

Predictive Coding Technology Endorsed by Federal Court

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On Friday, February 24, 2012, U.S. Magistrate Judge David Peck in *Monique de Silva Moore v. Publicis Groupe & MSL Group*, Case No. 11-cv-01279 (S.D. N.Y. Feb. 24, 2012), endorsed the use of predictive coding in a document intensive e-discovery case. Predictive coding utilizes mathematical formulas to find words linked to primary terms. Predictive coding takes documents coded by an expert (usually a senior attorney on the case) and applies the implicit rules used to code the initial sample of documents to the whole collection. Studies have demonstrated that other search methods utilized by the legal industry-like key word searches-may leave up to 80 percent of relevant electronically stored information undiscovered. In document intensive cases, it can take many months and millions of dollars in costs to review electronically stored information using keyword searches. Predictive coding technology can cut review time down to a few weeks and reduce e-discovery costs by millions of dollars. For example, manual review can cost up to \$8.50 per document while predictive coding typically costs a few cents per document. The *Moore* decision is significant because it is the first case to date endorsing the use of predictive coding technology. While innovators in the legal industry have been advocating that predictive coding technology should be used in document intensive cases, the legal industry as a whole has been slow to adopt the technology. In part, this has been due to a lack of judicial precedent endorsing the technology. In *Moore*, a group of female public relations employees sued one of the world's four largest advertising firms alleging gender discrimination. The Defendants had an ESI universe of more than 3 million documents. Proportionality concerns motivated the Defendant to want to limit its cost of review to about \$550,000. Although the court would not enforce that limit prior to actually engaging in the initial review, the court did approve most of the details of the predictive coding process that the Defendants proposed. The endorsement of predictive coding technology by Magistrate Judge Peck, a recognized expert in the e-discovery field, should help to put the legal community at ease about the use of this technology. Predictive coding technology can locate electronically stored information much faster and at a fraction of the cost compared to traditional methods.

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