

**SIGN IN TO YOUR SUBSCRIPTIONS/ACCOUNT**

# NEWS

June 12, 2015

From **Bloomberg Law****REQUEST A TRIAL****By John Tredennick**

*John Tredennick is the founder and CEO of Catalyst Repository Systems, an international provider of multilingual document repositories and technology for electronic discovery and complex litigation. Formerly a nationally known trial lawyer, he was editor-in-chief of the best-selling book, "Winning With Computers: Trial Practice in the Twenty-First Century." John Tredennick can be reached at [jttredennick@catalystsecure.com](mailto:jttredennick@catalystsecure.com).*

Corporate litigation costs continue to soar, making litigation management an ever-more critical job of the corporate counsel. One recent survey found that in 2013 alone, litigation spending increased substantially, with 71 percent of all U.S. companies spending more than \$1 million and 43 percent of larger companies spending more than \$10 million.

With half or more of litigation costs attributable to eDiscovery, corporate counsel are becoming more aggressive in managing the discovery process, with an eye toward better controlling and predicting costs. Whereas corporate litigation management once meant little more than reviewing outside counsels' invoices, many legal departments today are far more hands-on, actively involved in planning, overseeing and monitoring their companies' caseloads.

That oversight extends to eDiscovery technology. At larger companies in particular, corporate counsel are not simply signing off on the choice of technology, they are driving the choice. They are deploying integrated litigation repositories to standardize all their cases and counsel on a common platform, and then equipping those platforms with cost-saving tools such as technology assisted review (TAR).

In this way, they are achieving greater control and predictability in their litigation costs, while also helping their outside counsel reduce the time and cost of eDiscovery.

### **An Enterprise Approach To Litigation Management**

To understand why corporations are taking this approach, consider the inherent inefficiency in how they traditionally handled litigation technology. Typically, they left it to their outside counsel to pick the platforms and vendors for discovery and litigation support. The more cases a company had and the more outside firms it used, the more disparity in the systems and vendors that handled its cases.

If cases were widgets, it would be easy to see how little sense this makes from a management perspective. No company would allow its workers to individually pick and use their own production systems. The result would be systems that are incompatible with each other and over which the company has no control, driving up costs and breeding inefficiency.

Recognizing this inherent inefficiency and lack of control, growing numbers of legal departments are taking an opposite tack. Rather than leave it to their outside firms to select and manage discovery platforms, they are consolidating all of their cases into a single system and mandating that their outside counsel use that system for eDiscovery.

These multi-matter repositories, as they are called, house all of a company's discovery matters. Outside counsel perform search, review and production from directly within the multi-matter system. Corporate counsel get control, consistency, accountability and

efficiency.

### **A More Cost-Efficient Approach to eDiscovery**

A key benefit to corporations of multi-matter repositories is savings. The savings come, in large part, from the elimination of costs that are needlessly duplicated when discovery is dispersed among multiple systems.

This is particularly true for larger corporations involved in multiple legal matters, where the same key custodians and core documents are likely to appear and reappear.

Each time the same document is loaded and processed, the corporation incurs a cost. Each time the document is stored, the corporation incurs a cost. Each time outside counsel review the same document for privilege, the corporation incurs a cost.

A multi-matter repository eliminates these duplicate costs by allowing the same document to be used in multiple matters, regardless of whether the matters are concurrent or successive. The document is loaded and processed just once, and all metadata, coding calls, privilege calls and redactions adhere to the document.

Instead of documents being loaded over and over again for each new case, they are loaded just once into a core repository. When a new case begins, it gets its own site. Documents in the core repository are simply copied to the new site, where they are available for review by the outside lawyers handling that case.

Built-in safeguards ensure that document families are kept together and that duplicate records are copied just once. Because the document is the same, all tagging is saved to the same record and can be associated with one or multiple matters.

### **How a Multi-Matter Repository Reduces Costs**

A common example of redundancy in eDiscovery is privilege review. In virtually every case, outside counsel will review documents for privilege. Even when a document has been reviewed and tagged as privileged in one case, it is likely to be reviewed all over again the next time it appears in a subsequent case.

Is this necessary? A document that is privileged as to the corporation in one case will be privileged in the next case and the next after that. When a document is kept in a multi-matter repository, that privilege call adheres to it and there is no need to revisit it

later down the road.

Other ways a multi-matter repository eliminates redundant and duplicative work include:

- Documents are processed and loaded into the central repository just once.
- Firm pays only once to store a single copy of a document, even if it is used in many cases.
- Conversion of a document to an image for production or redaction is done only once.
- Redactions may be reused across cases, reducing costs and avoiding inconsistent productions.

For corporate counsel, a multi-matter repository is a management tool that delivers real benefits to the bottom line.

There are less tangible benefits, as well. For one, a multi-matter repository cuts down on the possibility of mistakes by eliminating vendor hand-offs and enforcing standardization across cases. For another, a multi-matter repository provides the legal department with global administration and reporting across all legal matters.

### **Cutting Costs With Technology Assisted Review**

As corporate counsel more actively seek to reduce litigation costs, they are increasing urging their outside counsel to consider the use of technology assisted review in appropriate cases. When companies move to an integrated litigation repository, they increasingly make TAR a core component.

The reason for this is no secret: with data volumes in litigation exploding far beyond the capacity of legal teams to review, TAR has become essential for its ability to prioritize documents for review. When their outside firms use TAR, corporations can reduce their review costs by half or more in many cases.

Granted, corporations were slow to embrace this technology. As the first TAR products emerged several years ago, many were reluctant to use them.

The reluctance was often attributed to concerns about “defensibility.” Lawyers feared that, if called on in court to defend their data discovery, the TAR technology would be considered too untested a technology to pass scrutiny.

That mindset changed virtually overnight when, on Feb. 24, 2012, a federal magistrate judge in New York, Andrew J. Peck, issued the first judicial opinion anywhere to endorse the use of TAR in electronic discovery: *Moore v. Publicis Groupe*, 287 F.R.D. 182, 193, 18 WH Cases2d 1479 (S.D.N.Y. 2012). It was the shot heard ‘round the litigation world, prompting headlines declaring the ruling a breakthrough and the judge a trailblazer.

Judge Peck himself had observed just two months earlier in a legal trade magazine: “While anecdotally it appears that some lawyers are using predictive coding technology, it also appears that many lawyers (and their clients) are waiting for a judicial decision approving of computer-assisted review.” (Andrew Peck, “Search, Forward” *L. Tech. News*, Oct. 2011, at 25, 29.)

Without doubt, Judge Peck ushered in the next generation of eDiscovery search and review. In the wake of his decision, TAR has gained acceptance as standard operating procedure in large and complex cases.

### **Reducing the Time And Cost of Review**

Studies have demonstrated that TAR techniques can reduce document populations dramatically, in some cases providing as much as a 50-fold improvement. (See, e.g., Maura R. Grossman & Gordon V. Cormack, *Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review*, 17 Rich. J.L. & Tech. 11, 43 (2011), <http://jolt.richmond.edu/v17i3/article11.pdf>).

For budget-conscious corporate counsel, that translates into substantial savings on review costs, easily shaving millions off a company's annual legal spend.

To understand the significance of this, it helps to step back and consider how big data has changed the litigation equation.

For decades, document review was a manual process. Attorneys eyeballed each document and decided whether it should be produced.

As paper turned into data and data grew into big data, manual review was no longer feasible. Today, major corporate lawsuits routinely involve gigabytes or even terabytes of data.

To help sift through it all, attorneys turned to technology. Their objective, as Judge Peck observed in his decision, was “to identify as many relevant documents as possible while reviewing as few non-relevant documents as possible.”

Even today, the technology attorneys most commonly use is keyword searching. But keyword searches are imprecise.

As Judge Peck put it, the way lawyers choose keywords “is the equivalent of the child's game of ‘Go Fish.’ ”

Judge Peck cited a 1985 study by scholars David Blair and M.E. Maron in which experienced searchers were instructed to use keywords to retrieve at least 75 percent of relevant documents from a collection of 40,000. Although the searchers believed they had succeeded, their actual recall was just 20 percent.

“Computer-assisted review appears to be better than the available alternatives, and thus should be used in appropriate cases,” Judge Peck concluded. While computer-assisted review is not perfect, he added, court rules do not require perfection. The overarching goal is to “secure the just, speedy, and inexpensive determination” of lawsuits.

### **The Next Generation of TAR**

Since Judge Peck's decision, TAR has continued to evolve and improve. While even first-generation TAR systems were a major advance over manual or keyword searching, they still had shortcomings that limited their usefulness in many real-world contexts.

For one, first-generation TAR systems required that a senior attorney be involved in training the system. The senior attorney would have to review and code hundreds or thousands of random documents until the system stabilized. Not only did this drive up the cost of using TAR, but it frequently delayed the process from ever getting started in the first place.

Another shortcoming in these early systems was that they required legal teams to have all their documents at the start. If a subsequent batch of documents arrived, the training would have to begin all over again.

Advances in TAR systems overcome these shortcomings in several respects. For one, they no longer require senior attorneys for training. Instead, through a process known as “continuous active learning,” the review team can simply begin reviewing documents and the system will continuously learn from their coding calls and improve its results.

A recently published, peer-reviewed study found that continuous active learning yielded “generally superior results” to other TAR systems and required “substantially and significantly less human review effort.” (Gordon V. Cormack and Maura R. Grossman, *Evaluation of Machine-Learning Protocols for Technology-Assisted Review in Electronic Discovery*, 37th Intern'l ACM SIGIR Conference On Research & Development In Information Retrieval, 153-162 (2014)).

Also, because the system is continually learning and refreshing its rankings, new documents can be added at any time. This conforms to the way litigation occurs in the real world, where discovery documents typically arrive on a rolling basis.

### **The Benefit to Legal Departments**

As noted earlier, discovery accounts for half or more of a corporation's litigation costs, and the most expensive part of the discovery process is review, estimated to be as much as 73 percent of the overall discovery cost.

TAR reduces this cost by reducing the number of documents to be reviewed. It prioritizes the documents for review that are most likely to be relevant. Non-relevant documents go to the bottom of the pile. Rather than have to review every document, as was the case with manual review, TAR enables review teams to review a significantly smaller percentage of the documents.

Another advantage of TAR for legal departments is that it facilitates early case assessment. Using TAR to find key documents quickly, corporate counsel get a better understanding of the case and of its strengths and weaknesses. This enables better planning, both in terms of budget and litigation strategy.

With corporate litigation and discovery costs soaring, it is no wonder that corporate



counsel are taking a more active role in managing their litigation caseloads and that technology has become a critical part of the management equation.

As this has happened, these two technologies in particular—the multi-matter repository and technology assisted review—have established themselves as essential tools for helping corporate counsel manage cases and costs.

**Request Bloomberg Law now**

## **LEGAL & BUSINESS**

---

## **TAX & ACCOUNTING**

---

## **ENVIRONMENT, HEALTH & SAFETY**

---

## **HUMAN RESOURCES & PAYROLL**

---

### **RELATED NEWS**

The U.K.'s Whistleblower Champion Regime: America's Champion?

The Long and Wyndham Road: A Settlement in Wyndham and Curve Ball in LabMD Signals Storm Warnings for the FTC's 2016 Data Security Initiatives

BBNA Insights: What Happens Next? Status of Water Rights Compact with Confederated Salish and Kootenai Tribes

Intergovernmental Information Sharing On U.S. Persons' Foreign Financial Accounts

Making Sense of a Morass: An Overview of the Different Standards U.S. Government Agencies and Other Entities Are Developing to Regulate Cybersecurity

You Say You Want a Revolution? Fracking, Prices and States' Fiscal Responses



## COMPANY

[About Us](#)

[Careers](#)

[Contact Us](#)

[Media](#)

## BLOOMBERG BNA

[Legal](#)

[Tax & Accounting](#)

[Environment, Health & Safety](#)

[Human Resources & Payroll](#)



[My Invoice](#)

[Terms & Conditions](#)

[Privacy Policy](#)

[Bloomberg.com](#)

[Accessibility](#)

Copyright © 2016 The Bureau of National Affairs, Inc.  
All Rights Reserved