

E-DISCOVERY: FROM THE EARLY 2000s TO NOW

Reflecting on 15 Years at the Forefront of E-Discovery

Since the early 2000s when he pioneered electronic discovery processing in Australia, through to the present where he sits in front of Australia's largest and most powerful processing data centre, FTI Consulting's Andrew Kerr has seen (and processed) almost every data type imaginable.

As we move into Ringtail's 20th year in Australia, please join us in celebrating Andrew's 15 years at the forefront of e-discovery. But first, let's hear from the man himself and what led him into the e-discovery world.

Q. How long have you been working in the litigation support industry?

A. My foray into the Litigation Support Industry began in 2001 – as a Document Imaging Supervisor for Diskcovery. Those were the days, back on the scanners! Things moved quickly, and I was soon on the electronic side of the business doing processing and running the Ringtail ASP (as it was called back then).

I spent 9 years working in a Bureau environment (essentially following Diskcovery through a number of progressive sales). I followed this with 3 years at a prominent national law firm as their LTS Manager, after which the A-Team re-formed at FTI Consulting.

Q. When did you first get involved with e-discovery processing and what was it like back then?

A. I think this was around 2003 – back in the days of cream coloured computers! It is actually funny to reflect on this 14 years later. Most notably, the software we used back then wasn't distributed (unless you manually did it), and neither are the main products available today!

"Back in my day", we used in-house developed tools for the processing and rendering. It was good, because having the developers readily available to assist with problems/bugs/previously not encountered file types was great. We did eventually move to Discovery Cracker, which was a really good tool for its time – key features were distributed processing and QC!

Pricing, well...pricing was expensive. But, we were the pioneers and it took a lot of effort to get these systems up and running. Client expectations are one thing though that hasn't really changed over the years – Lawyers back then wanted this stuff "yesterday", and also thought it's simply "pressing a button".

Q. What have been the most significant changes in e-discovery processing since you were first involved?

A. The most significant changes I've seen over the years would have to be the software, the providers, price erosion and of course data volumes! Providers have come and gone, but back in 2003 there were only a handful. Today, clients are spoiled for choice! Pricing has changed remarkably – it was only a few years ago that pricing of up to \$1000 per GB was still being charged. Today, the norm is almost 1/10th of that! And volumes... wow...years ago we were talking about megabytes of data. Today, terabytes is quite a common term being thrown around! I'm sure petabytes will be just around the corner!

One thing that hasn't changed though, is e-discovery is still not point and click – a lot of people think it is, but at the end of the day nearly every job has something “different” that requires human interaction. In saying that, a lot of the processes that were once quite manual have been somewhat automated to make the entire process more streamlined.

Q. What are some tips that you can provide lawyers and decision makers when it comes to e-discovery?

A. I would say that the biggest tip I can provide is that you get what you pay for when it comes to e-discovery, and the cheapest provider may not necessarily be the best provider (nor the cheapest in the long run). At FTI Consulting, our processing methodologies are constantly evolving. As you process more and more data, your QC steps evolve to include the nuances you see along the way.

One small example is our unique exception handling which is built into our e-discovery service at no extra cost. Archived (or stubbed)

emails and attachments are increasingly problematic and are not automatically flagged as an issue by standard processing platforms. If these emails are let through to review, a reviewer may not recognise that there is critical data missing (such as the attachments or body of the email). FTI Consulting has developed processes to identify and warn a client immediately so that the problem data can be addressed prior to the documents being reviewed, avoiding costly review of erroneous material and non-disclosure of potentially relevant material.

Q. Where do you see e-discovery in Australia in 10 years' time?

A. I think e-discovery is going to fall more into the hands of the corporations. We have already predicted (and seen) the rise of the corporate client as an agitator for efficiencies within the legal process. With the rise of Office365, and the broader acceptance of cloud-based data, e-discovery will shift its focus out of the law firm and into the corporation. But it will still be the same issues of cost, data volume, and time. Same problem - different location.

Until then...it is all going to come down to the speed of getting data from its native format into an appropriate platform for review, with a little bit of magic thrown in along the way for Early Case Assessment (ECA) purposes. A lot of the time, people just don't know what they've got, and want to dump it all into a platform to “take a look” and go from there. Data volumes are also on the rise, which is going to see a drop in the prices – that can only be a good thing right?

The processes are definitely going to become more automated, and will be quite hands-off, with the software being able to do 99% of the work without human interaction. Technology Assisted Review, be it Predictive Coding or continuous active learning (CAL), is going to become more commonplace in order to reduce the excessive review costs currently being undertaken. Lawyers and Law Firms are definitely going to have to keep up with these changes, as this will impact their current billing practices of hourly charging.

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