CORPORATE COUNSEL

3 Steps for Eliminating E-discovery Redundancy

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As anyone in the e-discovery business can tell you, in-house and external legal teams are grappling with the collection, processing and review of ever-growing data volumes, and costs that increase in parallel. In the Advice From Counsel study released by FTI Consulting last year, a majority of respondents reported seeing data volumes exceeding 20 GB per custodian in their typical e-discovery matters. *See* http://bit.ly/1ymtnPa. Most participants also expected a continued upward trend in e-discovery data volume over the next few years.

In another recent study, e-discovery managers from the Fortune 1000 specifically flagged the issue of over-collecting data and collecting duplicate data as factors driving up e-discovery costs, compounding the challenge of ever-growing data volumes. *See* http://bit.ly/1yG4obB.

In response, the use of multimatter repositories has emerged as a way to eliminate some of the data redundancy legal teams are facing. While it may not be practical to turn back the tide of data generated by employees as they go about their jobs, multimatter repositories can maximize the value derived from data the first time it travels through the e-discovery life cycle, and avoid the time and cost incurred by having the same or duplicative data travel again and again through collection, processing and review.

Multimatter Repository

A multimatter repository approach allows legal teams to reuse data across multiple, separate matters for the same corporation. And it is gaining ground—the Advice from Counsel study mentioned above reported

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that 40 percent of respondents currently reuse coding decisions made on documents from previous matters, and 80 percent indicated interest in implementing a repository that would allow data reuse in this way.

While data reuse is a very effective solution to some of today's most cumbersome e-discovery challenges, it isn't as simple as it may seem. Legal teams may think, "We've already reviewed this custodian's data, let's just keep it and use it again the next time," but the actual implementation can be a surprisingly complex undertaking. There are many different ways a multimatter repository may be set up and different requirements for how it will be used depending on the subject matter of each case, the way the case teams operate, which pieces of work product can be reused, and what limitations there may be on the data.

Companies looking to move toward this kind of approach to e-discovery need to consider how it can be facilitated in an accurate and defensible manner. The

following outlines three steps for implementing a multimatter repository to drive efficiency by leveraging the product of prior efforts, while ensuring a sound and reliable process and output.

1. Set Strategy and Rules

The legal and technology teams must devise a comprehensive set of logical rules to successfully leverage coding decisions across matters, including commitment to using consistent criteria and coding choices across the entire team. First, the team should agree on which aspects of review work product are amenable to reuse across matters (*e.g.*, privilege and "hot" coding, privilege redactions) and which are not (*e.g.*, responsiveness and issue tagging). Establishing a universal protocol for coding the reusable aspects at the outset and applying it to each matter will make the work product easily transferrable and avoid costly and time-consuming reconciliation later on.

Inevitably, there will be instances where the legal team finds that it needs to treat documents differently in different matters, even on the agreed-upon reusable aspects. The re-use rules must be constructed flexibly enough to permit authorized users to overrule prior decisions. But those tasked with choosing the rules should keep top of mind the main purpose of the system: to reduce the review burden and cost by categorically avoiding redundant efforts. They can help by configuring the review workflow in a way that complements the logical rules, to discourage unnecessary second-guessing and ensure that reviewers focus on the decisions that need to be made.

2. Prepare for Simultaneous Matters

If we were in a world in which companies faced only one matter at a time, and when they were done with that matter, they could proceed to the next matter with a clean handoff, this would be a much simpler problem to address. But that's not the world we live in, and in fact, legal teams are constantly juggling multiple competing priorities and simultaneous matters, such as multiple plaintiffs and/or regulatory actions, often involving the same data. It's a real challenge to see under what circumstances data can be repurposed across different matters when those matters are playing out simultaneously.

Propagating every coding decision immediately, even ones that may soon be changed or overruled by senior members of the review team, is likely to lead to confusion and discrepancies. Therefore, the reuse of coding decisions among live cases should be restricted by a finalization process. For example, coding may only be eligible for reuse once documents have been produced or placed on privilege logs. The legal and technology teams should think carefully about what criteria to use to validate documents as "finalized" so that their coding can be reused, and what to do if a document that is already "finalized" nonetheless is later changed (for example, due to a privilege clawback).

3. Ensure Scalability and Flexibility

A repository must have the ability to scale to store tens of millions of documents and each piece of metadata associated with them. For example, offerings built on SQL databases, the software underlying many e-discovery platforms, can store billions of rows of information when designed properly. But large multimatter repositories and all of the historical information contained within them will quickly push technical limits unless the platform is architected and implemented correctly. It is imperative to understand any limitations before choosing a system and to plan accordingly so that unexpected setbacks do not arise while multiple matters are active.

In addition to scalability, the repository should be flexible enough to handle the many configurations that various sets of matters may require. Attorneys should seek out a system that does not take a one-size-fits-all approach, as any set of related matters that would warrant a multimatter repository will undoubtedly have unique considerations and requirements.

Conclusion

For one client, our team has been building a multimatter repository for several years, as it has grown cumulatively over time. The system has been utilized for dozens of separate matters and now holds more than 10 terabytes of data and several hundred custodians' worth of e-mail. The scale of this repository has provided millions of dollars in savings from the avoided reprocessing of many terabytes of data and avoided privilege review on hundreds of thousands of documents.

In the traditional approach, each action is treated separately; collected for, processed, reviewed and produced separately. Under that paradigm we see a lot of redundancy and a huge waste in resources. For any company facing multiple plaintiff lawsuits regarding one or a series of related events, multiple shareholder lawsuits about the same event, or multiple regulatory investigations regarding the same event—essentially any time there are many separate actions regarding the same underlying facts—a multimatter repository is likely to be a responsible and cost-effective choice. Thoughtful planning at the outset, coupled with the right technology, will set legal teams up to reap significant rewards by complying with discovery demands more quickly and consistently, and by realizing potentially tremendous cost savings.

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