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PRACTICE TIP

Five Ways You May Be Contributing to A Data Breach

By Charlie Magliato

While attorneys understand the importance of client confidentiality, many are less concerned about data security. This can be a serious oversight, since law firms are becoming increasingly vulnerable to security breaches. As other industries such as healthcare, financial services and the government start to recognize the dangers of security breaches and deploy more stringent security measures, the hacker community has begun to eye the legal industry as low-hanging fruit. Since law firms have been slow to adopt the newest security technology and practices, they are becoming increasingly vulnerable to attacks.

With a security breach, law firms not only hurt their relationships with clients; they may be at risk of noncompliance with regulations such as the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), as well as data privacy laws. Such noncompliance can lead to large fines, a public announcement of the breach and damage to the law firm's reputation and business-development efforts. These costs, both quantifiable

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Mind the Gap: Innovative Efforts to Improve The e-Discovery Process

By Jonathan Sachs and Benjamin Kirk

On Dec. 1, 2006, the Federal Rules of Civil Procedure were amended to address the growing complexities raised by the increased proliferation of electronically stored information (ESI). Although these amendments provided a modicum of clarity, many problems persist and more continue to arise. There is little doubt that many of these problems stem from the fact that e-discovery is primarily driven by technology, which has a natural rate of change that far outpaces the notoriously conservative legal field — a trend that some are trying to change.

While many scholars and practitioners continue to simply lament the widening gap between “ideal” e-discovery regulations and the painful realities of the current legal system, a growing minority from both the bench and bar are working hard to fill the void in a number of innovative ways.

BRIDGING THE GAP

One of the latest efforts to bridge the gap comes from the Western District of Pennsylvania. On Nov. 16, 2010, the Board of Judges approved the establishment of the Electronic Discovery Special Masters (EDSM) program to assist litigants in certain cases where e-discovery issues arise. When necessary, the court or the parties can decide to appoint an EDSM from a special pool of candidates previously approved by the court.

To qualify as an EDSM, a candidate must meet specific criteria set by the court. The court's Alternate Dispute Resolution Implementation Committee, chaired by Judge Joy Flowers Conti, developed and approved the required selection criteria, which includes active bar admission, demonstrated litigation experience (particularly with e-discovery), demonstrated training and experience with computers and technology, and mediation training and experience.

If appointed, the court will establish the scope of the EDSM's duties which may include, but are not limited to, developing protocols for the preservation,

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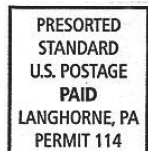
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retrieval or search of potentially relevant ESI, developing protective orders to address concerns regarding the protection of confidential information, monitoring discovery compliance and resolving discovery disputes. The EDSM may also present findings of fact or conclusions of law to the court; however these must be issued as a report and recommendation that will be subject to *de novo* review and opportunities for objection by the parties.

"The judges in the U.S. Court, Western District of Pennsylvania, have indicated that they expect the use of e-Discovery Special Masters to increase here and around the country over the years ahead," says Richard Litteri, e-discovery counsel and approved EDSM for the district, further stating that he "suspects that other jurisdictions will observe their use here and, if warranted, create similar programs of their own."

While it is still too soon to assess the effectiveness of the new EDSM program, another high profile, local e-discovery program reported significant success in the use of discovery liaisons. The Seventh Circuit Electronic Discovery Pilot Program (www.discoverypilot.com/about-us) noted in its May 2010 report on Phase One of the multi-phase program that the participating judges "overwhelmingly felt" the program had a positive effect on the test cases, and "[i]n particular, the judges felt that the involvement of e-discovery liaisons required by [the program] contributes to a more efficient discovery process."

Jonathan Sachs is a manager of Legal Technologies Consulting for Kroll Ontrack, where he consults with clients to integrate electronic discovery best practices into case strategy. **Benjamin Kirk** is lead law clerk for Kroll Ontrack, where he tracks the evolving common and statutory law in the areas of corporate information management, electronic discovery and computer forensics.

Courts are not the only actors pushing for e-discovery liaisons. In Alabama, two practitioners have co-founded the American College of e-Neutrals (ACESIN) (www.acesin.com) — a new e-discovery liaison program with a novel twist. Recognizing that many of the e-discovery challenges stem from not only a lack of education, but a lack of cooperation as well, ACESIN believes "e-Mediations" are the key. Like a special master, certified e-Neutral Fellows possess special e-discovery expertise that allows them to assist parties in conducting an efficient and cost-effective e-discovery process. Unlike special masters, however, e-Neutral Fellows specifically provide this service from an alternative dispute resolution (ADR) standpoint. The process, referred to as "e-Mediation," blends the skill set of an e-discovery liaison with that of a mediator in order to facilitate a cooperation-based e-discovery process. Prospective e-Neutrals can become an e-Neutral Fellow by applying to ACESIN. Those in need of additional training in order to meet the e-Neutral qualifications can also attend a training course periodically offered by the organization.

Efforts like the EDSM program and ACESIN e-Neutrals, though still unproven, are encouraging and their premise is supported by positive findings from the Seventh Circuit's Pilot Program. These programs reinforce the notion that significant portions of problems in the e-discovery process stem from a general lack of knowledge, which e-discovery liaisons can provide until the bench and bar at large catch up. In that same vein, however, the liaison programs evince a deeper, systemic problem that needs to be addressed — the need for e-discovery education in the legal community.

CLOSING THE GAP

The reality is that e-discovery is a rapidly growing body of law that demands its own attention. For obvious reasons, no attorney would represent a client in an area of law without possessing the requisite

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Increasing Speed And Confidence In Second Request Responses with New Technologies

By David J. Laing

Responding to Hart-Scott-Rodino Act Requests for Additional Information and Documentary Materials (more commonly known as “Second Requests”) presents substantial challenges in assembling a comprehensive and complete production of requested information and documents from company archives. The schedule is always limited, and the results must always be defensible against government challenge that the Second Request response is inadequate. Moving Second Request document productions forward rapidly, without sacrificing quality, can determine the success of the transaction.

Recently, while helping a client complete its Second Request response, Baker & McKenzie deployed predictive coding technology. Predictive coding, or document prioritization, is a process by which, using direction from as few as one attorney reviewing documents, software is able to apply that direction across an entire corpus of documents, coding a large body of documents at a fraction of the time and cost of individual document review. Baker deployed this technology to leverage the knowledge of its legal team and to decrease the time required to select documents for production in response to a U.S. Department of Justice (DOJ) Second Request. Results of this work not only helped

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the client complete its transaction on schedule, but also provided a model for future work on similar projects.

THE CHALLENGE

In response to a Second Request from DOJ, the client collected approximately 650 gigabytes of electronically stored information (ESI), estimated to be more than 3 million documents that contained potentially responsive documents and information. Unlike some litigation matters, neither the DOJ nor the client believed that significant information would be obtained through forensic analysis of deleted files, file fragments and slack space; the key objective was a comprehensive review of potentially responsive, readily available active data.

Baker retained Epiq Systems to process and host this ESI. In addition to conventional filters for culling out system and binary files, Epiq helped cull information in other, more nuanced, ways. Epiq worked with the Baker legal team to identify and remove “junk” e-mail messages from domains like Ebay.com and espn.com that could be attacked as a group. Epiq’s consultants found additional patterns of “junk identification” to further reduce the volume of documents requiring review. Even with these techniques, Baker was left with more than two million documents that required substantive review with an eight-week deadline.

In coordination with counsel representing the other party in the transaction, Baker, representing the purchaser and the much larger of the two companies, began document review using traditional methods to identify documents of greater potential relevance. A review team comprising 60 lawyers focused first on documents and e-mail messages harvested from specific corporate employees and used a variety of keyword searches to lasso documents of initial interest. Epiq also used near-duplicate identification and e-mail threading solutions to group substantially similar and related documents, so that relevance determinations could be applied to

larger chains of documents as appropriate. The near-duplication and threading technology employed is a product of Equivio, an e-discovery applications provider.

DEPLOYING PREDICTIVE CODING TO SPEED REVIEW

Even with the best efforts of legal teams in the proposed transaction, it became clear that it would be not be possible to complete review of the two disparate document collections within the schedule. To help complete the project within its original timeframe, Epiq suggested deploying its Equivio-based predictive relevance application called IQ Review™. Because Epiq was already hosting the documents, this technology could be quickly applied to all remaining documents without sacrificing the prior work product. In addition, the ongoing review could still continue, even as batches of documents were assembled through IQ Review.

Though classification technology has been available in other industries since the 1990s, predictive coding has only recently become both affordable and accessible in the e-discovery space. Acceptance of predictive coding for use in litigation has grown tremendously in the past year. Empirical testing, such as the National Institute of Standards and Technology’s TREC Legal Track study, has demonstrated that these tools have matched if not exceeded traditional all-human subjective document review efforts to consistently identify relevant documents, while excluding irrelevant materials from review. In addition, federal district court judges have been noting the limitations of keyword and traditional linear document for some time, and are becoming increasingly active about asking litigants whether they are taking advantage of these new tools. (See, e.g., *Disability Rights Council of Greater*

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Second Request

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Washington v. Washington Metropolitan Transit Authority, 242 F.R.D. 139 (D.D.C. 2007) (“I bring to the parties’ attention recent scholarship that argues that concept searching, as opposed to keyword searching, is more efficient and more likely to produce the most comprehensive results.”))

In this case, with 750,000 documents remaining and a very tight schedule, IQ Review offered a compelling alternative to adding yet more human document reviewers (who would not have had prior experience with this matter) and authorizing yet more overtime. Implementation of the predictive coding technology was straightforward: a senior attorney with thorough knowledge of the nuances of the case reviewed small batches of sample documents, rating them as responsive or not responsive. After each batch, the Equivio>Relevance engine behind IQ Review compared the expert’s classifications with its own predictions, while constantly tuning its ability to assess document relevance for the case. When it found that it could learn nothing more from the document collection, the system terminated the training process, and applied its analysis to the entire document collection. In this case, approximately 40 sample batches of documents were required to achieve analytical stability — approximately 10 hours of attorney time. This relatively small time investment provided valuable insight into the collection.

RESULTS OF PREDICTIVE CODING

Of the remaining 750,000 documents, only a small percentage (about 20%) received a high relevance score by the predictive coding engine. The majority of the documents, about 60% of the total remaining volume, received a very low score, suggesting that they were highly unlikely to be relevant. Documents between the very high and very low scoring clusters — approximately 20% of the remaining

documents — were less likely to be substantively responsive to DOJ’s information requests, but some of them would likely be relevant based on a technical reading of DOJ’s information requests. These results were consistent with those that the 60-attorney review team had obtained on the standard document-by-document review.

Based on this analysis, the review team moved forward on three separate tracks. Reviewing documents with the highest Equivio>Relevance scores quickly proved them to have near-universal relevance to the DOJ requests. Every document in that top grouping was included in the production to DOJ. Documents in the median cluster that had substantially lower Equivio>Relevance scores were individually reviewed, though only relatively few documents were ultimately selected for production from that batch of material. For the lowest ranked documents, two separate methods were used to probe for potentially relevant materials. First, a variety of keyword search terms were used to look for any mention of these terms. Second, every 500th document in this subset was individually reviewed by a member of the review team. These two processes provided a quality-control verification of the predictive coding technology’s results. Neither approach identified any responsive documents for production, and these materials were set aside.

Based on the predictive coding results, a large number of potentially relevant documents were defensibly excluded from time-consuming individual review. This permitted the team to focus on those documents that had a much greater likelihood of actual relevance and enabling the completion of the review on time and with substantially less effort than had been spent reviewing documents without the predictive coding ranking. Using predictive coding, review of the final 35% of the document collection took only about 10% of the total project time. The final 35% of the project incurred approximately 5% of the total proj-

ect costs. Even with initial system training and substantial quality control throughout the review, the teams estimated that the review could have been completed in less than half the time required by standard document review had predictive coding been applied from the outset of the project.

Post-project review also determined that predictive coding had provided noticeably greater consistency in document classification. While quality control auditing of the “traditional review” portion of the document review found significant variability between the relevance determinations made by the 60 attorneys on the review team, documents organized through IQ Review were much more likely to be grouped consistently.

CONCLUSION

The final measure of a company’s Second Request response is how it is received by the inquiring government entity. Stakes were high, as this transaction relied upon predictive coding technology to cull voluminous ESI that otherwise could not have been meaningfully reviewed in the time permitted to prepare responses. Based on its review of the materials provided, the DOJ raised no issues as to the sufficiency of the document production from either party, and it sought no additional evidentiary materials. Even more importantly, after receiving all comprehensive information about the proposed transaction, including much more than the Second Request materials, the DOJ made no material objections, and the transaction successfully closed as planned. While it is possible that the DOJ would have reached the same conclusion even if it had received a less comprehensive submission from the parties, the use of predictive coding

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Worldox Takes Center Stage at Calfee with GX2 and Productivity Suite Upgrade

By Russ Mazzaro and Susan Zavesky

Technology at a law firm is the invisible hand that processes data and documents to facilitate the legal work of attorneys and staff. However, At Calfee Halter & Griswold LLP, a 300+ employee firm based in Cleveland, technology sometimes takes center stage, especially when the firm depends heavily on it to serve our clients thoroughly and effectively.

For the past 13 years, our firm has used the Worldox Document Management System (DMS) from World Software Corporation. Worldox manages our documents and e-mails with a profiling system, search capability, version control and Outlook integration. Over the years, Worldox has become very popular at our firm.

In December 2010, we introduced the Worldox iPad Application to our user base and it was well received. With Worldox's reputation further fortified at the firm, the technology committee was receptive to hearing about what else Worldox could do for us in 2011.

In early 2011, we began planning to move offices, prompting us to take stock of all our technology. We were running Windows XP and Office 2007 and could have stayed on Worldox GX, but GX2 included a feature called "Workspaces" which would help us supplement our author-based profiling system, thereby helping lawyers and staff to organize and find documents more readily. Thus, we began to build the case internally for upgrading to GX2.

Russ Mazzaro is IT Director at Calfee Halter & Griswold LLP. **Susan Zavesky** is the firm's User Services Manager.

In addition, World Software was in the final stages of developing its Worldox Productivity Suite, a comprehensive workflow toolbox that would allow us to collaborate and manage projects more effectively. Realizing it would be an ambitious undertaking, but confident that our IT resources and Worldox tech support would see us through it successfully, we decided to upgrade to Worldox GX2 and install the Productivity Suite at the same time.

After careful consideration, our technology committee approved these projects and we forged ahead. As our firm is an early adopter of the Productivity Suite, World Software's engineers helped us with the implementation and its team of developers was closely involved to monitor product improvement requests.

WORLDOX PRODUCTIVITY SUITE

The Worldox Productivity Suite for a firm Calfee's size has four main components: Workflow, Audit Notifier, Task Reminder and Chat/IM. We also had the option to purchase both Document Comparison and PDF Conversion modules from DocsCorp, a Worldox partner, at a discounted price. Initially, we decided to install the Workflow and Task modules and table the Audit Notifier and Chat/IM tools for deployment at a future date. We already used a Workshare product for the document comparison and a PDF tool so we didn't need to buy the add-on modules. (Note: For firms with less than 25 users, the DocsCorp comparison and PDF tools are included in the price of the Worldox Productivity Suite.)

From a planning perspective, World Software was going to help us with the installation itself, but our first area of focus was on hardware. Worldox requires indexer machines to catalog profiles and text, and we had been using PC-class machines up until that point. However, our hardware was somewhat underpowered for what we really needed to support Worldox GX2 and the Productivity Suite, so we decided to upgrade to more powerful machines for indexing.

Our two Worldox GX indexers were three-year-old desktop-class XP boxes with only 1 GB of memory, and one of them had a faulty hard drive. We prepared two five-year-old, rack-mounted, server-class machines as our new indexers. Worldox indexers don't have to be brand new, state-of-the-art machines, but they need to have adequate memory and processing power to handle the data load they are assigned to index. World Software tech support helped us to make some refinements to Calfee's indexer technology; adjusting our full-text logic to work better and correcting some field table import issues.

WORLDOX GX2 UPGRADE

Our usual protocol in preparation for an upgrade implementation is to fully test the product, review the release notes, test out third-party tools and integrations, and then develop a Calfee-specific training guide. Prior to the upgrade, we set up a live installation of GX2, customized it to suit our unique requirements, and then applied the alterations to this live testing environment.

Once the planning and testing were completed, our Worldox GX2 upgrade was completed overnight — literally; it was done in 24 hours after World Software had helped us on-site and remotely for the week before the cutover. Fortunately, GX2 caused no negative impact to the firm. The mirroring process, in which tables are copied to the users' hard drives for redundancy, took a bit longer than with GX, but the enhancements definitely exceeded the drawbacks.

One issue that required some time was purging old author codes of obsolete users who had left the firm. Our Worldox User list contained a lot of inactive users so we had to

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Worldox

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clean out the system. We also needed to make sure that all active users had a proper e-mail address defined, as many of the new GX2 features are e-mail based.

Since Worldox already had a strong following at our firm, we were not met with a huge amount of resistance to Worldox GX2 or the Productivity Suite. We scheduled focus groups to determine the most impactful features that would capture users' attention, and will continue to introduce new modules over time.

By far, the most heralded feature of GX2 is Workspaces, which allows us to select document types and move files into a specific folder. Our lawyers and paralegals love this feature because it extends their ability to organize and search for documents, and also helps them track versions. Users like the multiple document-

previewing tab, the longer description field (which expanded naming capacity from 60 to 120 characters), and improved navigation and simplified searching.

Worldox GX2 Workspaces allows users to group or link selected documents for a specific purpose, irrespective of profile status. It also enables any user that has been granted access to a project to modify both the project and the documents without changing profile status. Workspaces provides fast and easy access to just the most important documents in a client or matter folder without changing or altering the documents' location.

Our employees also really like the new audio feedback in GX2, which makes a noise when they click on something. Those who do not like it can turn it off, but most users appreciate that their click is validated by an audible response from Worldox. GX2 allows us to use other sources to store Worldox documents and

files. We plan to leverage this feature for our archiving plan. We will be moving documents into a document retention system shortly.

OVERALL RESPONSE

Calfee's lawyers and staff responded positively to the Productivity Suite and Worldox GX2. The Productivity Suite's Workflow module makes it easier for lawyers to track the progress of their projects. It helps us consolidate, and not duplicate, our efforts. The Worldox GX2 upgrade introduced new features without causing a shock to our system. There was very little wear and tear on IT as a result of these installations.

Worldox continues to be a linchpin of our firm's daily operations. Now that we have the Productivity Suite and GX2 installed, our users are more productive than ever.



Data Breach

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and non-quantifiable, can be enormous. Compared to the potential consequences of a data breach, the costs of actually implementing policies and technology to protect confidential client and personally identifiable data is trivial.

Breaches can be caused by extremely sophisticated hackers using cutting-edge technology, but many law firms also make very basic mistakes that leave them vulnerable. In order to avoid financial and reputational damage, you and your firm need to understand and mitigate five everyday practices that can cause data breaches.

Charlie Magliato, Legal Program Director of Biscom, has more than 30 years of experience in application development, IT project management, business development and channel and direct sales. His most recent experience involves managing business development and strategic alliances for two industry-leading managed file transfer solution providers.

NUMBER 1: HITTING SEND

e-Mail has become so seamlessly integrated in our communications and business activities that we hardly notice we're using it, even when exchanging matter-related documents with clients. Many attorneys have also begun using e-mail as the *de facto* method for archiving the delivery of these documents.

However, e-mail can be one of the leading ways to compromise client and matter information. You must always remember that you cannot ensure that the recipient of your e-mail practices the same level of security that your law firm does. And there are always chinks in the armor, no matter who is hitting send.

Here are some of the top ways that e-mail can leave you open to risk:

- **Non-encrypted content.** If your e-mail is intercepted by an unintended recipient, that person can easily access and read it.
- **Unintended recipients.** This can stem from something as simple as entering the wrong e-mail address. Or, you may send it to the correct recipient, who

then forwards your e-mail on to an unauthorized individual. Another possibility is that you may send an e-mail to someone who is no longer with the organization, and your e-mail is automatically forwarded to someone at the company who is not authorized to view the information. If you have ever sent an e-mail to an unintended recipient, then you know the odds of successfully recalling it are little to none.

- **Returned e-mails due to oversized attachments.** This may not seem like a big security hazard, however as e-mail attachment sizes grow, the potential for undeliverable e-mails because of the recipient's mailbox size limits increases. This can be a serious problem when sending time-sensitive documents. It's also a productivity drain, as you and your IT staff waste valuable time looking for alternative delivery options. Along with the hassle, though, it opens the door to security breaches.

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Data Breach

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NUMBER 2: FTP SITES

We've all encountered this scenario: Your client wants a document *now*, so you need to get it into his hands five minutes ago. When you e-mail it, you receive the dreaded bounce-back message that reads something like, "Message size exceeds fixed maximum size." e-Mailing the document won't work and you are faced with several undesirable options. You can separate the document into multiple parts, sending it through multiple e-mails. This is tedious, time-consuming and prone to errors. It also creates the perception that your firm is a technology laggard.

Or, you can turn to other alternatives. One of the most popular fall-backs is an FTP site. FTP sites have been around for 30 years, but in some people's eyes they aren't any more user-friendly now than the day they were created. These sites require a great deal of hands-on work to ensure that data remains confidential at each stage of the process. If they aren't properly maintained, FTP sites can contribute to security concerns such as:

- **Unsecure transfers.** The number of rogue FTP sites in law firms is mind-boggling. Most of these sites are freeware that do not encrypt data transfers. This opens the door for data breaches.
- **Pressuring IT for a fast solution.** If your firm doesn't have an organization-wide FTP site or you don't have access to it, you may be tempted to put the IT staff under the gun to create a one-off site ASAP. With an attorney breathing down its neck, IT may race to create a site that is functional but not totally secure.
- **Unrestricted access.** IT must spend a great deal of effort and administrative time securing FTP sites, creating external user accounts and setting permissions to prohibit access by unauthorized external parties. When racing against the clock, attorneys may be tempted to

upload documents to public folders and not set user permissions or go through IT. Even restricting access based on the recipient's information isn't 100% foolproof with an FTP site. This leaves you and your firm vulnerable to hackers.

NUMBER 3: HOSTED FILE TRANSFER SERVICES

If you don't have an FTP site or decide not to use it, you still need to get that enormous file to the client. IT may not be immediately available to offer suggestions or help, so you may turn to a variety of online sites that allow you to upload files and share them with other parties. The

FTP sites have been around for 30 years, but in some people's eyes they aren't any more user-friendly now than the day they were created.

big risk here is the level of security measures imposed at the service provider's data centers. Uploads and downloads may not be encrypted. Data may not be encrypted on the provider's servers. The provider's employees may have access to the data. Most importantly, the provider may not have adequate user authentication measures to protect against unauthorized access.

Recently, serious issues have been identified with several of these hosted file transfer services. Studies have found that these sites are particularly vulnerable to hackers who use an approach called "dumpster diving," which randomly accesses sequentially incremented URLs to hack into these sites with impunity. Since these sites are so easy for non-technical people to use, law firms should be concerned that staff and attorneys will register and upload files without the knowledge or sanction of IT.

NUMBER 4: PHYSICAL MEDIA

While e-mail and Internet options are the go-to choices for many attorneys, many others still rely on copying documents and files to physical media. This tends to be the

preferred practice of litigation and practice support teams that need to transfer large volumes of files to support discovery requests.

In a pinch, attorneys and staff will burn a DVD or copy files to a USB stick as a way to overcome e-mail size restrictions. The risks with this approach are obvious. In addition to the time involved along with the expense of courier services and overnight delivery, in most cases the data is not encrypted. This leaves the data susceptible if the DVD or USB stick is lost or stolen.

NUMBER 5: FAXES

Along with DVDs and USB sticks, many law firms also rely on faxes to transmit documents. The traditional method of sending faxes to a recipient's fax machine has obvious security implications. If the faxes you send are not immediately retrieved from the fax machine, the risk of an unintended recipient picking them up increases.

Today, most faxes are sent electronically, which converts traditional faxes into an electronic format that can be accessed via a computer. Rather than relying on a physical device to receive your fax and transfer it to paper as a traditional fax machine does, electronic faxing typically delivers the document to the recipient as an e-mail. Most law firms use a hosted service for electronic faxing, meaning you pay a third-party service provider to convert your faxes to files. Many of these services deliver the fax unencrypted over unsecure networks, which raises the same security concerns as delivering documents via unsecure e-mail. If you are considering a hosted fax service, check that the service encrypts transfers.

CONCLUSION

Hackers can get to your data through the most mundane and everyday processes. These data breaches open your firm up to large fines and substantial dents in the firm's reputation and client base. By systematically tackling these weak links, you can significantly minimize the chance of a security breach.

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e-Discovery

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knowledge — and the same logic applies to e-discovery. Yet, rising discovery costs and the number of cases involving sanctions have directly corresponded over the past three years. It is becoming increasingly clear that before real improvement in the e-discovery process can be made, law firms, individual litigators and even judges must begin to invest in themselves by embracing some form of e-discovery education.

Law schools are arguably in the best position to address the e-discovery knowledge gap, but most have been surprisingly reluctant to answer the call. In the meantime, innovators from every corner of the e-discovery world have begun providing opportunities for serious education designed to fit the needs of any practitioner.

One of the newest e-discovery education programs is the E-Discovery Team Training Program (<https://www.e-discoveryteamtraining.com>), founded by practitioner and e-discovery expert Ralph Losey. The program is comprised of 62 classes and is an extension of a course originally designed by Losey for law students at the University of Florida, but is now available online to any registered subscriber. The comprehensive, in-depth coursework takes anywhere from 50 to 400 hours to complete and is taught by Losey, with addi-

tional materials and commentary provided by industry experts and leading e-discovery judges, including Judge Shira Scheindlin from the Southern District of New York, Judge Paul Grimm from the District of Maryland and Judge John Facciola from the District of Columbia.

For practitioners seeking a shorter, more basic education, various professional organizations and service providers offer less intensive e-discovery certification courses. In order to meet the demand for a more verifiable level of education, many of these programs are now offering standardized certification exams or advanced courses.

The Association of Certified E-Discovery Specialists® (<http://aceds.org>), an independent membership association, now offers a multiple-choice exam that addresses 15 subject matter areas, including information management, ethics, collection, processing, document review and international discovery. Other professional organizations offering similar programs include the Organization of Legal Professionals (OLP) (www.theolp.org) and the Association of Litigation Support Professionals (ALSP) (www.alsponline.org). OLP now offers a Certified eDiscovery Professional (CeDP®) certification exam that was developed over 18 months with the assistance of industry professionals, consultants and law professors. Although the ALSP certification exam is still in

development, it is reported to cover a spectrum of topics beyond just e-discovery, and will purportedly “signify that an individual has demonstrated the knowledge and skills required to perform competently in today’s complex litigation support environment.”

The Sedona Conference®, a well-known thought leader in e-discovery, offers continuing legal education courses through its non-profit extension, The Sedona Conference Institute (TSCI) (www.thosedonaconference.org/tsci_html). Since 2006, TSCI has offered a series of CLE courses from locations around the U.S. The courses are offered in one or two-day advanced courses with material based upon the popular and heavily cited Working Group Series.

CONCLUSION

e-Discovery no doubt continues to challenge and frustrate the legal field. But, as this burgeoning area of law continues to evolve at a rapid rate, practitioners must evolve with it, adapting to address the increasing complexities and challenges associated with e-discovery. Whether through judicial efforts aimed at bridging the knowledge gap or through comprehensive e-discovery education designed to close it, practitioners everywhere must begin working to improve their own e-discovery education in order to best advocate for their clients.



Second Request

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to identify materials responsive to the government’s Second Request greatly increased the parties’ confidence in the quality of their submission and also substantially reduced the overall cost of this component of the transaction.

Neither the DOJ nor the Federal Trade Commission have expressly accepted or endorsed the use of predictive coding for Second Re-

quest document responses. The agencies have asserted their ability to approve keyword search terms for the identification, and limitation, of documents extracted from a company’s ESI systems. Once extracted, the identification of responsive documents is a privileged process that the agencies do not have the right to approve, whether that process is individual document review, keyword searching or predictive technology. As more courts recognize that “concept searching, as opposed to key-

word searching, is more efficient and more likely to produce the most comprehensive results,” the antitrust agencies should also recognize the increased accuracy and comprehensiveness provided by predictive coding technologies.



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