



# Ross Ipsa Loquitur

*A Wisconsin Law Journal Bi-Monthly Column*

## **Dumpster Disasters: Tips for Ethically Retiring Your Old Computers**

by

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In a regular and predictable ritual, not dissimilar in either frequency or level of irritation to the “Seventeen Year Locusts,” your PCs, laptops and network file servers need replacement. Not that they necessarily wear out, but rather, they develop a technological form of chronic forgetfulness - just no longer up to the task of running contemporary software. Sadly, using a three or four year old desktop PC is a lot like driving a car with 800,000 miles on it - it just barely limps along.

So what happens to all these elderly PC systems once you’ve relegated them to the dustbin of techno.history in your firm or law department? Toss them in the dumpster? It seems wasteful and certainly not very environmentally conscious. Today, there are many avenues for recycling old computers to ensure they don’t cause harm to our already thoroughly oppressed environment. There are also a number of philanthropic options available including donations to organizations that use the PCs to train the developmentally and physically challenged. All interesting options to be sure.

But do the “right thing” and make a donation of your old PC, a worthy cause to be sure, but a kind gesture that could cost you your law license.

Why? All those old computers are packed with confidential client information, sensitive firm information. Further, the computers undoubtedly have software licensed to your firm or organization for which you have very specific obligations under the respective End User License Agreements. Giving away control and access to these computers - whether the inappropriate landfill/dumpster approach or the well-intended charitable donation can lead to malpractice claims and ethical violations at worst, and at best, serious embarrassment. And not to ruin your day any further, even potential HIPPA (disclosing employee or client healthcare information) and Sarbanes-Oxley (giving away corporate documents which you must maintain) violation claims. So what should you do?

You need a D.U.M.P. - a Disposal unMalpractice Plan!

The key to a D.U.M.P. is a process of ensuring, to the greatest extent reasonably practicable, that you remove confidential client information, firm or organization information and all licensed software which you do not intend to formally transfer. This means using a technical process that will remove this information in an effective manner, rendering the information as unrecoverable as you can reasonably accomplish. It may not be possible to delete information such that no one could ever recover it. Perhaps vaporizing the computer in a cataclysmic Star-Trekkian matter/anti-matter implosion. But practically speaking, if someone wants to spend

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enough money and enough time, they can probably find a way to recover at least some of your data, no matter what you do. But the reality is that the standard to meet is one of reasonableness. What steps would a lawyer reasonably need to take to ensure the reasonably effective removal of this information?

What doesn't work:

- 1) Deleting files using Windows Explorer or the Windows My Computer functions.

Even the great mass of technopeasantry knows they can click the Recycle Bin and undelete these files in short order. It's fairly well known that deleting files using Windows or even "DOS" command line functions doesn't remove the files. It merely removes the "directory listing" making it impossible for Windows to "see" the file. Think of it as removing the address numbers from your home. Visitors may not know it's your house if they're looking for your address, but the house is most assuredly still there. Even reformatting a hard drive or removing a storage "partition" yields easily recoverable information - cheap or free utilities abound that can recover the information.

- 2) Deleting the files and emptying the Recycle Bin.

A little more clever, but the files are still recoverable by even "entry-level experts" in about 30 seconds.

- 3) Throwing the hard drive in your building's incinerator.

Still not good enough. Just ask the data recovery experts at companies such as Kroll Ontrack ([www.krollontrack.com](http://www.krollontrack.com)) or Drivesavers ([www.drivesavers.com](http://www.drivesavers.com)). A few thousands dollars and a couple of days and they can probably recover most, if not all the information from utterly scorched hard drives.

- 4) Letting David Letterman throw your computers off of a 40 story building.

Entertaining, but equally ineffective.

What does work:

- 1) Using electronic "File Shredding" software.

These software systems delete files in a number of ways that you cannot accomplish using Windows alone. They typically will run a routine that deletes the files, but then overwrites the areas of the hard drive with repeated patterns of random characters. The more "passes" made by the overwriting routine, the harder it becomes to recover the original information. The

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product and methodology used should be compliant with the standards promulgated by the U.S. Department of Defense. Deleting information pursuant to this standard should satisfy the “reasonableness” requirement.

The U.S. Department of Defense has a set of published guidelines related to the clearing and sanitizing of PC media (DoD 5220.22-M). This set of guidelines recommends the approach where one should "overwrite all addressable locations with a character, its complement, then a random character and verify" for all writable media (i.e. hard drives, floppy drives, backup tapes, ZIP disks, flash drives, etc.) One particular company that produces this type of “electronic shredder” is zDelete. They produce the DataEraser software system. On their website at [www.zdelete.com/dod.htm](http://www.zdelete.com/dod.htm) is the DoD’s table that prescribes the specific methods required for adequate and compliant information destruction on all sorts of media types in common use in law practices today.

Be sure to understand all the places where data may be located. These include, but may not be limited to:

- \* Hard drives in PCs
- \* Old hard drives sitting on your shelves that may have failed and were removed but still have recoverable information
- \* Floppy disks (all sizes - don’t forget the old ones in your building’s basement)
- \* ZIP disks and other removable data cartridges
- \* Backup tapes
- \* The newer “Flash Drives”

There are many software products that will accomplish electronic file shredding to DoD standards. A Google search of “file deletion software” will yield a treasure trove of capable utilities. Products such as DataEraser, CyberScrub and many others are suitable. Look for the specific DoD 5220.22-M certification as a sign of competence. Then **BE CERTAIN TO USE THE PRODUCT CORRECTLY**. In other words, **READ THE INSTRUCTIONS!** Then a “best practices” approach would involve the creation of a formal written computer usage policy detailing the goal of the process, the process itself and a written requirement that the D.U.M.P. plan always be used when disposing of PCs or electronic media. This is the most complete way to CYA - Cover Your Assets.

Once you’ve removed the data and licensed software, there are donation options. Several choices might include:

- 1) **Donation or Sale to Employees:** If you have relatively recent PCs that are still usable for home/college/student use, offering them to your employees may make a lot of sense and be seen as an employee benefit. You can either sell them at a very low price (and we can help you with valuation) or simply donate them to whoever wants them.

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- 2) Donation to a Charitable Entity assuming you can find a donee. Presume a donee will not want to actually use the systems for daily work. Rather, they will likely want to use them for some type of vocational training. Keep in mind that many organizations have the same software needs as you do so trying to unload 15 year old '486 class or older PCs, or even your early generation Pentiums 4s may not be very easy. If you cannot find donees locally (i.e. church groups, municipal agencies, homeless shelters, etc.), think “national.”

One group to look into is the National Cristina Foundation They match companies and individuals interested in donating computers and related equipment with non profit organizations and schools that serve people with disabilities in the U S. and abroad. Donors send equipment directly to the beneficiary. You can contact them at: National Cristina Foundation ([www.cristina.org](http://www.cristina.org)).

Many more donation sources are available if you do the Google search: “donating used computers.”

Old PC Disposal Assistance if you don't understand, or don't want to acquire and learn to use electronic file shredding software, then hire an expert to handle the process for you - money well spent. Be certain to get a written statement from the service provider that documents their destruction of the information, the methodology and software used, and their compliance with the DoD standards. Ideally, such a written statement would also indemnify your lawyers from liability for the service providers failure to adequately destroy the information.

It is also imperative from a legal and ethical perspective, to comply with your software license agreements. In other words, that you remove all licensed software that you do not intend to formally transfer with the PC system. Read the End User License Agreement to learn precisely what is satisfactory related to each software product that may be on the “dumped” or donated PC systems.

**TIP:** Be sure to inform your clients of their need to take the same precautionary measures when they dispose of their PC systems and media. The last thing you need is a corporate client tossing backup tapes into the dumpster, packed with damaging information about a matter in litigation - and a digital dumpster diver hired by the opposition finds it and uses it against them. This happens - it's not fantasy.

The bottom line is simple. PC in the Dumpster = Potential Malpractice Claims, Ethical Violations, Embarrassment. Imagine the community embarrassment that happens when your local vocational retraining institution calls you to ask if you intended to donate a network server containing your entire time and billing system (a real case study one of us experienced). Develop a D.U.M.P. for your firm or law department, then make it official policy and use it!

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