

Reviewing Electronic Evidence

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Electronic documents can generate huge volumes of data to be reviewed for disclosure. For example, a single network hard drive that holds 40 gigabytes of data could amount to 20 metric tonnes of printed paper. By using specialized proprietary technology that (a) limits the data to relevant time periods and relevant document custodians, (b) searches the data by keywords, and (c) eliminates duplicate copies of electronic documents, this universe of electronic documents can quickly be reduced to a more manageable set.

After potentially relevant electronic documents have been identified, collected and filtered, lawyers have several output options for reviewing their collection:

- printing to paper with slip sheets containing metadata,
- burning the native data to CD-ROM,
- importing the data into a litigation support system,
- or, uploading the data into an online document repository.

Searching, filtering and reviewing technologies have been available in the U.K. for several years now. During that time, using an online review tool has become popular with litigators faced with large volumes of electronic and paper documents. Instead of printing and shipping enormous quantities of hard copy documents, then reviewing it all box by box, legal teams are increasingly accessing, reviewing, categorising, redacting and annotating each document file by file online, via a secure internet connection.

There are many advantages of using an online document review tool. Perhaps the most obvious is efficiency. Studies have shown that searching, viewing, classifying, and marking data electronically saves time and money. In addition, using an online review system is more accurate than a traditional paper review as each document is catalogued by the database, ensuring any overlooked or misplaced document can be located quickly and easily.

Furthermore, the logistics of managing the review can be simplified. Historically paper bundles were copied then shipped to legal teams. Now, with online repository functionality, documents can be reviewed simultaneously in multiple locations by numerous members of a review team. In addition, repository functionality allows litigation managers to access comprehensive reporting options and monitor the progress of the review. Sophisticated online review tools also enable lawyers to run reports inventorying items such as: what has been reviewed, what documents are left to be reviewed, and how many documents each reviewer has evaluated during a certain time frame.

Depending on the characteristics of the review tool, there can be numerous benefits available to the legal teams. First, reviewing only printed documents results in an incomplete body of evidence because metadata (data about the data – things such as the last accessed date, last modified date, to, from, cc, bcc, etc.) is not displayed. Electronic review tools, on the other hand, keep a document associated with its metadata, allowing the reviewer to view this integral part of the document at the same time.

In addition, most document review tools provide sophisticated searching and categorisation capabilities. Lawyers or paralegals reviewing the documents can quickly and easily locate a sub-section of documents by running a search, then mark the documents as relevant, irrelevant, privileged, hot, etc. Functionality can extend to highlighting, annotation, and redaction features, as well as the creation of privilege logs, all with the mere click of a button.

As these tools become more common in legal document review, expect the features and functionality to expand, giving legal teams more control over their document sets, saving their clients' time and money.

Top 10 Considerations When Choosing an Online Repository

When selecting an electronic review tool, the following factors should be considered:

1. Speed – Look for a solution that enables fast document viewing. Some options transmit entire documents over the internet which can slow down the time it takes to complete the document review as teams have to wait for documents to be received. To facilitate faster transmission, the repository should send screen shots across the internet as this minimises the size of document being sent, reducing the transmission time to seconds at most.

2. Security – A secure and efficient repository solution should not transfer image file data across the internet as there is a chance of the data being unlawfully intercepted. Instead, all data should remain closely guarded at a secure facility where it is protected from unlawful access. Please note: PDFs that are password protected can still be accessed by ‘talented’ hackers. Even if documents are password protected, prudent users should avoid transmitting entire data sets across the internet.

3. Ease of Use – The repository’s graphical user interface (“GUI”) should be easy to use as this can significantly affect the logistics and management of a review exercise. If the layout has a familiar format and it is simple to navigate to the commonly used functionalities, the review should be virtually instinctive to each member of the legal team. Solutions with more complex, unfamiliar GUIs can delay and prolong the review, potentially incurring additional costs in equipment, training and staff retention.

4. Functionality - Sophisticated online review tools offer capabilities such as note-taking, highlighting, redaction, duplicate handling and more. These functions will add value to your review as they ensure all critical information is easily accessible for any further review or for a seamless production at the disclosure stage.

5. Self Administration – Be cautious of repository tools that do not provide for self administration. Certain options require the document review supervisor to call the electronic evidence expert for simple tasks such as adding new reviewer profiles, assigning or reassigning data sets, running reports, etc. Instead, the review tool should enable the manager to organise and administer the data review process without having to continuously contact the expert. As the review progresses, the manager should also be able to generate a variety of reports to monitor the progress of the review, instead of relying on external assistance.

6. All Inclusive Options – Some data repository viewers require other computer programs to be purchased and installed at each data reviewing workstation in order to operate the review tool. This may incur extra costs and time delays while additional licences and technical equipment are installed. Choose a sophisticated review tool that does not require any additional software to be downloaded. All inclusive repository packages now only require an Internet browser (usually Internet Explorer) to run the data viewer.

7. Organised File Structures – Pay careful attention to the file organisation system which houses the captured data. The review tool should not merely dump the data into one large file but should allow a manager to classify the data into logical file sets (i.e., user, date, size, etc.). This helps with the logistics and management of the review set as it enables sets to be broken up into more manageable assignments for the review team.

8. Searching – Consider the review tool’s searching capabilities. The tool should provide for sophisticated capabilities that search across the text of the email messages, metadata, and all attachments. In addition, the online tool should accelerate the review process by highlighting search terms in the document and enabling the user to quickly jump to each instance of a keyword.

9. Output – Once the review is completed, the review tool should allow for quick and easy production of the relevant documents. Pay special attention to whether the expert hands any printing duties off to a third party, which can diminish the client’s flexibility and control over the project. In addition, ensure the review tool provider/expert can transform the review database into a production database if needed. Delays may occur otherwise while different options are evaluated.

10. Privilege Searching and Log Creation - Look for a repository that offers you unparalleled assistance in the search for potentially privileged documents and the creation of an automated privilege log. This functionality will save critical time in the review and production processes. Given the increasingly high-tech communications in today’s corporate culture, litigators who embrace technology stand to gain strategic advantages for their clients. Utilising an online document review repository is one such technology tool that assists in the electronic disclosure process. Lawyers who choose to embrace this technology stand to give themselves a key competitive advantage.

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