Dear Readers,

The Richmond Journal of Law and Technology is proud to present its third issue of the Twenty-First Volume, our Annual Survey. This issue is published in conjunction with JOLT’s Symposium, “Who’s Looking At Your Mobile Device? Data Security, Personal Privacy, and Information Governance in the Wireless World.” As one of the leading publications in the legal technology field, JOLT has the privilege of publishing articles that address topics at the forefront of the law. From the Journal’s inception in 1995, JOLT has strived to be a step ahead of these laws in an effort to help shape the emerging legal landscape. Our Annual Survey seeks to discuss the complex, ever-changing nature of e-Discovery and information governance. Additionally, JOLT recognizes the practical benefit that many of its articles have on legal professionals and we publish articles with this goal in mind. The following articles embody this balance between innovation and practicality and we look forward to the discussions they evoke.

In our first article, “Kill the Dinosaurs, and Other Tips for Achieving Technical Competence in Your Law Practice,” author Antigone Peyton discusses how old ways of thinking when it comes to technology leave attorneys at risk. The article acknowledges several ‘dinosaur thoughts’ still found in digital law practice today, and shows the reader why and how they must be changed. Peyton emphasizes the need for a focus on education; firms must become knowledgeable about the various security risks associated with technology in the legal practice, and take steps to limit those risks with new ways of thinking.

Author Philip J. Favro provides our second article, entitled “The New ESI Sanctions Framework Under the Proposed Rule 37(e) Amendments.” The article first discusses the shortcomings of the current rules when dealing with electronically stored information before turning to the significance of the sanctions framework under the proposed changes to the Federal Rules of Civil Procedure. Favro considers whether those changes adequately address failures with ESI preservation, discussing the questions the amendments leave unanswered, and ultimately concludes that while they do so solve all ESI preservation issues, the proposed changes resolve many of the shortcomings found in the current Rules.

In our third article, “Beyond Technophobia: Lawyers’ Ethical and Legal Obligations to Monitor Evolving Technology and Security Risks,” author Timothy J. Toohey discusses the evolving security risks attorneys face by e-mail, the Internet, and cloud computing. The article argues that lawyers must reassess their duties of competence and confidentiality when it comes to technology, and develop a greater awareness of security threats. Toohey concludes that security and privacy are no longer matters for specialists, but must be understood and dealt with directly by attorneys.

Authors Michael Arnold and Dennis R. Kiker provide our fourth article, entitled “The Big Data Collection Problem of Little Mobile Devices.” The article discusses the impact of ubiquitous mobile device usage and the case law emphasizing the relevance of information stored on these devices in litigation. The authors conclude by outlining the various methods for collecting mobile
data while staying within the reasonableness requirements, emphasizing that attorneys must be prepared to assess and evaluate new sources of information, from mobile devices to wearable technology, in preparing a case.

In our final article, “Wherever You Go, There You Are (With Your Mobile Device): Privacy Risks and Legal Complexities Associated with International ‘Bring Your Own Device’ Programs,” authors Melinda L. McLellan, James A. Sherer, and Emily R. Fedeles consider the implications of BYOD programs in an international setting. Using a hypothetical case study, the article draws out the risks associated with data traveling from country to country, transferring mobile carriers and being temporarily stored along the way. The authors conclude by suggesting several considerations for implementing and improving upon a BYOD program to protect against these risks.

On behalf of the entire 2014-2015 JOLT staff, I want to extend our sincerest thanks for your continued readership. I would like to thank each of our authors for the time and hard work they have put into these articles. I would also like to recognize and thank the JOLT Editorial Board and staff for their continued dedication and diligence in completing the Annual Survey and making the Symposium a success. As always, JOLT greatly appreciates the ongoing support from the University of Richmond School of Law and is especially grateful for the guidance of our faculty advisors, Dean Jim Gibson and Professor Chris Cotropia.

Sincerely,

Catherine Meade Gray
Annual Survey & Symposium Editor, Volume XXI
