



# Capturing and saving Internet evidence

*For a \$20 investment you can obtain smoking-gun evidence from the Web and satisfy your Perry Mason fantasies.*



Mortimer

## BY MICHAEL MORTIMER

Almost every night on the news you see the anchors posting images of Web pages, video clips and other information that are either the subject of the story or that provide background information.

In the legal world, the Net is more and more becoming a source of data and information that properly preserved can later become evidence in a case. This article will discuss how for just \$20 (that's right, a measly \$20 bill!) you can obtain smoking-gun evidence from the Net and use it to win that multi-million dollar case. I don't know about you, but I can't think of a better return on a \$20 investment.

For what an appetizer at a restaurant costs in my town, you can gather and preserve evidence. Later at trial you can beat the Defendant CEO on the side of the head with your digital printouts, to where he leaps out of the witness chair, confesses and begs you to settle the case for \$20 million. (For \$20 you can get smoking-gun evidence and feed your Perry Mason fantasies. What a deal!)

### A war vignette

One time we had a trial where the defendant alleged that during the time period in question, it was getting out of a business. If true, this would have dramatically decreased the plaintiff's damages. If the jury believed the defendant's claim that during that one year in question, the defendant was winding down its operations instead of expanding its business, our client would not have had a case.

An Internet search took us to a Web site that discussed an industry conference that senior officers of the

defendant corporation attended. On the Web site was a presentation that a defendant vice president had presented to conference attendees. The presentation discussed defendant's business expansion plans and clearly contradicted the VP's deposition testimony that defendant was winding down the business.

With our capture software we were able to preserve the evidence for use at trial. Turning over the Net captures to the defendant in a supplemental federal Rule 26 exchange resulted in a case resolution.

### The issue

Everyone knows how to "right click" the mouse and press "save picture as" to download and save a picture or image file. But what do you do if you want to save an entire Web page or perhaps a video from a Web site? How do you save that smoking-gun evidence that is visible on your computer screen today that might quickly disappear or get torn down once defense counsel warns his or her client that you are sniffing around the Net for incriminating evidence?

You need to read this article if you think the best way to preserve the evidence you see on screen is to whip out your 1.3 megapixel digital camera and snap a picture of your computer monitor.

### Admissibility and copyright

It's beyond the scope of this article to talk about admissibility of what you find on the Net (e.g., laying foundation, the rule that a lawyer must avoid becoming a witness, etc.) I also cannot discuss the fair use doctrine, copyright law or other legal issues related to evidence-gathering on the Net. This article presumes you will check out the law in your jurisdiction to figure out how to get your Net evidence admitted at trial. There is



plenty of law on the subject, and it is easy to find.

With the above in mind, the best way to avoid becoming a witness in a case is to have a member of your staff, a spouse or some other third party collect the Net evidence for you (with you looking over his or her shoulder). That way, if the witness is ever called into court, he or she can lay the proper foundation for how the evidence was collected.

### Screen capture utility software

Most people are familiar with capturing pictures or files, such as using Windows to print a Web page, for example. While that might suffice in an emergency, a screen capture program is the Y2K way to handle the task.

The technical name for programs that can capture on-screen data and images is “screen capture utility software.” Like anything electronic-based, over the years, screen capture programs have improved. Today’s programs can do much more and far better than programs from five years ago. And of course, prices have gone way down.

### Some terminology

Here are some terms and features to consider before buying any program:

- **Screen Capture Software** – This is the name for any program that captures whatever you see on a Web site (on your computer monitor.) If you are shopping for a program, this is the term you would enter into Google. Paste this link into your browser for the screen capture hits in Google: <http://tinyurl.com/q4urho>.

- **Capture and Record Modes** – This phrase is commonly used to describe the various methods a program can capture what you see on your display. Some programs can only capture Web pages or parts of a page while others can also capture audio and video.

- **Document Capture Formats** – The full-featured capture programs provide the option to save document screen captures in varying formats (JPEG, GIF,

BMP, PDF and TIFF to name a few.) This matters for a number of reasons, the most important being the clarity of the capture and file size. Video capture formats are typically AVI or WMV.

- **Video Capture Formats** – This is important because some programs perform well at capturing on-screen data, but the program’s video captures look like banana republic productions. Video quality is a real issue, and it has been for years. A capture program’s video capture mode is useless if the video to be played for a jury looks like a 1950s home movie. The better programs permit you to select video capture quality, with the highest quality mode being quite impressive.

Also, the video capture used to be automatic, meaning the program detected where on the display a video was playing, and it attempted to capture it. I say “attempted” because in the old days it was hit or miss on the programs finding the video on-screen. Nowadays, programs allow you to manually select where on-screen the video capture will occur.

- **Settings** – The best programs provide you with the option to set capture mode and quality. For example, if you are concerned about file size, you can opt for a lesser quality setting so that the final product is perhaps 50 percent less in size than a best-quality capture. Also, some video capture programs allow you to adjust the capture frame rate to avoid a choppy video. (Note: a frame rate of 20 or above produces smooth video playback.)

- **Editing Tools** – The better programs permit you to edit your captures, after which you can save them on your computer. For example, if you captured an article that contains ads on the right or left of the page, you can edit those out of the file you will be saving. Editing tools might also include the ability to highlight and underline passages.

- **Cost** – This is a factor when a company frequently comes out with new versions of a program and requires an additional payment to upgrade. While the upgrades are discounted, \$30 here

and \$70 there adds up when having to upgrade your software library either because companies charge annual subscription fees or charge for semi-annual “new version” fees.

### My recommendation

Since the beginning of the consumer Net, back in 1994 through 1996, I have tried various screen capture programs. Some worked better than others. A big problem of these programs, no matter which software I was using, was the inability to capture video. Even the dedicated programs, where the only function was video capture, did not work well.

Fortunately, most programs were trial software for which I did not have to pay for using. I just installed the program, tried it a few times, learned that the program did not work and performed an uninstall in short order.

For the past few years I have been using two capture programs with great success, except for the video capturing. One is “SnagIt” and the other is “FastStone Screen Capture.” Since I like FastStone’s video captures better than SnagIt’s, I am recommending FastStone to readers.

An additional bonus to using FastStone is that the program is \$20 for a lifetime license (no charge for upgrades.) In comparison, SnagIt costs \$50 with the likelihood that the company will upgrade to a new version ever year that you can purchase at a “discount.”

Here is a link to FastStone’s page: <http://www.faststone.org/FSCaptureDetail.htm>.

Like other programs I have recommended in prior articles, FastStone has an unrestricted 30-day trial period where you have access to all the program’s features.

The interface for FastStone is extremely user-friendly, so download the program and try it out. I can’t recall exactly, but I believe at the end of 30 days the program deactivates and requires you to purchase a license.



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Here is the FastStone site's description of the program:

*FastStone Capture is a powerful, lightweight, yet full-featured screen capture tool that allows you to easily capture and annotate anything on the screen including windows, objects, menus, full screen, rectangular/freehand regions and even scrolling windows/Web pages.*

*You can choose to send captures to editor, file, clipboard, printer, e-mail, Word/PowerPoint document or upload them to your Web site.*

*Editing tools include annotating (texts, arrowed lines, highlights), resizing, cropping, sharpening, watermarking, applying edge effects and many more.*

*It also allows you to record screen activities and sound into highly compressed video files.*

*Other features include global hotkeys, automatic filename generation, support for external editors, a color picker, a screen magnifier and a screen ruler.*

*FastStone Capture saves files in BMP, GIF, JPEG, PCX, PNG, TGA, TIFF and PDF formats.*

### **See the results for yourself**

As an added bonus for you, I have uploaded to my server various captures so that you can see for yourself the quality the FastStone program produces.

Here is a link to a short video clip. (Video captures are large files, so I made this one short.) Paste this link into your browser address bar:  
<http://tinyurl.com/ogwbn6>

This link will show you a capture of a longer Web site page. The capture process automatically scrolled down so to capture the entire length of the page, which was equivalent to about three full computer display lengths. I saved the capture in PDF format:  
<http://tinyurl.com/prp49m>

Finally, this page is a capture where I told the program what area on my dis-

play that I wanted to capture. The saved page is in jpg format:  
<http://tinyurl.com/ouogzw>

### **Conclusion**

The way I see it, this is a win-win situation. Download the FastStone program, install it and give it a try. I know you will enjoy the video capture feature. With a 30-day trial period and a cost of \$20 at the end of the trial, there's no reason you cannot be capturing Web pages and video as soon as you are finished reading this article.

Get to it and have fun!

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