

7 Ways to Save Big Money on eDiscovery

You Don't Have to Break the Bank to Get Great Results

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The volume of electronically stored information (ESI) continues to grow at a staggering rate. Each day we create over 2.5 *quintillion* bytes of data and over 90% of the world's current electronic data was created in just the last two years alone. The explosion of data poses monumental cost and logistical challenges for companies and their attorneys involved in litigation. But by beginning at the beginning and thinking logically about each step in the eDiscovery process, it is possible to sort through it all in a cost effective way. This paper suggests 7 ways to cut your eDiscovery costs and at the same time gain better, quicker insight into your cases.

Method Number 1: Precull Your Data – Early Case Assessment (ECA) tools to reduce your data volumes abound and the ultimate cost of eDiscovery is directly proportional to the volume of data you have to process and review.

Data volumes are exploding. Each day we send 210 billion emails, send over 85 million text messages, post 4.3 billion Facebook messages, send and share about 500 million Tweets.

-- Domo.com, *Data Never Sleeps 4.0*, 2016:

One of the best ways to reduce your costs is to use common sense methods to reduce data volumes before you start processing which reduces processing and review costs. Use these data limiting techniques to reduce data volumes before you even process:

Apply Date Range Restrictions – You should have a good idea of what the pertinent dates are that are important to your case. By limiting the date range of the data you

collect or process, you can usually cut down on a significant volume of your potential data (often 50% or more). In breach of contracts cases, for example, the contract at issue has not existed forever. You should know when the parties started negotiating, when they reached an agreement, when the agreement was breached and when litigation started. You should bake in a little leeway on each side to make sure you don't miss anything (a month or two is usually sufficient). That is your date range and don't go beyond it.



IGNORANCE IS EXPENSIVE

The single most expensive item in most eDiscovery cases is ignorance. Not becoming educated in basic eDiscovery terminology and concepts can be disastrous for your case. So far at least 25 state bar associations have determined that technical competence is so crucial to modern law practice that failing to stay current constitutes a breach of the attorney's duty to his or her client.



Limit Domains – As noted above, we create a ton of data and most business data is being created in the form of email. Perhaps 90% (or more) of the email in a given inbox is irrelevant to the matter you are working on. Think about it: how many lunch invites, sales requests, newsletters, or LinkedIn things do you get every week? Vendors can easily exclude particular email domains if you know they are not going to be relevant to your case. If your case involves the ABC Company, all those emails from the DEF and XYZ Companies are not pertinent. Your vendor can likely exclude any email from the “www.DEF.com” domain so they never make it into your working data set.

Limit Your Custodians – The average custodian has about 5 gigabytes of email (some much more, some less). That could be an additional 25,000+ emails for each custodian. Learn your case early and figure out who the key players are and where their data lives. Only collect from those key custodians. Identify individuals who might technically be custodians, but who really don't have any relevant new information. Frequently, secretaries, assistants, billing, and other departments may just have copies of email, the originals of which already exist in another custodian's ESI. Do not waste time and resources on duplicate custodians. Raise the custodian issue at the Meet and Confer and limit custodian count as much as possible. You can often force the other side to agree to a set number of custodians (say, 10) and you can ignore the rest. Just make sure the 10 people you pick have the pertinent data.

Apply Keyword Searches – Most vendors have software that will allow you to apply keywords to your data before you begin to review it. This can be tricky, because until you know your case better you may not understand the many ways your client refers to the subject matter. Language is very malleable and frequently people collaborating on a project will develop a shorthand language when referring to it. And we all send emails that just say something like “See attached” or “FYI” with no text. If the attachment contains no keywords or is not

IGNORE THE RULE 26(F) MEET AND CONFER AT YOUR PERIL

Too many attorneys treat the Rule 26(f) Meet and Confer Conference as a nuisance, not as the amazingly effective cost-saving tool it can be. If properly utilized, the Meet and Confer can help you save your client significant costs by limiting the volume of data you must collect, process and review. If you are in state court and there is no 26(f), as the court to order one.



searchable, you'll miss those emails even though they are responsive. Get other side to agree to the use of certain keywords. Then they're stuck with the results. Just be careful: Missing potentially responsive documents can be costly.

DeNIST It – Sometimes, depending on how your ESI was collected, you may have a real grab bag of extra computer files in your data set. Frequently you will get all manner of “system files” mixed in with the actual user-created files. NIST (the National Institute of Standards and Technology) regularly analyzes commercial software and compiles a list by name of all the individual files found in commercial software. These are system files and are highly unlikely to contain any relevant information (i.e., user-created information). The list is updated four times per year. EDiscovery processing software compares the files in your collection to the NIST list and excludes anything that matches a file on the list. This saves time and money by reducing the number of files you pay to process and review.

Exclude Certain File Types – You will often notice a wide range of file types in your data, many of which are likely not relevant to your case. For example, if you are involved in a contract case, it is likely documents with .doc, .docx or .pdf extensions are going to be most relevant. It is unlikely that video or audio files are going to be responsive. Unless you have voice mail recordings mixed in, you can probably safely exclude those media file types. Image files (.jpg, .gif, .png) and files that are obviously computer code are likewise irrelevant and can be safely excluded. You can also exclude email signature blocks and disclaimers that often result in false keyword hits.

Method Number 2: Use the 26(f) Meet and Confer Conference as it Was Intended – If you are in federal court, you likely will have to “meet and confer” with the other side to talk about discovery. This occurs very early on in the process, often before you know much about the client’s computer system, discovery volumes, or types of documents you will be dealing with. If you

27% OF THE COST OF eDISCOVERY IS SPENT ON PROCESSING WHILE THE REMAINING 73% IS SPENT IN THE REVIEW PHASE

By doing everything you can to cut down the volumes of electronic information you process, you wind up having less to review. Even if you spend more up front, it's usually worth it. By tracking the metrics from project to project, you can calculate how much a dollar spent on data reduction up front will save once you get to the review.



are in state court, you will not have a formal 26(f) Conference, but you can (and should) still ask the judge to order one. Before the meeting, find out as much as you can about your client's computer systems, network, software, users, email, backups and in-house capabilities. This is an important early opportunity to limit the amount of data subject to discovery. If you don't feel comfortable with the technology, take along an expert (many courts require this). Bring your client's IT manager or an eDiscovery attorney from your firm or both. Most larger firms have attorneys who make eDiscovery their specialty. If you do not have the in-house expertise, you can also tap your vendor for help. These experts can cut through the noise, providing technical and legal assistance on how to manage the case, the court and the other side so you don't lose control of the data.

Method Number 3: Use Technology Assisted Review (TAR) and other AI Tech Tools to Speed Review – "TAR" is a term used to refer to different technologies that use computer algorithms to extrapolate from a small set of relevant documents (a "seed set") to the larger universe of documents and automatically assign responsiveness coding based on similarity to the seed set. It is possible in most cases to reduce documents for human review by 90%, and save perhaps 1/3 of the overall eDiscovery cost. Other techniques like email threading (reviewing email chains), deduplication (removing duplicates) and near-duplicate detection (drafts) can also be utilized to reduce the number of documents that need to be reviewed by a live person.

Method Number 4: Get Educated in Technology – The most expensive single item in modern litigation is ignorance. You do not have to become an expert in every nuance of tech, but you absolutely must get comfortable with the language of computers, email, eDiscovery and software. Basic technical competence has become so important to the practice of law that the [Florida Bar and those of 24 other states](#) have made it a CLE requirement. Refusing to become at least somewhat conversant in the language of tech is no longer an option.

DON'T FORGET ABOUT USING LEGAL PROJECT MANAGEMENT

Legal Project Management (or LPM) offers yet one more way to save costs by formalizing repeatable processes and getting better every time. If done correctly, using basic LPM techniques like project scoping, tracking metrics, and including an "After Action Review" to analyze successes and failures, can help to greatly improve project outcomes. The result will be more flexibility, predictability in pricing and transparency, which is what the majority of clients say they want from their law firms but are just not getting.



Method Number 5: Shop Your Vendors – This is one of the most under-utilized options to save money. Too often firms become locked into a few preferred vendors and don't investigate other vendors' capabilities and pricing. In one recent comparison of a cross section of vendors bidding on the same eDiscovery job, the bids varied by as much as 2,000% from the highest to lowest. Now, in some cases you may need to pick the pricier vendor because of some unique aspects of the case that only that one vendor can manage (forensic collection in Antarctica or whatever), but ordinarily that is not the reality. The technology and methods vendors use are becoming very commoditized and a reputable vendor should have the capabilities you need. Price is often the only true differentiator, but do your due diligence on their capabilities. Check references. Try telling your client why you picked the vendor that was 20 times more expensive than the next guy and you may have a lot of explaining to do. One great new SaaS company that allows you to quickly compare vendors without going through a complicated and lengthy RFP process is [ClariLegal](#). It's like eHarmony for eDiscovery. Their software platform strips out all the vendor mumbo jumbo surrounding eDiscovery and allows you to easily compare several bids side by side on a true apples-to-apples basis so you can select the bid that fits your budget and case needs. The RFP process is reduced from weeks (or months) to days or even hours.

Method Number 6: Use A Contract Review Team to Review Documents – Contract reviewers are attorneys or paralegals that specialize in document review. They are typically about 1/5th (or less) the per hour cost of a standard firm associate. Though not usually well suited for complex reviews, contract reviewers are an excellent way to quickly scale up a first pass review and identify privileged and key documents. A general rule of thumb is that review by a contract attorney costs about \$1 per document, while associate review is more like \$5+ per document. Save big dollars by using those higher priced associates for privilege reviews and issue coding.

GO VENDOR SHOPPING TO SAVE

Most firms and corporate law departments have a few go-to vendors that they use over and over again without much thought to using other vendors. And the reasons for this are simple: it is easier to work with a vendor you are used to and, frankly, the RFP process is a nightmare. But you may not be getting the best price from your usual suspects, despite what they are telling you. One vendor's price can be 20 times higher than another vendor's price for the same project. Shopping vendors once a year is a good idea to make sure you are really getting the best price.

Method Number 7: Implement Legal Project Management Tools and Techniques to Streamline the Process – Legal project management is a hot topic among clients and GCs these days. Clients use traditional PM in their own business operations every day as a way to save money and improve processes. Clients wonder why lawyers don't use PM. Of course, litigation is a little like a war and you can't predict everything the court and the other side will do. But discovery, including eDiscovery, is a largely predictable process and integrating some basic project management tools like project scoping and metrics will pay big dividends. Also conducting an "After Action Review" to identify lessons learned (both good and bad) and apply those lessons next time is very useful. And lastly, there are a number of cheap/free PM software tools available to assist you.

Conclusion – There is little dispute we are drowning in data, but it does not have to bust your case budget. The best method to lower your eDiscovery costs is to know your case well, understand the technology and manage it like a project. Find out from your client how its system works, where the data is stored and how many custodians you have. Use the 26(f) Meet and Confer to limit what you have to collect and produce even further. Collect, process and review as little data as possible. Automate the review process by using technology assisted review to zero in on the most responsive documents. Leverage the technology to magnify savings. Your clients will thank you.



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