



How to Develop Efficient E-Discovery Systems

In today's digital environment, e-discovery is a standard and frequently challenging part of the modern litigation process. Given the ever-increasing volume of electronically stored information, the preservation, collection and review of documents is often the most expensive part of the litigation process. Here, Knowledge Center contributor Scott A. Kane explains how to manage these tasks to ensure that discovery obligations are not only met, but are done so in a reasonable, efficient and cost-effective manner.

By **Scott A. Kane**



Among large corporations that are serial litigants, there is growing recognition of the proactive need to implement consistent and reproducible e-discovery systems in their organization before—not after—they face significant e-discovery obligations in litigation. While the commitment is significant in terms of the time and effort required to implement and maintain such e-discovery systems, the investment of resources quickly pays off in the form of litigation efficiencies and reduced attorneys' fees and vendor costs down the road.

The adoption of such an internal e-discovery system need not be a great burden for other organizations whose litigation needs are less immediate. Even small to midsize businesses that infrequently face litigation and e-discovery demands can benefit from implementing a proactive, e-discovery plan appropriate to their needs. Even some forethought is better than none. At a

minimum, an effective e-discovery system should:

1. Define the company's method for initiating and communicating litigation holds,
2. Establish procedures for preserving potentially relevant electronically stored information (ESI), such as suspending automatic e-mail deletion when litigation becomes reasonably anticipated,
3. Describe systems and sources of data within the organization (in more detailed format, sometimes referred to as a "data map"), and
4. Identify responsibility within the organization (including the respective roles of the legal department and IT) for satisfying e-discovery responsibilities when they arise.

A company's existing outside counsel and consultants will often assist in-house staff with some of this work at no cost (or reduced cost). There is much to be gained by partnering with outside e-discovery practitioners

who can apply their experience and knowledge in assessing e-discovery needs and defining the appropriate systems and business approaches required to address those needs.

Reviewing potentially relevant data

One portion of the e-discovery process that is frequently ignored is the plan for eventually reviewing potentially relevant data that has been collected in response to a specific legal need. E-mail systems and file servers in even small companies may contain hundreds of thousands (if not millions) of documents. Only a small fraction of them are likely to be relevant to a particular dispute.

An e-discovery strategy that adequately identifies and preserves potentially relevant ESI is not operating efficiently if it does not include a plan for reducing the amount of this data that must then be reviewed. Our law firm of Squire Sanders & Dempsey ("Squire Sanders") has addressed this need

through its “Intelligent Discovery” initiative, which seeks to reduce client costs by limiting—to the greatest extent possible—the amount of time devoted to human review of large data populations.

Traditional discovery processes often involve a “linear” review in which each document (that is, piece of potential evidence) is individually classified as to its relevance. This process is time-consuming and expensive. For very large populations of ESI, the potential costs of this exercise can approximate the true economic value of the matter in dispute. In addition, because of the amount of material that must be reviewed, key evidence might not be seen by the legal team until well after important strategy decisions have been made.

The Intelligent Discovery approach

Using our Intelligent Discovery approach, the time and expense of document review is reduced through a mix of process and technology. As part of this approach, Squire Sanders uses Equivio>Relevance predictive coding technology to apply the results of review by experienced trial attorneys across larger document populations.

For our clients, this has provided an extremely efficient method of assessing the potential relevance of collected documents. In addition, this predictive coding technology has helped identify critical documents sooner, remove irrelevant documents from the working data set and prioritize the remaining document population for efficient handling (for example, send documents of the highest potential rel-

evance to senior members of the team and send documents less likely to be relevant to more junior—and less expensive—reviewers).

Predictive coding technology can also be applied to reduce costs at earlier stages in the litigation life cycle. For example, the predictive coding process (which requires one to two days to prepare) provides a powerful tool for “early case assessment” in which highly relevant documents are quickly identified from a subset of the potentially responsive material before the full litigation process has commenced. The results of this analysis can provide key insight into the best strategy for litigating (or settling) a particular dispute.

Predictive coding technology also allows early case assessment efforts to focus on the key documents, providing an opportunity to understand the strengths and weaknesses of a matter early in the litigation process—rather than after significant time and expense has been spent on traditional document review methods. For this reason, organizations implementing internal e-discovery systems should strongly consider including a formal, early case assessment phase.

Closing thoughts

An e-discovery system should, at a minimum, include methods for identifying, preserving and collecting potentially relevant information in a reasonable and cost-effective manner. Companies benefit significantly in litigation from understanding their data sooner and reducing the significant cost of reviewing it. The most effective e-discovery systems will also include strategies for early case

assessment and defensibly reducing the size of data populations. Emerging technologies such as predictive coding, applied correctly, facilitate a defensible approach to reducing the disproportionate review burden created by large volumes of potentially relevant ESI.

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Scott is co-chair of Squire, Sanders & Dempsey’s e-discovery and data management team, which serves as a resource for lawyers and clients in matters involving the preservation and discovery of electronic documents. Scott teaches a course on e-discovery issues as an adjunct professor at the University of Cincinnati, College of Law. Scott is a frequent speaker in this practice area to clients, bar association groups and professional organizations. He is a member of the Electronic Document Retention and Production Working Group of The Sedona Conference.

Scott also serves as president of the Cincinnati/Northern Kentucky chapter of the Federal Bar Association. Prior to law school, Scott served in the United States Army and is a veteran of Operation Desert Storm. Scott received his J.D., summa cum laude, from the University of Cincinnati. He can be reached at scott.kane@ssd.com.