



The Sedona Conference TAR Case Law Primer, Second Edition (February 2023)

The use of Technology Assisted Review (TAR) to search for electronically stored information (ESI) has become common practice in litigation. Courts routinely cite TAR's benefits and encourage its use. But with more frequent use of TAR and greater familiarity with TAR workflows, courts are now grappling with increasingly more complex TAR disputes than they dealt with when The Sedona Conference published the first edition of the *TAR Case Law Primer* in January 2017.

Case law has developed in the intervening years to address issues such as TAR methodologies, metrics, and validation. *The Tar Case Law Primer, Second Edition* updates and replaces the First Edition, providing a comprehensive look at the cases that have substantively addressed TAR through December 31, 2022. It discusses how the technological shift from TAR 1.0 systems to TAR 2.0 (continuous active learning) has impacted the case law, spotlights key trends and issues relating to TAR, and summarizes the current state of the law and the open questions that remain.

As with the First Edition, the *Primer* does not recommend best practices or otherwise comment on the utility of TAR. It is intended to assist courts and practitioners in staying abreast of this evolving area of law and technology.

Section II addresses the history of judicial acceptance of TAR, beginning with *Da Silva Moore v. Publicis Groupe* in 2012. Section III discusses how courts have accepted the use of TAR when parties agree to its use, and how they have held parties to their prior agreements. Section IV examines the level of transparency and disclosure that courts expect in connection with TAR. Section V addresses issues related to TAR workflows, including search-term culling, recall thresholds, ESI orders and TAR protocols. Section VI discusses court-ordered ESI protocols in relation to a responding party's production decisions. Section VII examines the application of proportionality in relation to TAR; Section VII examines cost shifting; Section IX looks at TAR cases from foreign jurisdictions; and Section X examines the use of TAR in governmental investigations.

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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