

MANAGING AUDIO EVIDENCE IN eDISCLOSURE FOR FINANCIAL SERVICES COMPANIES

Audio evidence can be pivotal to a legal case. Failure to manage this evidence effectively can leave businesses open to judicial criticism, damaging publicity and fines from regulators.¹

Key legislation relating to audio evidence:

- In the U.K., the **Financial Services Authority (FSA)** – now the **Financial Conduct Authority (FCA)** - introduced rules in 2008 requiring that all firms regulated by the FSA record all telephone conversations and electronic communications relating to client orders and the conclusion of transactions in the equity, bond, and derivatives markets.² In November 2010 this requirement was extended to cover the recording of mobile phone conversations that relate to client orders and transactions by regulated firms³. Similar rules have either been introduced or are under consideration by regulators in many countries across the globe.
- **Mifid II**, adopted by the European Parliament in April 2014, aims to make financial markets more efficient, resilient and transparent, and improve investor protection.⁴ Once these regulations are implemented in 2015, financial services firms⁵ in the EU will be required to record all customer phone calls and to retain those recordings for three years.⁶

Key considerations for companies in the finance sector:

- **Do you have a strategy to manage voice recordings?**

Research commissioned by Epiq Systems suggests that managing audio data is a 'key challenge' for more than a third (38 per cent) of major corporations across Europe. More than two-thirds (69 per cent) of the survey respondents also recognise the need to improve processes to deal with the admissibility of audio evidence.⁷

Companies should not wait for a request before planning how best to manage audio evidence. When a request for information is made, the time allowed for producing the evidence may be very short. An urgent or rushed response to a request is more likely to lead to poor strategic decisions or errors. Therefore, a proactive approach is essential to achieve a swift, accurate response.

Companies need to consider:

- How to make their monitoring of audio wide, deep and frequent enough
- How an audit history will be maintained
- What the follow-up process will be in the event of a potential breach

1 For example: 'JP Morgan 'misled' information from regulators' Daily Telegraph, 19 September 2013

2 Financial Services Authority, 'Telephone Recording: recording of voice conversations and electronic communications', March 2008

3 Financial Services Authority, 'Taping of mobile phones - Feedback on CP10/7 and final rules', November 2010

4 Deloitte, 'Markets in Financial Instruments Directive - MiFID II', April 2014

5 MiFID II applies to companies including investment banks, portfolio managers, stockbrokers and broker dealers, corporate finance firms, futures and options firms and some commodities firms. See Financial Conduct Authority, 'Markets in Financial Instruments Directive (MiFID)', 22 July 2013

6 European Securities and Markets Authority, 'Consultation Paper MIFID II', Section 2.6 pp. 32-38, 'MIFID II, Financial Markets And Technology', 22 May 2014

7 Epiq Systems commissioned research of 100 respondents from large blue-chip companies (defined as having more than \$500M annual revenues) in the U.K., Germany, the Netherlands and Switzerland. Survey conducted by telephone in November 2013. Large European organisations in manufacturing and construction; retail; financial services; utilities; pharmaceuticals; professional services and IT/telecoms took part. Respondents included the CFO/Finance Director, Head of Compliance/Compliance Director or the Head of Legal/Legal Director/Head of Counsel

- Identification of internal monitoring team members
- Identification of third-party advisers and providers
- Are you aware of the variety of devices your staff is using to record business conversations?

The ubiquity of mobile devices makes the retrieval of audio evidence increasingly complex. Members of staff now have access to laptops, mobile phones, tablets and more, all of which they may use for both personal and business use.

The recording of telephone conversations produces high volumes of data which, during disclosure or regulatory actions, must be reviewed. Since the traditional method of review - where individuals listen to many hours of conversation - is not scalable, companies need to use new methods to retrieve and review audio evidence.

- **Are you familiar with the emerging technologies and techniques which are being developed to deal with audio evidence?**

As technology continues to develop, the gathering and review of data becomes more complex. However, many new solutions are available which aim to solve this problem and make the eDisclosure process easier and quicker. It will be increasingly difficult for businesses to complain that audio evidence is too challenging, time consuming or costly to manage, review or produce. The evidential value of voice recordings in litigation or regulatory investigation is likely to outweigh such arguments.

There are now tools which can be deployed to access all the calls made by a particular individual, no matter where or how the calls are made. Machine transcription and conceptual analysis can help winnow out non-relevant calls, and speaker recognition capability identifies nuances of different individuals' voices. Similarly, sentiment analysis can identify the raised voices and added cross-talk found in the most argumentative or angry conversations. These can then be cross-referenced with keywords to focus on specific flashpoints.

Phonemic search technologies are a relatively new entrant into the world of eDisclosure but are gaining rapid acceptance. Using phonemic audio search engines, recorded data can be converted into phonemes and then is searchable for keywords which are also converted into a phonemic representation. Also, advanced automatic speech recognition (ASR) technology can create a transcript of audio which can then be searched as a text document. This means that lawyers can quickly review many thousands of hours of conversations. Reviewers can then use tools such as JumpTo™ voice retrieval to select a passage of text and hear the original audio.

- **How do you plan to manage the costs of dealing with audio evidence?**

Dealing with audio evidence efficiently, such that the cost remains proportionate to the overall cost of the legal exercise, is a challenge. But, a well thought through plan and consideration of the available options will stand those who are required to search, review and disclose audio evidence in good stead.

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