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Bogdana STJEPANOVIĆ*
Institute of Comparative Law, Belgrade, Serbia

LEVERAGING ARTIFICIAL INTELLIGENCE IN eDISCOVERY: ENHANCING EFFICIENCY, ACCURACY, AND ETHICAL CONSIDERATIONS**

Developments in digital technologies over the past few decades have profoundly affected every area of law, from the practice of individual lawyers to court procedures. Today, systems can draft documents, conduct legal research, disclose documents in litigation, conduct due diligence, provide legal guidance, and even resolve litigation online. The traditionally conservative legal profession is now compelled to embrace these changes to stay relevant in the changing world.

Discovery is a crucial part of court procedure in common law jurisdictions. It allows each party to obtain the information needed to prepare for trial, evaluate the strengths and weaknesses of their case, and develop strategies for success. As more information is stored electronically, the need for an electronic form of this litigation phase emerged. Since 2006, electronic discovery (eDiscovery) has been officially recognized.

Electronic discovery, or eDiscovery, refers to the process of identifying, collecting, and producing electronically stored information (ESI) in response to a request for production in a lawsuit or investigation. ESI encompasses a wide range of digital data, including emails, online documents, spreadsheets, databases, digital images, presentations, audio and video files, social media posts, and websites.

The primary purpose of eDiscovery is to support litigation, but the processes of identifying, preserving, collecting, and analyzing ESI are applicable to any organization facing legal or regulatory compliance requirements. Companies in EMEA and APAC regions, even without formal eDiscovery rules, use the technology in anticipation of litigation or regulatory action, to redact sensitive information, conduct internal investigations, perform fact-finding audits, and manage company data.

* PhD, Research Associate, ORCID: 0000-0002-9504-473X, e-mail: b.stjepanovic@iup.rs

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In this article we are going to analyze the eDiscovery process in general, including its phases, advantages, and disadvantages. It will also examine the impact of Artificial Intelligence (AI) on eDiscovery. Given that both AI and eDiscovery are highly complex and rapidly evolving fields, the aim of this article is to provide a preliminary overview of AI's use in eDiscovery and to explore potential future developments.

Keywords: artificial intelligence (AI), eDiscovery, Legaltech, data privacy, digital technologies.

1. INTRODUCTION

A traditionally conservative legal profession is undergoing tremendous changes with the introduction of new technologies. The pace at which technology has been displacing outdated processes has varied over the years, but the real acceleration of the digital transformation in the legal profession happened with the COVID-19 pandemic in 2020. From then on, new technologies have been rapidly transforming our world, requiring the legal sector to reinvent itself to keep up.

The transformation of the legal industry has led to the emergence of new concepts, one of which is Legaltech. The term "Legaltech" refers to the application of new technologies to the legal field to carry out tasks that, until recently, were performed by lawyers or other personnel working in law firms. Legaltech encompasses various tools and systems that can draft documents, conduct legal research, disclose documents in litigation, conduct due diligence, provide legal guidance, and even resolve litigation online.¹

Today, digital technologies have been successfully applied to many areas of law, including due diligence, contract review, legal research, e-discovery, prediction technology, and document automation. Additionally, tools such as client portals and intranet-based collaborative platforms are becoming more sophisticated every day.²

One of the most recent technologies revolutionizing our world is artificial intelligence (AI). AI is rapidly and profoundly transforming almost all aspects of the existing

¹ Salmerón-Manzano, E. 2021. Legaltech and Lawtech: Global Perspectives, Challenges and Opportunities. In: Salmeron-Manzano, E. (ed.), *Laws and Emerging Technologies*, p. 62.

When it comes to the future of Legal Tech there are some predictions: paperless legal practice; more remote work; more AI; court appearances by video; online filing of pleadings and payments of fees as well as full access to docket sheets and PDFs of filed documents; less reliance on lawyers, etc. Matich, T. 2021. 10 Predictions for the Next 10 Years of Legal Tech. Clio. Available at: <https://www.clio.com/blog/10-predictions-10-years/> (2. 6. 2024).

Legal tech, as Colin points out, extends beyond sophisticated AI and robotics; it includes simpler, yet impactful tools like billing software. The ultimate goal is to make legal work more efficient, productive, and less burdensome for professionals. This clarification is crucial in distinguishing between legal tech and legal innovation. While legal tech encompasses the tools and software developed to address specific legal tasks, legal innovation involves a broader approach, encompassing new ways of thinking, business models, and methodologies that fundamentally change how legal services are conceived and delivered. Percipient. n. d. Bridging the Gap: Legal Tech vs Legal Innovation. Available at: <https://percipient.co/bridging-the-gap-legal-tech-vs-legal-innovation/> (2. 6. 2024).

² Caserta, S. & Rask Madsen, M. 2019. The Legal Profession in the Era of Digital Capitalism: Disruption or New Dawn? *Laws*, 8(1), pp. 1-17.

world, including the legal sector. Generative AI, for example, is transforming legal practice by assisting with tasks such as contract review, document retrieval, case management, legal research, and contract drafting. There are even predictions that AI might eventually overtake the legal profession and replace legal professionals in certain roles.³

An integral part of Legaltech and legal innovation is eDiscovery. Electronic discovery (e-discovery, ediscovery, eDiscovery, or e-Discovery) refers to the electronic aspect of identifying, collecting, and producing electronically stored information (ESI) in response to a request for production in a lawsuit or investigation.⁴ With the growing volume of electronic data and rapidly evolving technologies—such as Chat GPT-4⁵, which can almost perfectly mimic human voice and many other capabilities—new challenges have emerged for eDiscovery, particularly concerning the accuracy of the obtained information.

AI has emerged as a crucial tool in addressing some of these challenges and solving both old and new problems in eDiscovery. AI is already widely used in the eDiscovery process for document categorization (e.g., technology-assisted review or predictive coding), identification of personally identifiable information (PII), investigations, and some forms of early case assessment.⁶ When used correctly by experienced individuals with a critical approach to the results, AI can offer significant cost and time savings compared to previous unautomated methods. The ability of AI and machine learning (ML) technologies to extract meaningful insights from vast datasets has led to significant transformations in eDiscovery.⁷

In this article we are going to analyze the eDiscovery process in general (its phases, pros and cons, etc.) and explore the impact that the introduction of AI has had on it. Given that both AI and eDiscovery are complex and rapidly evolving fields, our aim is to provide a preliminary overview of the use of AI in eDiscovery and to suggest potential future developments.

2. THE EDISCOVERY PROCESS: AN OVERVIEW

In common law jurisdictions, discovery is a fundamental phase of civil litigation. It allows both parties to obtain evidence and information relevant to their case, which is crucial for preparing for trial. Discovery enables parties to evaluate the strengths and weaknesses of their case and develop effective trial strategies.

With the exponential increase in data volumes, the concept of the global "datasphere" has emerged, reflecting the vast amount of digital data generated worldwide. This includes newly created, captured, and duplicated data. Experts predict that global data creation will

³ Caserta & Rask Madsen, p. 1.

⁴ CDS. n. d. The Basics: What is e-Discovery? Available at: <https://cdslegal.com/knowledge/the-basics-what-is-e-discovery/> (15. 6. 2024).

⁵ ChatGPT is not a standalone technology per se, but rather a specific application of broader artificial intelligence (AI) and natural language processing (NLP) technologies.

⁶ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

⁷ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

exceed 180 zettabytes by 2025.⁸ This explosion in data necessitates advanced tools for managing and processing information, particularly in the context of eDiscovery.⁹

eDiscovery, officially became a part of court procedures with the 2006 amendments to the Federal Rules of Civil Procedure. These amendments recognized the growing relevance of electronic documents and ESI in litigation, altering how parties, their lawyers, and courts handle the discovery of such information.¹⁰ This shift impacted how companies manage, preserve, and produce ESI.¹¹

⁸ Logikcull. eDiscovery Disrupted: The Potential Effects of AI. Available at: <https://www.logikcull.com/blog/ediscovery-disrupted-the-potential-effects-of-ai> (3. 6. 2024). A zettabyte is one sextillion or 1,000,000,000,000,000,000 bytes.

⁹ Growing importance of eDiscovery shows its value as well. In 2023 the global eDiscovery market was valued at USD 15.45 billion and is projected to be worth USD 16.98 billion in 2024 and reach USD 39.91 billion by 2032, exhibiting a CAGR of 11.3%. North America dominated the global market with a share of 39.16% in 2023. See: Fortune Business Insights. 2024. eDiscovery Market Size, Share & Industry Analysis, By Component (Solutions and Services) By Deployment Model (Cloud and On-premises), By Enterprise Type (Large Enterprises and SMEs), By End-user (BFSI, Retail & Consumer Goods, Government & Public Sector, Healthcare & Life Sciences, IT & Telecommunications, Legal, and Others), and Regional Forecast, 2024-2032. Available at: <https://www.fortunebusinessinsights.com/industry-reports/ediscovery-market-101503> (15. 6. 2024).

The market is split into cloud and on-premises. In 2023, the cloud segment accounted for a larger market share and is projected to grow with a high CAGR during the forecast period. The cloud environment growth is attributed to an increase in remote work due to the pandemic and centralized structure, which is accelerating the demand for cloud. Cloud electronic discovery solutions offer better convenience and collaboration as they can be accessed from anywhere, and allow organizations to share and process files in real-time which leads to reducing the cost of data storage and ease of use in AI and automation technologies, thus increasing demand for cloud-based solutions. *Ibid.*

¹⁰ Before 2006, ESI were used and analyzed but there were no strict procedures that had to be followed. Advantages of EDiscovery compared to discovery process:

- EDiscovery significantly enhances the efficiency and speed of the discovery process. Traditional manual document review is labour-intensive and time-consuming. By utilizing automated data processing and review technologies, eDiscovery tools allow legal teams to manage vast amounts of data more swiftly. This efficiency is essential in the face of rapidly growing data volumes in the digital era. Logikcull. eDiscovery Disrupted: The Potential Effects of AI. Available at: <https://www.logikcull.com/blog/ediscovery-disrupted-the-potential-effects-of-ai> (3. 6. 2024).
- EDiscovery can lead to substantial cost savings. Automating data collection, processing, and review reduces labor costs associated with manual document review. Technologies such as predictive coding and technology-assisted review (TAR) streamline these processes, thereby lowering litigation expenses. Additionally, AI and machine learning further enhance cost-efficiency by minimizing the need for manual intervention. Industry trends. Available at: <https://cloudnine.com/tag/industry-trends/> (5. 6. 2024).
- Advanced eDiscovery tools improve the precision of data retrieval and analysis. Predictive coding, for instance, uses algorithms to identify relevant documents, thus enhancing the accuracy of the review process. These technological advancements help reduce human error and ensure that critical evidence is not overlooked. Create Progress. 2024. The Role of AI in E-Discovery: Enhancing Litigation with Efficient and Cost-Effective Solutions. Available at: <https://createprogress.ai/the-role-of-ai-in-e-discovery-enhancing-litigation-with-efficient-and-cost-effective-solutions/> (8. 6. 2024).
- Finally, eDiscovery improves electronic data management through frameworks like the Electronic Discovery Reference Model (EDRM). The EDRM provides a structured approach to handling electronically stored information (ESI), aiding in data organization and maintaining integrity throughout the legal process. KLDISCOVERY. What is eDiscovery? Available at: <https://www.kldiscovery.com/uk/resources/what-is-ediscovery> (8. 6. 2024).

¹¹ DeBono, J. 2008. Preventing and Reducing Costs and Burdens Associated with E-discovery: The 2006 Amendments to the Federal Rules of Civil Procedure. *Mercer Law Review*, 59(3), pp. 963-990. Available at:

ESI is dynamic and often contains metadata¹² such as time-date stamps and author information. This complexity, along with the volume of data, necessitates the use of advanced technology to handle eDiscovery effectively. Key to eDiscovery is the preservation of original content and metadata to avoid claims of spoliation or tampering with evidence.¹³

The eDiscovery process is typically guided by the Electronic Discovery Reference Model (EDRM). The EDRM outlines a structured approach to handling ESI, from identification and preservation to processing, review, and presentation. The first stage of EDRM is **Information Governance**. This stage involves setting up policies and procedures for managing electronic data throughout its lifecycle. It ensures data is handled consistently and in compliance with regulations, thereby reducing legal risks and improving data management. The second stage is **Identification** of ESI. In this stage, the locations of relevant electronic data are determined and accessed. This helps businesses quickly locate and retrieve data, saving time and resources in the eDiscovery process. After ESI is identified, the **Preservation** stage starts. This step involves safeguarding relevant electronic data to maintain its integrity and authenticity, preventing data loss or tampering. This ensures that the information remains reliable for audits or legal proceedings. Next step is **Collection** of ESI. Relevant electronic data is gathered in a way that supports legal requirements while minimizing disruptions to business operations, allowing companies to maintain productivity during the eDiscovery process. Fifth stage is **Processing**. In this stage collected electronic data is converted into a format suitable for review and analysis. This step facilitates the extraction of valuable insights while ensuring compliance with legal and regulatory standards. Sixth stage is a **Review** stage. The collected data is evaluated to determine its relevance and privilege status. This enables organizations to focus on pertinent information and streamline the eDiscovery process. One of the key stages of EDRM is **Analysis**. It involves examining the data to identify key information and insights, helping companies make informed, data-driven decisions. After it is done, relevant data is generated in a format that meets legal and regulatory requirements, ensuring that the information is presented accurately and in a legally acceptable manner. This stage is named **Production**.

https://digitalcommons.law.mercer.edu/jour_mlr/vol59/iss3/6 (9. 8. 2024).

First, electronically stored information is now included in permissible discovery. Second, parties are required to "meet and confer" about the discovery of electronically stored information at the onset of litigation. Third, issues pertaining to claims of privilege and waiver of privilege for electronically stored information are addressed. Fourth, matters relating to the production and form of production of electronically stored information are discussed. Fifth, limitations are imposed on the discovery of electronically stored information where a substantial burden or cost is imposed on the producing party. Sixth, a safe harbor provision is created to prevent sanctions from being imposed when electronically stored information is inadvertently destroyed or "lost as a result of the routine, good-faith operation of an electronic information system". DeBono, J. 2008. Preventing and Reducing Costs and Burdens Associated with E-discovery: The 2006 Amendments to the Federal Rules of Civil Procedure. *Mercer Law Review*, 59(3), pp. 963-990. Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol59/iss3/6 (9. 8. 2024).

¹² Metadata, or data about data can be used to organize information to make it easier to review large volumes of ESI. Besides that, metadata may be necessary to confirm the authenticity of information. Match, T. 2024. What Lawyers Need to Know About eDiscovery. Clio. Available at: <https://www.clio.com/blog/need-to-know-ediscovery/> (2. 6. 2024).

¹³ CDS. n. d. The Basics: What is e-Discovery? Available at: <https://cdslegal.com/knowledge/the-basics-what-is-e-discovery/> (15. 6. 2024).

And the last stage of EDRM is **Presentation**. This final stage involves delivering the relevant data in a clear and organized manner, making it easy for stakeholders to understand and use the information for decision-making purposes.¹⁴

2.1. Advantages of eDiscovery

E-discovery offers numerous advantages that enhance the legal process by making the collection, analysis, and management of evidence more efficient, accurate, and accessible. Here are some of the key advantages:

1. **Improved Evidence Authentication:** E-discovery tools allow for the verification of electronic evidence through metadata, which includes timestamps, author details, and modification histories. This ensures the authenticity and reliability of digital documents, reducing the chances of tampering or forgery.¹⁵
2. **Faster Processing:** The automation capabilities of e-discovery tools enable quicker collection and analysis of large volumes of electronically stored information (ESI). This speeds up legal proceedings by reducing the time spent on manually handling physical documents and evidence.¹⁶
3. **Enhanced Data Recovery:** Even if electronic data has been deleted or altered, e-discovery tools can often retrieve or reconstruct it. This is especially valuable in cases where crucial information might otherwise be lost or destroyed, ensuring that all relevant evidence is accessible.
4. **Comprehensive Record of Changes:** E-discovery systems keep meticulous records of any modifications or deletions made to electronic documents. This ensures transparency and accountability, as all changes are documented and visible to the parties involved in the case.
5. **Broader Access to Evidence:** E-discovery allows for the examination of various types of digital evidence, such as emails, text messages, social media posts, and website data. This wider range of evidence sources provides a more comprehensive understanding of the case and can reveal critical insights that might not be available through traditional evidence gathering methods.
6. **Increased Efficiency and Cost-Effectiveness:** By streamlining the discovery process, e-discovery reduces the time and labor required to manage evidence. This leads to more efficient case management and can lower the overall costs of litigation.
7. **Facilitates Collaboration:** E-discovery tools support better collaboration between legal teams, investigators, and law enforcement by allowing data to be shared remotely and analyzed in real-time. This is particularly beneficial in complex cases involving multiple jurisdictions or international teams.

¹⁴ Veritas. EDRM: What It Is, Why It Matters, and How to Use It? Available at: <https://www.veritas.com/information-center/edrm> (15. 6. 2020).

¹⁵ Klaff, T. 2007. Authenticating E-Discovery As Evidence. *CCB Journal*. Available at: <https://ccbjournal.com/articles/authenticating-e-discovery-evidence> (15. 6. 2024).

¹⁶ Infosys BPM. E-Discovery automation: Challenges and opportunities. Available at: <https://www.infosysbpm.com/blogs/legal-process-outsourcing/e-discovery-automation-challenges-and-opportunities.html> (15. 6. 2024.)

These advantages make e-discovery a vital tool in modern legal practice, improving both the speed and accuracy of evidence collection and management.¹⁷

2.2. Challenges in eDiscovery

Despite its unbeatable benefits for legal field, as a multifaceted process eDiscovery has several challenges that legal professionals must navigate. Here are some key challenges:

1. **Data Volume:** A primary challenge in eDiscovery is the management of vast data volumes. Modern organizations generate extensive quantities of electronic data. This data is dispersed across various devices, servers, and cloud platforms, complicating the task of locating and identifying pertinent information. The sheer volume of data can necessitate substantial time and resources to process, particularly in the context of large-scale litigation or regulatory scrutiny.¹⁸
2. **Data Security:** Handling sensitive and confidential information requires robust security measures to prevent data breaches and unauthorized access. Legal teams must ensure compliance with data protection regulations and implement stringent security protocols.¹⁹
3. **Cost Management:** While technology can reduce some costs, eDiscovery can still be expensive, particularly in complex cases with vast amounts of data. Effective budgeting and cost management strategies are essential to control expenses.²⁰
4. **Technical Expertise:** The complexity of eDiscovery tools and processes necessitates a certain level of technical expertise. Legal professionals must stay informed about the latest advancements and receive adequate training to effectively leverage these technologies.
5. **Ethical Considerations:** The use of AI and automation in eDiscovery raises ethical questions about bias, transparency, and accountability. Ensuring that AI tools are used responsibly and that their decision-making processes are transparent is crucial to maintaining fairness and integrity in the legal process.²¹
6. **Risk of over-relying on technology:** While AI and machine learning can enhance accuracy and efficiency, they are not infallible. Over-reliance on these technologies without proper oversight can lead to issues such as incomplete or incorrect data analysis.²²

¹⁷ See more: Scheindlin, S. & Conference, S. 2015. *Electronic Discovery and Digital Evidence in a Nutshell*. St. Paul: West Academic Publishing.

¹⁸ Sakthivel, R. 2023. Complexities of eDiscovery. LinkedIn. Available at: <https://www.linkedin.com/pulse/complexities-ediscovery-ravi-sakthivel/> (9. 8. 2024).

¹⁹ Schwartz, P. M. & Solove, D. J. 2011. The PII Problem: Privacy and a New Concept of Personally Identifiable Information. *New York University Law Review*, 86, p. 1814.

²⁰ The document review process is particularly costly, often accounting for over 80% of total litigation expenses, equivalent to approximately \$42 billion annually. Cloud nine. 2022. Managing the Unpredictability of eDiscovery Costs. Available at: <https://cloudnine.com/ediscoverydaily/managing-unpredictability-of-ediscovery-costs-with-cloudnine/> (14. 7. 2024). See more: EDRM. 2022. How to Evaluate and Control Ediscovery Costs. Available at: <https://edrm.net/2022/04/how-to-evaluate-and-control-ediscovery-costs/> (17. 6. 2024).

²¹ Mittelstadt, B. D. *et al.* 2016. The Ethics of Algorithms: Mapping the Debate. *Big Data & Society*, 3(2), p. 2.

²² Troy, T. 2023. Examining the Impacts, Both Positive and Negative, of Artificial Intelligence on Businesses. Medium. Available at: <https://medium.com/@timothyroy/examining-the-impacts-both-positive->

3. AI AND EDISCOVERY

Artificial intelligence (AI) refers to a branch of computer science concerned with creating intelligent agents, which are systems that can reason, learn, and act autonomously. AI encompasses a broad range of techniques, from narrow AI, which excels at specific tasks, to the theoretical concept of general AI, which would possess human-level intelligence across all domains.²³

Currently, there is no universally accepted definition of AI.²⁴ For the purpose of this paper, we define AI as an automated process used to classify, categorize, summarize, make predictions, or provide information regarding data or information using statistical, rule-based, or other algorithmic means.²⁵

and-negative-of-artificial-intelligence-on-businesses-ac17758d787e (22. 6. 2024).

²³ Rouse, M. 2024. What Is Artificial Intelligence (AI)? Available at: <https://www.techopedia.com/definition/190/artificial-intelligence-ai> (7. 4. 2024); Paloalto Networks. What Is Artificial Intelligence (AI)? Available at: <https://www.paloaltonetworks.com/cyberpedia/artificial-intelligence-ai> (7. 4. 2024).

²⁴ In Art. 3 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance), OJ L, 2024/1689: “AI system” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments”. The concept of AI was created by computer scientist Alan Turing in 1950 when he speculated that “thinking machines” could reason at the level of human beings. In order to prove that Turing proposed an “imitation game,” (further known as a “Turing test”) as a means of deciding whether a computer was intelligent. For a machine to pass the Turing test, it must be able to talk to somebody and fool them into thinking it is human. The term “artificial intelligence” was introduced by John McCarthy in a proposal for a 1956 workshop on building machines to emulate human intellectual capacity. This workshop was intended to investigate “the conjecture that every aspect of learning or any other feature of intelligence can in principle be so precisely described that a machine can be made to simulate it. An attempt will be made to find how to make machines use language, form abstractions and concepts, solve the kinds of problems now reserved for humans, and improve themselves.” McCarthy, J. *et al.* 1955. A proposal for the Dartmouth Summer Research Project on Artificial Intelligence. JMC Stanford. Available at: <http://jmc.stanford.edu/articles/dartmouth/dartmouth.pdf> (9. 8. 2024). A proposal for the Dartmouth Summer Research Project on Artificial Intelligence (<http://jmc.stanford.edu/articles/dartmouth/dartmouth.pdf>).

Seven decades after introducing the Turing test, we have been presented with information that ChatGPT 4 has passed it. Scientists decided to replicate this test by asking 500 people to speak with four respondents, including a human and the 1960s-era AI program ELIZA as well as both GPT-3.5 and GPT-4, the AI that powers ChatGPT. The conversations lasted five minutes—after which participants had to say whether they believed they were talking to a human or an AI. In the study, published May 9 to the preprint arXiv server, the scientists found that participants judged GPT-4 to be human 54% of the time, ELIZA, a system pre-programmed with responses but with no large language model (LLM) or neural network architecture, was judged to be human just 22% of the time. GPT-3.5 scored 50% while the human participant scored 67%. GPT-4 has passed the Turing test, researchers claim. Turney, D. 2024. GPT-4 has passed the Turing test, researchers claim. Live Science. Available at: <https://www.livescience.com/technology/artificial-intelligence/gpt-4-has-passed-the-turing-test-researchers-claim> (9. 8. 2024). The fact that there could be mimic human voice and conversation leads to many problems when conducting eDiscovery as well.

²⁵ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

AI is rapidly transforming various industries, and eDiscovery is no exception. AI-powered tools are being increasingly used to streamline the eDiscovery process, improve accuracy, and reduce costs.

3.1. AI Techniques in eDiscovery

AI encompasses a range of techniques that have found applications in eDiscovery.

Clustering is an unsupervised ML technique employed in eDiscovery to group similar documents based on shared characteristics or topics. This process enables users to identify patterns within the dataset and take actions on clusters of related documents. While clustering does not require pre-labeled data, the selection of features for similarity measurement and the determination of the optimal number of clusters remain crucial decisions for the analyst.²⁶

Email Threading is a process that identifies and groups related emails within a conversation, streamlining the review process. By organizing emails into threads, eDiscovery practitioners can efficiently analyze email communications and reduce redundancy in review efforts.²⁷

Concept Search is an NL processing technique that allows users to search for documents based on semantic meaning rather than exact keywords. By understanding the context of words and their relationships, concept search can enhance the precision and recall of search results. This approach can be particularly useful in overcoming the challenges posed by synonyms, polysemy, and complex query formulations.²⁸

Technology-Assisted Review (TAR) or predictive coding, is a supervised machine learning technique that trains a computer system to distinguish between relevant and irrelevant documents. By leveraging human-in-the-loop feedback, TAR algorithms continuously improve their accuracy over time. This technology has become a cornerstone of modern eDiscovery practices, enabling efficient and cost-effective document review.²⁹

Entity Recognition is an NLP technique that identifies and classifies named entities within text, such as person names, organizations, locations, dates, and numerical values. In eDiscovery, entity recognition can be used to extract relevant information, protect sensitive data, and facilitate advanced analytics.³⁰

Sentiment Analysis is an NLP technique that determines the emotional tone of text, categorizing it as positive, negative, or neutral. In eDiscovery, sentiment analysis can be

²⁶ Cloud nine. Document Clustering for eDiscovery Review. Available at: <https://cloudnine.com/legacy/document-clustering/> (14. 7. 2024).

²⁷ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

²⁸ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

²⁹ EDRM. Technology Assisted Review. Available at: <https://edrm.net/resources/frameworks-and-standards/technology-assisted-review/> (15. 6. 2024).

³⁰ Deloitte. 2018. Entity recognition: How electronic discovery can benefit. Available at: <https://www2.deloitte.com/us/en/pages/advisory/articles/entity-recognition-how-electronic-discovery-can-benefit.html> (15. 7. 2024).

applied to emails, social media posts, and other unstructured data to identify potential evidence or assess the overall sentiment surrounding a case.³¹

Machine Translation is the process of automatically translating text from one language to another. While not a perfect substitute for human translation, machine translation can be used as a preliminary step in the eDiscovery process to identify foreign language documents and provide initial insights into their content.³²

Anonymization and Identity Masking are techniques used to protect sensitive information by removing or replacing PII. AI-powered tools can automate these processes, improving efficiency and accuracy while ensuring compliance with data privacy regulations.³³

By leveraging these AI techniques, eDiscovery practitioners can enhance the efficiency, accuracy, and cost-effectiveness of the discovery process while mitigating risks associated with data privacy and security.

3.2. Beyond AI: Complementary Technologies

Besides AI some other technologies are also revolutionizing eDiscovery. One of them is **Natural Language Processing (NLP)**. NLP enables eDiscovery tools to understand and interpret human language. This allows for more intuitive search queries, where users can input conversational prompts instead of relying on rigid keywords. NLP enhances the accuracy and efficiency of document review by identifying relevant information based on context and meaning.³⁴ **Cloud-based eDiscovery platforms** offer scalable and flexible solutions for managing large volumes of data. These platforms enable secure collaboration among legal teams, streamline data collection and processing, and provide robust analytics capabilities. Cloud computing also reduces the need for expensive on-premises infrastructure, making eDiscovery more accessible to organizations of all sizes.³⁵ **Advanced data analytics tools** provide deeper insights into ESI, allowing legal teams to uncover hidden patterns and relationships within the data. These tools can identify key players, track communication flows, and detect anomalies that may be relevant to the case. Data analytics enhances the ability to build robust legal strategies and uncover critical evidence.³⁶

³¹ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

³² EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

³³ EDRM. 2020. The use of artificial intelligence in eDiscovery. Available at: https://edrm.net/wp-content/uploads/dlm_uploads/2021/02/20210203-EDRM-AI-Paper-v-14.pdf (17. 6. 2024).

³⁴ Grand View Research, Inc. 2023. Legal AI and the Crucial Role of Natural Language Processing. Decoding Markets & Trends. Available at: <https://www.linkedin.com/pulse/legal-ai-crucial-role-natural-language-processing-9wvsf/> (15. 6. 2024).

³⁵ JDSUPRA. 2023. Modern eDiscovery Solutions: The Case for the Cloud in 2023. Available at: <https://www.jdsupra.com/legalnews/modern-ediscovery-solutions-the-case-7455173/> (3. 7. 2024).

³⁶ Doclime. How is Data Analytics Improving E-Discovery for Paralegals? Available at: <https://doclime.com/blog/data-analytics-improving-e-discovery-for-paralegals> (15. 7. 2024).

3.3. AI Revolutionizing eDiscovery

As seen in previous chapters eDiscovery is facing many challenges and is about to face even more in future (with exponential growth of data volume). The exponential growth of electronic data has transformed the legal landscape, making eDiscovery an increasingly complex and resource-intensive process. Traditional eDiscovery methods are struggling to keep pace with the sheer volume of data generated daily. To address these challenges, the legal industry is turning to AI. AI is revolutionizing eDiscovery by enhancing efficiency, improving accuracy, reducing costs, and providing deeper insights into data.

Enhancing Efficiency and Speed - AI's capacity to enhance efficiency and speed represents one of its most substantial contributions to eDiscovery. Traditional eDiscovery methodologies necessitate extensive manual labor to review vast datasets and identify pertinent information. AI technologies, including ML and natural language processing (NLP), can automate these tasks, significantly reducing the time required for document review and data processing.³⁷ AI-powered tools facilitate rapid analysis of terabytes of data, identifying relevant documents and streamlining the review process. This allows legal professionals to concentrate on strategic tasks, thereby augmenting productivity.³⁸

Improving Accuracy and Reducing Errors – The accuracy of eDiscovery is critical, as errors can lead to significant legal and financial consequences. AI enhances the accuracy of eDiscovery by analyzing large datasets with high precision, thereby reducing the likelihood of errors that human reviewers might introduce. AI algorithms can detect inconsistencies, anomalies, and potential risks within documents, ensuring a thorough and reliable review process, which is paramount in legal proceedings.³⁹

Cost-reduction – As being said eDiscovery is a quite costly due to the labor-intensive nature of document review. AI offers a cost-effective alternative by automating routine tasks, reducing the necessity for extensive human involvement, and consequently yielding substantial cost savings for legal teams.⁴⁰

Advanced Document Analysis – AI's advanced analytical capabilities signify a major advancement in document analysis. Beyond mere keyword searches, AI can identify complex patterns, relationships, and themes within datasets, uncovering hidden connections and insights that might elude human reviewers.⁴¹

³⁷ Create Progress. 2024. The Role of AI in E-Discovery: Enhancing Litigation with Efficient and Cost-Effective Solutions. Available at: <https://createprogress.ai/the-role-of-ai-in-e-discovery-enhancing-litigation-with-efficient-and-cost-effective-solutions/> (8. 6. 2024).

³⁸ Deloitte. 2024. The future of legal work? The use of Generative AI by legal departments. Available at: <https://www.deloitte.com/content/dam/assets-shared/docs/services/legal/2024/dttl-genai-legal-work-full-report.pdf> (15. 7. 2024).

³⁹ Complex Discovery. 2024. AI Trends in eDiscovery: Comparative Analysis of Recent Survey Results. Available at: <https://complexdiscovery.com/ai-trends-in-ediscovery-comparative-analysis-of-recent-survey-results/> (14. 7. 2024).

⁴⁰ Nawaz, N. *et al.* 2024. The Adoption of Artificial Intelligence in Human Resources Management Practices. *International Journal of Information Management Data Insights*, 4(1), p. 100208.

⁴¹ Blessing, E., Klaus, H., Potter, K. (2023) Utilizing AI and Data Analytics to Derive Insights from Large Datasets, Aiding in Decision-making Processes. Available at: <https://www.researchgate.net/>

Adapting to Natural Language Processing (NLP) NLP is one of the most exciting developments within AI. NLP tools, such as ChatGPT, enable users to interact with technology using conversational prompts and queries. This capability is transforming eDiscovery by allowing legal professionals to search for and retrieve information in a more intuitive manner. Instead of relying on rigid search terms, legal professionals can input natural language queries, and AI can interpret and execute these queries, retrieving relevant documents more efficiently than traditional keyword-based searches. This adaptability enhances the accessibility and user-friendliness of eDiscovery tools.⁴²

3.4. Challenges and Considerations

While AI offers numerous advantages, there are challenges and considerations that must be addressed. **Data privacy and security** are paramount concerns, as handling sensitive information necessitates stringent safeguards to prevent breaches and unauthorized access. **Ensuring the ethical use of AI**, particularly in avoiding biases and maintaining fairness in automated decision-making, is another critical issue. Integrating AI with existing systems and workflows presents complexities. Legal professionals must be trained to effectively utilize AI tools, and organizations must manage the transition from traditional methods to AI-driven processes. Addressing these challenges is essential to maximizing the benefits of AI while ensuring compliance with legal and ethical standards.⁴³

4. THE FUTURE OF EDISCOVERY

As technology continues to evolve, the future of eDiscovery promises even greater advancements and efficiencies. Emerging technologies such as blockchain for secure data verification, augmented reality for enhanced data visualization, and more sophisticated AI algorithms will further transform the landscape of eDiscovery. Legal professionals must remain adaptable and proactive in embracing these innovations to stay ahead in an increasingly digital world.⁴⁴ As AI and automation technologies continue to mature, their integration into eDiscovery processes will become more seamless. This will further reduce the reliance on manual review, enhance accuracy, and lower costs. AI-powered predictive coding and automated document classification are expected to become standard practices.⁴⁵ With

publication/376650485_Utilizing_AI_and_data_analytics_to_derive_insights_from_large_datasets_aiding_in_decision-making_processes

⁴² Kmetz, R. 2024. Unveiling the Power of NLP: ChatGPT and the Evolution of Natural Language Processing. Available at: <https://ryankmetz.medium.com/unveiling-the-power-of-nlp-chatgpt-and-the-evolution-of-natural-language-processing-010e9f0235f7> (16. 7. 2024.).

⁴³ Karthik Devineni, S. (2024) AI in Data Privacy and Security. *International Journal of Artificial Intelligence and Machine Learning* 3(1):35-49.

⁴⁴ Hassan *et al.* 2019. Blockchain and the Future of E-Discovery. Preprint. Available at: https://www.researchgate.net/publication/331730251_Blockchain_And_The_Future_of_the_Internet_A_Comprehensive_Review (26. 7. 2024).

⁴⁵ Business Network Solutions. 2024. How AI and Automation are Revolutionizing Document Management for Law Firms. Available at: <https://bnsasia.biz/how-ai-and-automation-are-revolutionizing-document-management-for-law-firms/> (15. 6. 2024).

the growing emphasis on data privacy and security, eDiscovery practices will need to adapt to comply with stricter regulations. Organizations will need to implement robust data protection measures and ensure that their eDiscovery processes are compliant with laws such as the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA).⁴⁶ It is assumed that legal standards and best practices for eDiscovery will continue to evolve in response to technological advancements and changing regulatory landscapes. Courts and regulatory bodies will likely provide more guidance on the use of AI and automation in eDiscovery, setting new precedents and shaping industry practices.⁴⁷ Collaboration and communication tools will play a crucial role in the future of eDiscovery. As legal teams become more distributed, the ability to securely share and collaborate on ESI will be essential. Advanced collaboration platforms will facilitate real-time communication, document sharing, and joint analysis, improving the overall efficiency of the eDiscovery process.⁴⁸

5. CONCLUSION

eDiscovery has revolutionized the handling of electronic evidence in the legal profession, offering significant benefits in terms of efficiency, cost reduction, and accuracy. However, it also presents challenges, such as high initial costs, complexity, data security risks, and the potential for over-reliance on technology. A balanced approach that leverages the advantages of eDiscovery while addressing its limitations is essential for optimizing its effectiveness in legal proceedings.

AI, in particular, is poised to further transform the legal industry. By automating routine tasks, enhancing accuracy, and uncovering hidden patterns, AI has the potential to significantly improve the eDiscovery process. However, challenges such as data privacy, algorithmic bias, and the need for specialized expertise must be carefully addressed to fully realize AI's benefits.

The broader implications of AI for the legal profession are profound. By automating mundane tasks, AI frees up legal professionals to focus on higher-value activities, such as strategic thinking and client counseling. However, the ethical implications of AI cannot be ignored. Developing robust legal frameworks and ethical guidelines will be crucial to ensuring that AI is used responsibly and beneficially.

The future of the legal profession will undoubtedly be shaped by AI and other emerging technologies. To thrive in this evolving landscape, legal professionals must embrace continuous learning and adapt their practices accordingly. By understanding the potential of AI and addressing its limitations, the legal industry can harness its power to deliver more efficient, accurate, and just outcomes.

⁴⁶ ZZapproved. 2022. The Ultimate Guide to GDPR and Ediscovery. Available at: <https://zapproved.com/blog/general-data-protection-regulation-gdpr-need-to-know-how-to-prepare/> (26. 7. 2024).

⁴⁷ Jaloudi, R. 2024. The Future of eDiscovery: Navigating Legal Tech Advancements in the Digital Age. Medium. Available at: <https://medium.com/@rjaloudi/the-future-of-ediscovery-navigating-legal-tech-advancements-in-the-digital-age-da57ee1d7b55> (15. 6. 2024).

⁴⁸ Purdue Global Law School. 2022. Collaboration Tools Are Making E-Discovery More Complex. Available at: <https://www.purduegloballawschool.edu/blog/news/collaboration-tools-make-ediscovery-complex> (27. 7. 2024).

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