



# Bye-Bye Black Marker

Electronic redaction of key documents streamlines the time-intensive process and minimizes errors and the risks of revealing confidential information.



BY CHRISTINE MUSIL

Manual redaction conjures an image of stacks of paper, black markers and mind-numbing tedium. Recently, a paralegal who had just finished an insurance case involving the redaction of privacy information from tens of thousands of documents described the process: two paralegals, two black felt-tip markers, a copy machine, 20,000 records and work that stretched over several weeks – at least. Ouch!

At a time when many law firms and corporate legal departments report continued investments in legal technology (according to the *2008 American Bar Association Legal Technology Survey Report*, nearly half of the respondents said their firms' technology budgets had increased despite tough economic times), it is stunning that many consider this manual process to remain the *de facto* standard for redaction. Until recent years, redaction has remained one of the last bastions of legal work that has largely resisted digital automation, leaving the process prone to risk and costly errors.

Because legal administrators often oversee technology purchases, human resources and workflows at their firms, redaction is an area ripe for overhaul, and the benefits for taking action can be significant.

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## THE MANUAL REDACTION PROCESS

Let's review the typical manual redaction process:

1. Print the document.
2. Find and redact all of the desired areas, possibly noting the reasons for each redaction in a manual log or a note in the margin.
3. Make two or three copies to make sure the text is sufficiently blocked out.
4. Scan the pages back into the system, hoping you caught everything and that no one changes his/her mind on what constitutes privileged data.
5. Repeat.

When done properly, manual redaction is effective, but it has several drawbacks:

- It is obviously time consuming.
- It is prone to human error.
- It most likely requires the documents to be scanned back into the system.
- If you have to make changes, you have to start over.
- If the redacted documents are scanned back in, they aren't text-searchable unless they undergo optical character recognition.
- It requires a significant amount of paper, ink, toner and energy.

Most legal professionals are familiar and comfortable with the manual redaction process. But if they examine the advantages of electronic redaction, maybe a few more of them will say goodbye to their black markers – for redaction purposes, anyway.

## NEW MANDATES, NEW CONCERNS

With the fairly recent rise in the amount of data that is deemed discoverable, the relatively new mandates in the U.S. Federal Rules of Civil Procedure requiring the protection of privacy information (Rule 5.2) in documents produced to the courts, redaction has become a pretty significant concern and a much more voluminous undertaking. The explosion of electronically stored information (ESI) such as digital documents and e-mails has increased e-discovery volume substantially. And, generally speaking, the larger the discovery data set is, the more redaction will need to take place. Using the marker/copier method to mark up thousands of e-mails is

decidedly inefficient, not to mention fraught with the peril of human mistakes. (After a few hours of reading, mistakes *are* going to happen).

News travels fast about poor redaction, and such mistakes can have highly damaging repercussions. There have already been very public examples of incorrectly redacted documents being filed into the federal PACER system that unintentionally revealed a great deal of confidential information.

When law firms are responsible for the redaction efforts, their failures to adequately perform the task can be costly both to the firms and to their clients, and may result in reputation damage, adverse jury instructions, monetary payments or even default judgments in favor of the compromised parties.

## ENTER ELECTRONIC REDACTION

Combining the best elements of the manual marker-based redaction method *and* the benefits of intelligent automation, electronic redaction can change the way we think about the process, while minimizing errors and the exposure of sensitive information. It opens up a new range of possibilities for streamlining redaction-intensive environments such as e-discovery, while adding benefits such as logging and accountability.

Let's say we have 100 Adobe Acrobat PDFs that have been identified as containing private or privileged information. Electronic redaction software offers the ability to search all 100 of those documents for all search terms at one time. What if we're looking for all Social Security numbers, but we don't know the actual numbers to enter into the software? Redaction software can seek out patterns (such as xxx-xx-xxxx) and find all suspected instances of Social Security numbers for the redactor to choose from.

The technology can even find all instances of a pattern *except* the one in question. Say, for example, that we need to redact non-relevant phone numbers from phone records and leave only the two numbers in question visible. Software makes that possible. Can you imagine having to do that by reading through each page and marking each number separately?

The right redaction software makes a lot of other redaction conveniences possible, too, such

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as automatic Bates numbering and logging of each redaction action performed, including the search term, reason code applied, who performed the redaction and why. Because the judge in a case often gets to decide how to handle insufficient redaction in documents produced to the court, being able to prove due diligence was performed in redaction by producing a log can safeguard against privilege being waived.

But what if privilege is waived, and now you have to go back and redo all the redaction, now minus the particular search criteria? With a manual process, you would have to start all over using the originals of the data set, wasting more time, paper and energy (both yours and the electrical power required). The electronic redaction alternative lets you simply reload the documents containing that particular text, along with their corresponding redaction files, select that particular redaction reason code and delete it. The change can then be applied to either part or all of the data set with the click of a mouse.

### SAVING THE PLANET – AND TIME AND MONEY, TOO

If you still aren't ready to part with the black marker, let's go beyond the convenience of technology and consider the environmental impact. Law firms are so notorious for their paper and energy consumption that the Environmental Protection Agency and American Bar Association have launched the Law Office Climate Challenge to reduce such consumption. Did you know the average *lawyer* uses between 20,000 and 100,000 sheets of copier/printer paper a year? The life cycle of the paper alone causes about 4.5 tons of carbon dioxide emissions. Electronic redaction is a best practice that reduces not only the environmental cost of the paper, but also the energy footprint of the printer and copier.

Of course, electronic redaction also saves the law firm and its clients time and money while minimizing mistakes that can arise from manual processes. Instead of being holed

up in a conference room for days, weeks or months manually redacting documents, the firm's paralegals can instead be providing more assistance to the attorneys and more direction and help for the legal assistants. Also, many of the hours needlessly billed to the client for a redaction project will disappear, and the remaining number of hours will be much more palatable to the client when the bill arrives. And don't forget the savings on paper purchases as an added incentive to consider using an electronic tool.

### A SIMPLE CHOICE

Overall, redaction is a process that is simple in concept, but often proves to be complicated, laborious and unwieldy in reality. Even the most sentimental paralegals will be glad to say goodbye to their black markers and all the trips to the copy machine. Electronic redaction is a viable option that has gained popularity over the past few years, and for good reason.

Give your markers, copiers and paralegals a rest, and consider looking at electronic redaction as a viable alternative. As a legal administrator, you have the opportunity to look at electronic redaction software packages and all of their intrinsic benefits to your firm or legal department. If electronic redaction does prove to save countless hours of paralegals' time and dollars of clients' money, your paralegals will thank you for it, your partners will enjoy having happy clients, and your paper bills and copier/scanner wear and tear will decrease.

The biggest thing you'll have to give up is the faithful black marker, but with all the time you'll be saving, surely you can find a new use for your old friend. ✱

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