

**DOCUMENT PRODUCTION AND RETENTION METHODS
IN THE POST-ENRON WORLD**

February 2003

BACKGROUND

The recent downturn in the economy and subsequent allegations of corporate misconduct have resulted in an explosion of high profile, high stakes law suits. Legislation passed in an effort to restore investor confidence and curb corporate abuse has created an entirely new set of regulatory requirements for publicly traded companies and the legal professionals who represent them. These two trends have created an environment in which the retention, production and control of a company's internal documents have become even more crucial.

A legal professional or corporate document control specialist seeking to conform to litigation and regulatory mandates must address the retention and management of two sets of documents: electronic and paper. Corporate efforts to digitize internal documents have usually been rewarded with substantial increases in productivity and employee satisfaction. Digitizing also allows for easier and more cost effective storage and retrieval. But digitization has been something of a nightmare for the legal professional. Conversations that once took place around the water cooler are now immortalized in e-mail. Corporate officers who encourage employees to think "outside the box" are horrified to find that ideas that would once have been immediately dismissed in a free wheeling brainstorming session are given undo gravity when communicated as an electronic presentation and produced as an exhibit in a courtroom. At the same time, the decrease in the effort required to store documents seems to be driving an increase in the legal responsibility to do so. Electronic documents create additional problems due to the networked environment in which they are created; they are duplicated more rapidly and more extensively and they are distributed more widely than their paper counterparts. At present, this replication and distribution of a single document is repeated over and over again in the document management process, resulting in a high level of duplicative effort (single documents indexed and coded multiple times, e.g.).

Paper Documents create the same problems they have been creating for years. Using existing methods, paper is difficult and expensive to collect, move and manage. In a litigation setting, individual office and central file searches are intrusive and disrupt a company's operations. The sheer bulk of the collection makes management expensive and difficult. Firms are typically required to hire temps or maintain staffs whose sole responsibility lies in tracking and moving boxes of documents. Indexing and coding and identifying important documents still requires additional floor space and largely remains as labor intensive today as it has always been.

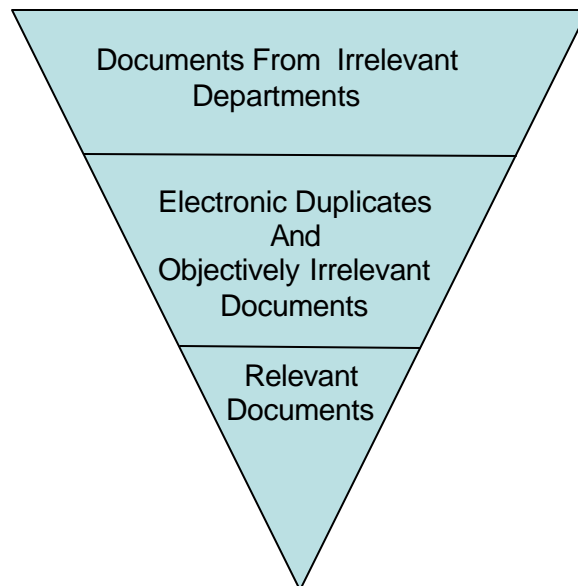
Existing corporate document retention policies are no longer adequate and most, if not all, corporate legal departments and outside counsel recognize the need for a new approach. But finding that new approach has not been easy. What is needed is a simple, systematic, objective and ongoing document control solution that controls the generation, storage and management of corporate documents.

THE DOCUMENT PYRAMID

Whether an enterprise creates a million a day or only a few, corporate all documents are not created equal. Some are produced by departments or work groups with operations that almost always fall outside the scope of litigation or regulatory issues. Many of the documents created by the remaining departments are duplicates while others are nearly worthless (reminders of lunch dates or discussions of the previous day's sports results, e.g.). Finally, a very small number of documents are declarations of policy, reports on operations and financial matters, or serve as the blueprints for a firm's operations (business plans, competitive analyses, e.g.). These are the documents that are used in litigation and are of interest to regulators.

Whether in a litigation or in a regulatory compliance setting, or simply in keeping track of intellectual capital, the overwhelming majority of the time and expense of document management goes into separating the important documents from the meaningless. This process can be described as an inverted pyramid which represents the universe of corporate documents, and in which the goal is to get down the pyramid as quickly and cost effectively as possible.

THE DOCUMENT PYRAMID



THE DIGITAL SOLUTION

Managing documents digitally allows you to cost-effectively create and maintain a collection of potentially relevant documents with minimal disruption to your normal operation. This requires three steps and can be done for a single case or to create a resource that can be used across cases.

Step One involves the elimination of whole departments from consideration. In traditional non-digital litigation settings, individuals are chosen by the likelihood of their having relevant documents. This process is subject to controversy (where the other side argues that the net has been cast too narrowly) and to over-collection (where a mass of documents is collected from a custodian only to find that only one or two documents have any relevance) or under-collection (where an important custodian is overlooked).

Digital litigation uses a more conservative method in which whole departments are eliminated from the collection process but only if it can be objectively shown that these departments are highly unlikely to produce documents of interest. Maintenance records, for example, are not typically responsive to document requests and the ongoing processing and storage of those documents makes little sense. In the few cases where maintenance records are of interest, the focus will typically be on a single account, thus making a more surgical production feasible.

Step Two is the collection and objective processing of all remaining documents. In existing processes, these documents are turned over to legal professionals who view each one to make relevance determinations. Duplicated documents are reviewed every time they appear and objectively irrelevant documents (like lunch reminders) are reviewed and removed from the collection using the same level of effort and legal skill that is applied to all other documents.

Digital litigation allows you to collect electronic and paper documents more easily. Electronic documents, for example can be collected as part of the normal backup procedures in the identified departments and work groups. In this scenario, the network administrator simply creates a second backup copy which is then delivered for processing.

These documents can then be “de-duped,” an automated process that retains only a single copy of each document version while retaining a list of custodians in whose collection a copy was found. This process alone removes a significant number of documents and moves the process further down the inverted pyramid.

Remaining documents can then be physically viewed by relatively unskilled personnel who operate under specific guidelines that allow them to eliminate all documents with no potentially relevant content whatsoever. The performance of this task by personnel with minimal or no legal training has the dual benefit of reducing processing costs and ensuring objectivity.

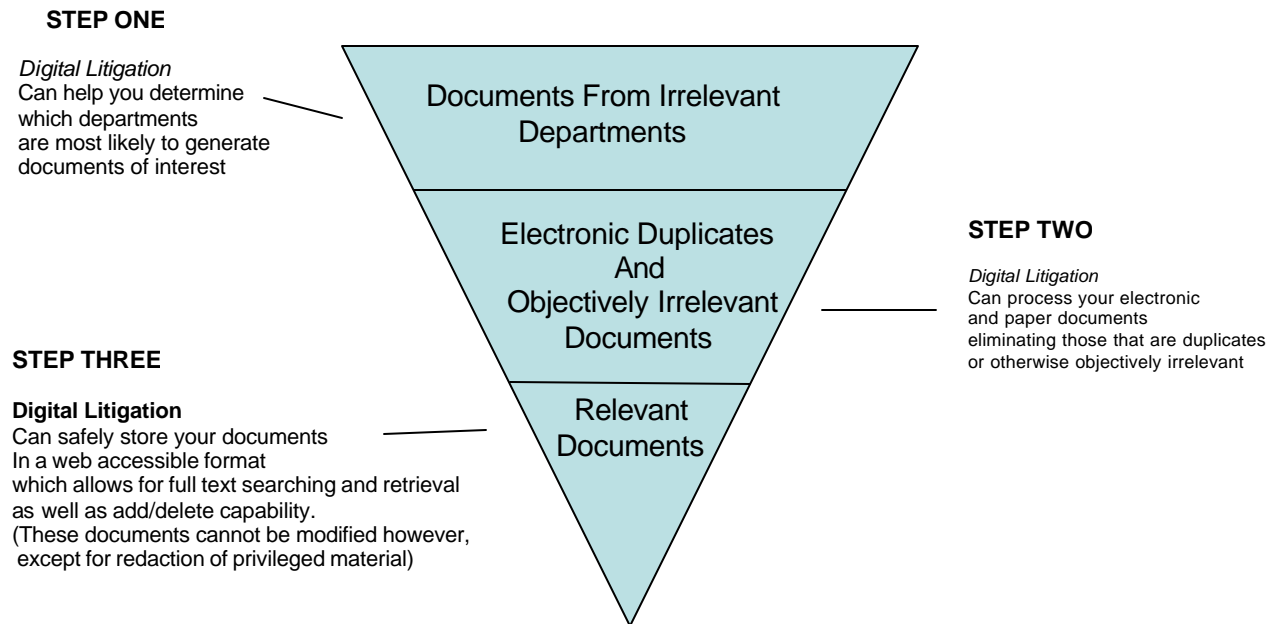
Step Three is performed on the relatively small collection of documents that remain at the very bottom of the pyramid after the first two steps have been performed. These documents are stored in a central, secure, electronically accessible location. In a litigation setting, the user can either electronically search the collection for relevant documents or determine relevancy by looking at each document. In either case, the task is simplified greatly by the prior elimination of duplicate and clearly irrelevant documents.

An enterprise subject to a relatively large number of ongoing law suits or regulatory inquiries should consider maintaining a collection of potentially relevant documents as part of its normal course of business. These documents can then be accessed as needed, eliminating the need to create separate collections for each action.

Enterprises, including law firms, that are focused on individual actions can eliminate irrelevant documents from the collection and eventually narrow down the scope of the collection even further thus saving storage and retrieval costs and making electronic searching more effective.

THE DOCUMENT PYRAMID

Digital Solution



Digital Litigation, Your Complete Litigation and Document Retention Solution

CONCLUSION

In today's legal and regulatory environment, finding new ways to discover, manage, review and produce corporate documents is imperative. Digital Litigation can make your litigation and regulatory efforts faster, better and more cost effective. Elimination of duplicate documents minimizes wasted time spent on "recoding" documents that have already been processed. Electronic and imaged paper documents are easier and faster to review online than in their original forms. The reduction in the overhead presently spent on managing large collections lowers your clients' litigation costs while freeing legal professionals to do what they are trained to do: legal analysis.

Digital Litigation Services (DLS), a division of Mountain States Imaging LLC, offers end-to-end, cost-effective document services that allow legal professionals to leverage their time and skills more effectively. DLS understands the unique constraints that exist in the litigation environment as well as the ongoing processes needed to ensure compliance with existing and recently mandated document retention requirements.

Established in 1986, **Mountain States Imaging, LLC (MSI)** provides total solutions to document-management problems. MSI specializes in high volume document conversions offering the most efficient quality solution available. MSI's corporate headquarters are in Denver, Colorado with services offered across the USA. For more information visit our website at www.msimaging.com or call us at 303-773-3750