

Making the Case for Audio

**IN LITIGATION
& COMPLIANCE**

By Jeff Schlueter*



In December 2006, the Federal Rules of Civil Procedure made it clear that all forms of sound recordings are included in the definition of Electronically Stored Information (ESI). From call center recordings to voicemail to web conferences and podcasts, corporations are increasingly generating discoverable audio content.

Beyond the reactive nature of litigation, corporations have also recognized that the body of audio content they produce presents opportunities to monitor, avoid exposure, and train employees. But once created, this content represents a significant challenge for compliance officers.

Traditionally, audio content was difficult to locate, isolate, and process in an efficient manner. Human listening and transcription were the primary methods of dealing with audio content. Both are expensive, time consuming, and prone to significant error and oversight.

The barriers to audio have come down. Here is a look at four recent audio projects:

1. Financial Trading Investigation

A federal regulatory agency directed this financial trading company to conduct an internal investigation and produce specific voice recordings from its trading floor calls. Initially, approximately 2,400 hours of trader calls were isolated for review.

Challenges:

- All of the recordings were stored in a 'call logger' system in a non-standard format.
- Law firm personnel needed to be able to review, evaluate, and produce relevant content.
- The costs of traditional audio review methods were estimated at \$350,000 to \$500,000.

The Process:

Using metadata available from the call logger system, the electronic files were located, sent to a professional data specialist, and converted to a common file format. Once the files were available in a standard format, they were ingested into Nexidia Forensic Search making the audio files immediately accessible for review.

Initially, the law firm and client planned to review the entire contents of each recording rather than refine the document set with search tools. They were concerned, based on traditional methods, that important contents would be missed without a complete review. However, reviewing audio content is similar to reviewing other electronic documents, and the audio discovery tools

now available are similar to those commonly found in document review software.

The audio content was made available to the reviewers in a secure, online, hosted environment. As law firm personnel began the review process, they quickly realized that they were able to narrow the body of content using keyword and metadata searches.

Results: Rather than spending thousands of hours of professional time, the relevant recordings were easily located, reviewed, and extracted. The client saved more than \$200,000 in discovery expenses.

2. Regulatory Compliance

An international energy company, with trading floors around the world, made the decision to proactively monitor all trading floor calls as an early warning system. In this highly regulated industry, the company's goal was to identify any inappropriate behavior before it became a cause for concern to either the company or federal regulators.

Challenges:

- One person, working full time, could only review 5% of the calls.
- Hiring a skilled workforce to ensure full coverage was too costly.
- Many of the calls were in languages other than North American English.

The Process:

The company sought a full-time compliance monitoring system that would quickly identify the small percentage of calls that required human listening. Project managers with a background in speech patterns worked with company personnel to build a series of search terms that were considered precursors to inappropriate behavior. Calls in languages other than North American English are automatically identified and processed using the appropriate language indexes.

Nexidia's ESI software system was implemented and connected to the company's call logger system. Immediately upon completion of a call, the call logger system transfers the recording for indexing and analysis. Using the queries, only the recordings that require review are flagged.

Results: Since implementation, 100% of the trading floor calls are reviewed for compliance by the system and one employee spends 20% of his time reviewing exceptions and managing the system.

Corporate attorneys and compliance officers are increasingly being asked to take charge of audio content in litigation and compliance issues. Sound recordings, like other forms of ESI, continue to increase in volume. The information contained in those files is not only discoverable, it is available internally to assist corporations and organizations in their compliance efforts.

This commitment is helping the company build on and improve its reputation with business partners.

3. Transportation Litigation

A transportation company involved in a significant litigation matter delivered 350 hours of recorded telephone conversations to its counsel. The audio files included 10,500 individual recordings from the company's internal trading desk.

Challenges:

- Searching for specific non-English terms.
- Identifying and quantifying the responsive recordings.
- Multiple reviewers necessitated a secure online hosting environment.
- The estimated cost for traditional audio review exceeded \$160,000.

The Process: The term 'force majeure' was of particular interest in this investigation. 'Majeure', a French term, will not typically be located using speech-to-text and dictionary-based search technologies. However, phonetic search breaks 'force majeure' down to its basic sounds: fôrs' mä-zhûr'. Locating special terms, slang words, and proper names in phonetic searches poses no challenge whatsoever. In this instance, since the recordings were all in North American English, there was no need to use any of the other 31 phonetic language packages developed to handle foreign languages.

The company's call logger system was capable of exporting standard '.wav' files and metadata, eliminating the need for data conversion. The metadata from the original system identified the date, time, duration, and identity of the company employee in each recording. This information was critical to the discovery process, allowing reviewers to zero in on specifics dates and telephone extensions.

The law firm anticipated the need for multiple reviewers to assess the large volume of recordings. Once the data

was processed through the phonetic search engine, it was made available in a secure, hosted environment. To the surprise of the law firm, a single attorney was able to search and review all of the content quickly isolating the responsive recordings.

Results: From the original data set, 350 recording (35 hours) were identified as responsive. The new data set, less than 4 percent of the recordings and 10 percent of the hours, was more manageable. The processing cost of \$30,000 represented a significant savings compared to traditional manual review. Attorney review costs were reduced to a small fraction of the estimated cost.

4. Proactive Business Management

The Fair Debt Collection Practices Act (FDCPA) requires debt collectors to act fairly and prohibits certain activities in the collection of consumer debt. The penalties for violating the FDCPA are expensive and may include awards for personal humiliation, embarrassment, mental anguish, and emotional distress. An individual collector's income is typically tied to results, and while collectors are educated about the 'does and don'ts' of debt collection, abusive and harassing behavior is occasionally employed by aggressive collectors.

Recently, one large collection agency acknowledged that one or more rogue collectors repeatedly violating the FDCPA could jeopardize its very existence. The CEO was determined to implement a program to act as an early warning system for unauthorized behavior.

Challenges:

- Every call needed to be screened for inappropriate communications.
- Calls were recorded in a call logger system and not easily accessible for review.
- Human review of every recording was expensive and not scalable.

The Process: The collection agency personnel worked with Nexidia's professional audio consultants to develop relevant search terms and queries that would identify possible violations of company policies and the FDCPA. Nexidia Enterprise Speech Intelligence (ESI) was integrated with the call logger system. As soon as each call is completed, it is automatically indexed and evaluated. Any incident of inappropriate behavior is routed to supervisory staff for immediate review. The collector receives immediate feedback and training to correct his practices.

Results: The collection agency has a scalable, effective system for monitoring collection calls. The company actively monitors all calls and uses the recordings to educate collectors and avoid potential liability.

Conclusion

Corporate attorneys and compliance officers are increasingly being asked to take charge of audio content in litigation and compliance issues. Sound recordings, like other forms of ESI, continue to increase in volume. The information contained in those files is not only discoverable, it is available internally to assist corporations and organizations in their compliance efforts. Like other areas of ESI, new tools are available that make handling audio content much more manageable and less expensive.

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