

The New World of Web-based Discovery

More attorneys, firms are turning to the Web for their research, storage needs

By Lynn Reilly & Mark Stokes

Web-based electronic discovery came to be because electronic documents are different. Unlike paper, they carry embedded information that reveals their history. They come in multiple file types. And they exist in volumes unheard of in days of paper storage. Estimates are that computer users send 9.8 billion e-mails daily. Electronic information is easily copied and shared, and incremental backups further increase duplication. To complicate matters, storage is decentralized, since most electronic information lives on individual hard drives in stand-alone PCs.

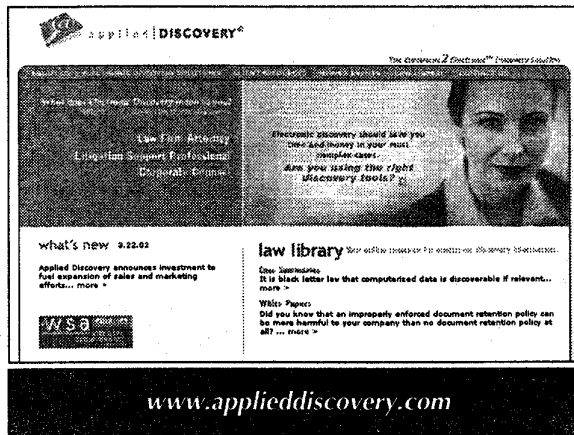
Electronic documents are also ubiquitous: Businesses now store effectively all documents electronically. As of October 2000, 99.997 percent of all new documents were created and stored electronically.

Lawyers' discovery methods had to evolve in response to this universal change in business practices. Still using outmoded and cumbersome processes optimized for paper documents, lawyers needed a new means of conducting document review and production.

The answer was a tool designed specifically for electronic rather than paper review. Now, Web-based electronic discovery services manage otherwise overwhelming volumes of data, corral decentralized documents, preserve all features of original electronic material, and make the document production process easier and more efficient than ever before.

A NEW WORLD REQUIRES NEW PRACTICES

Traditionally, lawyers reviewed all documents, including the minority that was



stored electronically, in hard copy form. Seasoned litigators remember when a document was a piece of paper, and document production meant reviewing a warehouse full of boxes, one page at a time. Eventually, the process of scanning and coding emerged to reduce the time and money spent in paper review. Paper documents were copied, scanned, and subjectively coded so that limited keyword searches could be performed. Any documents stored electronically were printed, then scanned and coded. This process was the efficient option when most documents were paper.

Now that all newly created documents are electronic, conversion from electronic form to paper and back to electronic no longer makes sense. Scanning and coding not only is costly and time consuming, but it compromises document characteristics in reducing electronic documents to paper. Meta data — the embedded data in an electronic document that shows when and by whom the document was created, sent, received, and modified — is lost. Scanned text is, on average, only 85 percent accurate. And original formatting can only be viewed as a tagged image file (TIF) image.

Keeping electronic documents elec-

tronic solves all of these problems. Original electronic files, whatever their type, are converted to portable document format (PDF) files. PDF, unlike paper or a TIF image, preserves all of the document's original characteristics. Keeping the original formatting, colors, and page orientation means that the document looks exactly like the original when it was electronically created. And — importantly for evidentiary purposes — keeping it electronic means that Meta data is preserved. File links remain intact, so that e-mail attachments, for example, cannot be overlooked or lost.

BENEFITS OF WEB-BASED DISCOVERY

What are the benefits of Web-based discovery? In short, savings in time and cost — which offer a strategic advantage and enhance client service. Using a Web-based service provider, attorneys can collaborate to carry out familiar tasks — reviewing, categorizing, annotating, Bates numbering, and redacting documents — all online.

Just as the Internet speeds any research process, Web-based discovery tools expedite document review. As the document collection process begins and data is sent to an electronic discovery service provider, documents are uploaded to a secure client database. Because millions of pages per week can be uploaded, and can be accessed incrementally, document review can begin almost immediately.

With electronic search capability, reviewing attorneys can perform keyword searches over a collection of documents, identifying the most important ones first

and eliminating time otherwise spent manually searching irrelevant material. Early identification of key documents makes the most efficient use of attorney time. Automated searching also takes human error out of the process and minimizes the time employees must divert to sorting their documents.

An added benefit is that storing discoverable evidence and document collections in a centralized database eliminates the hardware expenses of housing data locally. A Web-based service means no software seat licenses and maintenance fees — and an unlimited number of designated users have access. More costs are eliminated without the need for special IT staffing. And no billable hours are lost while attorneys learn new software.

The option of “de-duping” is one more way to reduce expenses. A document sent to multiple recipients is stored on the database only once, with all links to the document preserved. Where appropriate, this can save review time and conversion costs.

STRATEGIC ADVANTAGE

Web-based service means attorneys have access and can collaborate anytime, anywhere they have an Internet connection. Litigators can search, review, categorize, annotate, number, and redact documents all from a single interface. Meanwhile, in-house counsel can track the progress of discovery with access to the same interface that litigators are using.

With the efficiency of streamlined review comes a strategic advantage: Because key documents can be identified much more quickly, valuable attorney time need not be spent just locating the most important evidence. Rather, attorneys can quickly identify the most important documents and make informed decisions early in a case. With an easy way to grasp the body of evidence to be produced, they can better advise clients how to proceed without unnecessarily prolonging the litigation process.

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WHAT TO LOOK FOR IN A SERVICE PROVIDER

In choosing a company to handle data, consider the following:

- **Security and confidentiality.** All electronic discovery companies should have safeguards in place to protect against large-scale problems. Redundant systems, off-site backup equipment, data encryption, and firewall security are all very important.

- **Make sure the company you choose also provides adequate user verification procedures** — at a minimum, security should include a user ID/password combination. One of the most secure procedures includes a second ID token, which gives the user a key fob that works in tandem with a constantly changing access code known only to the bearer of the security token.

- **Ease of Use:** Be aware of how easy Web-based document review should be. Web-based discovery services should require less than an hour of training time. Expect a discovery tool to mimic familiar work processes. Look for a company that offers a user-friendly interface with intuitive commands and tools that allow you to search, categorize, annotate, redact, and create complex collections, all from a central screen. Make sure the program allows for complex searches.

- **Service and Support:** A service provider’s staff must understand not only how the technology works, but also how it fits into the discovery process. If you have questions, will you

be calling a technician at a call center, or a dedicated, cross-trained account manager who offers personalized service? Is personal training for every user provided at no charge? Consider also whether the company charges extra for ongoing support services, seat licenses, or other “per user” access or support fees.

GOING THE WAY OF THE DINOSAUR

Scanning and coding, created when only a minority of documents was electronic, is becoming obsolete. Now that electronic storage is everywhere, efficiency and document fidelity concerns mandate a new method of review and production. Electronic discovery tools are specifically designed for managing the volume and variety of electronic documents and preserving document characteristics that were not factors in copying paper. Web-based discovery services address these concerns while saving costs and time and providing a key strategic advantage throughout the discovery process.

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