



# STREAMLINING THE ELECTRONIC DISCOVERY PROCESS: TACTICS FOR AN EFFECTIVE IMPLEMENTATION

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Electronic discovery (e-discovery) requires the implementation of complex business processes and typically involves multiple departments within an enterprise. Whether an organization is facing litigation, regulatory inquiries or internal investigations, the increasing amount of electronically stored information (ESI), coupled with rising data management costs have made e-discovery a top priority for legal, security, and IT teams. Against the backdrop of potential court sanctions, adverse court judgments and the Federal Rules of Civil Procedure (FRCP), enterprises have struggled to keep up with rising litigation demands, and are unsure of where and how to develop or improve their e-discovery process.

## THE CHALLENGES OF ELECTRONIC DISCOVERY

Lawsuits, corporate investigations, and regulatory audits are on the rise and becoming all the more challenging to manage due to the amount of ESI created in our digital era. These two trends have fueled the escalating costs of e-discovery, and put the onus on corporations to take greater control of the e-discovery process. Adding to the complexity of the situation, e-discovery teams — which are comprised of legal, IT, security, and records management personnel — often struggle to collaborate because of disparate tools that are used to manage various stages of the process. As a result, teams often find themselves getting squeezed as they struggle to cope with increasing workloads while attempting to control spiraling e-discovery costs. Moreover, the growing risk of court sanctions places even greater importance on the need for transparency and defensibility

of the e-discovery process, adding to an already complex task for legal counsel and IT. In the end, organizations that cannot master this difficult process are putting the outcome of matters at risk.

## THE SOLUTION: MANAGE E-DISCOVERY AS A BUSINESS PROCESS

E-discovery is a crucial fact of life in today's business environment, yet many companies still fail to address this critical task in a proactive manner. Similar to disaster recovery and security, enterprises need to recognize that e-discovery is inevitable, and that the best option is to prepare for it in advance. However, proactively addressing e-discovery and implementing a set of repeatable processes and technologies to streamline the numerous, interrelated tasks is easier said than done. E-discovery is not a single activity, but a series of steps that involve the coordination of multiple departments across the enterprise. To effectively improve the e-discovery process, organizations should adopt a divide and conquer strategy, and focus on the steps that provide the greatest benefits and results first. In this fashion your organization isn't faced with a "boil the ocean" problem of trying to do too much at once. This approach will help bridge the gap between legal and IT when under tight deadlines in response to litigation and regulatory inquiries.

## HOW E-DISCOVERY TECHNOLOGIES CAN HELP STREAMLINE THE PROCESS

When responding to an event, such as litigation or a regulatory inquiry, the e-discovery process consists of three major, multi-element phases: (1) identification, preservation and collection;



- (2) processing, search and analysis; and
- (3) review and production.

Each of these phases has specific requirements and costs. By selecting the right e-discovery solution, enterprises can dramatically enhance each of these phases to more readily identify critical case facts, and resolve cases in less time to reduce overall cost.

So when looking for the best e-discovery solution to fit your needs, keep in mind a few things to ensure that you optimize and streamline the e-discovery process:

- Potentially relevant ESI will likely be stored in a range of disparate environments, including the cloud, social media, shared files, user desktops, laptops and email. Look for an e-discovery product that can easily collect ESI from different data sources. Technology that can seamlessly identify and defensibly collect data from across the enterprise makes it easier to perform downstream e-discovery processes such as early case assessment, review and production.

- When responding to investigations or regulatory inquiries, time is of the essence for both legal and IT. Be sure that the solution you use can easily load and configure cases of any file size, and quickly have data available for analysis and review. This will allow both legal and IT teams to easily manage, prioritize and collaborate on cases, particularly when tight deadlines are in play.

- Leverage analytical technologies to your advantage during meet and confer discussions, as well as optimizing downstream review efficiency. Your e-discovery solution should go beyond just basic search functionality to provide advanced analysis and review features like concept search, discussion threading and metadata filtering options. These capabilities will provide a streamlined review workflow, allowing your legal team to rapidly review relevant information.

As companies look to streamline their e-discovery processes to react more quickly to case requests, control costs, and ensure compliance with FRCP guidelines, it is to their advantage to develop repeatable processes that meet their needs in

the most cost-effective way, while also mitigating potential risks. Once considered an outsourced byproduct of litigation, e-discovery is now a critical business process that needs to be treated as such. To remain competitive and avoid staggering legal bills, companies must take control to find ways to reduce the costs, complexity and overall risk of e-discovery. While it is easy to get caught up in the overall process, it is best to focus on phases where the biggest gains can be made. Improve your e-discovery process one step at a time by prioritizing steps based on their duration, cost and impact to your organization. Remember that at the end of the day e-discovery needs to be managed as a repeatable business process so that the risks, costs and overall exposure to your organization are understood and managed appropriately along the way.



#### ABOUT THE AUTHOR

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*Dean Gonsowski brings over a decade of e-discovery consulting and legal practice experience to his position as Associate General Counsel for Clearwell Systems. He is a member of The Sedona Conference Working Group on Electronic Document Retention and Production (WG1), the Electronic Discovery Reference Model (EDRM) and teaches a series of continuing legal education (CLE) courses on various topics.*