

The Checks and Balances of Your E-Discovery

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August 2008

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As Appeared in Document Magazine

www.imergeconsult.com

The demand of e-discovery and litigation is ever-increasing, so be prepared for its future impact with these nine best practices for remittance processing technology

The new remittance processing technology utilizing image capture and analysis has a potentially significant impact on the e-discovery process and the demand for details in the litigation process. Ever since the Federal Rules of Civil Procedure (FRCP) were amended to incorporate electronically stored information (ESI) in December 2006, the courts have been considering an ever-expanding definition of what ESI includes. Most of the early focus has been on email correspondence, but as the litigators expand their search for relevant information, there is the potential that all of the electronic data in the new remittance processing databases will become the target of e-discovery searches.

What's In an Image?

In the early days of the Check 21 law, there was a worst-case scenario proposed that would test the legal status of a home insurance premium, which was paid by check and then deposited remotely by the insurance company as a check image and electronically cleared by the company's bank. The question was who would be liable for damages if the house burned down after the insurance policy expired due to a late payment. The answer involved everything from the postmark date, date on the check, date the check was endorsed, deposit date and date the bank posted the funds to the insurance company's account. Establishing a timeline of the transaction would involve both the image of the checks and remittance documents, as well as the metadata attached to each image as a record of when and where it was processed. This clearly is an extreme example where an e-discovery process would demand all of the insurance company's and bank's electronic records of the transaction to help prove the timing of the payment.

Since the new software search engines are capable of finding information from images we would never have dreamed possible from paper files, the extent of information available to investigators in the remittance and check images and related metadata files becomes both readily available and a target for e-discovery procedures. Here are some key points to consider when investigating new remittance processing software or upgrading your software in the future.

1. It should be obvious by now that all of the remittance processing records stored in digital images and computer databases can potentially become of interest to future litigators, as long as it remains within the statute of limitations for that legal jurisdiction. In most cases, this is typically seven years from the date of the transaction and becomes an obligation of the institution's records management function for retention and disposal.

Many of today's better remittance processing and document management software products have retention schedules built in to flag the records manager to delete files that have exceeded the seven-year age. This is always wise to avoid e-discovery of old information that may be influential but no longer available if properly disposed of after the statute of limitations has expired.

2. The courts are demanding more digital information and documents as they become more sophisticated at processing digital documents and image information. Be sure you have a review procedure in place with legal counsel and your IT staff to know the FRCP rules that impact your remittance processing procedures and potential demand for e-discovery transaction data.

3. Audit trails for each remittance processing document should be a part of your database information to record when any file was edited, printed, emailed or accessed in any way and by whom. This will greatly simplify the e-discovery process and verify the integrity of the image and metadata file for authenticity. Without an audit trail, the litigators can question the authenticity of a file, which can be used to suggest that it may have been edited to change the image or data.
4. The insurance industry alone is storing more digital information regarding claims and communications, as well as digital photos of damages. The premium payment information can often determine if a client's premium payments were received on time to guarantee coverage. Not only are there multiple forms of remittance data, but the new image files also create significantly large data files than the traditional text files, which not only take up much more storage space but also require longer to process searches for key words and relevant data.
5. The use of electronic payments, such as e-bill pay, online credit card charges and automatic transfer payments from checking accounts, are all recorded digitally and can easily be demanded in the e-discovery process to support a litigation case. How many times have you heard the CS/ programs discuss the credit card records of a victim or criminal to track down their location and purchases? The demand for these ACH records also falls into the domain of the new ESI data defined by the FRCP.
6. Knowledge management technology now provides the capability to search combinations of digital records and images to determine the existence of key words, phrases or patterns, and this could further impact the e-discovery process for remittance processing data that is attached or referenced in correspondence acquired from other systems. This will become of growing significance as the e-discovery process takes advantage of more and more sophisticated knowledge management software.
7. Collection agencies now utilize more sophisticated check processing technology to validate payments and follow up on delinquent debtors, so they can establish payment patterns and recover information from multiple transactions to compile evidence in an e-discovery litigation scenario. Now many agencies are sharing collection records to track down debtors who habitually use the credit system to defraud businesses. This really is an application of preventive e-discovery to investigate and stop the repeated misuse of credit.
8. Medical payments processing has always been a tedious process because of the need to match EOB codes with insurance payments and multiple payments to the providers. Now that new software can utilize sophisticated OCR and ICR algorithms to read the checks and EOB forms to separate payments out, there exists the potential for posting errors that could eventually become involved in legal suits and subjects for e-discovery. Further complicating these transactions are the Federal HIPAA laws that require the processors to retain the privacy of the medical data while adhering to the e-discovery disclosure rules. Just the release of a Medicare procedure code related to a patient name or SSN can be justification for legal action.
9. This brings us to the argument for data security. If you haven't been bombarded enough with the risk of identity theft from your customer and remittance processing databases, now the e-discovery laws are impacting how and where customer data is stored. Your IT department undoubtedly has a disaster recovery program that duplicates your customer data and remittance processing records at some remote location for both redundancy and backup. From an e-discovery standpoint, this doubles the processing job since litigators will want to search both sources to validate that something was or was not different between the two sources. This becomes doubly interesting to them if they suspect that someone has altered data to cover up a liability or error. We highly recommend that your disaster recovery plan include the potential for an e-discovery process in the event of any future legal action for or against your organization.

The bottom line is that e-discovery procedures are becoming more important as more court cases come to trial that involve the digital document information so commonly used by today's businesses and governments. While there is little case data to date that involves electronic remittance processing information, it is certain that it will become a growing consideration. Just the billions of check images and ACH transactions processed per day by commercial banks, credit unions and the Federal Reserve Bank suggest a high probability that more of this information will end up as part of the new e-discovery procedures in future court cases.

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content and knowledge management, as well as his latest application with the automation of image processing of checks and remittance documents.