

TechTalk:



Machines vs. People

By Kevin Carr, President, InterLegis

Editor's note: Each month, Kevin Carr will share his insights about discovery technologies in an easy-to-read straightforward manner. Check each edition of ALSP Update to stay abreast of his view on technology topics and trends. In this article, he discusses the role people play in the use of advanced legal technologies.

"This technology scares me."

An end-user of our technologies said this to me nearly eight years ago. This was before the e-Discovery boom, when paper was scanned and made searchable, and before advanced analytic technologies really gained industry-wide acceptance.

Her statement caught me off guard; primarily because I had just delivered a great demonstration of our technologies to her entire legal team, which was well received by all in the room. In fact, the response was so favorable that the group decided to move forward. However, as we continued our meeting in her office to discuss next steps, she uttered those words.

Here's how our conversation continued:

Me: *Why does the technology scare you? Is it because it's new stuff you haven't used before?*

Her: *No. It IS new, but we need it.*

Me: *Is it because you're afraid your team won't know how to use it?*

Her: *No, they can be trained.*

Me: *Is it because your data will be hosted out on the Web?*
(a fairly new concept at the time)

Her: *No, I'm not too concerned about that.*

Me: *Then what is it?*

As Seen in:



After a long pause, she said, *"It's because I fear it will replace me."*

Wow. That was a big statement to make – yet, an understandable one. But I honestly wasn't prepared for it.

So, after a long pause of my own, I responded with, *"I know why you feel that way, but this sort of technology won't ever replace you. It will, however, change how you do things."*

All these years later, I still feel the same way. I hold true to that opinion, and have since seen it confirmed time and time again.

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Her fears weren't without some merit, though. The reality is that advanced technologies can displace people in various industries. The manufacturing industry is a classic example. On many assembly lines, machines – even robots – are now doing the work people used to do. The benefits to manufacturing companies are plentiful: higher output, consistent quality, lower overhead, increased margins, no HR issues (machines don't complain, gossip, call in sick, or take lunch breaks) to name a few. Sadly, oftentimes the "machines vs. people" decision is a no-brainer. And thus, people get replaced; they need to find a new way to make a living.

Okay, so what about the legal industry? Well, with the explosion of data that gets produced today in discovery, a heavier reliance on technology is created. There's no denying it. Virtually gone are the days where data is fairly linear or consistent. Instead of one format (paper), we now deal with thousands of file types. There are e-mails, word processing documents, spreadsheets, databases, presentations, graphic files, encrypted data and embedded objects (lions, tigers and bears, oh my!).

There are also multiple layers of information including content, communication threads and meta data. And because of new regulations, companies are required to store data longer, which results in more data to collect, process and review. Added to this, the data is infinitely easier to gather. *"We'll just take his ENTIRE desktop hard drive. Oh, he also has a laptop? We'll take that too, thank you very much."* What used to be a few hundred thousand pages on a large matter has easily ballooned into millions of pages of information. Oh, and by the way, deadlines have gotten shorter ... only adding to the fun.

These things cause massive problems for legal teams. To review the data, it first needs to be normalized, culled, processed, indexed, categorized and analyzed by advanced technologies. Because of the dramatic increase in volume, it's often physically impossible to review without the aid of advanced technologies – even with large review teams.

And because of all this, discovery technologies are evolving into the highest form of *machines vs. people* – artificial intelligence. In other words, machines are used to do the thinking and decision-making for people. Such advanced technologies are no longer a luxury; instead, they are *required* just to understand the data and effectively do the job.

Yet, the fact remains that machines and technology continue to displace people in many industries. So the real questions are: Is the litigation discovery industry next? Will there be a day when data is loaded into artificial intelligence engines, gets chewed up, and out comes a set of information that wins the day? Will machines replace people in our industry?

The answer is no, no and no. You heard it here first.

But why?

Primarily, this holds true because the legal profession is an exception as compared to many others. It is, on a number of fronts, a very unique industry. Technology alone isn't enough, and it never will be. **The most advanced technology available at any given time is essentially useless without people to run it.** Such a statement from me is nearly blasphemous for a guy who is always pushing the envelope of what technology can do. So much so, in fact, that it could lead to the revocation of my Geekdom Society membership card. But it is nonetheless true.

With all the dynamic pieces related to litigation, a high degree of expertise, experience, legal knowledge, collaboration, communication and negotiation is required to run the legal process. And because of the complexities of what we do, a one-size-fits-all analytical technology is highly unlikely. Therefore, people are needed to customize the tools – oftentimes on a case-by-case basis. Much like a car, the vehicle is useless without a driver (the *Batmobile*, *KITT* and *Herbie* notwithstanding).

But what advanced technology can do is bring incredible efficiency to the mix. It can help legal teams work smarter and be more productive. Good technology can streamline processes, normalize data, cull down information to relevant sub-sets, and – if used intelligently – it can (and should) significantly reduce costs as well.

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Easy to say, right? But how does it really happen? A number of ways, actually. Let's walk through the Discovery Life Cycle, shall we?

Machines vs. People along the Discovery Life Cycle

| DLC Phases | Example Technologies | Benefit | People Involvement |
|-------------------------------|---|--|--|
| RECORDS MANAGEMENT & ARCHIVAL | On-the-fly content extraction, indexing and archiving as documents are created within an organization. | Seamless archival of documents, makes future collection easier, can catch potentially problematic communication in real-time. | Configuration and management of systems and content filters. Compliance monitoring and records retention enforcement. |
| COLLECTION | Network "spidering" of relevant rules-based content and seamless retrieval of documents/files. | Easy collection without burdening internal resources. | Configuration of rules, quality control to ensure complete collections, analyzing the data/early case assessment. |
| CULLING & PROCESSING | Indexing of unstructured data, concept clustering, attribute level culling tools, deduplication, ESI processing, load file creation and export. | Reducing produced data to smallest, most relevant set possible. Eliminating confidential and privileged data up front. Determining the merits of the case before incurring large expenses. Reducing overall costs e-Discovery costs. | Creation of culling criteria and analyzing data for completeness, accuracy, and relevance. Categorical marking of documents. Early case assessment and privilege review. Collaboration with legal teams, opposing counsel and courts. Managing productions. |
| REVIEW | Concept analysis, visual data mapping, auto classifications, rules-based coding, linguistic analysis, similarity matching, predictive coding, proactive relevancy alerts. | Streamline review, quicker turnarounds for production. Analyzing data trends to uncover relevant activity. Finding important documents faster in order to spend more time on case strategy. | Creation and management of review teams, enforcing case strategy, collaboration with legal teams, opposing counsel and courts. Legal evaluation and document coding decisions. Analyzing data trends and relevant terminology, people, places, organizations and more. |

As the table above demonstrates, technology can and should have a dramatic impact on a number of things along the Discovery Life Cycle. First and foremost, it should streamline the entire process, enabling legal teams to create the smallest, most relevant and cost-effective set of data possible, as quickly and accurately as possible. Secondly, it should aid in analyzing the data, facilitate decision-making, improve collaboration and effectively implement case strategy. The intelligent use of advanced technologies should radically change the process of discovery for the better – from analyzing productions to ultimately winning your case.

However, as it relates to the machines vs. people dilemma, the bottom line is that there are simply too many moving parts in the discovery process for the human element to become dispensable. In fact, the opposite is true. The more advanced technology becomes in our industry, the more it relies on people to make it work. However, technology will change the skills we need. Those who embrace technological advancement and learn these new tools will advance their careers. From a legal expertise standpoint, those who understand the impact technologies will continue to have on all aspects of the law and the business of legal services will continue to contribute to their organizations. And those who don't just may get left behind. In closing, the following is a quote I heard two weeks ago. It is the opposite of the first one, and possibly a sign of the changing tide in our profession:

"I find all this technology fascinating."

Yeah, me too.

'Til next time ... KC

Kevin Carr, president of InterLegis Inc., has a wide range of Internet-based technology expertise. As the architect of the InterLegis system, he has developed cutting-edge discovery technologies and best practices relating to data mapping, conceptual analysis, electronic data culling/processing, similarity matching, streamlined document review, automatic categorizations, visual analysis, document digitization, optical character recognition, compression, database indexing, advanced searching and document security.

