



The Case for E-Discovery in the Philippines, a Traditionally Paper-Based Market

Many of the tenets that serve as the guiding principles for the e-discovery process and the admissibility of electronic documents in a court proceeding have been primarily established by what is known as the “Electronic Commerce Act,” also known as the “ECA.” Note that e-discovery is defined as “the electronic aspect of identifying, collecting and producing electronically stored information (ESI) in response to a request for production in a lawsuit or investigation.”¹

The basic thrust behind the ECA has always been that of the “functional equivalent approach.” This simply

means that while traditional, paper-based documents are highly preferred in any legal proceeding, if there is an electronic equivalent that can be used instead, it is also acceptable.

It is also interesting to note that the ECA is actually technology neutral. While differing courts may allow only for electronic documents from just one particular source, in general, it allows for any format or type to be presented. In particular, the ECA also has a clause in it known as the “Principle of Media Neutrality.”

This allows for the admissibility of electronic documents no matter what media they may be stored in, such as an on-premises server, a virtual machine hosted in the cloud, the hard drive of a wireless device, or even a thumb drive. This is very important, as electronic documents are often transmitted across different devices during the e-discovery process.

3) The Implications of the Law:

This has been deemed one of the most powerful components of the ECA. Simply put, the ECA does not just apply to legal proceedings that are solely related to commerce and business transactions. The scope of the law can also be applied to criminal cases. So, in either application, the usage of electronic documents is permissible in any Philippine court of law.

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There are other important features to the ECA, including:

1) For Electronic Documents:

Depending upon the case in question, electronic documents will be treated with the same level of equality as their paper-based counterparts. It is important to note that this does not apply to the actual content that is in the electronic document, just the format that it is presented in. For example, if an attorney wishes to provide evidence by making use of only PDF-based files, this will hold the same weight as if the documents were actually printed out and made available to the court as a hard copy. However, most electronic documents will still need to be printed out in hard copies as the mandated and preferred method in court proceedings.

2) For Electronic Signatures:

The ECA does not discriminate against either e-signatures or those signatures that have been manually signed on a paper document. For instance, if the defendant in a trial signed his name in a typed format such as "John Doe" on the electronic document, this will have the same amount of legal bearing and authenticity if the defendant were to actually sign his name on a paper one.

After the passage of the ECA, another key order (or rule) was passed by the Philippine Supreme Court in 2001. This became known as the "Rules on Electronic Evidence Act," also known as the "REEA." It states that just like electronic-based documents, any electronic evidence that is collected at a crime scene (especially information and data that has been extracted from a wireless device) can also be permitted in a court of law, and will also have the same amount of legal bearing as their physical evidence counterparts.

The legal courts and system in the Philippines allow for the use of both electronic documents (still required to be printed out) as well as physical documents in any legal proceedings. Based upon both the ECA and the REEA, there is no discrimination between the two, and both can be admitted without any problem.

But the usage of electronic documents has been slow (in terms of documents generated from the e-discovery process), and because of that, there is no legal precedence that has been set forth in this regard. Because of this, rather than engaging in a meaningful e-discovery process before the trial is started, both the prosecution and defense instead present their cases and evidence to the judge during the trial of the case. Therefore, the court trials that take place in the Philippines can take years and even drag on longer than that since e-discovery is not utilized.



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There are other reasons for not making use of the e-discovery process:

- Philippine lawyers and judges are not aware of the benefits that the e-discovery process may contribute to their case;
- Perhaps due to the slower uptick in technology adoption, the process is not encouraged in the judiciary/government, thus the slow adoption/ utilization rate;
- There is the perception that it is expensive;
- There are very few legal firms (if any) in the Philippine market that use e-discovery tools. As a result, they do not perceive it as a competitive advantage to have.

The bottom line is that both Philippine judges and attorneys need to fully understand the benefits of electronic documents that are developed and compiled in the e-discovery process.

The Strategic Benefits of Electronic Discovery

Throughout the legal systems across the globe, many law firms have used the traditional means of the paper-based approach to their discovery processes. But as many businesses are now adopting cloud platforms from either Amazon Web Services (AWS) or Microsoft Azure, the trend is now shifting toward e-discovery. It brings a number of advantages to the legal table.

1) Better organizational flow:

Suppose you have a huge legal case that just got handed down to your team. With the traditional approach to discovery, you would have to comb through hundreds of documents to find the answers you are looking for in order to effectively prepare your case for trial. With the electronic approach, all of these documents are stored safely and securely in a forensically sound manner. This means that if you are looking for a specific piece of information, you can do a quick keyword search rather than spending hours upon hours going through all of the paper records. Other tangible benefits include:

- You will no longer have to keep and maintain large, bulky paper files;
- You will be able to make use of metadata (the relevant data that is associated with the content in the e-discovery proceedings) in the stored electronic files, which will help to ensure the integrity of the information and data that has been collected throughout the lifecycle of the discovery process;
- E-discovery makes use of both artificial intelligence (AI) and machine learning (ML) tools to further

but it can be expensive if you have to send all of these paper documents by courier, especially if other members of the team are in other offices located geographically far apart. E-discovery takes all of these burdens away. For example, you can arrange for a virtual meeting with the entire legal team involved with the case, and all of the attorneys can view and collaborate on a real-time basis, from literally anywhere in the world. What would take perhaps hours to do can now be accomplished in just a fraction of that time. This simply means that your team will be able to present their case with more ease and confidence.

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optimize and automate your search for, and through, needed electronic files of evidential value;

- You can quickly and easily convert from one file format to another, as needed, from the original data source (e.g., an e-mail server). This is in contrast to the norm where, if all you have are paper documents in your discovery process, and they need to be sent electronically somewhere, each printed piece will have to be manually scanned in and converted over to the file format that is requested. This can be a sheer waste of time. It is also important to note that some documents are not from a digital source (e.g., handwritten note), but can be scanned in and made searchable through the use of optical character recognition (OCR) software.

2) Better scales of efficiency:

If you have a large case, you will have a lot of attorneys involved in the discovery process. Can you imagine sending hundreds of pages to each attorney to review? Not only will this be a drain on your time resources,

3) It eliminates 3rd-party risk:

In today's world, reducing the threat of security breaches and insider attacks has become a must for any business. If you have to send your paper documents via the mail, a courier, or even a messenger company, you are depending on a third party. There is no guarantee that your paper documents will be delivered to the right location. Worse yet, it could be an impostor handling your documents while they are in transition. As a result, they could be used for malicious purposes, such as launching subsequent identity theft attacks. With an e-discovery based process, any third-party risks are eliminated, further ensuring the security of the electronic files.

4) Better layer of protections:

With traditional paper documents, the only security measure that you have is that they will be stored in a locked room somewhere in your office. But who is accessing this room, especially after hours? Are there any other security mechanisms in place to further protect this room? How do you know if only authorized personnel are retrieving these documents? These are



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some of the inherent weaknesses that are present with this approach. With e-discovery, most of these vulnerabilities are eliminated. For example, if you use either AWS or Microsoft Azure to store your electronic files, you can use many security tools that are available. For example, your data will be encrypted throughout the entire e-discovery process so that any electronic communications between you and your legal team will be rendered in an unreadable protected state while it is transit from the sender to the receiver, and vice versa. Also, you will be able to use multiple authentication protocols that will guarantee the legitimacy and authorization of the individuals accessing the electronic files, especially if your law firm has implemented the Zero Trust Framework.

5) You will have a versioning history:

In general, the discovery process is not a one-and-done affair. As new pieces of evidence are presented, and as more witnesses are subpoenaed, you will need to have more sessions in place in order for your legal team to get their questions answered. Just imagine if you had to update all of the original documentation if you use a paper-based approach. Not only will this take many more administrative hours, but it increases the

chances for grave errors to be made. Plus, you won't have a clear record of who is updating what paper document. With e-discovery, not only can you pull up the needed files almost instantaneously, but you will be able to update them in real time during your discovery sessions. One of the greatest benefits of the e-discovery model is that you will be able to deploy a version history of all of the files. You can quickly view the history of who has updated documents, when and from where. This is in addition to a complete audit trail within the software to log an exact record of every action performed within a case and by whom.

6) Keeping up with compliance:

Data privacy has fast become a huge hot-button topic for all kinds of businesses, including law firms. This has been catalyzed primarily with the recent passages of both the GDPR and the CCPA in Europe and California respectively. The CCPA has its origins in California, while the GDPR originated from the United Kingdom. The Philippine's Data Privacy Act closely mirrors these two pieces of legislation, but enforcing the compliance is still rather slow. As the United Kingdom and the United States start to enforce their own compliance standards, it is highly likely that the Philippines will follow suit.

Keeping required security controls over your paper documentation can prove to be a huge nightmare—and if any errors are made in this process, your law firm can not only be subject to an embarrassing audit, but it can also have very harsh financial penalties imposed. This can all be avoided by moving to an electronic discovery model. Many of the large providers offer various tools you can use in just a matter of minutes to help ensure that your electronic files are in compliance (and will continue to be so) with the many new data privacy laws that are coming about today.

7) New cloud-based affordability:

E-discovery based solutions that reside in either AWS or Microsoft Azure offer great affordability. Most law firms today are still heavily dependent upon what are known as “On Premises Solutions.” This simply means that a server physically resides in the office, in which all of the discovery documents are stored. This can prove very expensive due to having to deploy the latest software

patches and upgrades, licensing fees, and hiring IT staff to maintain and secure it from cyberattacks. With new cloud offerings, all of these concerns are addressed for you within your monthly fee. Rather than having to take the time and effort to procure a physical server, you can create its equivalent (a “virtual server”) in just a matter of minutes. You can then install all of the security features you need without having to purchase additional hardware and licenses. By deploying your e-discovery process in the cloud, you will be charged only a monthly fee, which is based upon the amount of resources that you are actually consuming. Another great advantage is scalability. For example, if you get a large-scale legal case and need to get more attorneys, you can simply create more virtual servers. If you don’t need all of them after some time, you can delete those virtual servers that are not being used and store the electronic documents that resided in them into a cheaper “cold storage” area in your cloud-based platform.



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