

Terms of Endearment - Effective Use of Search Terms in E-Discovery

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Written by **Mark E. Hartsell**

The development and use of search terms in e-discovery is a cornerstone of modern litigation. Properly crafted search terms enable legal teams to efficiently identify relevant electronically stored information (“ESI”) while minimizing review of irrelevant material. However, creating effective search terms requires a strategic and iterative approach to balance precision and breadth. This approach ensures compliance with discovery obligations while advancing case strategy in a cost-effective manner.

Key Challenges in Developing Search Terms

While search terms can dramatically streamline the e-discovery process, they come with inherent challenges, including:

- **Overbroad Searches:** Broad terms can result in an overwhelming number of irrelevant documents, unnecessarily increasing review time and costs.
- **Overly Narrow Searches:** Restrictive terms may exclude critical documents, jeopardizing the completeness of discovery.
- **Case-Specific Variability:** No universal list of search terms exists because terms will vary based on the case's unique facts, issues, and terminology.

To address these challenges, legal teams must adopt a methodical approach that focuses on the specific facts of the case and leverages available tools and techniques.

Strategies for Crafting Effective Search Terms

1. Define the Scope of Review

Before crafting search terms, clearly outline the objectives of the review.

- **What are you looking for?** Identify whether you are searching for specific documents, datasets, or general categories of information.

- What is the database? Are you searching within the client's system or an e-discovery platform like Relativity? Understanding the database architecture is essential for effective search strategies.

2. Identify Critical Concepts

Understanding the core issues of the case is fundamental to creating targeted searches. Ask:

- What are the key topics or concepts? Focus on the most significant issues in the dispute.
- Are there specific parameters? Narrow the scope using:
 - Time periods to restrict searches to relevant dates.
 - Custodians or parties of interest to focus on individuals or entities central to the matter.
 - Project names or industry-specific terms: Use unique identifiers to refine searches.

3. Leverage Boolean Operators

Boolean operators and advanced syntax allow for precise, flexible search construction. Common Boolean tools include:

- AND: Requires all specified terms to appear (e.g., dredging AND erosion).
- OR: Includes documents containing any of the specified terms (e.g., negligence OR fraud).
- NOT: Excludes documents containing specified terms (e.g., trademark infringement NOT copyright).
- Quotation Marks: Searches for exact phrases (e.g., "account will be sent to collections").
- Parentheses: Groups terms for complex queries (e.g., (negligence OR breach) AND contract).
- Wildcards: Captures variations of words (e.g., "negotiat*" for negotiation, negotiating, etc.).

4. Use Proximity Operators

Proximity operators allow searches to account for the relationship between terms.

- NEAR/n: Finds terms within a specific word distance (e.g., project NEAR/10 alpha).
- WITHIN/n: Similar to NEAR but varies based on the search platform (e.g., John W/2 Smith for "John Smith" with potential middle initials).

Proximity operators are particularly useful for names or contextual relationships, ensuring greater accuracy in search results.

5. Incorporate Alternative Terms

Expand the search universe by considering:

- Synonyms and alternate spellings: (e.g., "occupation" vs. "career" or "theater" vs. "theatre").
- Abbreviations and industry-specific jargon: These can be especially relevant in technical or specialized matters.
- Wildcard symbols: Use to capture word variations (e.g., "drai*" for drain, draining, drainage)

6. Filter Using Metadata

Metadata provides a powerful tool to refine searches. Common metadata filters include:

- Custodian or Author: Limit results to documents created or received by specific individuals.
- Date range: Focus on documents created or modified during relevant time periods.
- Document type: Restrict results to specific formats, such as emails, spreadsheets, or PDFs.

Testing and Refining Search Terms

1. Run Initial Searches

Execute your initial search terms to evaluate the volume and relevance of documents returned. Pay attention to:

- Over-collection of irrelevant data.
- Gaps in coverage that may exclude critical documents.

2. Review and Revise

Based on the results:

- Adjust Boolean operators or proximity parameters to refine searches.
- Replace broad terms with more specific alternatives or add contextual qualifiers.
- Test variations of terms or additional synonyms to ensure comprehensive coverage.

3. Document Your Process

Maintain records of all search terms, refinements, and corresponding results. For example:

- Does “Project NEAR/10 Alpha” yield different results than “Project NEAR/2 Alpha”?
- Does adding “breach” to “negligence OR fraud” significantly alter the document universe?
- Does expanding the date range significantly increase the document set?

Proper documentation ensures defensibility, transparency, and the ability to replicate or challenge results if necessary.

Conclusion

Crafting effective search terms in e-discovery is both an art and a science. By defining the scope of review, identifying critical issues, and leveraging advanced search tools, legal teams can create tailored search strategies that maximize efficiency and minimize the inclusion of irrelevant documents. Regular testing, refinement, and documentation of search protocols are essential to achieving defensible and effective results.

Incorporating these strategies allows legal teams to focus on what matters most—identifying and analyzing the key documents that drive case outcomes.

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Mark E. Hartsell

t 336.607.7456

mhartsell@ktslaw.com