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## **Apple's iOS 16 and E-Discovery**

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Apple recently announced it will be releasing its new mobile operating system, iOS 16, on September 12. The update will be available to iPhone 8 devices and newer. Although the new operating system will include some of the usual bell-and-whistle type updates such as improvements to the lock screen to allow for more customized looks and widgets, the updates that many e-discovery attorneys are watching closely relate to messaging. iOS 16 will contain updates that allow users to edit and even recall iMessages after they are sent, with some restrictions.

Our team has been testing these features in beta versions of iOS 16. Users can edit iMessages sent to recipients who are also on iOS 16 within 15 minutes of sending and can recall or “unsent” a message within 2 minutes. It appears that collection of edited and unsent messages using forensic tools will likely require, at least initially, some manual work to locate and associate edited messages, and unsent messages present their own unique challenges. Our team will test the public release version of iOS 16.

So how does this impact e-discovery? For one, users will soon adopt these new features, so phones with edited and unsent messages will be collected in legal investigations. For matters where this data is relevant, receiving parties may try to ascribe intent or motive to editing or unsending a message. In addition, there may be more manual analysis within messaging databases, at least until forensic tools are able to do so. Perhaps most significantly, attorneys may need to adjust for this new functionality when assessing and implementing client discovery and investigation response strategy. Companies and their counsel should be mindful of this functionality, its impact on their legal holds, policies and practices, and how to address it in the midst of a legal matter.

Stay tuned.

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