



March 15, 2012

## Court Recognizes Computer-Assisted Review as an Acceptable Way to Search for Relevant Electronic Documents in Discovery

### Intellectual Property Client Alert

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Litigants often must review and produce electronic format documents in the discovery phase of a civil litigation. Given the explosion of electronic documents generation and retention, electronic document production can be very expensive. The opinion in *De Silva Moore v. Publicis Groupe*, 2012 U.S. Dist. LEXIS 23350 (S.D. N.Y. Feb. 24, 2012), recognizes and favorably regards a novel type of computer-assisted review as an acceptable alternative to search for relevant electronic documents.

The object of electronic discovery is to identify as many relevant documents as possible, while reviewing as few non-relevant documents as possible. Because of the high volume of electronic documents, parties often rely on keyword searches to cull the documents down to a more manageable volume for further manual review. Keyword searches must be carefully crafted to avoid being over-inclusive which results in a large number of irrelevant documents.

Computer-assisted review uses software tools with algorithms to enable the computer to determine document relevance. Computer-assisted coding involves one or more people who review and code a “seed set” of documents. The computer algorithm identifies common document properties and then codes other documents. The results of the computer coding can be reviewed by a human, who gives feedback that the software algorithm uses to more finely tune or “train” its document coding process. When the human and computer begin to sufficiently code the same, the software is used to review high volumes of documents. Because the computer can review keywords in documents faster than a human, in certain situations computer-assisted review can yield highly relevant documents for less money than using just human reviewers.

In the case of *De Silva Moore v. Publicis Groupe*, the parties agreed to computer-assisted review but disagreed on the coding protocol. In the opinion, the court addressed the protocol concerns and approved the use of computer-assisted review in discovery. The court noted that computer-assisted review is an available tool for discovery and “should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amount of legal fees in document review.” Such cost savings may be particularly beneficial in intellectual property and other cases where technology companies are the litigants.

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