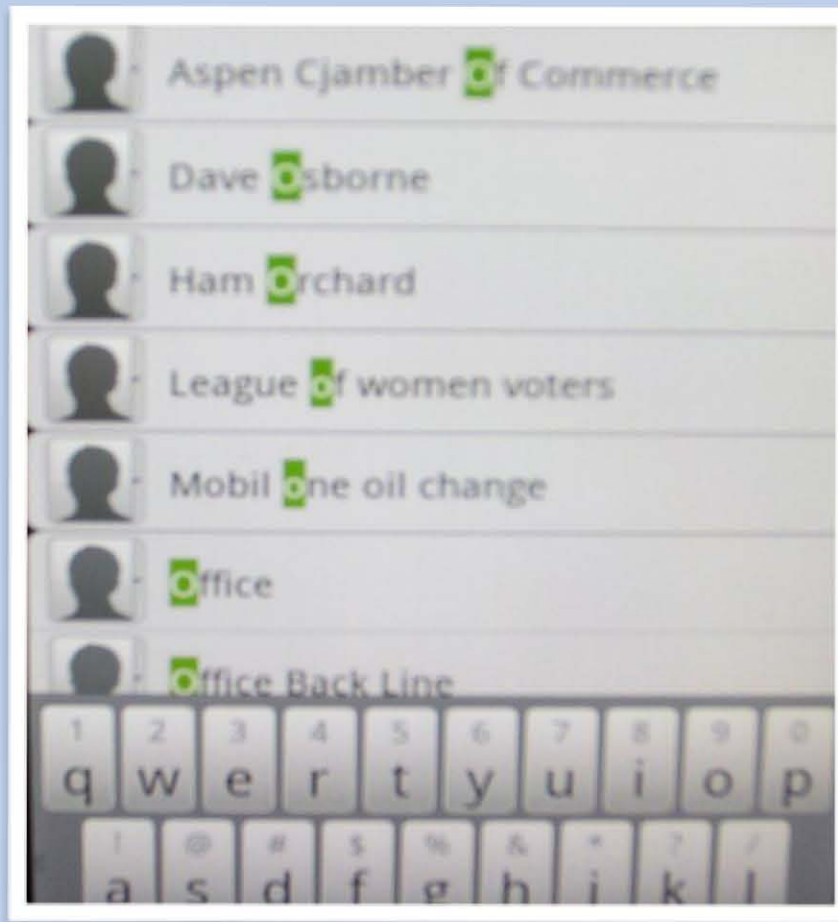
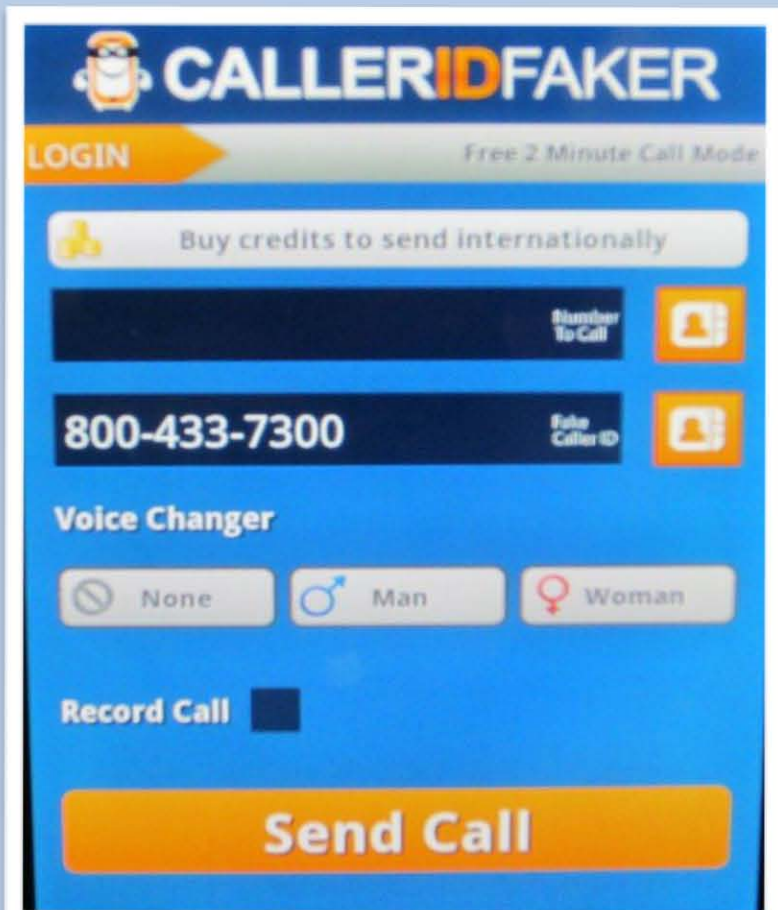
**Voice Changer**

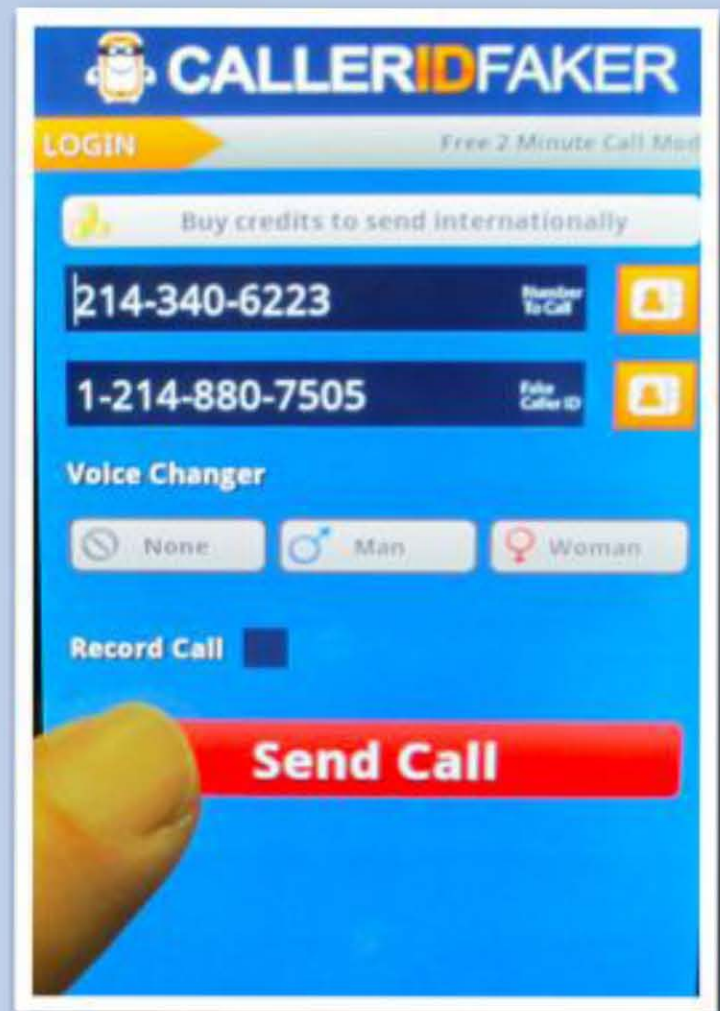
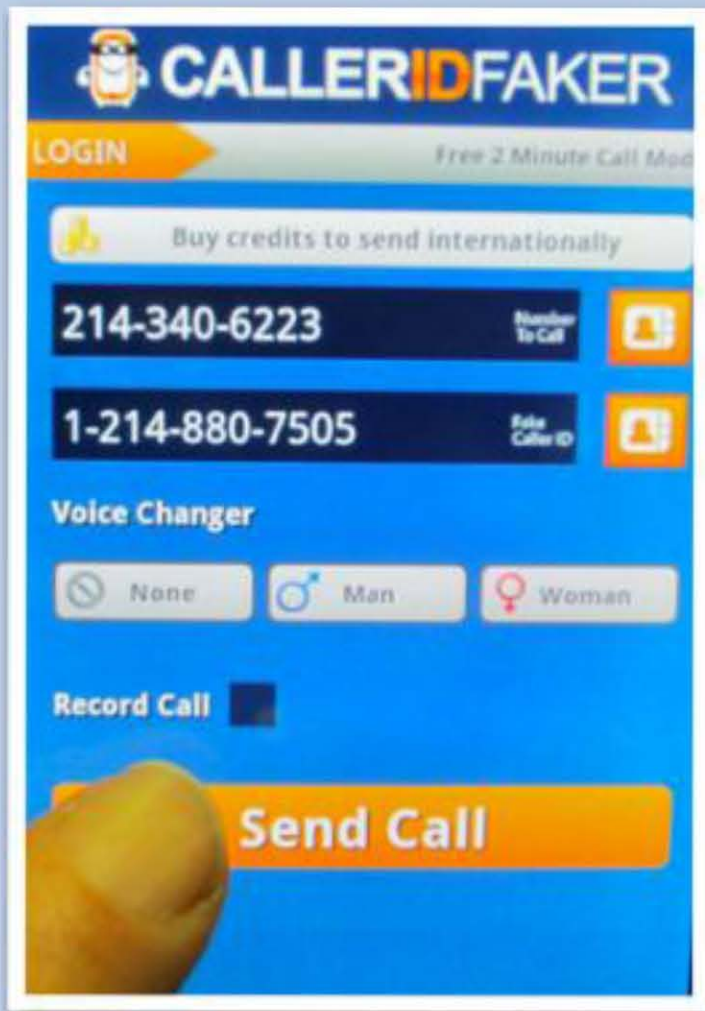
☐ None ☒ Man ☐ Woman

Record Call ☐

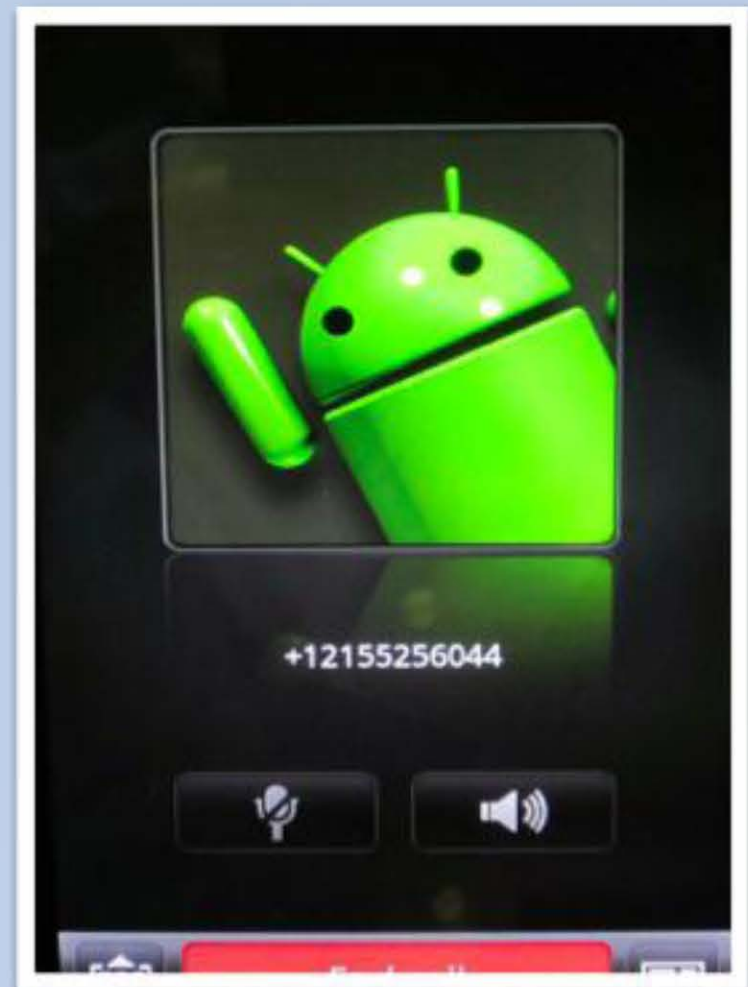
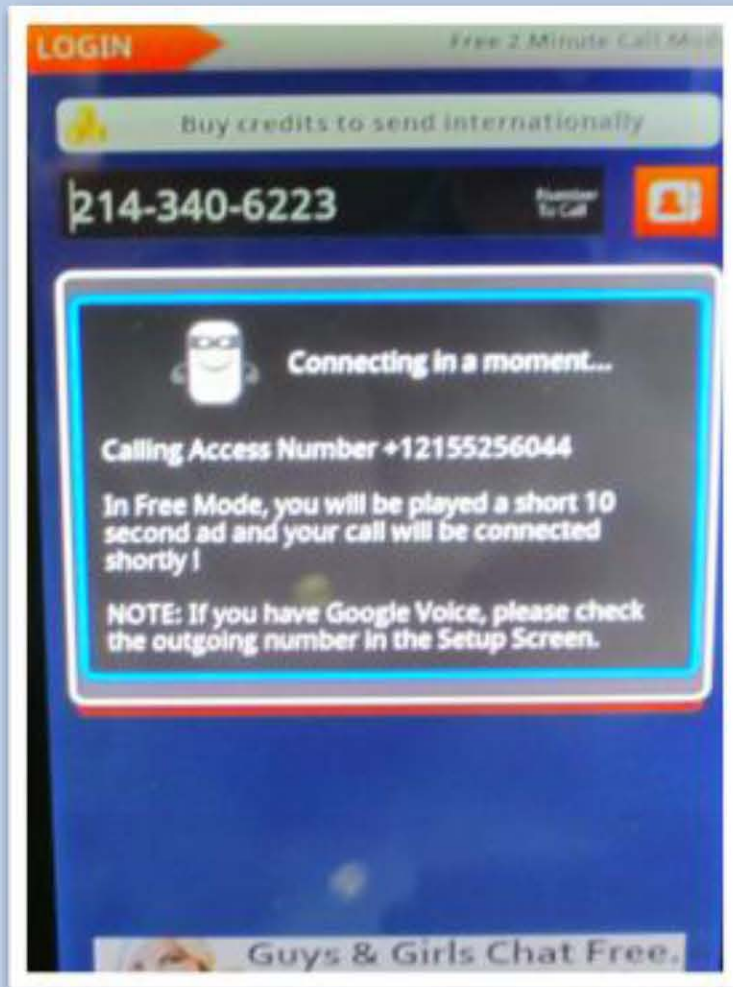
**Send Call**







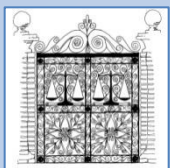
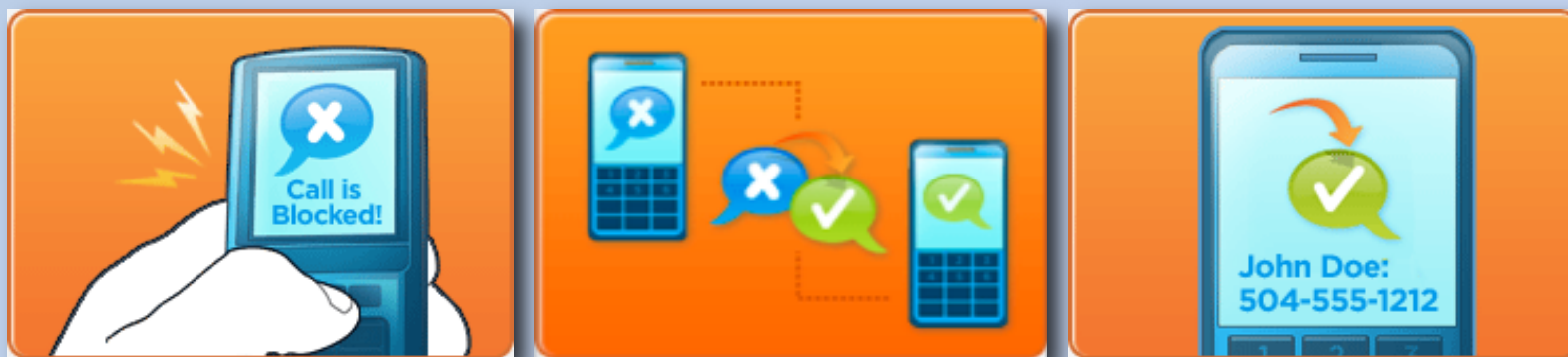






# TRAP CALL CARDS

Phone cards that allow users to unblock and reveal callers' identities and numbers even after people have tried to block the information with \*67 or unlisted numbers.



# The Lay of the Land



# Traditional Discovery

## Traditional Surveillance

## “Enhanced” Surveillance



# Evidentiary Issues in Court

- A. Computer Hard drive - Must show good cause to obtain and clean Chain of Custody to present
- B. “Hard” Evidence
- C. Electronic Evidence
- D. Websites/Facebook/Twitter
- E. Individual Items on Websites, blogs, Facebook and Twitter such as posts, comments or photographs



# PREREQUISITES TO ADMISSIBILITY OF EVIDENCE

*LORRAINE v. MARKEL*  
*Judge Paul W. Grimm*

- Relevant (FRE 401)
- Authentic (FRE 901(a)-902)
- Not Hearsay (FRE 801-807)
- Original or Duplicate (FRE 1001-1008)
- Probative Value vs. Unfair Prejudice (FRE 403)



2012-09-23 20:10:06 in 2149143795 2149143795 1,500 a month your rent will be \$1,200.00. Let's be civil, stick with the plan so our son can enjoy his high school years and you will be able to buy a

2012-09-23 20:10:06 in 2149143795 2149143795 house in 3-4 years. I want answer tomorrow. Do we have an agreement or do I contact a realtor. Done with Scott and not talking to him anymore.

2012-09-24 08:07:21 in 2149143795 2149143795 Julie I need an answer today. Do we have an agreement about the house or not? If we do then we will sort out the rest of possessions as discussed with

2012-09-24 08:07:23 in 2149143795 2149143795 out the vindictive drama. If not the house goes in the market now. I can't deal with your outbursts another day let alone 3-4 years. Your decision.

2012-09-24 08:07:24 in 2149143795 2149143795 Continue to dictate, be cruel and mean we sell now. Work together and collaborate and be civil and you can enjoy living in the house. Just think about

2012-09-24 08:07:25 in 2149143795 2149143795 Ian's feelings when you take those chickens somewhere to give them away. Look this is a wonderful place for him to grow up. In a beautiful home, arc

2012-09-24 08:07:26 in 2149143795 2149143795 hitectural design, the yard, chickens. Why fuck it up!

2012-09-24 08:10:41 in 2149143795 2149143795 And have you looked at places you can afford to live in on your income - you aren't going to be living in anything remotely close to the house and yard.

2012-09-24 08:10:43 in 2149143795 2149143795 We agreed to make this as painless as possible for Ian but you seem intent to cause him a lot of pain.

2012-09-24 08:13:29 in 2149143795 2149143795 If nothing else think about it from Ian's perspective. I want him to live out his childhood in the house. If I'm paying for it we have to work together

2012-09-24 08:13:31 in 2149143795 2149143795 . Otherwise it's sold so I can be free of the payments and free from the your unreasonable threats.

2012-10-06 18:30:23 out 2149143795 2149143795 Gary, I think it is in Ian's best interest if he doesn't spend the night with you and Amy until our divorce is finalized.

2012-10-06 19:35:13 out 2149143795 2149143795 ???



## *Evidence Intake & Chain of Custody*

Client No:		Date:	
Case Name:			
Trustee / Receiver:		PIC:	
Manager:			

Custodian:		Evidence ID:	
------------	--	--------------	--

(Client no., HDD, HDI, PC, etc.)

☐ Desktop
 ☐ Laptop
 ☐ Mobile
 ☐ External Drive
 ☐ Server

Description:	

### Details

Make:		Bios Date / Time:	
Model:		Ref Date / Time:	
Serial No:			

HDD1 ☐ IDE ☐ SATA ☐ SCSI
 HDD2 ☐ IDE ☐ SATA ☐ SCSI

Size:		Size:	
Make:		Make:	
Model:		Model:	
Serial No:		Serial No:	
Evidence No:		Evidence No:	

Released by: <small>Print / Sign</small>	Date / Time	Received by <small>Print / Sign</small>	Date / Time



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1600 Amphitheatre Parkway  
Mountain View, California 94043

Google

Fax: 650.887.1673  
google-legal-support@google.com  
www.google.com

September 13, 2012

*Via Email and Express Courier*



Re: [REDACTED] United States District Court for the Northern  
District of California, [REDACTED]

Dear [REDACTED]

Pursuant to the Subpoena issued in the above-referenced matter, we have conducted a diligent search for documents and information accessible on Google's systems that are responsive to your request. Our response is made in accordance with state and federal law, including the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq. By this response, Google does not waive any objection to further proceedings in this matter.

We understand that you have requested customer information regarding the user account specified in the Subpoena, which includes the following information: (1) Subscriber and recent login information for the Gmail account [REDACTED]

To the extent any document provided herein contains information exceeding the scope of your request, protected from disclosure or otherwise not subject to production, if at all, we have redacted such information or removed such data fields.

Finally, Google requests reimbursement in the amount of \$125 for reasonable costs incurred in processing your request. Please forward your payment to Google Custodian of Records, at the address above and please write the Internal Reference Number [REDACTED] on your check. The federal tax ID number for Google is 77-0493581.

Very truly yours,

Andrew Chung  
Legal Investigations Support





### CERTIFICATE OF AUTHENTICITY

I, Andrew Chung, certify:

1. I am a Custodian of Records for Google Inc. ("Google"), located in Mountain View, California.

I am authorized to submit this Certificate of Authenticity on behalf of Google in response to a Subpoena dated August 21, 2012 (Google Inc. Internal Reference No. [REDACTED] the matter of [REDACTED] v. John Doe. I have personal knowledge of the following facts and could testify competently thereto if called as a witness.

2. The documents contained in Exhibit A and attached hereto are true and correct copies of records pertaining to the email address [REDACTED]@GMAIL.COM.

3. The documents attached hereto reflect records made and retained by Google. The records were made at or near the time the data was acquired, entered, or transmitted to or from Google; the records were kept in the course of a regularly conducted activity of Google; and the making of the records were a regular practice of that activity.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: September 13, 2012



Andrew Chung, Custodian of Records for Google Inc.



#### Subscriber Information

Email: [REDACTED]@gmail.com  
Status: Enabled  
Services: [REDACTED], Talk, Search History, Gmail  
Name: [REDACTED]  
Secondary email: [REDACTED]  
Created on: 29-Jul-2012 07:13:34pm GMT  
Lang: en  
IP: 68.196.177.120 on 29-Jul-2012 07:13:34pm GMT

#### Logs

All times are displayed in UTC/GMT.  
[REDACTED]@gmail.com

Date/Time	Event	IP
07-Aug-2012 06:12:37 pm GMT	Logout	198.22.122.160
07-Aug-2012 06:06:36 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.158
07-Aug-2012 06:06:06 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.158
07-Aug-2012 05:04:09 pm GMT	Logout	198.22.122.160
07-Aug-2012 04:55:42 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.158
07-Aug-2012 04:55:13 pm GMT	Logout	198.22.122.158
07-Aug-2012 04:50:38 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.158
07-Aug-2012 04:50:38 pm GMT	Login Attempt	198.22.122.158
07-Aug-2012 04:39:15 pm GMT	Logout	198.22.122.158
07-Aug-2012 04:34:35 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.123
07-Aug-2012 04:34:35 pm GMT	Login Success	198.22.122.123
07-Aug-2012 01:35:33 pm GMT	Logout	206.217.76.98
07-Aug-2012 01:31:08 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	206.217.76.98
06-Aug-2012 02:13:15 pm GMT	Logout	206.217.76.98
06-Aug-2012 01:48:23 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	206.217.76.98
03-Aug-2012 01:11:32 pm GMT	Logout	206.217.76.98
03-Aug-2012 12:57:48 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	206.217.76.98
01-Aug-2012 01:33:48 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	173.225.75.82
29-Jul-2012 07:57:55 pm GMT	Logout	198.22.122.160
29-Jul-2012 07:47:26 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.160
29-Jul-2012 07:46:53 pm GMT	Logout	198.22.122.160
29-Jul-2012 07:43:52 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	198.22.122.160
29-Jul-2012 07:27:50 pm GMT	Logout	173.220.247.18
29-Jul-2012 07:23:33 pm GMT	LOGIN_ATTEMPT_AND_SUCCESS	173.220.247.18
29-Jul-2012 07:13:35 pm GMT	Login Success	68.196.177.120



Google Confidential and Proprietary



# RELEVANT FEDERAL & STATE LAWS AFFECTING ESI

A. Wiretap Act

B. Stored Communications Act 18 USC 2701

C. The Computer Fraud Act 18 USC 1030

D. Electronic Discovery Act

E. Electronic Communications Privacy Act

F. Federal Truth in Caller ID Act (“TCIA”)

2009

G. After-the-Fact Civil Remedies Available to  
the “Wronged” from the “Perpetrator(s)”



# Use of Electronic Evidence

A. Discovery Requests and Acquisition of Evidence

B. Evolving Trends

1. Emails

2. Reply Letter Document

3. Text Messages (*Christou v Beatport*) US DC, CO 2013

4. Internet Website Postings (*Tienda v. State*)

5. Chat Room Content

6. Invasion of Privacy

C. Stored Data Versus Processed Data (*Garcia v City of Laredo*)

D. Hearsay or Not

E. Authentication



# Facebook “Preservation”

The image is a screenshot of a Facebook profile page for Ken Raggio. The browser's address bar shows several tabs, including "Invitations, Free eC...", "Jury Hands Deion S...", "iPad vs. Paper", "Reservations - Fligh...", and "(3) Stair race trainin...". The Facebook header includes the logo, a search bar with the text "Search for people, places and things", and the user's name "Ken Raggio" with links for "Find Friends", "Home", and a notification icon.

The profile for Ken Raggio features a cover photo of him running on a treadmill. Below the cover photo, the name "Ken Raggio" is displayed, followed by a "Update" button. The "About" section lists the following information:

- Which high school did you go to?
- Worked at Raggio & Raggio PLLC
- Studied at The University of Texas at Austin
- Lives in Dallas, Texas

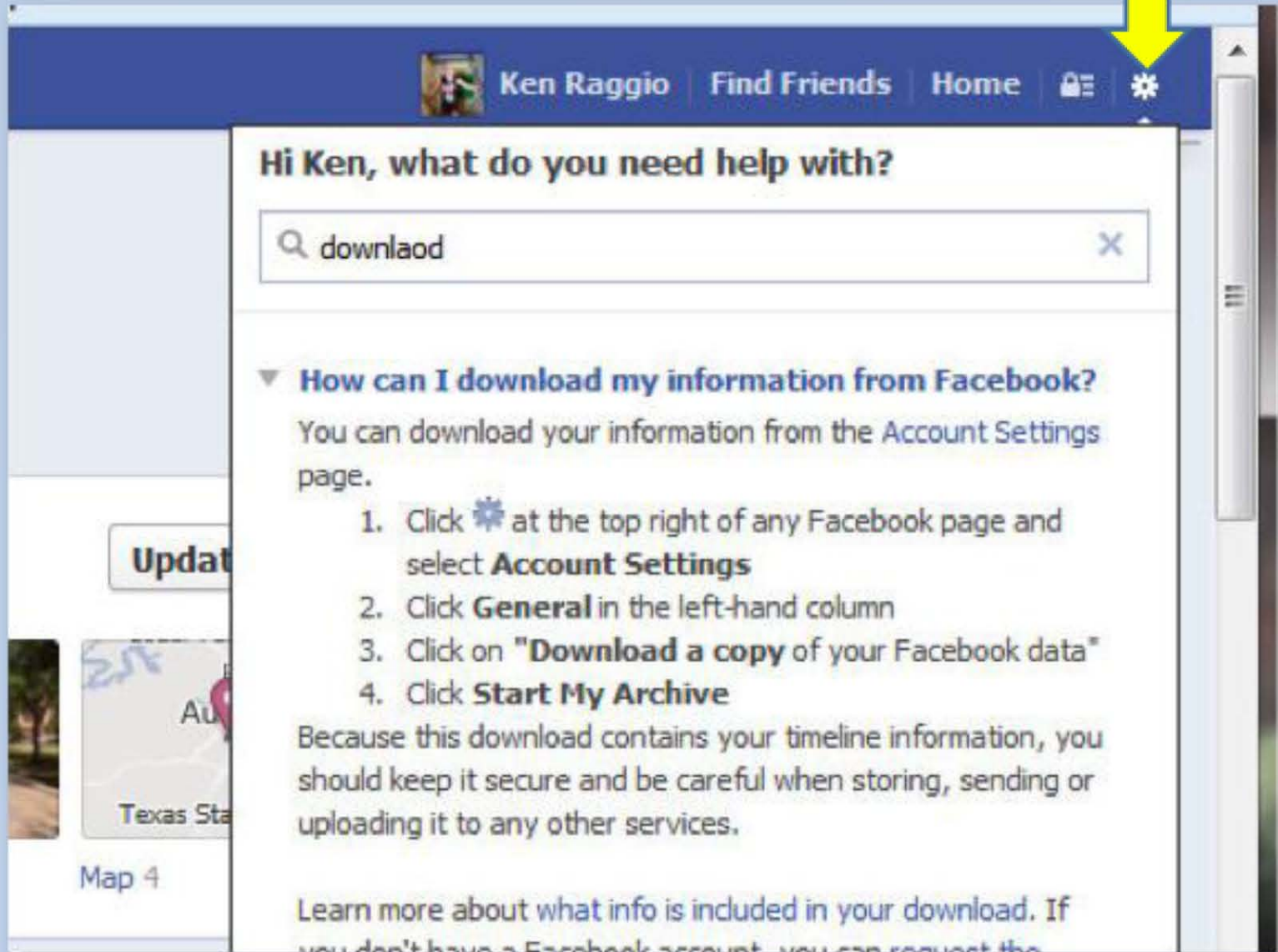
Below the "About" section, there are links for "About", "Friends 22", "Photos 13", and "Map". The "Status" section has a prompt "What's on your mind?" and a "Photo" button. A post from Ken Raggio is visible, dated "February 15 near Dallas · 1hr".

A search overlay is present on the right side of the page, titled "Hi Ken, what do you need help with?". It contains a search bar with the text "download" and a list of search results:

- How can I download my information from Facebook?
- What is Messenger for Windows?
- When I download my information from Facebook, what is included in the file?
- I'm downloading my information from Facebook. What's in my enhanced archive?
- The app I'm using says I need to download something, fill out a survey or sign into Facebook again to see special content. Is this true?
- Who can upload or download files?
- What security measures are in place to make sure someone else doesn't download a copy of my information?
- How do I download all the photos I have uploaded to Facebook?

At the bottom of the search overlay, it says "See more results for download" and "Displaying top 8 results".

# Facebook “Preservation”




The screenshot shows the Facebook interface for user Ken Raggio. At the top right, a yellow arrow points to the settings gear icon. Below the navigation bar, a help dialog box is open with the title "Hi Ken, what do you need help with?". The search bar contains the text "downlaod". The search results show a section titled "How can I download my information from Facebook?".

Hi Ken, what do you need help with?

Search: downlaod

▼ **How can I download my information from Facebook?**

You can download your information from the Account Settings page.

1. Click  at the top right of any Facebook page and select **Account Settings**
2. Click **General** in the left-hand column
3. Click on "**Download a copy** of your Facebook data"
4. Click **Start My Archive**

Because this download contains your timeline information, you should keep it secure and be careful when storing, sending or uploading it to any other services.

Learn more about what info is included in your download. If you don't have a Facebook account, you can request the



# Facebook—How MUCH Data!?!



## Accessing Your Facebook Info


### Where can I find my information?

Your information is available to you in three different places:

#### Downloaded Info

This includes your timeline info like posts you've shared, messages, photos and more. [Learn more.](#)

To download your information, go to your [Account Settings](#) and click



**Download a copy of your Facebook data.**

#### Expanded Archive

This is in addition to your downloaded info, and contains even more account info like logins, cookies and more.

The link to download your expanded archive is on the same page where you download your information.

#### Activity Log

This is a history of all your activity from posts you've commented on or liked, to apps you've used, to anything you've searched for. [Learn more.](#)

Your activity log can be accessed from your timeline.

### What type of information is available?

This is the info you can find, a short explanation of what it is and where you can find it (downloaded info, expanded archive or activity log). We store different types of data for different time periods, so we may not have all of your data since you joined Facebook.

https://www.facebook.com/

(4) Download Your L...

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More

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Find Friends

Home

facebook

Search for people, places and things

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Find Friends


Home

## Download Your Information

Get a copy of what you've shared on Facebook.

Easily download and browse through a personal archive of your Facebook photos, posts and messages. [Learn more about downloading a copy of your information.](#)

Start My Archive



### What's in your archive?

- Photos or videos you've shared on Facebook
- Your Wall posts, messages and chat conversations
- Your friends' names and some of their email addresses

[Note: We'll only include email addresses for friends who've allowed this in their account settings.]

### What's not in your archive?

- Your friends' photos and status updates
- Other people's personal info
- Comments you've made on other people's posts

You can also download an [expanded archive](#) to see more about your account history. [Learn what's included.](#)

### Caution: Protect your archive

Your Facebook archive includes sensitive info like your private Wall posts, photos and profile information. Please keep this in mind before choosing to download your archive.

Chat (Off)



facebook

Search for people, places and things

Ken Raggio Find Friends Home

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Early download and follow these steps about downloading a copy of your information.

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Details: [What's included in your archive?](#)

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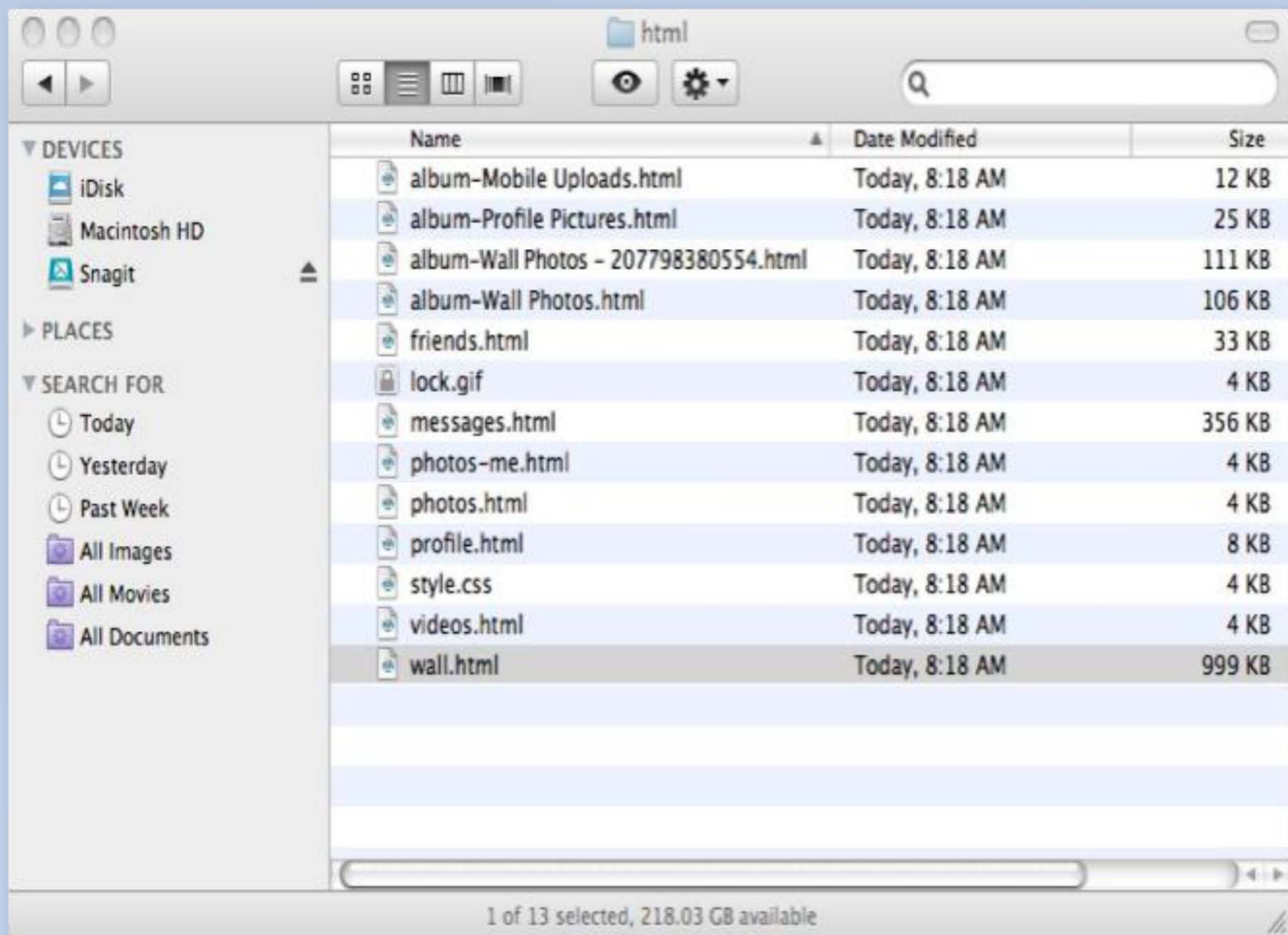
### Request My Download

It may take a little while for us to gather your photos, wall posts, messages, and other information. We will then ask you to verify your identity in order to help protect the security of your account.

[Start My Archive](#)

[Cancel](#)





Text MOVIE CLIP

THE  
CONVERSATION  
(Gene Hackman)

<sup>T</sup> *The more things  
change...*

*the more they stay  
the same!!!* ext