

Understanding The World Of E-mail: How It Can Significantly Increase Or Decrease The Costs Of Electronic Discovery – Part II

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Having a thorough understanding of e-mails and the company's infrastructure allows corporate counsel to develop stronger policies to mitigate their risks and reduce the costs associated with electronic discovery. In the past, electronic data was commonly converted to TIFF (Tagged Image File Format) images for attorney review, regardless of whether or not they were produced to the opposing party. This resulted in higher costs for cases, as the TIFF process is more expensive than a native file review.

When a file is converted to a TIFF image the original file is printed to an electronic format. The cost associated with a TIFF image review of e-mail can be significantly higher than a native file review based upon the number of documents that are to be produced from the collected data sets. For example, if more than 50% of the documents are going to be produced, then the cost of TIFFing the documents up front becomes less of a cost issue. However, if the production to the opposing party is going to be less than 50% of the documents reviewed, then corporate counsel should consider a native file review to contain the potentially large costs incurred by TIFFing.

By conducting a native file review of e-mail the metadata is extracted from the actual e-mail file and put into a database record. A link to the native file is also provided. During a native file review users can view the metadata, which includes but is not limited to: the date created, sender, recipient(s), subject and full text of the e-mail. Rather than viewing an identical image of the e-mail file, the viewer sees various fields that contain the original file's information. If the user desires to review the original e-mail file, rather than just the metadata fields, they can open the native file to view its contents.

The benefits of conducting a native file review extend beyond reducing costs. A key advantage to the process is giving the reviewer the ability to see nuances such as the formatting and coloring used by an e-mail's author when it was originally constructed. As a result, native file review allows users to observe when a sender emphasized words by using color in the body of the text. A one-bit black and white TIFF image does not have the ability to capture such formatting. In addition, such a

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review enables users to receive data quicker, since there is no need to TIFF the documents first or perform quality control on respective TIFF images.

A key disadvantage to native file review is the inability to redact a native file, which is possible with a TIFF image. In order to perform the redaction a back-end TIFFing process is required. Additionally, any documents that are going to be produced to the opposing party have to be TIFFed in the manner described above. This process requires additional time and costs.

There are a number of review tools on the market that allow the reviewer to immediately TIFF a native file document. This technology is commonly referred as "TIFF-on-the-fly." By TIFFing-on-the-fly, the user is able to redact the document without performing the back-end process that was previously described. Even with TIFF-on-the-fly technology, it is still common practice to use a back-end TIFFing process for production documents that are not redacted as they tend to be voluminous. Also, it is not practicable to TIFF-on-the-fly for large-scale productions due to inefficiencies and prohibitive costs.

After counsel has defined its strategy for forensic collection, they must begin the important next step of managing the size of the e-mail review. If performed properly, this process can significantly decrease the review time, which typically is the largest single cost in a case involving electronic discovery. From the onset, it is important to ensure that only the relevant date range is used. Eliminating all e-mails outside of the relevant date range will exponentially add to the efficiencies as well as the reduction of costs.

Another tactic in counsel's arsenal is using technology to eliminate duplicative e-mails from a data set. Sophisticated processing tools use a mathematical algorithm (referred to as Message Digest 5 Hash or more commonly known as MD5 Hash) to compare two files to determine if they are, in fact, duplicates. The use of MD5 Hash is analogous to a digital fingerprint for an e-mail file, and it is these digital fingerprints that are compared to eliminate the duplicative e-mails.

The most effective and widely utilized method for reducing the size of an e-mail review is through keyword searches. In the past, this methodology was commonly limited to simple names and single words. However, counsel now has the ability to hire electronic discovery consultants that are equipped with the latest technology that performs complex, highly-effective searches. This technology allows counsel to utilize Boolean logic, as well as proximity searching to achieve efficiencies in the search results.

In essence, Boolean logic allows the user to link multiple search terms under one integrated search to return the desired results. Some of the most common Boolean operators are "and" as well as "or." The "and" operator

returns all of the words in a search based on the aggregate terms that are used, whereas the "or" operator returns any of the individual words in a given search. Another option is proximity searching, which searches for words that are within a specified distance of each other. Searching in electronic discovery is not limited solely to words,

but can also be performed on such items as numbers, acronyms and phrases.

By gaining a better understanding of the technology and consulting expertise available to conduct e-mail reviews and overseeing the management of such projects, corporate counsel can experience greater efficiencies and significantly reduce the costs.

Partners Notes

Ballard Partner To Head DE Bar Commercial Law Section

Emilie R. Ninan, a partner in the Delaware office of Ballard Spahr Andrews & Ingersoll, LLP, has been elected chair of the Commercial Law Section of the Delaware State Bar Association (DSBA). She will serve a one-year term which began July 1.

The Commercial Law Section and its committees (including Uniform Commercial Code, Banking and Statutory Trust) provide a common meeting ground for attorneys practicing in the area of commercial law which governs business, commerce and consumer

transactions.

Ms. Ninan is the partner in charge of Ballard Spahr's Public Finance practice in Delaware, a director of the North American South Asian Bar Association (NASABA), and President of the South Asian Bar Association of Delaware (SABA-DE). She has been an active member of the DSBA since 1995 and has held various leadership positions within the DSBA during that time. Ms. Ninan is also a past recipient of the DSBA's Multicultural Judges & Lawyers Section Leadership Award.

CSC Ranked Highly In Survey

Corporation Service Company® (CSC), a privately held company and provider of legal and financial services to corporations and law firms, has announced that it has been named as a "Best in the Business" company as reported by The News Journal, a leading general circulation newspaper in Wilmington, DE. The Company Corporation®, a subsidiary of CSC®, was also named on the same list.

The "Best in the Business" ranking is based on thousands of anonymous surveys completed by employees, executives and members of the business community. Companies are judged on critical workplace factors including management, work/life balance, pay and benefits. On the 2007 list, CSC was ranked 9th overall for Large Companies and TCC was ranked 7th overall for Small Companies.

Working Mother Magazine Names Gibbons Among The Best Law Firms For Women

Working Mother magazine has named Gibbons P.C. to its first-ever list of the Best Law Firms for Women. Gibbons is the only New Jersey-headquartered firm to appear on this list, which includes the top 50 firms nationwide.

"We are proud to be included on this prestigious list, and applaud the efforts of so many Gibbons people that led to the firm's inclusion," said Patrick C. Dunican Jr., the managing director of Gibbons.

According to the publication, "The winning firms are noted for their work/life and women-friendly policies – including flex-time, child care and

women-focused mentoring, leadership and networking programs – as they set new standards to retain and promote top female legal talent." The 50 winning firms were selected based on their responses to an application measuring six areas of importance: workforce profile, benefits and compensation, parental leave, child care, flexibility, and retention and advancement of women.

Complete information about this list, including profiles of the winning firms, appears in the August/September issue of *Working Mother* which is available on newsstands and online at www.workingmother.com.

Tax Lawyer Joins Chadbourne & Parke

The international law firm of Chadbourne & Parke LLP has announced that Edouard S. Markson has joined the firm as tax partner in the New York office.

Mr. Markson most recently served as a director in the Tax Advisory group at Credit Suisse in New York. In this role, he was tax counsel for the Investment Banking, Alternative Investments and

Global Structuring business units.

Prior to Credit Suisse, Mr. Markson was a tax associate with Sullivan & Cromwell in New York, with a focus on mergers and acquisitions, structured financial transactions, and general corporate tax planning. Earlier in his career, he was a portfolio manager and analyst for an investment firm.