VENIO SYSTEMS

WHITE PAPER

Best Practices in Early Case Assessment

In an earlier paper, we described the value proposition for Early Case Assessment. Here, we will explain best practices in ECA.

Law firms can realize many advantages for themselves and their clients through early case assessment. An "ECA" can provide an early understanding of case facts in order to set case strategy and make settlement evaluations. An ECA also provides an early look at the Electronically Stored Information (ESI), allowing the legal team to improve defensibility by ensuring all the right data is preserved and collected, the right custodians are chosen and better preparing for a meet-and-confer. **And an ECA can substantially reduce discovery costs by reducing the data set before expensive downstream processing and review.**
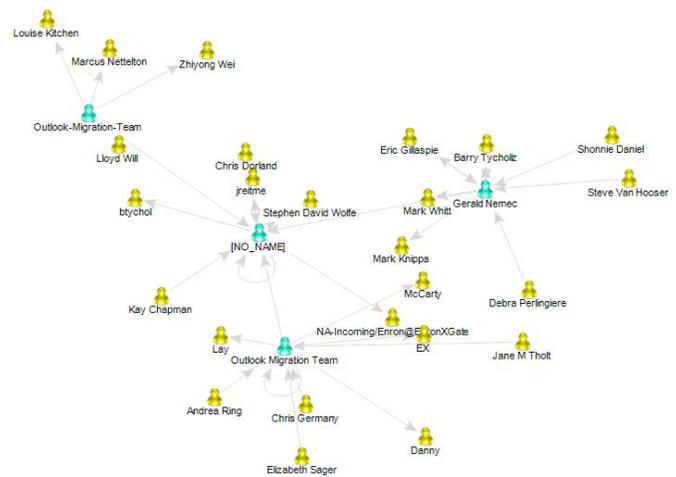
But in order to reap all of the benefits and ensure they conduct e-discovery in a defensible way, firms need to institute best practices for the ECA processes and the technologies they use. **To be truly effective, ECA should be a marriage of both process and technology.**

GAINING KNOWLEDGE

Much of the value of early case assessment comes from knowledge. The key is creating a list of "tags" that can be used to organize the documents for better triage by issue, document type, e-mail domain, date range, language or any other characteristic that will help you focus your efforts. An ECA tool should have a simple method to search for important facts and to refine those results, so that you can use them in combination with your tags. A solid ECA tool will also have many feature rich reporting tools. This allows for analysis of the data on a number of levels. At minimum, it makes sense to determine the keywords related to the hottest issues in order to identify the most important documents and most crucial evidence.

A world-class early case assessment can, for example, show the legal team how custodians communicate with each other. This improves defensibility and reduces the amount of work that must be done twice by allowing the

Results from Email Analysis

team to assess if other custodians, not initially identified for collection, should be added to the list. Similarly, an analysis of the languages used in the data set can provide the team with key information about the evidence, ensure that documents are not deemed unresponsive because the search terms are in a different language, and allow the review team to prepare resources for the review process.

Venio FPR Dashboard

Separate from the value in understanding the case better, there is so much value in having a better understanding of the data. A solid ECA can show file size, records deduped, file size, expected percentage of responsive documents, file types, and more. Optimally, this information can be viewed either on-screen in a dashboard format or as a hard copy printable report.

Here are some other pieces of valuable information that an Early Case should provide:

▶ **The Quick Peek.**

With the right technology and processes, law firms can quickly look through a collection to better understand the case and its merits.

▶ **Keywords.**

With analytics, the law firm can develop and refine keyword searches going forward.

▶ **Identifying an Initial Document Set.**

Using the keywords in conjunction with relevant key custodians, the legal team can identify an initial document set. Then, the team can consider refining searches based upon the response rates that have been realized in the initial document collection. The process can be repeated until everyone on the team is comfortable with the data set that will be reviewed.

▶ **Filling In the Gaps.**

Law firms can then leverage other tools such as social network views. This will help ensure that the key custodians have been identified. The legal team can then use gap analysis to identify potentially missing documents from an email collection.

KEYWORDS VS. CONCEPT SEARCHING

Theoretically, it's possible to simply have the legal team review everything. This is hardly practical, however, considering the costs involved and the timelines that litigators must work under. Instead, the legal team should search for what is meaningful and refine the searches as attorneys consider the initial document set. Then, the team can use the findings as a basis to reach an agreement with opposing counsel about what makes the most sense to ultimately include in the review. These type of details are often missed during the initial 26(f) Meet and Confer meetings and result in unnecessary effort and excessive cost overruns.

It is important to employ generally accepted legal standards when utilizing ECA to define search terms. The alternative methods can lead to sanctions because many of these methods are untested in the court of law. While there is a great deal of talk about "concept searches" and "intelligent" forms of review in legal circles, not all courts have offered insights into whether these are defensible. There is, however, substantial court backing for use of keyword searching in discovery. As Magistrate Judge Paul W. Grimm noted in *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251 (D. Md. 2008), "Keyword searches have long been recognized as appropriate and helpful for ESI search and retrieval..." [For a more thorough discussion about the defensibility of keyword searching, please refer to the Venio White Paper, "The Benefits of Early Case Assessment: Determining the Value Proposition."]

WORKFLOW

Once you've determined the key objectives and information you expect to gain, it is important to set up an efficient and defensible workflow for the early case assessment.
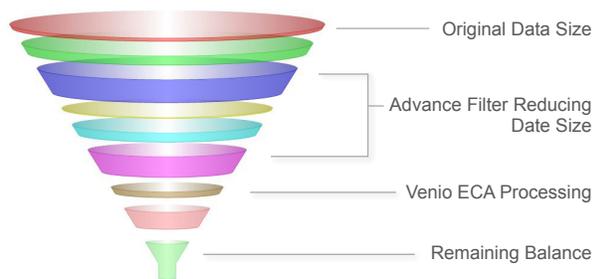
Step 1. Determine objectives and information to be gained. Develop tags to later create reports

Step 2. Determine which custodians' data must be analyzed and develop the keywords.

Step 3. De-duplicate, de-NIST, remove unnecessary file types to reduce the size of data set before processing.

Step 4. Load a forensic copy of the data into the ECA tool

Step 5. Select desired reports and share the information with the legal team

Step 6. Apply analytics to do a first pass review to reduce the size of the data set

Step 7. Export potentially responsive documents to a hosting solution

REDUCING TIME AND COST

Processing and reviewing non-responsive data is enormously time-consuming and expensive. Reducing the amount of data at the beginning of the e-discovery process reduces the number of documents that reviewers will need to look at during the review phase. A "first pass review" of

the ESI should cull out most of the non-responsive documents – up to 90%, reducing discovery cost substantially.

For example, consider a project with 200,000 documents, half of which are responsive. Culling out 90% of the unresponsive half, or 90,000 documents, prior to review can save upwards of $90,000 on review alone (assuming an average of 60 documents reviewed per hour a below average rate of $60 per hour for review time). There is also a dramatic impact on total cost per case because the reduction in data size up front reduces each monthly hosting fee by a similar magnitude over a longer duration of time. The other major savings are from creating auditable, process to support your decisions about not processing or hosting unresponsive documents.

Original Data Size
Advance Filter Reducing Date Size
Venio ECA Processing
Remaining Balance

VENIO FPR—THE RIGHT SOLUTION FOR ECA

ECA has become trendy in e-discovery circles lately, and many providers are touting their expertise in it. Law firms should carefully review all the different technologies and processes that providers offer. Venio FPR has powerful features based on legal best practices in Early Case Assessment.

▸ Venio is an application and web-based, not "black box" hardware. Venio FPR can be customized to scale in a way that best meets the needs of the client, the infrastructure in place and the particular matter at hand.

▸ Venio FPR provides processing for different types of data, including metadata, text and native files. With Venio FPR, there are a variety of ways to filter out data, including duplicates, system files, other file types and date ranges.

▸ Venio FPR's process allows firms to reduce the time it takes to bulk review the RESPONSIVE documents.

▸ Venio FPR gives attorneys and litigation professionals the ability to bulk tag documents by criteria such as by event and timeframe using its Time Line feature; by conversation thread string in its E-mail Social Networking Visualization tool; and by search terms in its robust Searching Interface.

▸ Venio also has the simplest deployment of domain name identification and file type analysis for easy segregation during the FPR process.

▸ Additional analytics are available, including email social network type analysis, language identification and keyword testing.

▸ Venio FPR has the ability to search and preview documents, including viewing the native document, meta data and email threads inherent to a system.

▸ User functions are web-enabled for use by project managers or clients, giving them access to the dashboard, searching, document preview, tagging, email analytics and reporting.

▸ Venio FPR has OCR as a built-in component.

▸ Persistent hit highlighting draws attention to key terms.

▸ Venio's solution offers several competitive pricing options to ensure flexibility and scale.

▸ Venio FPR is web-based, making it easy to access.

▸ Venio FPR seamlessly integrates with other review platforms

▸ The product roadmap for Venio FPR is an evolution to a single application that removes the need for load files and moving data between multiple applications.

There has been a great deal of talk about the benefits of Early Case Assessment as a way to save money and make e-discovery projects proceed much more quickly. And there is much more to ECA than just hype. Yet in order to ensure they receive all the benefits, law firms should carefully consider best practices, the right technologies and the service provider that can offer the most experience and flexibility.