# A Dynamic Approach to Early Case Assessment

Lots of buzz in the legal technology world today revolves around early case assessment, a term that is interpreted differently by law firms, corporations, consulting firms and software providers. Basically, early case assessment is the process that organizations use to estimate how much time and money it will take to prosecute or defend a legal case. The cost of complying with discovery requests can be extremely high for both the plaintiff and defendant, and because the vast majority of cases settle prior to trial, organizations want to determine as soon as possible whether or not to settle so they don't waste valuable resources on the case.

According to George Kiersted, president of Kiersted / Systems LP, "During electronic discovery, the sooner you know what kind of information you have, where it is, and how much you have, the sooner you can make sound decisions. You need to be equipped to determine whether and how to respond to pre-litigation demands, and once litigation is commenced, whether to attempt early resolution."

Case assessment is often customized to each case and each client. A cost-benefit analysis performed early in the process is crucial in mitigating risk, and an effective litigation action plan begins with identifying key issues and making well-informed decisions about potential strategies. Analyzing the benefits of winning and the cost of litigation helps avoid unnecessary expense and protect the interests of the organization. Because circumstances often change as the case evolves, organizations need to assess each case continually throughout the discovery process. That is why Kiersted prefers the term "dynamic case assessment" rather than early case assessment. He emphasizes that case assessment must be dynamic, and so should workflow in general. "Our clients want technology that lets them quickly assess an information collection, and then and slice and dice it for a clearer understanding and smarter decisions."

Once the potential for litigation becomes apparent, typically an early step is to place a legal hold on potentially relevant documents, both in paper form and electronically stored information (ESI). Potentially relevant information (which may be located on local hard drives, removable media, file servers, networks, etc.) may be processed and filtered based on search terms or data analytics and may be reviewed by attorneys and/or experts. Relevant information may then be produced to the opposing party.

While the process may seem clear, real-life scenarios present enormous difficulties. Attorneys, corporate legal departments, and risk managers face tremendous challenges in analyzing the huge volumes of ESI, which is growing exponentially, as are the types of data. Expertise from forensics teams, IT professionals and independent consultants, combined with the right technology tools, can help cut costs significantly by reducing the number of documents that attorneys must review. Initially, this is accomplished by culling down case datasets to only what is relevant. For example, technology can speed up the process by allowing review teams to drill down into a group of documents and decide whether to bulk code the entire subset or push it into the review process. Likewise, a clustering engine can logically and intelligently group items based on an analysis of document content, giving reviewers the power to quickly and easily find what they need without plowing through irrelevant information. They can get as granular as needed, while ensuring quality and consistency.

Moreover, legal teams need the flexibility to come back to "the well" if circumstances change, and they often do. The right technology tools smoothly integrate the task of culling the information with the steps in post-preliminary processing. With a dynamic approach, reviewers can sample, assess and act on data from any level they choose. During any phase of the process, they can breakdown data by custodian, email dates, email sender, sender domain, file type attachments and much more. Such flexibility lets litigators and corporate counsel assess, readjust and reprioritize on the fly.

Another aspect of case assessment is the expanded use of Microsoft SharePoint® by many organizations as a way to manage their data. SharePoint collects rich metadata that enhances the case assessment process because of the potential to slice and dice across new dimensions. According to Kiersted, legal teams should not settle for just a standard set of metadata fields. They should be able to use their own systems and their own metadata to characterize their documents. Smart technology recognizes those custom fields and ingests them into the toolset for early case assessment.

In addition to providing new ways to analyze ESI, technology helps set the stage to accomplish further efficiencies, anticipate and minimize actual litigation costs, and gain positive results. Ultimately, it is about taking control of the data, analyzing it, and determining much earlier in the e-Discovery process if the case has merit and how best to proceed. The right combination of professional consulting services and smart technology helps facilitate effective early case assessment and reveal more meaningful information - better, faster, and easier. For more information about a flexible and dynamic approach to early case assessment, contact Kiersted / Systems, LP at www.kiersted.com or 1-866-543-7789.