

## Review & Analysis

### 1. INTRODUCTION

- 1.1 There are two key decisions to make at the review and analysis stage of e-disclosure – who will undertake the review and what software you will use to do it. The type of software you use, the size and composition of your review team, and the degree of review carried out will all depend on the circumstances of the case and the agreements made with the other party.

### 2. SOFTWARE

- 2.1 Although the decision about which software to use will have been made at an earlier stage, it is important to make that decision with the review process in mind as certain tools may be better suited for the particular features of your case than others (depending on the number of documents, the types of document and the issues being considered in the review).

- 2.2 Some of the key tools that can be used during the review phase include:

- 2.2.1 Searching/ Keywords:** enables the reviewer to search all documents for specific terms. All products support the use of Boolean logic (i.e the use of AND, OR, NOT to define the search).

*Example provided by Recommind's Axcelerate product.*

- 2.2.2 Hit highlighting:** identifies the search term in the body of the document and enables the reviewer to move easily between each occurrence of the term.

*Example provided by eDiscovery Tools.*

- 2.2.3 Logic rules:** can be set up to minimise risk of documents being tagged incorrectly by reviewers.

*Example provided by Kroll.*

- 2.2.4 Email threading:** gives the reviewer a picture of the entire chain of correspondence including the final email and all branches.

*Example provided by Recommind's Axcelerate and eDiscovery Tools.*

- 2.2.5 Email visualisations:** shows patterns in email traffic over time. The most important visualisation is the ability to recreate an inbox view – not many software tools can do this.

*Example provided by Nuix and Axcelerate.*

- 2.2.6 Near duplicates:** identifies documents that are similar to a chosen document and rates them by degree of similarity.

*Example provided by Kroll.*

- 2.2.7 Audio searching:** enables digital recordings to be searched in a similar fashion to text.

*Example provided by Kroll, using an embedded version of a programme called Nexidia.*

- 2.2.8 Automatic translation: provides a “Google Translate” type functionality for instant translation. Not good enough for use in Court but enables a reviewer to get a feel for the document.

*Example provided by Axcelerate.*

*Most providers offer similar tools to those shown in the examples, however, the degree of sophistication of the tools varies between products. If a particular tool is likely to be useful for your review you should check with different providers to find the version of that tool that best suits your review.*

### **3. PEOPLE**

- 3.1 Once the review team has been established, it is necessary to provide your team with clear instructions as to what is expected of them. Each review will be different – the Protocol contemplates the parties agreeing to the extent of the review so it may not be necessary to review all documents prior to exchange.

- 3.2 However, it is often during the review phase that problems arise:

3.2.1 A client providing data in a disorganised manner meaning the review starts and stops, slowing the process and resulting in additional costs;

3.2.2 Client involvement in determining relevance;

3.2.3 Foreign language documents which slow the review process and result in additional cost;

3.2.4 Failure to coherently devise and apply redaction or ciphering rules (a cipher can be used to replace all instances of a name or word with a code throughout a document set (i.e replacing “Mr Smith” with “Mr X”)) – this can be used where the disclosure of an individual’s identity could breach data protection laws;

3.2.5 Difficulties for reviewers in assessing relevance of technical documents;

3.2.6 Privilege.

- 3.3 The involvement of senior lawyers in disclosure is unavoidable – instructing reviewers, answering reviewers’ questions, deciding on issues of privilege, setting the rules for tagging documents – and there is a cost for that involvement, one which clients are not always happy to pay. However, as a lawyer, it is necessary to remember that your duty to the Court comes before your duty to your client and you must understand (and ensure that your reviewers understand) the law as it relates to privilege and a lawyer’s duties during disclosure.

*CMCS Common Market Commercial Services AVV v Taylor [2011] EWHC 324 (Ch)*