

Audio: A Hi-Tech Company Gets Proactive About Its Own Litigation Readiness

BY JEFFREY SCHLUETER

After spending hundreds of hours listening to audio and video recordings in one matter, a California high-tech company's legal staff knew there must be a better way to review the content. The company's goal—meeting its audio discovery obligations in a cost effective manner—was a challenge for a legal department with limited human resources.

Background

Today, the legal departments in many large organizations are quickly moving from the costly reactive tradition of responding to litigation as it arises, to a more proactive approach—knowing what they have and putting themselves in a position of strength when responding to litigation and investigations. This company is no exception.

Given the wide variety of electronically stored information containing audio, including unified messaging and other types of recorded content, it is not reasonable for any company to exclude these files. Having a system in place that allows the legal staff to quickly and accurately review the content during internal investigations and litigation is particularly important given the growing volume of audio data and the requirement that it be included in the discovery process.

In 2007, the company, while responding to discovery requests, determined important evidence might be contained in audio or video files, including content in its Cisco Unity unified messaging system. After collecting the content, three staff members spent several weeks listening full-time to the recordings, while others worked part-time on the project. A reasonable (and defensible) search needed to be conducted without regard to the outcome. The good news: none of the content was responsive or relevant to the matter. The bad news: the process was time-consuming and costly.



The legal staff quickly realized that human listening was not a cost-effective method of dealing with audio content in any discovery matter and worse, these file types are gaining in popularity and therefore volume. They needed to put a more efficient and inexpensive method in place to deal with audio content in the future.

Finding the Solution

The primary objective was finding software or a service to efficiently process and make audio content available while minimizing the impact on staff and infrastructure. During a trip to LegalTech New York in February 2008, a member of the company's in-house staff visited with Nexidia about its Forensic Search product. He quickly realized that he was on the right path to a solution for the company's audio discovery challenge. The Nexidia software indexes audio content utilizing a patented phonetic process and makes the content available for search and review in an environment that is familiar to litigation professionals.

Armed with the information, the Senior Litigation Paralegal began the process of validating the company's claims, analyzing whether the product fulfilled the company's needs, and determining the impact the software would have on the company's infrastructure.

Making the Case

To evaluate the benefits properly, the content from the previous matter was indexed and evaluated in Nexidia. It was quickly determined that in just one day, one reviewer could accomplish in Nexidia Forensic Search what had previously taken a group of people several weeks of manual listening.

Nexidia Forensic Search presents the content in context, allowing reviewers to grasp the intent, tone, and inflection of the speaker. The evaluation proved that content could be quickly located, reviewed, annotated, and where necessary redacted for privilege. In addition, the evaluation concluded that as new issues arose or additional search terms were identified, prompting additional review of the content, re-review was as simple as searching new terms, eliminating the need for humans to listen to the entire body of content multiple times.

Next, the impact on the organization's systems was considered. The legal department shares IT

resources with the entire organization, and the IT Department was asked to review Nexidia Forensic Search. They determined there were no significant requirements and as such, there was minimal impact on the corporate infrastructure.

The ultimate decision rested with a group made up of the upper management including the CEO. Recognizing the need to review audio content, the risk of not having a system to control the data, and the cost factors, it was an easy decision to make.

Conclusion

As with other ESI, locating responsive audio content is critical in any litigation preparedness system. In the case of this technology company, hundreds of hours of human listening resulted in the determination in one particular matter that none of the content was responsive. The process was tedious and time consuming but discovery obligations required the company to perform a reasonably diligent search.

As the volume and popularity of programs and systems that create audio and video content grows, it is becoming increasingly difficult for companies to ignore it. Absent a conscious effort to deal with the issue, a company may find itself in the unenviable position of being required to throw employees—or worse, outside counsel time—at solving the problem under strict deadlines. A proactive approach with a solution like Nexidia's is a cost effective way to be prepared to meet audio discovery obligations.

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