

SLACK AND THE LAW

A Brief Analysis of Slack and Cloud-Based Collaboration Platforms Under California Law and Practice

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FOUR QUESTIONS

- What is Slack?
- How is Slack used?
- What should in-house legal teams know about Slack?
- What should litigators know about Slack?

WHAT IS SLACK?

- Slack is a a **cloud-based collaboration platform**

“What is Slack specifically? It’s chat room for your whole company. If you’ve heard of Internet Relay Chat (IRC) before, it’s fairly similar in function. Your team’s Slack will be divided up into smaller ‘channels’ for group discussion, made up of teams, interests or whatever you desire.

Slack is often positioned as an ‘email killer’ but it’s more like a way to lessen your internal email. You know, the kind that are super short and that seem to waste time?

What can you use it for? Well, anything. This is my favorite thing about Slack offering a free-forever plan: you can use it for any group situation where you want a way to chat to a bunch of people easily.

Want to set up a room of people to talk about tech news? You can, for free, like I did. Trying to organize your soccer team? Also free. Just want to hang out with like-minded startup people? You got it.

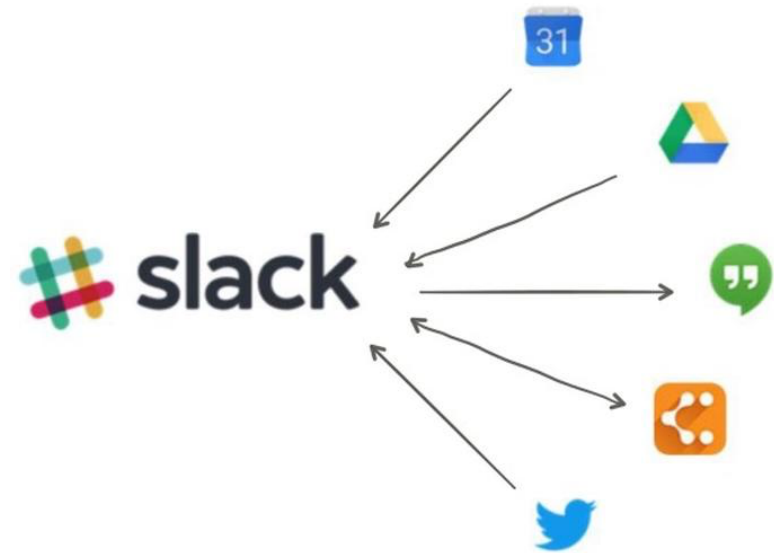
For work, Slack reduces the friction to working together as a team. It keeps everything in a central place and has a few nifty tricks to help you work a little smarter together.”



<https://thenextweb.com/insider/2015/08/11/the-ultimate-guide-to-doing-anything-in-slack/>
IMAGE SOURCE: <http://collaborationcommunicationsolution.blogspot.com/2015/03/why-you-need-to-adopt-collaboration.html>

WHAT IS SLACK? CONTINUED

- According to Slack CEO Stewart Butterfield, Slack is actually an acronym. It stands for: **Searchable Log of All Conversation and Knowledge.**
- “That's exactly what Slack is, *although most people use it for chatting and sharing links and files, and don't worry about the searchability so much.*”



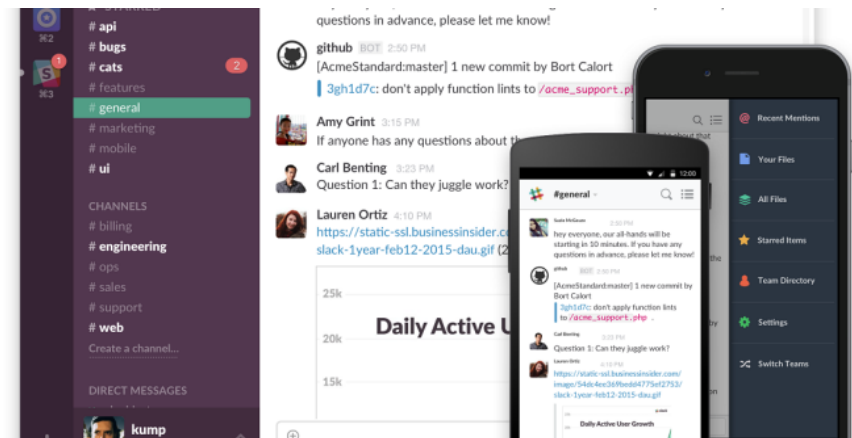
<http://www.businessinsider.com/where-did-slack-get-its-name-2016-9>

IMAGE SOURCE: <https://thenextweb.com/insider/2015/08/11/the-ultimate-guide-to-doing-anything-in-slack/>

WHAT IS SLACK? CONT. “9 THINGS EVERY LAWYER NEEDS TO KNOW”

1. Your Clients are Using Slack.
2. Slack integrates your numerous platforms, brings everything together in one spot.
3. Slack is *really* searchable.
4. Slack automates online search and information-gathering.
5. Slack shares important information instantly with everyone who needs to have it.
6. Slack improves client communications.
7. Slack improves communications with colleagues.
8. Slack supports (improves?) firm culture.
9. You can shrug in Slack.

<http://www.lawtechnologytoday.org/2015/06/the-ineffable-slack-9-things-lawyers-need-to-know/>



HOW IS SLACK USED?

- Slack is used by organizations to communicate electronically.
 - Engineering and development **teams** across **entire technological spectrum**.
- Slack has at least **5 Million Users** and 1.5 Million Paying customers
<https://techcrunch.com/2017/06/15/slack-is-reportedly-raising-another-huge-500m-round-of-funding/?ncid=rss>
- At least **77% of Fortune 100 companies** use it ...At least.
July, 2017, DMR, "42 Interesting SLACK Stats".

WHAT SHOULD IN-HOUSE LEGAL TEAMS KNOW ABOUT SLACK?

- **Whether you like it or not, your teams might be using it.**

- Anyone can sign up for it for free.
- It's device agnostic.
- Its very easy to use.
- Its a whole lot of fun.
- **Hypothetical:** Will people who are makers use the “bad” tool or the “good” tool?

- **IP Risk.**

- It collects everything.
- It's cloud based.
- **Hypothetical:** What if the Slack channel is privately owned by the employee, not the company? Where is your code? who owns it? Can you access it?

- **HR Risk.**

- Slack communications feel “informal”
- Private channels are supportable.
- Memes, Gifs and Emoji are supportable.
- **Hypothetical:** Brogrammers gone wild. The Google memo.

WHAT SHOULD IN-HOUSE LEGAL TEAMS KNOW ABOUT SLACK? CONT.

- Some **Policies and Procedures** and **Risk Mitigation** Best practices include:
 - **Employee Handbook** and **Training** on Proper Slack Usage and Etiquette.
 - **Employee Buy-in** for Compliance **Vital**.
 - Prior Approval Use Requirement vs. Banning.
 - **Limit Plug-ins** or **Require Prior Approval**.
 - **Company Needs to Own IP**, so it should own Slack services and channels.
 - Counsel should review **both** Company and Slack **Terms of Service**.

WHAT SHOULD LITIGATORS KNOW ABOUT SLACK?

- Although, no cases on point yet, It's likely discoverable under both California and federal law as social media is
 - **CA Labor Code §980(a):** As used in this chapter, "social media" means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.
 - **Social Media Cases:**
 - *People v. Beckley*, (2010) 185 Cal.App.4th 509, 510 [110 Cal.Rptr.3d 362] (held a Myspace image should have been barred for lack of authenticating evidence).
 - *People v. Valdez*, (2011) 201 Cal.App.4th 1429, 1438 [135 Cal.Rptr.3d 628] (held a Myspace picture was sufficiently authenticated given messages addressed to the defendant on the page and the page being password protected).
 - *Juror Number One v. Superior Court*, (2012) 206 Cal.App.4th 854, 855 [142 Cal.Rptr.3d 151] (held the court can compel a juror to disclose Facebook posts made during jury service).
 - See Recent MCLE from Sections Convention "*Program 10: Getting Acquainted with Social Media Evidence in the Courtroom*", Friday August 10, 2017, Criminal Law Section.
- It's often filled with highly relevant material evidence.
 - **Medical Malpractice Arbitration Example:** Precursor platform to Slack used by hospital staff to message about patient care. Language contained in platform tended to demonstrate hospital staff did not believe communications were discoverable. language was discovered through discovery.
- **Plaintiff side:** Include it in initial litigation hold letters to defendants.
- **Defense side:** include it in your initial litigation hold letters to clients.
- **Discovery tactic:** Ask about SLACK in your initial ROGS, RFI's, and Depositions.

THANK YOU

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