

Understanding The World Of Electronic Discovery: Planning For The Complexities Can Result In Significant Savings

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With the use of electronic discovery on the rise, companies that do not have a full appreciation of the potential complexities that can surface during the process, as well as tactics to overcome these issues, may be confronted with substantial expenses. By understanding these issues, counsel can keep costs down by identifying important factors in advance and preparing for unbudgeted costs. Corrupt or difficult to process data, foreign language data, complicated file types, production planning requirements and multi-party reviews are among the most complex and costly issues that may arise during the electronic discovery process.

Data Collection Precautions

One of the most critical steps in an electronic discovery matter is the collection. To ensure that data is gathered in a forensically sound manner, best practice dictates retaining an independent, highly-specialized industry expert to perform the collection. This consultant can also serve as an expert witness on the collection process. Such an approach greatly reduces the risk of the collection being challenged later, for issues such as improper chain of custody and spoliation.

Corrupt And Encrypted Data

A common presumption in the electronic discovery process is that the data being collected is clean. This can be a very costly assumption since there are numerous reasons why data might be corrupt; for example, antiquated legacy media. When an electronic discovery provider encounters corrupt data, they can first attempt to reconstruct the data. In situations where the data cannot be reconstructed, other data sources, such as backup tapes, may provide an alternative.

Computer forensic experts can play a critical role in collecting and reviewing encrypted data that may otherwise be impossible to access. Through the use of sophisticated password cracking technologies, it may be possible to defeat the encryption. In addition, it is important to note that the manner in which data is stored changes over time as software companies continue to deliver new and innovative technology solutions to the market.

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The Challenges Of Foreign Language Data

With more and more businesses going global, the amount of data containing foreign languages has significantly increased. Companies that have undergone multiple acquisitions face additional challenges, such as having disparate network systems and data environments. Data that is in a foreign language poses another obstacle since the original meaning or intention may not easily be discerned through a simple translation using existing technologies.

Counsel can avoid the obstacles outlined above through the use of a hosting review application that is capable of supporting foreign language data. Additional actions such as employing technologies that are capable of searching in the foreign language as well as utilizing reviewers who are fluent in a particular language and its nuances enables counsel to review multi-lingual evidence in a cost-effective, time-efficient manner.

Complex And Specialized File Types And Databases

The format and nature of file types and databases encountered during electronic discovery reviews has drastically changed how counsel needs to approach such matters. Excel spreadsheets, databases, chatroom transcripts, Internet files and the large array of other file types and formats can bring an otherwise smooth electronic discovery project to an abrupt halt. Files with unknown data such as hidden rows, columns and worksheets present a unique challenge because they may result in recovering a significantly larger amount of data than needed. Once the hidden data is recovered, the difficulty of printing the file to a TIFF image increases as well as the amount of time required to review the document.

There are other specialized file types, such as computer-aided design (CAD) drawings, that pose certain challenges for an online review. Typically, CAD drawings contain a limited amount of metadata and very little text. Native file types can also present problems since they are not well supported by an online review tool's image viewer. These file types need to be converted in a manner that presents an accurate translation of what the drawing represents. Once converted to a supported viewer file type, such as HTML, PDF or TIFF, the file can be reviewed online.

Data is typically extracted from hard drives, servers and other media before it undergoes electronic discovery processing. During an engagement, issues may arise when extracting data from a non-standard source, such as a company's database that may contain accounting or financial data, human resources information or other data. Such complex databases contain massive amounts of data that require a tailored approach to the collection process. Instances such as these require seasoned IT consultants that can build a customized front-end application that reads the database and

extracts the requested data. The extracted data is then put into a format that allows it to be analyzed and utilized for online review.

With upfront strategic planning, counsel can coordinate with their electronic discovery provider to manage complex or problematic file types. Depending on the number of such file types, significant cost savings can be realized by identifying and handling the specialized processing upfront. If such issues are not dealt with during the pre-planning stage, normal data processing will occur and the files might appear as errors, which will result in additional time and dollars.

Production Planning Requirements

Another area of concern for counsel involves properly planning production requirements. Counsel experienced in handling electronic discovery engagements recognize that having a strategic plan in place at the outset of a case can have significant benefits, such as identifying all of the processes to be utilized during production. The ultimate goal of any electronic discovery engagement is to meet deadlines and ensure that only responsive, non-privileged data is produced to the opposing party. Pre-planning enables counsel to make the

process much more efficient and cost effective.

Multiple Party Review

Large-scale, complex litigations involving multiple parties or law firms have their own set of unique requirements that must be addressed. In an effort to maximize efficiencies, counsel has developed effective strategies that enable multiple firms to share a common data set while ensuring confidentiality and privacy are maintained for each respective firm involved. In the past, every firm used its own distinct data set, which significantly increased the cost of litigation or a governmental investigation. Sophisticated technology solutions can be leveraged to streamline electronic discovery reviews and mitigate unnecessary costs.

Understanding The Intricacies Can Result In Cost Savings

Many of the obstacles that arise during electronic discovery and result in lost time and monies can be prevented. By having a full understanding of the complexities that can potentially arise in a case and pre-planning for such contingencies, companies can effectively manage the litigation costs and time associated with electronic discovery.

Corporate Counsel Organization Highlights

ACC's Annual Meeting: Enjoying The Ride On The Track To Success

ACC's 2007 Annual Meeting, marking the 25th anniversary of ACC, will take place at the end of October at the Hyatt Regency Chicago, 151 East Wacker Drive in Chicago. The largest annual gathering of in-house counsel in the world begins with a welcome reception at 6 p.m. on Sunday, October 28, followed by three days of more than 100 CLE/CPD programs and many networking opportunities.

On Monday and Tuesday, October 29 and 30, a wide variety of CLE/CPD programs are scheduled in eight one-and-one-half-hour sessions between 9 a.m. and 6 p.m. Lunch and a special program will be held from 12:30 to 2:30 p.m. each day, and a networking reception at the end of each day's sessions will be held from 6 to 7:30 p.m.

Among the programs are 17 which have been specifically designed for attorneys new to in-house practice and 9 designated as leadership and management skills programs. Many substantive law topics will be covered, including: antitrust, IP, litigation, employment and labor, corporate and securities, international law, IT and e-commerce, environmental, health and safety. "Updates" are scheduled on employ-

ment, SEC, privacy, legislation on energy issues and on financial services and futures, and hot topics in public law.

This year, ACC will hold its 10th annual On-site Pro Bono Clinic under the auspices of Corporate Pro Bono (CPBO) on Monday morning, in two sessions from 7:30 to 10:30 a.m. Participants will receive training from national experts on the legal issues facing nonprofit organizations and meet with Chicago area nonprofits. (For more information on the clinic, contact Eve Runyon, CPBO Project Director, (202) 662-9699 or at cpbo@acc.com.)

On Wednesday, October 31, morning programs from 9 a.m. to 12:30 p.m. will include the 10th annual CLO Club, a session from 9 to 10:30 a.m. exclusively for chief legal officers entitled Designing a "Best Practices" Plan to Ensure Financial Compliance. The annual meeting will adjourn at 1:30 p.m., after lunch.

For information on registration fees, see the Bulletin Board on The Metropolitan Corporate Counsel website at www.metrocorpccounsel.com.

For the most up-to-date listing of programs and faculty, visit ACC Online at am.acc.com.

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