

Alexa, Please Help Solve My Case

By: Andrew L. Smith, Esq.

So-called “digital assistants” like Amazon Echo and Google Home are inexpensive, handy little gadgets. With over 5,000 skills, whether you want to know the weather or order your favorite pizza, Alexa can help. First introduced in 2014, there are now 8 million Amazon Echo’s in use. In 2016 alone Amazon sold 5.2 million Echo units worldwide. The small version, Amazon Dot, is just \$49.99 and will continue to be a popular gift throughout the holidays.

Digital assistants are not only helpful in your home, they can assist us in the courtroom and investigating insurance claims, as more fully explained below. Whether you are an attorney, adjuster, or SIU – be sure to evaluate whether digital assistants can assist you.

How It Works?

The Echo is equipped with seven microphones and responds to a “wake word,” most commonly “Alexa.” When it detects the wake word, the device lights up blue and begins streaming audio to the cloud, including a fraction of a second of audio before the wake word.

Using Alexa is as simple as asking a question. Just ask to play music, read the news, control your smart home, or tell a joke – Alexa will respond instantly. Whether you are at home or on the go, Alexa is designed to make your life easier by letting you voice control your world.

Alexa lives in the cloud so it is always getting smarter. The more you talk to Alexa, the more it adapts to your speech patterns, vocabulary, and personal preferences. By storing your recordings, Alexa learns more about you than even you know about yourself.

Suffice it to say, Alexa is always listening. The device listens to every word you say. However, according to Amazon, the Echo only begins storing recordings in the cloud after the wake word is expressed.

Alexa Witnesses a Murder?

In November 2015, former Georgia police officer, Victor Collins, was found dead in a backyard hot tub at the Bentonville, Arkansas, home of acquaintance James Andrew Bates. Mr. Bates claimed it was an accidental drowning when he contacted police at 9:30 a.m., claiming he had gone to bed and left Mr. Collins and another man behind in the tub. But Bentonville Police investigators determined Mr. Collins died after a fight, while being strangled and held underwater – and Mr. Bates was the only person at the scene at the time.

Investigators served a search warrant on Amazon in hopes of getting testimony from a possible witness: the Amazon Echo used to stream music near the hot tub when they arrived at the scene. After a flurry of motions and objections by Amazon based on the First Amendment and privacy concerns, Mr. Bates has now consented to disclosure of his Echo data. The case is still pending and it is not yet known what the Amazon data will demonstrate.

Be sure to follow *State v. Bates*, Case No. 04CR-16-370, Benton County Circuit Court (Feb. 25, 2016), to see what Alexa witnessed the night of Mr. Collins’ death.

How Can Alexa Help Us?

In the insurance defense realm, data obtained from digital assistants can be used in all sorts of ways. Imagine you are investigating a fire loss of a multi-million dollar home located in a rural area. The origin and cause expert cannot pinpoint an exact area of origin or a classification of the fire. After Google is subpoenaed, you obtain Google Home data and learn someone was in the house and turned the lights off just 12 minutes before the mansion was engulfed in flames.

Armed with this information, the insurance company’s origin and cause expert and your fire modeling expert both agree there is no way the fire could have been accidental. In turn, the insurer denies the claim. The Google Home data could also be relied upon at trial if the insured later sues for breach of contract and bad faith.

In sum, whenever there are potential issues with someone being at the loss location at a particular time, have the digital assistant do what it does best – assist!

- Arson Claims
- Theft Claims
- Fraud or Misrepresentation Defense
- General SIU Investigations
- Alibi Verification

How Do We Get the Data?

So now we know the many types of information digital assistants offer, but how exactly do we obtain this treasure-trove of data? Depending on whether you are at the claims stage or involved in litigation, different options may be available.

1. You can begin by asking the owner to provide the actual digital assistant to you. In turn, you can retain a qualified expert to mine the available data from the device. Alternatively, you can have the owner execute an authorization and ask Amazon or Google to directly provide you the data and records from the cloud.
2. If in litigation, you can use traditional discovery techniques and issue written discovery requests to obtain the data or even the device itself.
3. You can use subpoena power to directly subpoena the data from Amazon or Google. However, be weary of the procedural “hoops to jump through” using this method. The third-party providers often rely upon the Stored Communications Act and require in-person service of the subpoena before they even consider complying. If you have ever attempted to subpoena other technological companies like Facebook, you should expect to confront the same difficulties. If you are not in litigation, you can also consider filing a pre-suit petition for discovery depending upon the state’s rules of civil procedure.

If you are seeking the data directly from the digital assistant provider, be prepared for a fight. Obtaining data directly from Amazon or Google can be a time-consuming, arduous process. According to Amazon’s privacy policy: “Amazon will not release customer information without a valid and binding legal demand properly served on us.” Further, “Amazon objects to overbroad or otherwise inappropriate demands as a matter of course.”

Conclusion

Whether you are investigating a minor theft loss or defending a multi-million-dollar suit, are you using digital assistant data to your advantage? As claims professionals and attorneys, devices such as Amazon Echo and Google Home offer us a wide array of valuable, easy-to-use, relevant information. Here are a few parting tips regarding the digital assistant revolution.

1. Do your research on the different devices on the market and their features. Learn how each device works just as if you were researching to purchase a digital assistant for your own home.
2. Consider issuing a discovery preservation letter from the start. The hold letter not only applies to “traditional” ESI, but also to the actual digital assistant, as well as the cloud data.
3. When evaluating your discovery options in any claim or case where this data could be relevant, include requests for digital assistant data. Also consider the quickest and most efficient mechanism for securing the data.
4. Be prepared to address and respond to evidentiary objections based on the right to privacy, the First Amendment, unreliability or inaccuracy of the data, as well as evidentiary rules on hearsay, authentication, relevance, and unfair prejudice.
5. Consider retaining a qualified expert witness to download, explain, and interpret the data you obtain and may rely upon. Likewise, consider addressing discovery of digital assistant data with your local electronic discovery management vendor.

As one final note, your investigation should not be limited to just digital assistants. Other similar devices and software programs include Google Now, Apple’s Siri, Windows Cortana, as well as apps for televisions, game consoles, cars, and toys.

About the author:

Andrew L. Smith is a Partner in the Cincinnati, Ohio office of Smith, Rolfes & Skavdahl Company, LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. He is the creator of the AGC of Ohio construction law blog, *Between the Law and a Hard Hart*, and the co-host of *BearcatsSportsRadio.com*.