

Discovery Made Easier By Computer

by Casey Frank

The needs of the discovery process often command a disproportionate share of the time and effort devoted to litigation. Ironically, computerization may have only exacerbated this imbalance by making it easier to reuse and add to previous interrogatories and, thus, encouraging overly broad requests. Fortunately, there are also simple ways that computers can be used to make discovery easier to deal with. Some of them will lighten the load on secretaries and paralegals. Others will improve attorneys' ability to use the information received.

Get Depositions on Disk

Most court reporters will supply deposition transcripts on disk for a nominal fee (along with printed copies). Admittedly, merely having a disk is no substitute for mental familiarity with a deposition. Nevertheless, there may be times when an attorney needs to find specific information on short notice that the attorney knows is there, but does not know precisely where it is in the transcript. Naturally, the larger the transcript, the more impractical it is to search manually. However, if all transcripts are loaded on a computer, such a search takes only minutes.

The disks supplied by court reporters will have the transcript in ASCII format.

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This is a universal text format. Both WordPerfect® and Microsoft Word® can open ASCII on either DOS or Macintosh® computers. In WordPerfect 5.1 for DOS, the long display is needed to view the ASCII file. Once opened, the ASCII file can be saved in the format native to the user's word processor.

For even more extensive analysis of electronic deposition transcripts, there are programs that will automatically index every word of an entire document. Some of these programs can search Word-

Perfect documents directly, while others require the transcript to be in ASCII format. A program entitled Summation Blaze® is available for DOS-based systems; the Sonar® program is available for the Macintosh. These programs are not limited to indexing depositions. They can provide indexing and text retrieval from any word processing document on a computer.

Programs such as these search for words or phrases as instructed and provide an index showing the page and line

CASE REVIEW

Insurance Coverage for Software Infringement Lawsuits

by Peter L. Edwards, a partner with Rothgerber, Appel, Powers & Johnson

Courts recently have had occasion to consider whether the "advertising injury" coverage available under most comprehensive general liability insurance policies applies in cases involving the alleged infringement of rights in computer software. In *Federal Insurance Co. and Great Northern Insurance Co. v. Microsoft Corp.*, No. C92-610D (W.D. Wash. Jan. 5, 1993), the court ruled that Microsoft was entitled to insurance coverage for defense costs in a copyright infringement lawsuit brought against Microsoft by Apple Computer.

The policy in question provided coverage for "advertising injury," which was defined to mean

injury arising out of one or more of the following offenses committed during the policy period occurring in the course of your advertising activities:

... (2) any infringement of copyright or title or of slogan, trademark, service mark or trade name. ...

The quoted language is similar to many comprehensive general liability policies that provide basic business insurance coverage.

The court reasoned that because the complaint alleged that Microsoft's infringing activities included "distribution," which may be broad enough to include advertising and marketing, the complaint therefore did allege "advertising injury" within the meaning of this policy. The court would not determine Microsoft's entitlement to insurance coverage for any settlement or judgment, however, until the outcome of the underlying lawsuit between Apple and Microsoft was determined.

of each occurrence. They could exhaustively index every word, but this would include too many "noise" words, such as "the" as well as "law" or "court." An essential feature of these programs allows the user to specify which noise words to exclude from the index, thus increasing the speed and accuracy of the search. Another important option of these programs allows the user to limit the words to be indexed to those specified, and no others. This is useful when the user wants to limit his or her search to a well-defined issue that can be reduced to known words or phrases, without having to wade through other data.

Trade Interrogatories on Disk and Paper

The least confusing way to answer interrogatories is to insert each written answer on the same page after each written question, without having to go back and forth between separate documents. The problem with this method is that it requires the retyping of all the questions. This problem is alleviated if the interrogatories are sent on disk along with the written version, and the practitioner requests a disk whenever he or she receives interrogatories in written form alone. Of course, parties need to coordinate disk sizes, word processing software and computers beforehand.

In a letter to this author, the U.S. District Court urged that "counsel work with opposing counsel in all cases to put this concept into action."¹ This convention would save all parties considerable time and expense.

Optical character recognition ("OCR") might theoretically obviate the need for distribution of disks containing electronic information. For several years, OCR has promised to allow users to turn information that is on paper into electronic form. However, it works incompletely at best. Ninety-nine percent accuracy sounds impressive, but even that level would still leave a few erroneous words on every page. For the foreseeable future, direct exchange of electronic information is and will continue to be superior to OCR.

Organize Documents With a Database

Discovery produces large volumes of paper. The best way to keep track of such information is in a database. To use a database, it is necessary first to enter the name, date received or produced and identifying tag-words for each document. Any significant words or phrases from deposition transcripts also can be imported. This allows the user to organize, find and track the receipt, production and location of all the

documents. The beauty of a database is that while the information only has to be entered once, it can be retrieved in many different ways.

Think of a database as a telephone book for paper people. From the same database, a user can: produce alphabetical lists (white pages) for rapid response to subsequent inquiries; generate categorical lists (yellow pages) for grouping all documents received or produced before a certain deadline or related to a specific topic (by searching for identifying tag-words); or group in almost any pattern. There are many databases for both DOS and Macintosh. Paradox[®] by Borland is one of the most popular for DOS computers, while Filemaker Pro[®] by Claris is one of the most popular for the Macintosh.

Conclusion

Electronics cannot replace intelligence, and computer programs cannot substitute for preparation. Nevertheless, even if computers cannot replace attorneys, attorneys with computers may eventually replace attorneys without them.

NOTE

1. Letter to author from James R. Manspeaker, U.S. District Court Clerk, Denver (June 8, 1992).