

## Electronic Disclosure: Event Report - The First U.K. Electronic Disclosure Conference

*Kelvin McGregor-Alcorn*  
*Director, Legal Technologies*

On 24th November 2004, Kroll Ontrack hosted the first large scale Electronic Evidence Thought Leadership event in the United Kingdom. The half-day seminar, entitled "*Electronic Disclosure: Its Impact Upon Litigation in the U.K.*", was attended by over 100 legal professionals including in-house counsel and partners, associates, lawyers and litigation support specialists from a range of private practices.

United States District Court Judge Shira A. Scheindlin, one of the most prominent U.S. electronic discovery thought leaders, opened the conference with a keynote speech which discussed electronic discovery legal issues, how members of the U.S. judiciary are handling preservation and spoliation concerns, document retention protocols, and data accessibility issues. Judge Scheindlin also spoke about notable U.S. electronic discovery case law and court rules, including the landmark *Zubulake v. UBS Warburg* decisions she authored.

Following Judge Scheindlin's keynote address, Tom Hopkinson, a non-practicing solicitor and legal consultant with Kroll Ontrack, provided the attendees with an overview of e-disclosure and computer forensic concepts. Mr. Hopkinson's presentation was then followed by a panel discussion. The panel was moderated by Professor Richard Susskind OBE, advisor to the Lord Chief Justice, with Judge Scheindlin and two leading U.K. e-disclosure authors: Neil Mirchandani, a partner with Lovells, and Sanjay Bhandari, an associate with Baker & McKenzie also taking part.

The session provided both the panellists and delegates with an interactive debate on the issues surrounding preservation, proportionality and the disclosure process. A summarisation of the key points raised follows:

### Trans-Atlantic Similarities

1. U.K. legal practices may be behind the U.S. in the application of technology but there is an increasing interest to understand and address the issues surrounding it.
2. There were arguments for and against the U.K. Judiciary's acceptance of modernisation but it seems judges of varying spectrums on both sides of the Atlantic are realising the significance of electronic evidence and its potential impact on the cases brought before them.
3. Electronic disclosure is being discussed and analysed in more cases within both jurisdictions, by firms and companies of varying sizes, not just by large multi-national organisations.
4. Meet and confer strategies can significantly benefit the e-disclosure process in both countries, especially with regards to discussing proportionality issues.
5. Organisations and law firms alike fear the negative 'smoking gun' piece of evidence, yet need reminding that the crucial information could in fact be positive, thus benefiting their case.

### Jurisdictional Differences

1. Lawyers in the U.S. produce their evidence collection primarily in electronic format. In the U.K., evidence is still produced primarily in the traditional paper-based format.
2. While IP, fraud and commercial lawyers are those more technologically savvy than their professional colleagues in the U.S., those involved in the Construction and Technology Court are the ones leading the way in the U.K.
3. Technology is far more widespread in U.S. courts than U.K. courtrooms. In America, this occurs far more frequently in lower courts rather than in appellate or supreme courts.
4. Some U.K. law firm clients may actually perceive e-disclosure costs as additional to those already being charged, and anticipate the expense as being substantially greater than it may realistically be.

## Points of Clarification

1. U.K. legal professionals were of varying opinion as to the knowledge base and interest levels of those within the Judiciary regarding technology, specifically within everyday use and in courtrooms.
2. There was debate between the extent to which where the boundaries of proportionality should lay, and where the implementation of technology could in fact impact these.

The two optional discussion sessions also highlighted the disparities between both systems, with U.K. legal professionals highlighting the need to understand the full ramifications of all the aspects relating to electronic disclosure. These sessions, *Practical Applications in Electronic Disclosure* and *Online Document Review*, were attended by approximately 50 delegates of varying backgrounds. Michele Lange, a U.S. attorney with Kroll Ontrack, led the *Online Document Review* session while Tom Hopkinson and Tracey Stretton, legal consultants with Kroll Ontrack in the U.K., chaired the two *Practical Applications in Electronic Disclosure* groups. The latter of these groups focused on the key stages of an electronic disclosure project, including data collection and restoration, data filtering and processing, and data delivery.

Delegates were open to sharing their own experiences both on an individual and organisational level, including examples of their own experiences working on U.K. electronic disclosure projects and how they practically and effectively overcome electronic data obstacles. The details of these conversations are not disclosed as Chatham House Rules were applied in each discussion session to promote freedom of speech.

The feedback received from delegates following the seminar was extremely positive. This includes the responses given in the 90 completed delegate questionnaires for The Law Society's accreditation application. As a result of this feedback, the Law Society has awarded 3.0 Continuing Professional Development credits to any professional collecting them. All those receiving these credits will be contacted shortly with confirmation.

The popularity of this event, along with other e-disclosure seminars sponsored by Kroll Ontrack back in June 2004, have proven a need in the U.K. legal market for events through which legal professionals of varying background can learn, analyse and discuss electronic disclosure. As in the U.S., Kroll Ontrack continues provide seminars based on topics related to electronic evidence for the benefit of legal professionals and the market as a whole. More events similar to the ones organised in 2004 will run in 2005 with the same aim – to provide more opportunities for discussion and development within the field of electronic disclosure.

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