

Dispute Resolution

# eDiscovery – The Advent of Technology Assisted Review?

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Discovery – the identifying and gathering of documents relevant to an action - can be a significant drain on resources for clients. In exceptional cases, the cost of discovery can reach as much as 40% - 50% of the total cost of the litigation. The challenge in complying with discovery obligations is ensuring that no relevant documents are missed while, at the same time, keeping costs under control. Technology Assisted Review may be the solution.

The Irish courts have long accepted that searching electronic documents using keywords is one way to reduce the volume of documents that have to be manually reviewed by a lawyer. In other jurisdictions, the U.S. in particular, the courts have gone a good deal further and endorsed the use of Technology Assisted Review.

### One to watch

The issue of endorsing Technology Assisted Review is currently before Mr. Justice Fullam in the Commercial Court, in a Motion brought by IBRC against the Quinn family.

The court will determine whether IBRC should be allowed to use Technology Assisted Review to assess the relevance of approximately 680,000 documents and if so, whether all parties should be allowed to have input into the process.

A judicial endorsement of Technology Assisted Review in this case would not prompt widespread adaptation of but it may indicate broad guidelines as to its use that could then be built upon in appropriate cases.

### What is Technology Assisted Review?

Technology Assisted Review involves the use of computer software to determine the relevance of electronic documents.

In simple terms, a sample set of documents is manually reviewed by a senior lawyer who is familiar with all elements of the case. The results of this manual review are then used to train the computer to identify relevant and non-relevant documents.

This process is undergone a number of times until the computer is correctly predicting, to a satisfactory level, the relevance or non-relevance of the sample sets of documents.

### What is the upside?

- There is the potential to significantly reduce both costs and the length of time it takes to complete discovery and bring a case to hearing.
- Some studies indicate that this type of review is actually more accurate than a traditional manual review.

### What is the downside?

- It is not tried and tested in this jurisdiction and, unlike other elements of eDiscovery, there is no official practice guide or generally accepted standards.

- In Ireland, unlike the U.S., relevant documents must also be categorised before they are discovered. This additional step will still require a manual review of all relevant documents which will somewhat reduce the impact of Technology Assisted Review.

Ultimately, if automated Discovery tools such as Technology Assisted Review are to be embraced in Ireland, it is likely that industry standards will have to be developed and agreed upon.

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