

O The Applied Discovery OrangePages

Electronic Discovery Newsletter

SPOTLIGHT

Applied Discovery Hits 2 Million Page Per Day Mark

This issue's Spotlight column features a Q&A with Evans Roth, Applied Discovery's Vice President of Production Services. His group is responsible for developing and executing data collection strategies, restoration of backup media, and processing client data for review with Applied Discovery's Online Review service.

The Orange Pages (TOP): Evans, we've heard that the Production Services group at Applied Discovery has had quite a year so far. Can you tell us a little bit about what you've been working on?

Evans Roth (ER): It has been a busy year for us, that's for sure. Most importantly, we've implemented a number of new technological developments in our production systems that have allowed us to significantly increase capacity for processing client data. We've also added a number of new positions to the group, including an expansion to our Quality Assurance team to maintain all our quality control checks to keep up with the faster production systems.



Evans Roth and company are processing 2 million pages a day.

TOP: When you talk about increased capacity, what kind of numbers are you referring to?

ER: Last month we passed the 110 million-page mark for client data processed in the past year. This was a significant milestone for us.

TOP: That's a lot of electronic documents.

ER: It is, and one of our Production Specialists put it this way: In the paper world, 110 million pages placed end to end would cover roughly 19,000 miles. That's almost the circumference of the earth!

TOP: Impressive numbers! So how many pages can your team process in a single day?

ER: We are currently processing roughly 2 million pages per day, with a couple of really big cases in the production line at any one time. Thanks

to the continual improvements in our processes and technologies, our systems can now handle a

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CASE LAW UPDATES

Email Messages Protected from Disclosure

Harris v. WHMC, Inc., 2002 Tex. App. LEXIS 5781, NO. 01-00-01134-CV (Texas Ct. App., 1st District, August 8, 2002).

Appellate court affirmed lower court's ruling that email messages sent between hospital employees following a surgery that resulted in the patient's death were protected from discovery by the Texas peer review and medical committee privileges. While copies of the messages obtained from the FDA under the Freedom of Information Act could be used for impeachment purposes, they were not allowed into evidence.

Email Evidence Discovered on Eve of Trial

Williams v. Saint-Gobain Corp., 2002 U.S. Dist. LEXIS 12798, No. 00-CV-0502E (W.D.N.Y. June 28, 2002).

In this Title VII age discrimination case, the court considered cross-motions for sanctions related to disputes over the discovery of electronic evidence. The plaintiff claimed that defendant's discovery responses were insufficient with regard to email communications that the defendant identified but claimed it could not produce. Defendant's original discovery responses indicated email messages that may have contained responsive information had never been printed, and were "irretrievable" in electronic form because the company had changed email systems. Then, five days before trial was scheduled to start, it came to light that a witness who was formerly a vice president at the defendant company had information on his laptop hard drive that included email from the time period in question. While the witness had copied information from the hard drive to a CD-ROM and had provided the CD-ROM to defense counsel in the initial stages of discovery, the subject emails were not contained on the disk. It was not until the emails were obtained directly from the witness' computer that they were provided to plaintiff.

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CONTACT US

No matter where you work, we have an office nearby. Our West Coast Headquarters is outside Seattle in Bellevue, Washington. Our East Coast Headquarters is in Midtown Manhattan. We also have regional offices in Houston, Chicago and Washington, D.C. You may contact your local Client Development representative as follows:

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TECH TIPS

How Many Pages in a Gigabyte?

As with so many interesting questions regarding sizes, capacities and loads, the answer is: it depends. An interesting analogy might be the following question: How many people are on the freeway? An answer would require further information. Which freeway? How long is the stretch of road? What is the time of day? How many people are in each vehicle?

There are a number of factors contributing to the analysis of how many pages are in a gigabyte. Different document types will generate very different numbers of pages per document and per gigabyte. For example, an expanded email file from Microsoft Outlook (a .pst file) could generate a relatively small number of pages (one each for every email, for instance), so the end result would be a low page count for the relatively large amount of disk space that

the file originally consumed (because the .pst file has mailbox or other system data that takes up file space but does not translate to readable information). On the other hand, a Microsoft Excel file may take up a relatively small amount of file space, but generally converts to a disproportionately large number of pages.

DOCUMENT TYPE	AVERAGE PAGES /DOC	AVERAGE PAGES /GB
 Microsoft Word files	8	64,782
 Email files	1.5	100,099
 Microsoft Excel files	50	165,791
 Lotus 1-2-3 files	55	287,317
 Microsoft PowerPoint files	14	17,552
 Text files	20	677,963
 Image files	1.4	15,477

Different document types generate different numbers of pages per document and per gigabyte.

One thing that does hold true is this: for a given document type, the average number of pages produced as compared to the size consumed by the original documents stays consistent. This table summarizes this for some common document types. So, if a client has a good understanding of the mix of the file types in the data they want processed, it is possible to provide estimates of the numbers of resulting pages.



This issue's Tech Tips column was written by Scot Fordyce, Director of Research and Development at Applied Discovery. If you have a technical issue you'd like to see addressed in this column, please contact us. ■

E-DISCOVERY RESOURCES

Applied Discovery's Web site contains a wealth of information related to the law and practice of electronic discovery. The following new White Papers are an example of the content available online. Please contact us for a complimentary copy, or view them in our online Law Library at www.applieddiscovery.com.

- **File Formats for Electronic Discovery Review: Why PDF Trumps TIFF**
A side-by-side comparison of the most common file formats utilized in electronic discovery.
- **Meta Data Matters**
The concept of meta data explained clearly and succinctly, with a description of why meta data matters in your legal work.
- **Electronic Discovery Readiness**
Developing an effective electronic discovery response plan.

Taking the Mystery Out of Electronic Discovery

Dear Miranda,

I understand the importance of electronic discovery, but some of the information out there is very confusing. All this talk about forensics and gigabytes and hard drives is enough to make a lawyer want to stick with old fashioned, paper discovery. Why is this so much more complicated than the way discovery used to be? How can I get a handle on what really matters in electronic discovery?

Christian T.
Chicago

Dear Christian,

You're not alone in feeling this way. As the field of electronic discovery has developed, there has been quite a bit of confusion about how to make sense of all the available information. Keep in mind this simple concept: discovery of electronic documents is the same as discovery of paper documents - only the storage medium for the information has changed. At Applied Discovery, we encourage our clients to approach electronic discovery in just the same way they approached traditional discovery, in the following five steps:

STEP	Then (Paper Discovery)	Now (Electronic Discovery)
① Analyze	Receive and analyze the document request; identify document custodians; determine where documents are located.	Receive and analyze the document request; identify document custodians; determine where documents are located.
② Gather	Gather paper documents from client file cabinets.	Gather electronic documents from client computers.
③ Process	Copy paper documents, and/or scan documents and OCR text; apply Bates numbers for identification.	Process electronic documents to standard file format; document ID numbers applied automatically.
④ Review	Review paper or scanned images of documents.	Review documents online with full text, meta data and original document formatting.
⑤ Produce	Produce paper or images. Privilege log produced with responsive documents.	Produce documents electronically or on paper. Privilege log produced electronically with responsive documents.

 *Miranda Glass is Educational Programs Manager at Applied Discovery. She answers questions from readers in each issue of Applied Discovery News. You can submit a question to her at miranda.glass@applieddiscovery.com. ■*

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large number of small and medium-sized projects right alongside the big cases.

TOP: What does this mean to Applied Discovery's clients?

ER: Well, it means a couple of things. First, it means we provide some pretty impressive turnaround times. Second, it means we're able to serve more clients at any given time because our systems are more scalable for different sized projects.

TOP: Thanks for all the information Evans. Who can our readers contact if they have more questions about Production Services at Applied Discovery?

ER: They can contact us at clientsolutions@applieddiscovery.com. Thanks for stopping by! ■

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The court determined there was no evidence of bad faith, and found that defendant made the emails available as soon as they were in its possession. Denying plaintiff's motion and request for sanctions, the court ordered defendant to make the complete CD-ROM available to plaintiff for further examination. The court further ordered plaintiff to produce any documentation in his possession that was generated while he worked for defendant - including emails. The court extended the discovery cutoff date to allow both parties to comply with the order.

In making its ruling, the court noted that the ultimate discovery of the subject emails meant it did not have to address the question of the appropriateness of defendant's change in email systems without taking adequate measures to ensure the availability of such information in the future.

Request for Backup Tapes Spanning Eight-Year Period is Unduly Burdensome

Byers v. Illinois State Police, 2002 U.S. Dist. LEXIS 9861, No. 99 C 8105 (N.D. Ill. June 3, 2002).

In this case alleging Title VII sex discrimination and retaliation, the court concluded that plaintiffs' request for email evidence contained on backup tapes covering an eight-year period would impose a substantial financial burden on defendant. The defendant had changed email programs during the time period in question, and claimed it did not have a way to examine email from the old system without incurring substantial expenses. Applying the marginal utility analysis for balancing the costs of electronic discovery set forth in *McPeck v. Ashcroft, 202 F.R.D. 31, 34 (D.D.C. 2001)*, the court ruled that plaintiffs would be entitled to the archived emails only if they were willing to pay for part of the cost of production. The court further held that if the plaintiffs wished to have the archived emails produced, they would have to pay the cost of licensing the old email program.

For full summaries of the cases noted above and a complete listing of cases related to the law of electronic discovery, visit our online Law Library at www.applieddiscovery.com. Our Law Library is updated monthly, and also features court rules summaries, white papers, articles and other educational materials related to electronic discovery. ■

UPCOMING EVENTS

Applied Discovery will be participating in the following events this season. Please contact us to register to attend or to request more information.

LegalTech

Hilton Hotel, New York City
Booths #108-110
September 19-20, 2002

10th Annual National Conference on Managing Electronic Records

Westin Hotel, Chicago
September 23-25, 2002

South Florida ACCA Corporate Counsel Institute

Fort Lauderdale, FL
October 1, 2002

Chicago Bar Association, Labor & Employ- ment Law Committee Meeting

Chicago Bar Association Office
October 9, 2002

Dallas-Fort Worth ACCA Meeting

Lincoln City Club, Dallas
October 17, 2002

Michigan ACCA Meeting

Detroit, MI
November 7, 2002

Glasser LegalWorks

6th Annual Electronic Discovery and Records
Management Conference
Marriott Hotel, San Francisco
December 5, 2002

**INSIDE :
ARE EMAIL MESSAGES
PROTECTED FROM
DISCLOSURE?**

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APPLIED DISCOVERY IN THE NEWS

You may have seen Applied Discovery recently in the following publications. Please contact us to request a copy of any these articles, or view them online at <http://www.applieddiscovery.com/newsEvents/ADInTheNews.asp>.

"Peering Into the Future of Deal Review:
Electronic Discovery Practices Enhance Effi-
ciency"

Texas Lawyer, August 5, 2002

"Tech Wednesday: Weekly Spotlight on
High-Tech Dealmaking"

The Daily Deal, July 31, 2002

"Digitally Blind Justice Eyes Discovery"

Investor's Business Daily, July 26, 2002

"The Future of Deal Review: For Second Re-
quests, All-Electronic Productions Will Soon
be the Norm"

Legal Times, July 15, 2002

"Seek and/or Destroy"

CFO Magazine, July 1, 2002 and July 9,
2002

