

# For the Records: Technology Advances e-Discovery and Information Management

Technology eases the burden in costly litigation-related records searches

by Don Harris



ADVANCES IN TECHNOLOGY are making the growing field of e-Discovery faster, less expensive and as a result, more popular. That's the good news for businesses having to produce documents as they respond to or initiate litigation, but they still must make document management decisions even in this day of vast, easy and cheap storage capability. Understanding how e-Discovery works can help businesses determine what records to keep or delete — and the know-how is not just for major corporations. Some small and medium-sized businesses are highly litigious, including those in the fields of construction, banking and healthcare. Experts say having an effective information management policy is critical.

E-Discovery, short for electronic discovery, involves a process, including court-ordered or even government-sanctioned hacking, whereby electronic data is sought and searched for possible use as evidence in a civil or criminal legal case. Lawyers need not be concerned that they will be replaced by technology, though e-Discovery is considered more accurate and efficient than document searches conducted by hand. Experts say e-Discovery allows lawyers to do what they're paid to do — try a case, not pore over mountains of documents.

What's more, digital data can be electronically searched easily, whereas paper

documents must be scrutinized manually. Electronic information subject to e-Discovery includes Word documents, spreadsheets, e-mail and audio and video recordings. E-mail is considered the most problematic.

Tom Turner, president and founding partner of Document Solutions, Inc., a Nashville-based litigation support company that provides advanced electronic discovery and digital forensics services, says failure to have an information-management e-Discovery policy results in over-zealous storage of unneeded documents. "I've met with clients who had boxes of documents involving employees who had been dead for 15 years," Turner says.

He doesn't recommend a specific timeframe for saving documents. "We do recommend that if you don't need to keep it for business or regulatory purposes, get rid of it," Turner says. "Delete it off your system. Shred it. Don't put it in a box. Don't send it off-site to be stored."

The No. 1 place to look for unneeded documents is e-mail, Turner says. Generally, only 10 percent or less of e-mail might be relevant in litigation. Companies that keep what could be considered stale e-mail pay the additional cost of e-Discovery. The more documents they save, the bigger the e-Discovery bill.

But attorney Wendy Akbar of the Phoenix office of Quarles & Brady says that saved

e-mails can be significant. "For example, a company is entitled to the other side's key e-mails on relevant issues," she says. "People watch what they say with far less frequency in informal and private e-mails, expressing opinions and emotions on business concerns that can later turn out to be Exhibit A in the courtroom."

"The good news," says Turner, "is that new technology allows us to do more, faster and more cost-efficient. At the same time, the volume of information corporations are generating is growing exponentially. And what's worse, electronic data is so inexpensive to store."

When e-Discovery burst on the scene a decade ago, the cost was about \$20,000 to manage and convert 50 gigabytes of information to a format for attorneys to examine. It would have taken several weeks to process 50 gigabytes — or what amounts to some 6-million pages, Turner says. Today, that same task is completed in a day, resulting in a substantial saving of time and money.

Lawyers rely on such software programs as Concordance and Ringtail, for example, which can convert TIFFs and PDFs into searchable data; search for key terms, phrases, dates or e-mail addresses; categorize and tag documents; and allow multiple reviewers to work on the same case from different locations. Other software programs, including Clearwell

and Cataphora, can find documents through searches linked to a specific term even if those documents do not contain that term, organize documents with similar content, and detect sentiment in an e-mail and changes in an author's writing style, which can indicate patterns of data deletion.

Akbar says the technological aspects of e-Discovery definitely can make a lawyer's job easier. "What makes many electronic documents different from paper documents is that they are living creatures and not static images," she says. "Metadata refers to the little pieces of information embedded in each electronic document, such as the author, date of creation, dates edited, actual edits and so on.

"The metadata of electronic documents provide the information needed to code and sort the documents into categories for easier review. It provides an easy way to track relationships between, for example, e-mails and other documents like attachments, and to follow a string of e-mails sent, forwarded, saved and received over time. The metadata can also reveal 'smoking gun' type information, such as information about earlier versions of a document — say, a contract or board minutes — that could reveal crucial information about a case."

Mark Walker, senior director of consulting and client services for Forensics Consulting Solutions in Phoenix, says it's not difficult to delete unwanted information. "The more time that passes beyond the delete event, the less likely it will be that anything useful will be recovered," Walker says. "That said, there have obviously been instances where very useful information has been recovered. Selecting the right forensic adviser is critical."

Looking ahead to even more technology advances, Walker says, "There is a great deal of discussion, hope and confidence that a trend toward 'automated review' or 'predictive coding' will gain confidence and help further reduce review costs." While some methodologies utilize technology and others concentrate on workflow, most use a combination of both, according to Walker. "The technology is available. It is the adoption of that technology and workflows that is, hopefully, just around the corner." ■

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