The Regulatory Impact on eDiscovery for Corporations and Government

Addressing Data Collaboration and Review Issues in Data-Intensive Legal and Regulatory Matters

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The

explosive growth in electronic information has changed the way we do business and how government investigations and legal matters are managed.

Email is now the leading form of communication, and the amount of data generated electronically has led to entire industries developing specifically to handle digital storage needs. This proliferation of electronic information has impacted how organizations manage both data as well as legal matters. Government investigations and the overall legal process have become increasingly complex, with the need to examine huge volumes of information as well as address the issue of data residing at multiple sites across several remote locations.

During the legal process, there is a host of critical factors that may come into play, from security to collaboration and viewing mass quantities of disparate data to the need for multiple parties to share access to data sets. This white paper will identify challenges in the legal process that affect multi-party litigations having to manage data across multiple locations and platforms. It will share examples of how a single, universal platform can be used to resolve many of the complexities resulting from the exponential growth of electronic information.

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At a high-level, what are the key challenges and considerations that must be addressed in the legal process for both litigation and government investigations? There are three primary areas to consider: **1)** the need to view large volumes of disparate data in a common format to gain a global understanding of the large issues; **2)** the ability to retain information both in structured and unstructured formats over extended periods that may include both federal agency investigations as well as criminal or civil litigation that can possibly extend for years; and **3)** security and collaboration protocols that enable shared viewing and analysis of data among disparate groups across multiple locations both nationally and internationally.

Born Digital

Over the past 15 years, a revolution has taken place. Technology advances have completely reshaped the way people and organizations communicate. Where once there were letters and interoffice memos, now email is the dominant form of communication. Paper files could either be stored or discarded (thrown away or shredded), whereas email lends itself to increasingly complex internal foldering systems where the vast majority of incoming messages are now electronically sorted, filed, and retained over time.

Data Proliferation

This fundamental change in communication means that the amount of data an organization stores has increased exponentially. This has direct ramifications for the legal process, as discovery of electronic information has become an industry unto itself, addressing the complex and costly process of culling down huge volumes of information to the actual responsive subset needed for discovery review.

Whereas the legal process once began with a few dozen bankers boxes worth of paper files to be reviewed, it is now common to begin identifying potentially responsive data that reaches petaybtes of information. Electronically stored information was officially recognized in the 2006 updates to the Federal Rules of Civil Procedure, and the legal process is still working five years later to catch up with the ramifications. Financial data alone can encompass hundreds of lines of data in spreadsheets, and email collections focus on “custodians” (people involved in a case or from whom data has been collected) and message threads across departments and office branch locations.

The result of this data proliferation is that the time and cost needed to identify, collect, and process information for the early stages of litigation have grown along with data sizes. Electronic discovery has become a multibillion-dollar industry and the growth of multinational organizations spread across dozens of offices around the globe ensures that this trend will only continue. The volume of data created in the course of everyday business is predicted to grow.

Legal Process Complexities

Growth in the volumes of information that is potentially relevant in the legal process has created additional costs and extended the timeframe for processing data, but most importantly, it has created serious logistic challenges to develop and execute strategies in litigation, government investigations, and other legal matters. Once upon a time, paper documents were the primary focus of legal discovery; documents came in different sizes but were essentially homogenous. Now, the number of different formats for discoverable data is nearly endless.

With the growth in multi-party litigation, the number of different law firms and corporate clients in any given matter can easily reach double digits. Email alone can create huge complexities when you have corporations using varying platforms ranging from Microsoft Exchange to Lotus Notes to Gmail. Corporations also develop databases using vastly different software platforms from commercial offerings such as ACT or Salesforce down to home-grown SQL-based databases. Add in the security and privacy concerns about moving data from corporate data centers and you have a jumble consisting of dozens of parties across multiple locations domestically and internationally, all trying to collaborate and examine data that exists in multiple formats. This does not even consider the potential need to re-use data as in the case of government investigations that lead to civil and/or criminal litigation. In many cases, variations on one original data pool may be used in multiple legal matters, creating the need for repositories that can store both data as well as legal notations about that data.

In light of these concerns raised by the technology-enabled growth in electronically created and stored information, some examples can be presented by looking at how many of these issues can be addressed. The remainder of this white paper looks at how multi-party matters can be addressed in a functionally practical manner through the use of a single, secure platform. This cloud-based platform

provides collaborative capabilities for tens, up to hundreds, of personnel spread across locations regionally, nationally, internationally, and even extra-terrestrially to reduce logistic challenges and other complexities inherent in the current legal discovery process.

Practical Examples of Collaborative Database Review

Enron Case

In 2002, litigation involving Enron changed the way that discovery was conducted and put a new focus on discovery vendors and the tools they offered. This represented a fundamental change in the legal landscape and established the value of discovery product and service providers as standalone entities. On September 26, 2002, the United States District Court for the Southern District of Texas (Houston Division) presiding over the Enron litigation named iCONECT as the document depository to be used for the case by all parties involved.

> "IT IS ORDERED that effective immediately, the following guidelines shall govern the establishment and operation of the Document Depository (the 'Depository')…shall be utilized to (i) establish a uniform method of identifying and producing documents for use in all Enron-Related Proceedings (hereinafter defined); (ii) minimize duplication of production efforts by requesting and producing parties; (iii) ensure the continued existence of relevant documents; and (iv) reduce the aggregate cost of producing and maintaining documents…All Designated Parties will participate using iCONECT, a document storage and online retrieval service that has been purchased for this case."

The Enron litigation, beginning in 2002, represented the largest corporate accounting fraud ever perpetrated and would involve managing more than 30 million documents, financial transactions and emails that would be used to serve both the plaintiffs and defendants in the securities and civil litigation against both Enron and the Arthur Andersen accounting firm.

The Enron case involved a complex government investigation followed by criminal and civil litigation using the same underlying data pool and requiring consistent data management across the entire case by having multi-party review litigation in a single review platform. Documentation for this case exceeded 150 million pages, the first case of this size and magnitude, creating tremendous logistics challenges. Through the iCONECT platform, 320 different attorneys representing 85 law firms across multiple locations were able to review and collaborate on legal strategy and analysis for this case.

Data for this case was physically hosted in Phoenix, AZ and involved large volumes of paper documents that were to be scanned into electronic format. The data hosted within this platform included complex electronic documents, spreadsheets, financial reports, as well as more than 1.3 million emails (the first ever massive email collection of this magnitude).

In addition to early stage discovery and review, the Enron data within the iCONECT platform was also linked directly into SANCTION®, feeding data directly into it to develop trial exhibits.

Government MEGA Automated Litigation Support System

Around the same time the Enron case was bubbling to the surface, the federal government began recognizing the benefits of this type of platform and identifying ways to incorporate discovery tools into managing government needs across litigation and purely investigative fronts. Currently, the federal government is operating under the third iteration of the MEGA contract, with the MEGA contract itself spanning more than 15 years to date. iCONECT has served as the web-hosted arm since 2001. The Department of Justice (DOJ) is the automated litigation support contract touchstone, serving as the hub for multiple investigations that touch nearly every federal government agency. iCONECT supports multiple organizations and agencies coordinating with the DOJ, using a single source repository.

The $1 billion contract includes labor and personnel, as well as services ranging from scanning and coding to copying and printing. This unified platform is the cornerstone of web-hosted ability across all divisions of the DOJ, including criminal, antitrust, civil rights, and more. The platform supports other agencies that interface with the DOJ for support services, including agencies that are involved in litigation that coordinate with the DOJ. This synergy includes local, regional, national, and international data, with 75-90 million pages representing over one petabyte of data sitting in the iCONECT platform at present, and roughly three to five petabytes of data flowing through the system over the course of the contract.

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The iCONECT platform also serves to standardize all data warehouses and data hosting under MEGA, and is the focus of efforts designed to re-integrate disparate data sets back into unified data sets, including the merging and normalization of more than 260 different office data sets.

Government Agencies

As government litigation needs have grown, there has been a steady recognition that technology tools and hosted platforms can provide benefits. Since the spring of 2008, the federal government has utilized the iCONECT-hosted platform to support the Litigation Technology Service Center (LTSC), a clearinghouse for the Executive Office of US Attorneys (EOUSA) nationwide, including scanning, coding, electronic discovery, and hosted review as a free service to US attorneys. To date, over 17 terabytes of information reside across this system, involving hundreds of cases and supporting more than 94 judicial districts in more than 200 geographically dispersed sites from New York City to Alaska, Guam, and outlying US territories.

The LTSC utilizes a combination of data centers for hosting in many cases, with local data hosting also utilized in certain jurisdictions. The iCONECT platform supports the LTSC, providing robust security features while allowing multiple parties and multiple databases to work within a single platform. This platform has met the Department of Defense parameters for security complexity, utilizing rotating security access (RSA) key fobs and incorporating automated two-step digital authentication. Additionally, this platform allows government data security protocols to be replicated and utilizes usernames/passwords already in the system via integration with Active Directory or LDAP, resulting in security synchronization between government systems and the iCONECT platform.

In addition to the LTSC, the Federal Aviation Administration also utilizes the iCONECT platform as an in-house tool for internal investigations and non-legal matters, capitalizing on the broad collaborative platform that enables parties across multiple sites to access and review highly confidential internal information without risk of security breaches.

FOIA Requests

Specific federal agencies have begun to incorporate technology tools such as web-hosted platforms into very specific multi-party matters in order to manage extremely large cases. One project originating from the Freedom of Information Act requests related to a combination of financial records and information involved in broad, multi-party litigation arising from struggles in the financial sector. Beginning in February 2009, data was ingested into the iCONECT cloud-based software platform, consisting of 40-50 billion pages of financial information collected from multiple institutions. This information was shared by dozens of government agencies as well as outside counsel who were performing investigative work, trying to understand what data existed and to make this information available for both government regulatory investigations as well as potential civil litigation.

Information within the iCONECT platform included documents in both paper format (documents are converted to images with associated text for searching) and electronic data collected from laptops, desktops, financial tools and databases, emails, interoffice memos, internal documents, as well as financial transactions stored in proprietary databases. The parties use the review platform to go beyond mere litigation but also to leverage efficiencies around managing all of these disparate forms of data and accessing it from a system that is easy to use and secure. With a central repository located at one large government contractor's secure facility, this multi-year project is ongoing as multiple parties across multiple industries utilize this single platform to collaborate and review data.

NASA - Columbia Accident Investigation 2003

Collaborative technology has been useful for other, non-litigation purposes as well. After the tragic explosion of the Space Shuttle Columbia in early 2003, NASA was tasked with generating a conclusive report to present to the US government demonstrating that it had identified the failures leading to this event and would be able to prevent future recurrences. This report, under the heading "Return to Flight Project", was a top priority for NASA. Several astronauts had been stranded on the MIR international space station while the space shuttle program was on hold and they could not be rescued until NASA was given clearance for another launch. Investigation data was sourced in iCONECT to allow for broad diverse data accessibility for a range of federal resources across multiple locations.

More than 80 experts were assembled to review several million pages of documents in the iCONECT platform in order to assemble the nearly 100-page document that was ultimately presented to the Senate in August 2005, concluding the 18-month Return to Flight Project. Not only was iCONECT the platform used as a centralized repository

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for reviewing data, but it also enabled extra-terrestrial access to the data, as astronauts on the MIR space station could review the data for this project. Over the period from February 2003 until the completion of the "Return to Flight Project" report in August 2005, millions of pages of information were reviewed and evaluated until NASA was able to conclusively identify the cause of the heat tile failures and convince Congress to authorize resumption of the space shuttle program and retrieve the stranded astronauts on the international space station.

Summary

The challenges arising from the technology boom of the past 15 years have not only reduced global barriers within businesses, but have also increased some of the complexities of managing internal investigations and the legal process. The implementation of email as the primary form of business communication means that enterprises now have to manage information pathways instead of simply filing documents.

The growth in the volume of information communicated electronically each day means that the potential pool of data for an investigation or legal matter is now exponentially greater than it was 15 years ago, and this growth curve shows no signs of abating. This means that more time and more money must be invested in managing data collections and analysis for legal or non-legal matters.

Additionally, federal, state, and local regulations have arisen directing how this electronically stored information should be managed and analyzed during the legal discovery process, adding even more layers of complexity to the equation. During this legal process, many factors need to be considered but the constant refrain among these are security, collaboration, and the need for multiple parties to share access to mass quantities of disparate data. While many software solutions exist in the marketplace, it can be time consuming to conduct cost-benefit analyses for what represent substantial capital investments in technology. That does not even consider the labor pool and training needed to ramp up many solutions. These challenges serve to highlight the availability of a single, universal platform that can provide secure access for large numbers of experts to review and analyze these massive data sets through a cloud-based solution offered by technology hosting providers that meet and exceed government requirements.

This white paper has provided five practical, varied examples of how web-hosted platforms such as iCONECT can address these issues in a single managed platform. These types of platforms offer three key value-added benefits, including: **1)** access to view large volumes of disparate data in a common format to gain a global understanding of the large issues; **2)** the ability to retain information both in structured and unstructured formats over extended periods to service a range of investigative and legal actions; and **3)** secure protocols that allow collaboration and shared access to content for a range of experts across multiple locations both locally and globally.

About the Author:

Ian Campbell is Chief Business Development Officer for iCONECT Development LLC, a world leader in litigation support and eDiscovery software. He is responsible for sales operations and business development, product lifecycle development, and Legal Service Provider (LSP) and partner relations. A key priority is cross-marketing the company's products and services to the legal, medical, government, corporate, and insurance industries.

With more than 16 years of strategic product development in the litigation support field, Campbell has consulted on major international legal projects to help firms achieve their long-range business goals. He is a frequent industry spokesperson, sharing his experiences and expert commentary with audiences for the American Bar Association, LegalTech, ILTA, AIIM, IQPC, ALSP, LSPA, Marcus-Evans, and other legal and management groups around the world.

Prior to iCONECT, Campbell founded his own company, Interlaw Technology, which provided network and document management for law firms. While designing a front-end interface to enable what would ultimately become multi-district litigation support software, he met Cynthia Williams, iCONECT CEO.

Campbell received a degree in Industrial Design from Fanshawe College in London, Canada.

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