

Electronic discovery

Litigation can be time consuming and expensive; electronic discovery makes it quicker and cheaper.

What is electronic discovery?

When a legal case reaches a certain stage, all parties need to complete what is known as a discovery procedure. They have to disclose all documents in their power or possession,

- relevant to the case,
 - material to the issues under dispute,
 - and not protected by legal privilege,
- to the other parties in the case.

30 years ago most discovery was paper based. Documents were typed or hand-written and relatively few in number, so discovery was usually relatively limited in scope and straightforward to complete.

Today it is very different. Something over 97% of business documents are generated on computers. Any modern computer can potentially store thousands of documents and tens of thousands of e-mails - all potentially relevant to any litigation and all requiring at least some review during the discovery process. To print out all this data, or even a fraction of it, and to review it manually is difficult, time-consuming and expensive. Yet this is the approach still taken in most legal cases in Ireland, to the considerable cost of the individual and organisations involved.

But there is another solution, already standard in the US and widespread in the UK. One which is becoming increasingly common in Ireland: Electronic Discovery.

The vast majority of the documents relevant to any legal case will be stored on computers, and usually only a few computers at that. Computer data can be electronically searched with ease, saving you time, money and trouble.



Why can't we do it the old way?

Many reasons:

The storage capacity of your computers is vast –there's too much material to review.

Most computers sold these days have hard drives bigger than 250 gigabytes. This may not sound like a lot, but that is more data that can be found in every book on every shelf in the biggest bookshop in Ireland. Even a simple mobile phone can have tens of megabytes of data storage (which doesn't sound like a lot until you realise that you can store the entire works of Shakespeare in less than ten megabytes). It is a potentially overwhelming task for any legal team to manually trawl through this amount of data, or at least to do so properly.

Your computer's memory is better than your own - You don't know all the files on your computers.

You may think you know exactly what's on your computer, but you cannot. For example if you are storing three or four years of e-mails on your computer it is likely that you have tens of thousands of different "documents" on your computers. And even if you think you are sure of what is on your own computer, do you know what surprises lie on anyone else's? What e-mails have your colleagues been writing? What documents are sitting on their computers? It is better that you find out before you go to court, than to have something unpleasant "sprung" on you later.

Accessing evidential computer files directly can change them.

Every file on each of your computers has associated date and time information, such as the time of creation, the time of last access, the time of last modification and the time of last printing. If you access the files on your computer directly, even to print them or e-mail them, you can easily alter these key dates. Your opponents in litigation can then use these alterations to have the documents declared invalid as evidence. Grant Thornton's professionals have already been called in to "pick up the pieces" after a number of these events. Don't let it happen to you.

The electronic forms of the documents are the originals.

The electronic form of a document is the original version. Under the 2000 Electronic Commerce Act electronic documents have equal validity to paper ones. Printing a document essentially redacts or edits it. Printing a document will possibly alter it. And you are required to provide unedited, unaltered documents in discovery.

To print a document is to lose data.

Electronic documents contain important data buried inside them, data that is often hidden from normal scrutiny, and will be lost if the document is printed. Word processed documents files typically contain editing histories which can be invaluable in finding earlier drafts of the same document, or people with a previously unknown involvement in the matters in hand. They may even contain text deleted from the document but still stored inside it. To print any electronic document is to lose large amounts of potentially relevant, even invaluable, information.

Electronic discovery is faster.

Traditional discovery methods are slow. They were developed for dealing with the handwritten and typewritten documents of the last centuries. They are inadequate to deal with the avalanche of computer-generated documents generated by modern organisations. Only computer-based techniques can adequately deal with computer generated data.

Electronic discovery is cheaper.

Manual review takes time and people. People have to be paid. Legal professionals have to be paid by the hour. Electronic discovery is mostly performed by computers. Human intervention is deliberately kept to a minimum.

Electronic discovery is more complete.

Many legal professionals attempt to compensate for using manual techniques by greatly limiting the scope of their review of documents. This, of course, greatly limits the chance of finding the key document that might make your case, or the bombshell e-mail that your opponent will produce to ruin it. The more files you include the review, the less chance there is of being caught by surprise. Only electronic discovery lets you do it properly. Grant Thornton can help you.

Evidential computer data is easy to tamper.

We have investigated a number of recent cases where counter-parties to cases have handed over evidence that has been modified, or had key documents deleted. Only electronic discovery techniques make it possible to uncover this kind of activity, and only experienced IT Forensics professionals can be relied upon to spot it. Grant Thornton have these professionals.

US and UK cases are likely to need electronically.

Electronic discovery is used widely in both the US and UK (among other countries). US and UK courts expect electronic discovery to be done properly, to the correct national standard. The penalties for getting it wrong can be draconian. Only companies with a presence in both jurisdiction can be relied upon to produce evidence to an acceptable standard. Grant Thornton is one such company.

How is it done?

Electronic discovery is simple. It only takes a few steps:

Plan

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Image

Perfect evidential copies, called "images" are made of each of these devices – this can be done quickly, cheaply and efficiently using IT forensics tools. Once these copies are made the original computers can be returned to normal service without fear that valuable evidence is being destroyed.

Process

Potentially relevant documents and e-mails are copied from all images to a central database of files. As part of this process a digital signature is automatically taken of each document and e-mail – guaranteeing the evidential validity of each document beyond question.

Duplicate

If any duplicate documents or e-mails are found in the database, they are removed. This means that files and e-mails only ever have to be reviewed once, no matter how many times they exist.

Search

The remaining documents and e-mails are automatically indexed and searched for search terms and concepts to find documents relevant to the case. Grant Thornton's IT Forensics professionals have years of experience devising and running such electronic searches and can help you find the search terms most likely to produce useful and relevant results with a minimum of "false positives". The advantage of this approach is that search after search can be run, with minimal cost, to produce a database of likely relevant documents and e-mails.

Review

Only the documents known to contain search terms – usually only a small fraction of those on the computers – then have to be reviewed for relevance and/or privilege by you or your legal advisors. However, because the documents will still be in electronic form, they review can be completed far more quickly and efficiently than if they were in printed form. This can result in a massive saving of time, cost and distribution.

Production

Only when the final set of discovery documents are ready are they printed out.

Why Grant Thornton?

Grant Thornton employs the most experienced electronic discovery practitioners in Ireland. Our specialists have successfully completed dozens of cases for all kinds of clients, from multinational financial companies, to large public bodies, to small businesses, to private individuals. Members of our team wrote the Law Society of Ireland's own practice guides on electronic evidence discovery. We use similar software, hardware and evidence procedures to the Garda Siochana, and we have the support of an international network of electronic discovery specialists. Our evidence handling standards are fully consistent with national and international standards and our professionals have delivered evidence in compliance with local and international rules, including the UK Civil Procedure Rules (CPR 31) and the US Federal Rules of Civil Procedure.

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