

# Benefits of using eDiscovery technology

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## Pumping down the volume

As we well know, the volume of data being generated is growing rapidly. eDiscovery involves almost all information capable of being stored electronically, across multiple formats. It is not limited to conventional formats such as Word documents, Excel spreadsheets, PowerPoint presentations and email. It includes text messages, social media interactions on WhatsApp, Twitter, Skype and Zoom meetings. Add in LinkedIn, Facebook and Google searches. In short, it is the *electronic* aspect of identifying, collecting and producing electronically stored information (ESI) in a litigation case or investigation.



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## Not as widely used as it could be

Objections raised against using eDiscovery technology include: only big firms can afford to use it and in big cases, but eDiscovery reduces the cost of conducting a case and the thresholds are being lowered. Another one is that it is an unnecessary expense as most cases settle. The benefits however outweigh these objections.

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## A brief overview of the benefits of using eDiscovery

### *Security*

eDiscovery software and technology is highly secure, with a constant audit trail – so there are no lost paper copies.

### *Reduces cost and saves time – litigation readiness*

Reviewing costs can be reduced as documents are found more quickly, collated and duplicates eliminated. Data mining time is reduced allowing attorneys more time to prepare for the case.

### *The power of metadata*

Metadata supports the evidential reliability of e-docs over paper ones – the underlying ‘data about the data’ tells you *who* knew *what* and *when*. An audit trail of time-date stamps, author and recipient information and file properties. A similar trail is evidenced when emails, private chats, social media and other sources are sought to be used in evidence.

### *Automated discovery*

Once identified documents, electronic- and paper-based, have been loaded onto the database of the software solution, the process of implementing it comes into its own. Here, information can be tracked and accessed from a centralised server. Early case assessment (ECA), analytics and technology assisted review (TAR) is implemented, increasing productivity and accuracy.

## **Features of litigation database solutions**

ECA includes three most important aspects:

1. Volume of data and types of documents – number, type (documents or emails for example) and breakdown helps planning, issues and relevance.
2. Key players (custodians) – patterns indicating key players will emerge from the data.
3. Date range – spikes indicate where the most relevant activity occurred, to be focused on.

Once sorted, the full power of an eDiscovery software solution can be implemented for finding necessary documents and excluding unimportant ones. eDiscovery software generally has the following most common features.

Keyword searching - keywords or phrases sorted in minutes.

- a. Clustering – grouping and organising related documents by relevance and consistency for easier review.
- b. Near duplicates/de-duplication – identifying and setting aside duplicate files to avoid unnecessary review, an exact, complex science, especially when many similar but not identical documents exist.
- c. Email threads – connects and groups related emails together allowing pivot emails to be ‘viewed’ for relevance.
- d. Concept searching – using the software to find words as they exist within a particular context.
- e. Technology-Assisted Review (TAR) – a huge, complex topic, but the most effective feature of any good eDiscovery software solution.
- f. Data analytics – the ability for systems to capture information about the documents in the database and to produce various reports, graphs, etc.

eDiscovery is by its nature complex, as are its underlying technologies, some of which have been alluded to above. By way of illustration, let us consider the following practical case study which happened in South Africa.



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## **Case study**

For various reasons, we cannot name this case or its outcome but it occurred in 2018 and was a Gauteng High Court case. A Cape Town law firm had very good reason in a complex civil litigation to have reasonable doubts about what they had

received from the other side by way of discovery. There had been some 'to-ing and fro-ing' between the lawyers and the judge who was managing the case in the High Court in SA. The court outcome was that the judge was sympathetic to the clients' position and application but he was anxious not to delay final discovery and trial of this matter. Therefore, given that there were legitimate doubts as to the integrity of the data produced and the manner in which it had been obtained, the judge ordered that the law firm could interrogate the other side's data but was not prepared to grant further time to do so. He did, however, order that the costs of collecting and investigating this data would be borne by the other side.

A South African eDiscovery service provider was engaged and the expert dealing with the matter quickly learned that all of the data available was in its native electronic format and showed there to be 456,649 documents or records as we prefer to call them. The law firm had the unenviable task of reviewing these and producing any relevant records in just five working days, and they only had four reviewers.

First, a deduplication technique was applied which reduced the total amount of records to 289,736. Thereafter, some basic eDiscovery techniques reduced the remaining collection further by filtering by date range, individuals or custodians and file types, followed by keyword searching. This combination of techniques reduced the collection to a remarkable 7,246 records to be reviewed by the lawyers and took just 24 hours. It was still a tough task for the lawyers and the service provider then applied more technology by organising the emails into email threads including family documents (attachments), which enabled the reviewing lawyers to deal with a number of emails with one, relevance or otherwise, determination instead of reviewing each and every email within the thread.

The lawyers worked very hard and the production of relevant documents was made in time and in accordance with the court order. Guess how many documents were produced as relevant? The answer: just 315! The numbers are worth repeating. From a starting point of 456,649 documents, the technology reduced that to 7,246 and then helped to reduce it further to just 315 documents which the lawyers reviewed. All of this happened in five days and proves one of the fundamental points of the book, namely that without eDiscovery technology actions such as this would be impossible. The trick is: less review by lawyers and more technology equals lower costs and reliability *and* this happened in South Africa.

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<sup>1</sup> <https://cdslegal.com/knowledge/the-basics-what-is-e-discovery/>

<sup>2</sup> T Harrison and I Hussain SC, A Guide to eDiscovery in South Africa, LexisNexis South Africa, 2021, at 23

<sup>3</sup> A Guide to eDiscovery in South Africa at 40 et seq

<sup>4</sup> A Guide to eDiscovery in South Africa at 119

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John de Villiers is the editor of *Lexis Digest*

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