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How New Technology Reduces the True Cost of e-Discovery

By Adam I. Cohen

PRACTICE TIP

For years, technology has been used to improve the efficiency of countless business activities and functions. Recently, a number of technology tools have emerged that enable companies to do the same with their electronic discovery process.

Unfortunately, many organizations have elected to forgo the use of technology — or opted to use less-powerful or less-sophisticated (and thus, less-expensive) tools — during their discovery process, in the name of “keeping costs low.” By taking such an approach, these companies often ultimately spend much, much more on the overall discovery effort — despite having saved money at individual points in the process.

To be sure, e-discovery can be very expensive, and companies rightly want to reduce the cost of the process. However, in seeking cost reduction, companies often fail to remember that the true driver of cost is the sheer volume of documents to be reviewed, not the tools used at various points in the process. The proposition is straightforward: Attorneys are expensive, and the

more documents attorneys must review toward the end of the process, and the longer it takes them to review said documents, the more costly the process will be. Therefore, companies should use every appropriate tool at their disposal to reduce the number of documents ultimately presented to attorneys for review — and facilitate quick review of those documents that are presented — even if it may mean spending more on tools with greater functionality and processing power.

COST V. BENEFIT ANALYSIS

How does this work in practice?

In each of the principal steps of e-discovery, a company faces several options for handling the work. Each of those options carries certain costs and benefits. Sometimes the low-cost option is the right one, while other times the more powerful and expensive alternative is best. How well a company identifies and acts on those tradeoffs ultimately will determine whether the e-discovery process cost-effectively helps the company achieve its goal of winning the case in question.

The most significant return on technology investment during e-discovery can be found during processing, culling and review. These are the most time-consuming steps and, consequently, represent areas in which technology can be especially effective in reducing overall discovery costs. But they also are areas in which there are considerable complex tradeoffs between cost of the solution employed and speed and effectiveness of the process. If a company opts for a less-expensive but less-potent solution, is it still getting the right documents from

its archives? Is it eliminating all irrelevant documents to avoid expensive attorney review later? Is it presenting attorneys with the documents in a way that enables them to quickly “separate the wheat from the chaff?” Electronic discovery technology solutions come at many different price points; generally speaking, one price is lower than another because some functionality has been “left out.” Thus, if a company chooses the lower-cost solution, it must know that the missing functionality won’t materially affect its overall e-discovery process. (Note, where the price difference does not appear to be based on a difference in functionality, it may be based on harder-to-measure but no less important differences; for example, the ability to offer responsive and effective client service. After all, the technology simply does not work “automagically” at the push of the button. There are professionals involved at every step of the way whose job it is to ensure that the multiple technical steps are performed properly. When it comes to hiring the most proficient talented individuals, the market tends to drive such individuals to the higher-paying positions. Such higher costs can be expected to lead to higher prices, but also to a higher quality of professional service.)

More robust technology solutions now available can generate multiple benefits for companies. These solutions can reduce the time and cost associated with processing and culling activities themselves, substantially reduce the number of documents for attorney review, and improve the speed, quality and consistency of document review and coding.

Adam Cohen is Senior Managing Director with the electronic evidence group at FTI Consulting, Inc. Before joining FTI, Cohen was a litigation partner at Weil, Gotshal & Manges LLP. He is cited in three of the seminal e-discovery *Zubulake* opinions, and frequently speaks and presents on the topic of electronic evidence and the application of technology within the litigation process.

INDEXING AND 'LIGHT' PROCESSING

Companies historically have conducted full processing of documents to determine potential responsiveness — opening each document, looking for any notes or comments that may be included, identifying and extracting embedded objects and attachments, and in the case of Excel files, checking for hidden rows or columns. This is a highly time- and CPU-intensive process. By taking advantage of “light” processing technologies, a company can get a sense of the essence of each document by just extracting and indexing the full text and metadata of the file (such as date created, date modified and where the document was found), and consequently, eliminate many documents from full processing that typically takes up to five times longer and costs three to four times more than light processing.

NEAR-DUPLICATION DETECTION

Traditional de-duplication technologies are valuable in identifying and eliminating documents that are exact duplicates of one another. However, what about documents between which there are only minor differences?

Several leading companies are addressing this challenge by taking advantage of near-duplicate detection technologies to improve document processing and culling. Near-duplicate detection tools enable an organization to quickly identify and group documents that have virtually the same content, such as an original Word document, a version of that document with several tracked changes, a final version of the document and a .pdf version of the final Word file, but would not be recognized by traditional de-duplication tools as being the same document.

Near-duplicate detection tools can considerably reduce the overall population of documents to be reviewed — in some cases, by as much as 50% — resulting in substantial cost savings. In fact, if a company using such technologies could reduce 1 terabyte of data to 100 gigabytes of data for review, that's a 10% cost savings in review time. Furthermore, with near-duplicate documents grouped rationally together, one

person could review and code each group, resulting in consistent coding across the group and eliminating time wasted by other attorneys reviewing near-duplicate documents in depth.

Such a set-centric review strategy proved highly beneficial for a major player in the pharmaceutical industry. After using traditional de-duplication, the company employed near-duplicate detection technology to identify an additional 27% of the document population as near duplicates — and saved more than \$5 million in review costs in the process.

E-MAIL THREADING

E-mail threading tools pinpoint and collect e-mail “chains” sent among a group of people so that it's obvious which e-mails pertain to the same subject matter directed to a consistent set of people and, thus, should be treated as one unit during review.

Like near-duplicate detection tools, e-mail threading solutions promote quicker and more consistent review and coding of documents — in this case, by presenting the entire “conversation” to an individual reviewer who can quickly determine which e-mails need to be read in depth and which are simply duplicates of others in the group, and then assign the same coding to all e-mails in the group.

CLUSTERING ANALYSIS

Litigators and investigators are reaching the limits of their ability to process the immense amount of information generated by electronic communications involved in complex matters. As a result, some firms are using clustering analysis and data visualization technology to help them greatly streamline the review stage of e-discovery.

Clustering analysis technologies automatically group documents based on relationships and “concepts” (related words or phrases) in the data, providing a more robust view of the contents than keyword searches alone. By using the technology to cluster related documents and visualize them in a “concept map” interface, attorneys can tag groups of highly relevant

documents while quickly setting aside irrelevant documents.

For example, attorneys for a large financial institution facing class-action litigation recently used clustering to rapidly reduce a population of 550,000 documents to 7,000 documents that merited a more detailed privileged review — saving substantial time and money for their client.

TAKING THE LONG VIEW

When considering costs, it's always tempting for those leading e-discovery efforts to focus too closely on individual steps or solutions and lose sight of the overall process. This can lead to decisions that result in the adoption of lower-priced solutions that, while maximizing cost savings in the short term, end up costing a company more in the long run in terms of attorney review costs and, possibly, lost cases due to incomplete or inaccurate document processing and review.

When considering investment in e-discovery tools and approaches, companies must remember that every decision along the way has an impact on the cost of the overall discovery process as well as on the organization's ability to win its case. By balancing how discovery technologies can help them achieve their broader goal with the cost of each solution, companies can make more informed decisions about which solutions to deploy — and when.

