

10 Reasons For Conversion

Some corporations have resisted conversion, citing the perceived additional costs of scanning documents and purchasing software and related technology services. Here are 10 reasons why corporations should adopt conversion as standard procedure for their litigation documents.

1. Lower copy costs. Historically, the bane of managing document collections was copying – it was expensive and maddening. Dust-covered young associates and paralegals, ties askew and fingers blackened like those of coal miners, were “makin’ copies” in dank, dark document rooms long before Rob Schneider’s “Copymeister” character made the phrase famous on Saturday Night Live. In the paper world, someone is making copies at every turn.

Copying is an anachronism in the electronic world. It only exists in the form of the obligatory scanning of the original document set. This one-time scanning cost is roughly equal to the original copying cost on a paper project. In fact, scanning prices may be lower than copying prices at certain volume thresholds.

The beauty of electronic document projects is that copying and scanning are unnecessary after the one-time scan. An electronic document database creates virtual copies of digital images (often through electronic placeholder or pointer systems), which allows one digital image to appear to exist in many places in the system.

Hence, these malleable images are dragged, “foldered” and otherwise managed electronically without incurring copy-related costs.

2. Faster review. Electronic document review is faster, with no paperclips, staples, binders, over-sized documents and wrinkled, folded or tattered pages to delay document analysis.

Plus, software allowing click-and-scroll-based document review permits easy navigation on database highways. This is especially true when using high-end document management databases, with their streamlined interfaces and low click counts.

Finally, electronic document review is mentally and physically less demanding on document reviewers than paper document review. Focused and energetic reviewers analyze documents more quickly and make fewer mistakes, yielding a shorter project timeline and lower billable hours.

3. Fewer personnel. Paper document processing and review requires an army of attorneys, paralegals and temporary employees. In the e-world, fewer tasks exist, and they are performed more quickly.

For example, copy checking, Bates numbering, and number checking – traditional paper collection tasks for paralegals and temporary employees – are unnecessary on an electronic project. These tasks are automated or obsolete.

Also, as mentioned above, document reviewers analyze electronic documents faster than paper documents. Fewer reviewers, supervising attorneys and paralegals are needed, which makes for fewer billable hours and happier CFOs.

4. Accurate and consistent review. Reviewing and quality controlling stacks of banker’s boxes is time consuming and expensive because these tasks are so labor intensive.

In the electronic world, technology does the heavy lifting. The management and review of electronic documents by an experienced document team – proficient in the use of sophisticated document management applications – culls, sorts, and “folders” by specific criteria (e.g., date, author, subject matter, box, etc.) using the document management database’s search engine.

The team also implements extensive quality control processes with the database’s search engine. For example, “document sweeps” – targeted searches for privileged, confidential, and “hot” documents – are conducted, ensuring such information is not mistakenly disclosed.

5. Adaptable database. Electronic review databases are dynamic and nimble. They respond to litigation developments, such as court rulings, new discovery requests and “learned information.” Learned information is information regarding the corporate client or case issues that is learned while reviewing documents in the collection.

Two hypothetical situations involving the pre-production review of converted document images illustrate the adaptability of electronic databases.

In the first hypothetical, a judge in a product liability case involving Sports Fuel Company’s NoFail energy bar rules that information regarding Sports Fuel’s protein bar, YummyPro, must be produced if contained in a document involving NoFail bars. Before the judge’s ruling, the document team redacted YummyPro information because it was seemingly irrelevant to the case and protected as a trade secret.

The judge’s ruling is not a problem. The database is searched for redacted documents with text such as “YummyPro” and “protein.” Redactions governed by the judge’s ruling are erased with the click of a mouse.

In the second hypothetical, a document reviewer during the second month of the NoFail project finds a letter from Jill Hammer, Esq. In the letter, Hammer advises Sports Fuel’s president of the legal consequences of not including the side effects of NoFail on the packaging label.

The document reviewers already had reviewed a number of e-mails between Hammer and Sports Fuel executives, but none of the e-mails referred to Hammer as a lawyer. Consequently, the letters were coded for production.

Again, this is not a problem in the electronic world. The team searches the documents marked for production for text such as “Hammer.” Retrieved documents are reviewed again for privileged content.

An electronic review database equips the document team with the tools to respond to any development or changed circumstance.

6. Auto-Generated Reports. Report generators are standard features on most document review software applications. These applications create customized reports and privilege logs with little more than “a push of a button.” The database manager need only input the criteria he wants included in the report.

Like everything else in the paper world, reports are labor intensive. Privilege logs can take weeks or even months to create, extending the project timeline and unnecessarily increasing billable hours.

7. Production Deadlines. Rising complaints about the glacial pace of the judicial process have led many courts to adopt a “rocket docket” philosophy. An integral component of this philosophy is compressing discovery into ever shrinking time frames. The pre-production efficiencies offered by conversion and electronic management databases, as outlined in the six bullet points above, are the secret to making timely document productions and avoiding sanctions.

The paper world is plagued by pre-production inefficiency. Often, counsel is left with two unpalatable options: produce the documents without a detailed review, or dig deep into the client’s wallet and hire a truckload of document reviewers. Either approach raises concerns.

A cursory review compromises fundamental safeguards, potentially resulting in the disclosure of valuable client intellectual property and privileged communications. Also, a limited review is not an option if the documents contain privacy information that must be withheld or redacted.

Counsel and client will likely choose to hire a truckload of document reviewers because the risks associated with a cursory review are too great. While this choice is the lesser of two evils, it is expensive and risky because training a large number of 11th-hour temporary hires is no easy task.

8. Lower Storage Costs. Electronic documents are stored at lower costs than paper documents because electronic documents occupy file space, whereas paper documents occupy physical space. File space – offered by numerous data storage companies and e-discovery providers – is cheaper than leased office space or off-site storage.

Rent at those gated and barb wired garage door facilities is not as cheap as their Spartan appearance would lead one to believe.

9. Access. A document management database can be accessed through a secure Internet connection. Instantaneous remote connectivity provides counsel and client with perpetual access to the document collection.

To access a paper document collection, counsel and client must be in the same physical space as the documents. This scenario is not feasible in today's litigation world, with cases, counsel and corporate offices in every corner of the world.

Electronic document collections also can be reactivated post-production or post-trial with minimal set up time and expense. Paper document collections, however, must be retrieved from storage and manually reorganized, requiring significant time, labor and expense.

10. Integration of Native Electronic Documents. The definition of "discovery" in today's litigation environment includes electronic discovery (native electronic data, such as e-mails, word processing files and spreadsheets). The proliferation of hardware and software systems in the workplace and the ubiquitous nature of today's e-mail systems have forced legislators, judges and litigators to recognize this need breed of discovery.

Savvy counsel, recognizing that electronic documents now comprise a significant portion of their corporation's documents, are integrating paper and electronic documents into a single document management database. Note the economies of scale at work here.

Also, this approach allows the litigation and document teams to compare, contrast, organize, and review *all* discovery documents through the use of the database's search engine, quality control, and organizational features. In turn, counsel and their teams make better, more informed decisions.

Conclusion

In their book "The Myth of the Paperless Office," Abigail J. Sellen and Richard H.R. Harper note an interesting paradox: The Internet and other technologies have actually increased the amount of printing done. In other words, more paper documents exist now than ever.

Technology's failure to drive paper into extinction has left corporations grappling with the old problem of managing paper documents for litigation.

Sun Tzu, in "The Art of War," said, "Whoever is first in the field and awaits the coming of the enemy will be fresh for the fight; whoever is second in the field and has to hasten to battle will arrive exhausted."

Corporate counsel who have embraced electronic document conversion are on the battlefield and “fresh for the fight.” Their litigation teams are efficient, specialized, and armed with the most advanced tools of the trade.

These corporate counsel have discovered that the capital expenditures for conversion (scanning, optical character recognition processing, software licensing, and hosting fees) are much lower than the labor costs associated with managing paper (attorney and paralegal billable hours). Their litigation successes are proof of the strategic advantages of scanning paper to digital images.

Meanwhile, other corporate counsel are forced to watch as their outside counsel march blindly – sticks and stones in hand – without the advantages offered by conversion.

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