Data, data everywhere

*Legal Week* takes a look at how e-discovery and data management can help businesses facing unprecedented levels of scrutiny.
Responding to regulatory scrutiny and big data with innovation

By Mark Smulian

Just as police will demand that physical evidence at a crime scene is preserved intact, so electronic evidence must be retained and made accessible in cases and regulatory investigations.

And with businesses facing unprecedented levels of scrutiny in the wake of the financial crisis, managing the vast amounts of electronic data they produce so they can keep the regulators on side has become a major headache.

Indeed, the cost of complying with information requests from regulators can be as crippling as any subsequent fines. On the other hand, if a company can respond quickly and efficiently to a demand for documents, it is likely to receive more favourable treatment.

Working in a ‘paperless’ way can be a blessing but at times can also be a curse, and the transition to using electronic data has brought its own problems for those engaged in litigation, regulatory inquiries and business activities including mergers and acquisitions.

Technology has made it easy to create and store infinite numbers of documents and emails, and finding the ones relevant to any set of legal or regulatory proceedings can be even more costly and time-consuming than would have been the case when sorting through paper.

Legal Week Intelligence, in association with Kroll Ontrack, surveyed 101 general counsel and in-house lawyers to find out how companies are dealing with e-discovery, litigation and regulatory data demands.

To put an electronic document search in perspective, some 5,000 paper documents might roughly constitute a gigabyte of electronic data and it is not uncommon for a complex case to involve

Key findings

- The top three most pressing challenges currently facing legal departments are: responding to an increasingly regulated environment, straddling the need to be legal advisers and commercial advisers and controlling costs
- 53% of respondents say their UK entities/operations have been involved mostly with domestic litigation (UK) in the last 12 months, followed by internal investigations (44%) and regulatory investigations (33%)
- 53% of respondents say technology is used to review electronically stored information to check for compliance and identify potential legal risk, while 27% do not use any at all.
- To reduce and control legal spend related to big data management in legal proceedings, companies mainly carry out more work internally using their own technology/software/bespoke solutions (68%) followed by relying on external law firms to implement cost-cutting mechanisms (47%) and vendor technology (22%)
- Litigation/arbitration arising in the UK (48%), followed by internal investigations (43%) and litigation/arbitration arising outside of the UK are the cases respondents most frequently become involved in that require electronic corporate data to be processed
- 32% of companies do not have software to manage and maintain their data maps for litigation, investigations and regulatory compliance
- Companies are most likely to outsource legal document review to a third party other than a law firm when there are short time scales or large volumes
- Respondents’ law firms (66%) are most likely to suggest a vendor to provide e-discovery services
three or four terabytes of data (one terabyte equals one thousand gigabytes).

With possibly millions of documents and emails spread across multiple systems and formats that might be relevant to a case, how can those that are essential, or even just useful, be found? And how can a company be certain that all of them have been classified correctly?

When considering the main obstacles to providing or reviewing electronically stored documents for legal proceedings, time was the most common problem cited by survey respondents, followed by costs, logistical challenges when data is scattered in different countries and complying with data protection authorities that restrict access to data or transfers across borders.

The onset of ‘big data’ means that relevant identified information is not even on a company’s own IT system but is instead stored on staff members’ tablets, mobile phones or in the ‘cloud’ — often kept on a server in another jurisdiction.

Expertise in e-discovery is needed to identify the information relevant to a case.

Even where information is held in a structured way in databases, finding something in the hundreds of thousands of rows of an accounting system, for example, could make seeking a needle in a haystack a comparatively easy task.

Some companies have taken a proactive approach to managing their legal risks and are trying to glean timely intelligence from all of this data by carrying out health checks on it. They do this by reviewing what they store electronically through internal audits to identify and resolve problems early.

**Time-saving technology**

Technical tools that can find, collate and analyse data are growing in sophistication — with everything from traditional keyword searches to the use of artificial intelligence — and can connect seemingly disparate pieces of information as relevant and related.

---

**Methodology**

Kroll Ontrack’s survey with Legal Week, which canvassed 101 general counsel and in-house lawyers, sought to find out what companies think about e-discovery, litigation and regulatory data demands.

The respondents worked at companies ranging from small businesses to those with more than 5,000 staff, and from those with legal budgets of less than £500,000 a year to those with more than £10m.

Half of the respondents were public companies and 45% employed 1,001 people or more. Respondents hailed from a variety of sectors including financial services/insurance, technology/media/telecoms, energy, construction and manufacturing.
Artificial intelligence, which is widely expected to grow in scope, involves software capable of so-called ‘predictive coding’ that learns from human users and reviews and categorises documents.

In March 2015, the Republic of Ireland High Court approved the use of predictive coding in a disclosure process in *Irish Bank Resolution Corporation Ltd & ors v Quinn & ors* [2015] IEHC 175 — the first time a court in the British Isles has done so.

Use of artificial intelligence is growing in the UK but is further advanced in the US, where Ralph Losey, national e-discovery counsel at law firm Jackson Lewis, says: “The courts in the US have approved it. Not only that, you will find judges endorsing it warmly and trying to get attorneys to be more proactive in its use.”

Despite this enthusiasm, Neil Mirchandani, a partner at Hogan Lovells who specialises in financial services disputes, notes that there have been some issues with predictive coding adoption, though these may be limited to one side of the Atlantic. He says: “There have been a number of challenges to the use of predictive coding in the US, which have sought to challenge the algorithms used. Those have not happened in the UK, and I doubt such challenges would be very successful as in the US it was in most cases accepted that if the technology did not work nor would the providers’ business models and therefore it was reliable.”

Different technologies can work together in a complementary fashion. For example, companies under investigation can use visual tools to find relevant emails, such as those that appear to concern communications with competitors. Predictive coding can then be used to quickly identify other similar documents that enable a company to meet its obligations on disclosure of information to a regulator or a court.

“The world has moved on and lawyers need to think about alternative evidence streams (such as social media chat rooms) as well as traditional sources of information when looking for evidence,” says Pinsent Masons partner Ben Lasserson, who specialises in contentious EU and competition law. “Data analytic tools are useful as they quickly identify themes and patterns. There is so much information available nowadays that you need to use technology to focus in with a laser-like approach.”

Concerns over providing the disclosure of information in litigation and to regulators were certainly foremost in the minds of survey respondents. A question on which types of legal...
action had taken up the company’s time in the preceding year saw domestic litigation in the UK mentioned by 53% of respondents, followed by internal investigations by 44%, regulatory investigations by 33% and alternate dispute resolution by 32%.

Cross-border litigation involving European companies was cited by 26% and that involving US entities was close behind on 24%.

While UK litigation will always require disclosure, increased regulatory investigation activity is expected from the Competition and Markets Authority (CMA), which has launched 38 cases related to mergers and anti-competitive activity in its first year of operation.

Other regulators remain globally active and cooperative; for example the Financial Conduct Authority is working with the Serious Fraud Office and overseas bodies including the US Department of Justice to probe alleged corporate irregularities.

A quick response to a request for information in such proceedings can avoid a fine or at least lead to a reduced penalty, and so time becomes of the essence in finding the right data.

The CMA is leading the pack on taking this issue seriously in the UK, having stepped up its digital forensic capacity and developed closer partnerships with the police and other criminal enforcement agencies. This is exemplified by the fact that it has now appointed a director of digital forensics and intelligence.

Now, more than ever, companies on the receiving end of this will need skilled forensic and electronic discovery experts to identify the data required and who understand how to use the technologies that can do this — no human, after all, could reasonably comb through all the material to find this.

The increase in technical sophistication is of course taking place on both sides, with regulators and those representing investigated companies necessarily buying their technology from the same marketplace.

Since each side knows what the other is technologically capable of doing, this knowledge can inform negotiations on what they should seek — for example, keyword searches may be more widely or narrowly drawn depending on what both sides agree it is relevant to seek.

Given their own growing e-discovery expertise, the regulators will quickly realise whether they are dealing with a company that is taking data storage and disclosure seriously. This is likely to set the tone for the subsequent investigation and may well impact on any sanctions that are levied.

Just over half of the respondents to the survey (53%) are already proactively reviewing their electronically stored information to check for compliance and identify potential legal risks.

Given the level of scrutiny businesses are under, it is perhaps surprising that one-in-four respondents (27%) are not yet taking such pre-emptive action.

‘You will find judges in the US endorsing artificial intelligence warmly’

Ralph Losey, Jackson Lewis

<table>
<thead>
<tr>
<th>Which of the following types of legal action affecting UK entities/operations has your company been involved in during the past year?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic litigation (UK litigation)</td>
</tr>
<tr>
<td>Internal investigations</td>
</tr>
<tr>
<td>Regulatory investigations</td>
</tr>
<tr>
<td>Alternate Dispute Resolution</td>
</tr>
<tr>
<td>Cross-border litigation involving European companies</td>
</tr>
<tr>
<td>Cross-border litigation involving US companies</td>
</tr>
<tr>
<td>None</td>
</tr>
</tbody>
</table>

*Respondents could select more than one

<table>
<thead>
<tr>
<th>Is technology used to review electronically stored information to check for compliance and identify potential legal risk?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not use</td>
</tr>
<tr>
<td>Considering implementing measures</td>
</tr>
<tr>
<td>Measures have been implemented</td>
</tr>
<tr>
<td>Measures soon to be implemented</td>
</tr>
<tr>
<td>Measures not yet implemented</td>
</tr>
</tbody>
</table>
Innovation through unbundling

It is clear that there is a job to be done in searching a mass of electronic data but the question for companies is who has the ability and capacity to do it?

Companies are unlikely to have the skills or capacity in-house, as are their law firms, since data searching by its nature tends to be a large and time-pressured ‘one-off’ job.

Survey respondents say that their companies have multiple needs that may require an external resource to review the documents. These are short time scales or large volumes (42%), multiple languages that need to be reviewed (32%) and specialised technology that is needed to speed up the review (26%).

Specialist firms exist that can do this job cost-effectively for companies that outsource this work, and an increasing number choose to outsource it independently of their legal advisers.

This ‘unbundling’ of part of the legal process can be more cost-effective, quality can be maintained and the costs involved will be clear.

‘Unbundling’ can provide companies with increased flexibility by offering access to cutting-edge tools and the experts who know how to use them as well as an essential service for smaller specialist ‘boutique’ law firms that cannot retain the capacity to conduct the e-disclosure process in-house.

What methods does your company rely on most to control and reduce legal spend related to big data management in legal proceedings?

<table>
<thead>
<tr>
<th>Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal work using own technology/software/bespoke solutions</td>
<td>68%</td>
</tr>
<tr>
<td>External law firms</td>
<td>47%</td>
</tr>
<tr>
<td>Vendor technology</td>
<td>22%</td>
</tr>
<tr>
<td>Legal process outsourcing</td>
<td>17%</td>
</tr>
<tr>
<td>Temporary contract lawyers</td>
<td>8%</td>
</tr>
</tbody>
</table>

*Respondents could select more than one*
Regardless, among GCs there is still a lack of knowledge not only about the benefits of unbundling the legal process, but also about e-discovery as whole.

Losey notes the US experience in this respect: “People do not really know what e-discovery is. If I tell people on the golf course what I do, they don’t know what it is unless they are involved in the legal profession.

“Companies are starting to see the value of using artificial intelligence and quickly grasp that we apply artificial intelligence to find evidence, and describing it like that helps to explain it.”

Most American companies will still leave this work to their law firms to do, except for those in industries that are involved in serial litigation and so find it viable to have their own discovery departments.

'E-disclosure technology is always on our radar. People involved in litigation, arbitration and investigations will be the main users of it'

Neil Mirchandani, Hogan Lovells

What types of cases do you become involved with that require electronic corporate data to be processed for legal proceedings?

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation/arbitration arising in UK</td>
<td>48%</td>
</tr>
<tr>
<td>Internal investigations</td>
<td>43%</td>
</tr>
<tr>
<td>Litigation/arbitration arising outside the UK</td>
<td>32%</td>
</tr>
<tr>
<td>Investigations launched by UK regulator</td>
<td>31%</td>
</tr>
<tr>
<td>Merger and acquisition activities</td>
<td>27%</td>
</tr>
<tr>
<td>Investigations by a foreign regulator</td>
<td>18%</td>
</tr>
</tbody>
</table>

Responsive could select more than one
"I think there is happy medium to be struck, as even large companies may not have the internal expertise and will go to outside experts or their vendor, and it is better to rely on people for whom discovery is a specialisation and something they do every day," Losey says.

Asked about the most pressing challenges facing their legal departments (see chart, page 4), respondents say their prime concern is responding to an increasingly regulated environment, followed by straddling the need to be both legal advisers and commercial advisers, controlling costs and responding to cross-border regulatory issues and to the impact generally of the digital age.

Litigation and arbitration arising in the UK was the most common cause for companies to have to process and search electronically stored data for proceedings, with 48% of respondents having taken this route. This was closely followed by internal investigations, overseas litigation, investigations by UK authorities, mergers and acquisitions activity and foreign regulatory probes.

Mirchandani echoes these findings, saying that e-disclosure technology is “always on our radar. People involved in litigation, arbitration and investigations will be the main users of it.”

Future pressures
Where might future pressures for the rapid collation of information arise?

Losey says: “Government investigation is the most important driver behind disclosure certainly in Europe, though the number one driver in the US would be civil litigation with government investigation a clear second. If anything, in mainland Europe government investigation is a bigger driver than litigation.”

To deal with this, any company needs to know as a first step where its data is — a task perhaps more complex than it sounds.

Where a company sought to develop a data map to guide its understanding of what information it holds, the survey found 49% of respondents held this on digital platforms, but 28% documented this manually on spreadsheets and 24% did not possess a data map of any kind.

So, if a company finds itself embroiled in litigation, a regulatory investigation or a business process that requires it to interrogate what appears to be an unmanageable mass of electronic data, what should it do?

Chris Chapman, legal technologies manager at Kroll Ontrack in the UK, knows how complex cases with electronic data can be, having recently participated in one that required searches through between three and four terabytes of information. “When you have to filter that much you can pay horrendous charges and you do not always know what is relevant,” he says. “These charges can be avoided by the employment of simple technology at an early stage, ideally as soon as a litigation or investigation is contemplated; or better still companies can take action on a pre-emptive basis by installing systems that help them identify and store data that is likely to become relevant at some stage.

“Companies are very much dependent on whether they have had experience of e-disclosure in the past to shape what they do when faced with it.

“If a company is new to litigation or regulatory investigations they will appoint a law firm that will review the data and then many companies think, ‘I can just send across the evidence I think is relevant’.

This though can be unwise as ‘sending across’ is not a simple act of transmission — it can have unfortunate consequences for the unwary.

Chapman explains: “Just the act of sending information can change it, and may change pertinent data for evidence. If you send it out you may change what is known as the metadata, such as the time it was sent and who to, which can be really useful when determining its relevance. It
is important that it’s not changed, since evidence must be preserved unaltered.”

Lawyers conducting a case must also be satisfied “that all the relevant data has been collected; they need the full picture rather than relying on what is fed to them by clients. There is a risk that clients will self-select and not comply with the obligations to disclose, which brings the risk of fines and sanctions.”

Chapman says that before the 2008 banking crisis companies made their own arrangements for data disclosure but they now find, in particular in the finance sector, that regulators are more active and litigation has increased, and so “they tend to outsource more and take an active interest in who is looking after data for them and how much that is costing” when data is being stored for the purposes of litigation or investigation.

“Unbundling” is cheaper because you do not need an experienced lawyer to do the searching or the first pass review, and so people can see there is a saving outsourcing, but they will be less sure when it comes to relying on technology that they may not understand to automatically read documents.

Keyword searching is a readily understood way of interrogating data, while topic clustering software will look for related issues and it is also possible to seek out words that may mean the same thing as an agreed search term.

Predictive coding, though, conjures ideas of a machine thinking for itself, which may perplex those unused to it.

“It is different because the others are all search methods that many are familiar with but predictive coding relies on the machine to learn from the review of a small group of documents within which topics might be relevant,” Chapman explains.

“A lawyer will initially categorise documents related to the case, and from this the programme learns what is relevant.”

Kroll Ontrack senior account director Ben Fielding says that while companies may think of their information technology system as a single entity, it may well not be, thus adding to the complexity of searching it.

“It depends a lot on the size of the organisation,” he says. “If it has grown through mergers and acquisitions then you will be looking at a lot of different systems and backups, or even just when a company grows things can change quickly.

“There will have been changes in people and policies so it can be difficult to keep up with it, as

Case study

Calmness amid the chaos

Faced with an imminent deadline, Kroll Ontrack was asked to arrange and complete two simultaneous reviews totalling 15,000 documents using lawyers fluent in Swedish, German and English – all within six days’ time.

The situation

In a time-sensitive response to a pan-European regulatory request for information for a prospective joint venture, Kroll Ontrack was asked by a client on a Tuesday to staff up to 30 lawyers fluent in Swedish, German and English to start reviewing documents on Thursday morning in its London office.

Responding to changing client needs

Not all instructions are simple and the client’s timeline and budget changed before the beginning of the review. Kroll Ontrack assisted the client by:

• Negotiating search terms and key word searches.
• Working through the weekend to apply the final agreed-upon search terms.
• Recruiting new reviewers to the client’s very specific requirements in response to the client pushing forward the start date of the review to the weekend and reducing availability of the original review team.
• Reducing the number of reviewers from 30 to 12 by day two of the instruction, following finalisation of the client’s budget for the review.

The now 12 reviewers had five days to get through the remaining documents spread across two unique databases and data sets.

Calmness where there could have been chaos

The client was at ease, all things considered, because they knew that the Kroll Ontrack Managed Services team was directly collaborating with the Case Management and Ediscovery Consultancy teams. Having all three teams under the same roof meant that when project parameters and priorities changed during the course of the five remaining days prior to the regulatory commission’s deadline, all of the teams were able to instantly react and coordinate responses in an efficient manner. With just 48 hours remaining prior to running the first production of data to the regulatory commission, Kroll Ontrack was able to provide expert consultancy on the best format for the production taking into account the complicated privilege rules at play in the document review. A synthesis of what was technically possible and theoretically required was easily accomplished as all teams knew all aspects of the case from processing and culling to staffing and review management to quality control and production.

The advantages of a sole provider

Kroll Ontrack’s technology and people led to all deadlines being met to the satisfaction of the client. By using Automated Workflow technology, batches of documents were assigned to reviewers without manual input from the case manager, and with the review taking place in the ediscovery.com review platform, reviewers were able to work in the client’s multiple databases quickly, accurately and securely. Moreover, our Managed Services team, many of whom are former lawyers with extensive review experience, were able to manage the document review process in a highly efficient manner, as they had an in-depth understanding of the client’s needs.

25 years experience in electronic evidence

5 dedicated data centres worldwide

30 offices in 24 countries
there has been an explosion in data over the past 15-20 years."

Companies would in an ideal word have a data map showing everything they have, but Fielding warns the speed of producing documents in business means this state of perfection is impossible to reach, "because by the time you had completed it, it would already be out of date".

He explains: “Mapping data has to be about priorities, what data is relevant and what departments and people need to be involved in litigation and investigation.

“If either of those happens to your company, you are going to want a quick response. Getting that is a matter of teamwork between the e-discovery provider, the corporate client and the law firm, who each bring their skills to bear.”

Respondents look to a variety of integrated cost control means to reduce legal spend related to big data management in legal proceedings, with most carrying out work internally using their own software and solutions, followed by relying on external law firms to implement cost saving mechanisms and using technology provided by a vendor.

‘Charges can be avoided by the employment of simple technology at an early stage, ideally as soon as a litigation or investigation is contemplated’

Chris Chapman, Kroll Ontrack

A client will want information quickly but will also seek to control costs and “so may appoint a law firm and a technology firm and tell them to work together, and in the US we are starting to see companies engaging more directly with companies like ourselves whose job is managing e-discovery”, Fielding says. “Law firms continue to assert control over project management, deciding what material is or is not relevant, while e-discovery providers supply the requisite technological support throughout the process.”

It is important to be clear about roles, with some companies misunderstanding what ‘processing’ the data involves.

As Fielding summarises, companies may indeed collect the data and store it but in Kroll Ontrack’s experience not many companies, or even law firms, have full service e-discovery processing available to them in-house to either search for or review documents, and are unlikely to enjoy access to predictive coding and other sophisticated analytic features.

Discovery through collaboration

What do corporate counsel think of the way e-discovery is moving?

Tony Moss, head of discovery at British American Tobacco (BAT), says: “The tobacco industry has been involved in serial litigation long-term and so big data discovery is what we’ve done to keep ahead of the curve, and so we have a dedicated role.”

BAT long ago took this work away from its law firms and ‘unbundled’ it, in this case to discovery specialists in India, citing the cost pressures it faced.

“We took ownership of searching at an early stage, and took it away from law firms,” Moss says. “They played a role in helping us shortlist the providers in India that do collation and processing.”

Moss explains that virtually all of BAT’s e-discovery work is litigation-driven, as opposed to regulatory, “though we have had a couple of minor matters with regard to regulators suddenly turning up and demanding information, and we were able to respond”.

He says: “E-discovery is I think taking off a bit more in the UK, and I can see there may be an increase in regulatory investigations, but we are not too exposed to that.”

Moss says e-searching is “a bigger challenge than when information was on paper as there has been
a large increase seen in the volume produced, and we rely on good technological tools to deal with it. “This has been developing for years and we have documents retained as a matter of policy.”

A majority of companies surveyed (66%) say that choosing an external resource/vendor to provide e-discovery services is suggested by their law firm, as opposed to 34% who say their company chooses. Moss thinks law firms are also changing their thinking on who should provide search and discovery services.

“The law firms are becoming more accepting of other providers and I think they see that if they insist on doing discovery themselves clients may go elsewhere due to cost pressures.”

Pinsent Masons’ Lasserson adds: “When document review is outsourced you need to think carefully about your disclosure obligations and make sure the process you have followed is defensible and that no corners are cut. Judges do ask questions as to how disclosure obligations have been discharged. Consequently, you cannot focus only on cost at the expense of quality.”

As experience in the US suggests, e-discovery is only likely to grow in importance and become a legal specialization in its own right as the demands of litigation and investigations continue to rise alongside what will no doubt be a rapid growth in the capabilities of technology.

Those alarmed by the need to trawl through a mass of data will be reassured that technology can simplify the task, but concerned that they and their colleagues — and indeed legal advisers — lack the expertise to use these tools in a reliable and effective way.

Hogan Lovell’s Mirchandani says: “The really exciting thing with the technology is that people are developing tools that allow you to sort the wheat from the chaff easily. You do not want a lot of irrelevant documents. It may be only a few are needed and if a system can do that, clients really get it.”

Thus the ‘unbundling’ to specialists will, again to judge from US experience, become a more common feature of companies’ engagement with the law so that they can access the best expertise directly rather than with a law firm’s ‘middle man’.

Only a decade or so ago ‘artificial intelligence’ sounded as though it belonged to the realms of science fiction — soon it may be an everyday part of a firm’s e-discovery work, good for both their reputation and bottom line.

**View point: Katie Fitzgerald, predictive coding specialist at Kroll Ontrack**

**Why predictive coding is the intelligent choice**

I am celebrating the decision in Irish Bank Resolution Corporation Ltd & ors v Quinn & ors [2015] IEHC 175. The use of this machine learning technology in discovery has been sanctioned in the US for some time. For the first time, a court closer to home has agreed to the validity of using this technology and the benefits being reaped from it. The ruling addresses major concerns expressed about predictive coding and seeks to sway the sceptics. It unequivocally states that predictive coding will save time and money. The methodology underpinning the use of this technology has been declared sound, as has the benefits of using it.

**The judgment**

• In discovery of large data sets, technology assisted review using predictive coding is at least as accurate as, and, probably more accurate than, the manual or linear method in identifying relevant documents
• As predictive coding combines man and machine, the process must contain appropriate checks and balances which render each stage capable of independent verification. The parties need to agree to these
• Predictive coding will save time and money if used to refine a data set and to limit the pool of documents to be manually reviewed (in this case 10% of the 680,809 documents would need to be manually reviewed after employing predictive coding)
• Parties should first agree to the use of predictive coding, run agreed upon keyword searches to initially refine the dataset and then use predictive coding, subject to agreed upon checks and balances. Documents suggested by the software as being potentially relevant should then be reviewed manually by a human review team

**Will using predictive coding technology mean relevant documents will be missed?**

The Judge addressed concerns that relevant documents will be missed in a predictive coding review. Common sense tells us that there is always a risk of relevant documents being missed. There are likely to be mistakes, even in a human review. Provided that the correct validation steps are taken and predictive coding relevance scores are sufficiently high, then the obligation to disclose can be met.

**Does the use of predictive coding necessitate disclosing commercially-sensitive, non-relevant information to the other side?**

One of the biggest fears clients have about using predictive coding is that parties will have to show the other side commercially-sensitive and non-relevant information, to prove they have correctly taught the system how to identify relevant documents and categorise them. The Judge held that this is not required.

**What does the acceptance of predictive coding mean for clients?**

This case is a landmark decision in Europe and the judgement tackles with ease the concerns often articulated about predictive coding. It also provides a solid foundation for a protocol on the use of this kind of technology in the disclosure process and states with conviction that predictive coding will save time and money.
Your Global Ediscovery Partner

At Kroll Ontrack we specialise in providing innovative electronic evidence services to our clients across the world.

We provide legal technology services to help law firms, corporate clients and government entities recover, search, analyse and produce data efficiently and cost-effectively. Our highly skilled legal and technical experts assist clients in multiple practice areas including dispute resolution, competition and regulatory cases.

For more information about Kroll Ontrack and its offerings please visit: www.ediscovery.com/uk.