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BUSINESS TECHNOLOGY

Using Software to Sift Digital Records

Looking to Pare Litigation Costs, Firms Use Technology to Find Relevant Electronic Documents in Legal Discovery Process

By **NATHAN KOPPEL**

Companies in litigation pay lawyers handsome sums to pore over their vast archives of emails, documents and other electronic records. The goal of this sleuthing is to identify which records contain information relevant to a lawsuit.

The process, termed electronic discovery, has grown into one of the costliest, and most nettlesome, aspects of litigation. Large companies expect to spend about \$1.3 billion, or 7.1% of their litigation spending, on it this year, according to BTI Consulting Group Inc. That is up from 5.2% five years ago, said BTI, which surveys lawyers at the 1000 biggest companies.

"In the old days, someone might keep notes on a piece of paper and then throw it away," said Richard Baer, general counsel of Qwest Communications International Inc. "Now, data is captured, so there is a lot more information to go through."

Mr. Baer said the telecom company is currently reviewing about three terabytes of data, which equals hundreds of millions of pages, in various cases.

While technology helped give rise to the e-discovery beast, it can also help tame it, according to lawyers and technology experts.

Litigants, for example, increasingly are using software that can scan gigabytes of data quickly and identify which records contain potentially relevant information and which include proprietary information that shouldn't be revealed.

"The biggest pain point in litigation is the amount of money spent on attorneys reviewing documents," said Jonathan Redgrave, a Washington, D.C., lawyer who helps companies manage e-discovery. "Companies can save on lawyer time by using technology to more quickly identify the material that needs a deeper analysis."

Law firm Morgan, Lewis & Bockius LLP, for example, used so-called predictive coding software made by Recommind Inc. to respond to a government investigation of a corporate client. Morgan Lewis had to sort through millions of pages in less than a month, said Stephanie "Tess" Blair, the head of the firm's e-discovery practice.

Attorneys at the firm started by reviewing a relatively small set of records to identify the important characteristics. Attorneys, for example, noted that a particular employee wrote many relevant emails and that many of those documents were drafted within a particular date range, Ms. Blair said.

That knowledge was then coded into software, which was used to scan a larger universe of electronic records. Attorneys then reviewed the most relevant records to make the final determination about whether they should be disclosed. Lawyers also spot-checked some of the material that was deemed irrelevant, to ensure that the software worked properly.

"I don't want my attorneys reviewing emails that talk about sports or lunch invitations," Ms. Blair said. "Technology allows

us to eliminate 60% to 80% of records from attorney review."

Recommind licenses its software for costs ranging from about \$650 per gigabyte of data analyzed to several million dollars annually for unlimited data.

Companies and attorneys are using similar technology to scan electronic records to determine which are most likely to involve privileged attorney-client communications, said attorneys.

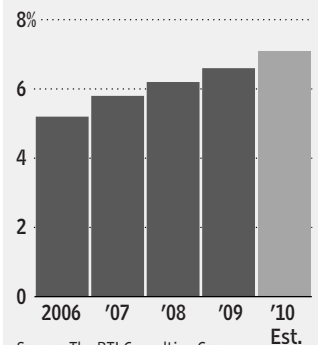
Eric Evans, a member of the e-discovery practice at Mayer Brown LLP, said his firm used software in a litigation matter to quickly spot emails sent by attorneys to clients that included the word "privilege" in the subject line and not merely in the footer of the email, where boilerplate language often invokes the privilege even when it doesn't apply. Having the word in the subject line is likely to mean the email is worth reviewing. The software is made by Stroz Friedberg LLC, a forensics consulting firm that charges about \$250 per gigabyte of information reviewed.

Companies also increasingly use technology to reduce the amount of data they preserve in the hopes they will be able to tackle e-discovery more quickly and cheaply if they become a party to a lawsuit.

"If companies have less junk on their computer systems or in the backup tapes or email archives it's easier to find relevant information . . . and produce it for litigation," said Dennis Kiker, an attorney with LeClairRyan who specializes in electronic discovery.

Discovering Costs

Spending on electronic discovery at Fortune 1000 companies as a percent of litigation costs



Source: The BTI Consulting Group

Companies often preserve historical data for years on backup tapes that are stacked high in distant warehouses, according to lawyers. A search appliance made by Index Engines Inc. allows companies to scan their backup tapes and determine which can be destroyed. The search costs between \$150,000 to more than \$1 million depending on the volume of data.

Consulting firm Litigation Logistics LLC recently used the technology to scan 293,000 backup tapes at an energy company, said Richard Davis, chief executive of the consultancy. In about four month's time, he said, his firm had identified 278,000 tapes that could be discarded.

"This would have taken two years at least without the technology," Mr. Davis said.