



The Sedona Conference

TAR Case Law Primer (January 2017)

In just a few short years, the use of technology-assisted review (TAR) for the exploration and classification of large document collections in civil litigation has evolved from a theoretical possibility to an essential tool in the litigator's toolbox. However, its widespread application—and the realization of its potential benefits—has been impeded by uncertainty about its acceptance by the courts as a legitimate alternative to costly, time-consuming manual review of documents in discovery. This *Primer* analyzes decisions from more than 30 state, federal, and foreign courts and administrative agencies that have been required to opine on the efficacy of TAR in a variety of circumstances, and explores the evolution in the courts' thinking.

The *Primer* is the product of more than a year of development and dialogue within The Sedona Conference Working Group on Electronic Document Retention and Production (WG1). It was originally conceived as a chapter of a larger Commentary on the use of TAR in civil litigation, but the rapid development of the case law, the volume of court decisions, and the importance of those decisions in shaping legal practice in real time required that an exposition of the case law be made available on a faster timetable than WG1's usual dialogue and consensus-building process allowed. For that reason, the *Primer* strives to present the case law in as neutral a fashion as possible. It avoids making any recommendations regarding particular TAR methodologies, nor does it propose any principles, guidelines, or best practices for TAR application, independent of those suggested by the courts themselves.

As the title suggests, the *Primer* is a starting point. The evolution in the case law is far from complete, nor is the analysis. We welcome your input on the *Primer* as we continue to receive new decisions that present novel facts, issues, and arguments. Your comments and suggestions may be sent to comments@sedonaconference.org.

The full text of *The Sedona Conference Tar Case Law Primer* is available free
for individual download from The Sedona Conference website at
https://thesedonaconference.org/publication/TAR_Case_Law_Primer.

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