

# TOP FIVE TIPS FOR REDUCING EDISCOVERY COSTS

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The abundance of electronic information created and stored by large enterprises has made the adoption of efficient discovery practices a more important corporate objective than ever before. Reviewing and producing information in response to legal document requests can be burdensome and expensive. A disorganized or untimely response can have disastrous consequences, including sanctions or the unintentional production of privileged information. However, by adopting an eDiscovery action plan based on the five tips discussed here, any company can implement an efficient strategy for responding to discovery requests, minimize the impact of legal activity on ongoing business operations, and reduce costs related to document review and production. Proper planning among corporate counsel, outside counsel and the company's eDiscovery solution provider can ensure efficiency in any size or type of matter. When a legal document request is received, rather than facing a fire drill, you will be ready to respond swiftly and cost effectively.

## TIP 1 REDUCE EDISCOVERY COSTS BY SIGNIFICANTLY REDUCING DATA VOLUMES

The volume of data stored by large corporations is growing exponentially. At the same time, litigation, government investigations and regulatory inquiries are happening at an increasing pace. Under even the best of circumstances these legal matters are expensive and labor-intensive. For companies without an effective eDiscovery action plan, the costs can be crippling. Fortunately, the technology and tools available to facilitate eDiscovery practices have evolved quickly in the past few years as leading service providers have developed advanced review platforms to match the sophistication of companies involved in complex legal matters.

## TIP 1 IMPLEMENTED

The client used Stratify Legal Discovery® OnPoint to cull the data from 500 GB to 90 GB. With free early stage filtering, client **costs were reduced 82%**.

### Old Practice

500 GB x \$500 per GB = \$250,000  
25 million documents for review

### New Practice

90 GB x \$500 per GB = \$45,000  
4.5 million documents for review

Any legal professional involved in a matter with a significant eDiscovery component in the past 10 years has experienced the difficult balancing act of ensuring that all potentially relevant evidence is reviewed and analyzed while keeping the costs of discovery under control. The two components that significantly impact expenses in most matters are third party data processing charges and billable attorney time spent on first-pass review of large data sets. If every email, electronic file and digitized paper document containing potentially relevant information must be processed and loaded into a review application before being searched and sorted for responsiveness, there is little hope of reducing costs in any meaningful way.

Today's sophisticated search and filtering technologies can be used to effectively narrow a data set before transitioning to substantive review. However, the remaining problem with many of these approaches is that service providers typically charge a per-gigabyte processing fee for uploading the entire unfiltered data set to the review platform before work can begin. One response to this situation has been for companies to bring early case assessment in-house with an eDiscovery appliance like Iron Mountain eVantage™. Alternatively, a recent announcement by Iron Mountain provides an cloud-based eDiscovery option that will be appealing to any company facing a complex legal matter or one that involves a large volume of electronic data. With the introduction of Stratify Legal Discovery® OnPoint, Iron Mountain is now offering clients the ability to process and load an unlimited volume of data for free to perform the initial search and filtering work necessary to identify data potentially relevant to the matter at hand.

Providing access to advanced analytical tools available in Stratify Legal Discovery at no cost—including concept organization, random filtering, metadata-based filtering and other sophisticated search functionality—this offering immediately addresses one of the two major cost components of eDiscovery. Processing fees are charged only for the smaller subset of documents designated for further review, and charges starting at \$500 per gigabyte are incurred just once as the designated documents are promoted to the Stratify Legal Discovery hosted review platform. The days of incurring hundreds of thousands of dollars in eDiscovery processing costs before your legal work can begin are now a thing of the past.

## Sample Case

For purposes of considering the potential cost savings of implementing the five tips discussed here, assume the following facts associated with a document request:

**Custodians:** The request involves 175 custodians at five different locations, including corporate offices in North

America, Europe and Asia and a manufacturing facility in South America.

**Data Collection:** Consistent collection protocols are challenging due to the varying levels of sophistication of the client's IT staff in each location.

**Data Volume:** After collection is complete, the result is 500 GB of data (approximately 5 million documents).

## TIP 2 IMPLEMENTED

The client promoted 90 GB of filtered data to the hosted Stratify Legal Discovery® review interface. Using concept organization technology the initial set of 4.5 million documents was quickly organized to identify those most relevant to key issues in the case. The result was 15 reviewer work folders prioritized for review by senior attorneys.

After tagging for responsiveness and coding by issue, attorneys applied search parameters again to ensure that no responsive documents were missing and that all privileged information was redacted. Random sampling was then used to QC the data before a final production set was designated.

## TIP 2 REDUCE EDISCOVERY COSTS WITH ALTERNATIVES TO PURELY LINEAR ATTORNEY REVIEW PROCESSES

Next, you should turn your attention to reducing the hundreds of hours of billable time that can potentially be spent on linear first-pass review. Industry experts estimate that first level document review accounts for anywhere between 58% and 90% of total litigation costs.<sup>1</sup> The balance is likely the same in regulatory proceedings and other document-intensive investigative matters. If these processes can be streamlined, corporate clients can significantly reduce expenses and outside counsel can turn their attention to substantive legal issues much earlier in the case.

By putting advanced technology to work, you can implement an eDiscovery review protocol that incorporates elements of the latest technologies as they are appropriate to any given matter. For example, the core review functionality available in Stratify Legal Discovery enables the review team to choose to deploy any or all of the tools available to support substantive review.

With advanced review and data analytics tools such as those included with Stratify Legal Discovery OnPoint, you can significantly improve on outdated practices and increase the speed, accuracy and consistency of document tagging, privilege issue coding and other critical discovery practices. By performing these essential tasks more efficiently and accurately than traditional linear review—which can produce mixed results depending on factors such as subjective coding decisions and inevitable reviewer fatigue—your legal team will be able to identify the documents and issues central to case strategy while significantly reducing billable review time.

Finding a way to quickly and effectively identify documents central to a case has broad appeal to corporate counsel who face undiminished budget pressure. In addition, faster, more accurate first-level filtering can equally benefit savvy law firm attorneys who understand that a cost-effective approach to eDiscovery is one of the best client development and retention strategies a firm can have today.

### CORE FUNCTIONALITY AVAILABLE WITH STRATIFY LEGAL DISCOVERY® ONPOINT

- Full text Boolean search
- Metadata-based faceted search
- “Smart issue” folders
- Reviewer work folders
- Native file review
- Sophisticated tagging, annotation and redaction capabilities
- Task assignments
- Advanced Lotus Notes processing
- Group-based security settings

### IRON MOUNTAIN EDISCOVERY ANALYTICS (INCLUDED)

- Automatic concept organization
- Stratify Document Analytics™
- Stratify Visual Email Analytics™
- Random sampling

<sup>1</sup> “Cutting to the Document Review Chase,” American Bar Association Newsletter, Business Law Today, Vol. 18, No. 2, Nov.-Dec. 2008.

### TIP 3 IMPLEMENTED

The client engaged the Iron Mountain consulting team to help design uniform collection protocols that could be implemented by the IT teams in multiple locations. With significant differences between systems in the corporate business offices and at the manufacturing plant in South America, it was critical that the data collection be performed consistently.

The client knew that multiple foreign languages would be included in the data set, so they selected the Stratify Legal Discovery® complex language support configuration option.

## TIP 3 REDUCE COSTS BY USING THE EDISCOVERY CAPABILITIES MOST APPROPRIATE FOR EACH MATTER

There is no one-size-fits-all review application that is well suited to meet the needs of every matter. While some document requests are relatively small or straightforward and can be managed in-house with an onsite appliance such as Iron Mountain eVantage™, others are characterized by very large or complex data sets or involve multiple parties or review teams. For these matters, you want a robust hosted platform with more extensive capabilities.

When preparing your eDiscovery action plan, you need to have the flexibility to deploy the right technology for each matter. Unfortunately, attempting to apply the correct eDiscovery technologies on a case-by-case basis typically results in a patchwork of tools that don't necessarily play well together and often creates duplicative processes and costs that waste time and increase your budget.

Providing clients with matter management flexibility was the goal when Iron Mountain announced a new approach to eDiscovery based on simplified configuration options for the Stratify Legal Discovery service. The different configurations are designed to enable clients to flexibly manage eDiscovery by selecting the capability sets appropriate to each situation.

**Iron Mountain offers advanced eDiscovery configurations that can be selected singly or in combination to suit the needs of different types of matters.**

#### IRON MOUNTAIN DOCUMENTS ANALYTICS

(included with Stratify Legal Discovery OnPoint)

- Automatic concept organization to quickly identify relevant groupings of documents
- Stratify Document Analytics™ to identify risky Microsoft Office documents
- Stratify Visual Email Analytics™ to identify key custodians and critical emails
- Random Sampling to validate and QC tagging, review accuracy, reviewer quality and production sets

#### COMPLEX LANGUAGE SUPPORT

(optional)

- Advanced support for complex, multi-byte languages, including Chinese, Japanese, Korean, Thai and more
- Unicode data, as well as non-UTF8 sources (such as Microsoft Outlook 2003), are appropriately restored and indexed
- All review and analytical capabilities, including concept organization, search, review and metadata editing, are multi-language enabled

#### MULTI-PARTY / REVIEW TEAM SUPPORT AND AUTOMATED WORKFLOW

(optional)

- Documents and work product can be completely partitioned between parties and/or review teams, preventing any breach of confidence or privilege waiver
- Establish policies for sharing documents among multiple parties or multiple review teams
- Easily constructed multi-tier, rules-based workflows in large or complex matters automate eDiscovery review workflow while radically simplifying workflow management

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MATTERS OF INCREASING COMPLEXITY

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When deciding which approach is best, it is often helpful to have access to a knowledgeable consulting team that has significant eDiscovery experience working with clients to design efficient, cost-effective strategies across the eDiscovery continuum. These eDiscovery and information management specialists can help with data retention and litigation hold policies, data collection methods, or recommending defensible search and filtering protocols. The end result is implementation of the most cost-effective review configuration for each matter.

After you have experienced the cost savings of successfully reducing the initial data set and complementing attorney review practices with sophisticated search and data analytics tools, you can be confident that a configurable eDiscovery review platform will give you the flexibility to maintain control of the matter from beginning to end—regardless of how it may change in scope or complexity along the way.

#### **TIP 4 IMPLEMENTED**

As the project progressed, the client leveraged insights from the Iron Mountain team about how the company created and stored data to address the challenges associated with its disparate IT systems. This enabled the client to prepare for the likelihood that the product at issue in the case would be the subject of future litigation.

After establishing a Master Services Agreement with Iron Mountain, the client designated data that was likely to be needed for future litigation and arranged to have it stored and managed to be easily accessible.

The client saved money by avoiding duplicative processing charges, and increased efficiencies by building on insights gained from the first case to facilitate strategy for anticipated future matters.

#### **TIP 4 REDUCE COSTS AND INCREASE ACCOUNTABILITY BY CONSOLIDATING EDISCOVERY WITH A SINGLE SOLUTION PROVIDER**

No matter how sophisticated a particular eDiscovery technology may be, the end result will be only as good as the work performed by the review team. Unfortunately, many corporate clients still use multiple eDiscovery review applications from a variety of solution providers, depending on the type of matter or which outside law firm is assigned. This practice leads to considerable review inefficiencies as data is transferred between applications and even data centers (which also increases the risk of metadata corruption or loss of work product) and leads to unnecessary charges when the same data is re-processed and loaded multiple times. Managing projects in a one-off manner also often results in nebulous accountability among different providers, rather than a uniform, coherent approach that recognizes eDiscovery as a critical legal function.

You can achieve significant cost savings and workflow efficiencies by implementing a single platform as the basis for all eDiscovery work. By integrating first stage filtering with full review, production and advanced capabilities as necessary, you simplify the overall eDiscovery process and realize numerous efficiencies along the way. Even more importantly, collaborating with a trusted solution provider that offers scalable technology, experienced consulting resources, dedicated project management and technical staff, and battle-tested processes will provide a single point of accountability.

Standardizing your approach to eDiscovery has the added benefit of enabling you to optimize the productivity of your core review teams—whether members of the in house team or primary outside counsel—by training them how to get the most out of the technology. Standardized workflow practices become second

nature when the review platform is familiar, and reviewers are faster and more accurate when they are comfortable with the review interface. Just as you wouldn't change email applications from project to project—migrating from Microsoft Outlook to Lotus Notes to some other application and back again—it makes no sense to continually rotate through an array of eDiscovery applications.

Finally, consolidating eDiscovery on a single platform will provide your legal teams consistent access to an account manager, a dedicated project management team, matter setup procedures and specifications that are customized to your requirements, and familiar technical support options. As with any important professional service you purchase, the importance of building relationships can't be understated. When difficult issues arise or seemingly impossible deadlines are imposed, a team that already knows and understands your eDiscovery needs in-depth will be best suited to rise to the occasion.

## TIP 5 IMPLEMENTED

With help from their Iron Mountain project managers, the legal team prepared reports and memoranda to track all data by custodian and location—from the point of collection through production. Maintaining this knowledge base of information has been a valuable resource during discovery and later phases of the case—both for purposes of preserving a record of everything that had been done to the data (in the event of an objection by the requesting party), and for responding to questions from the client and senior members of the outside legal team as the case developed.

## TIP 5 REDUCE EDISCOVERY COSTS BY ESTABLISHING REPEATABLE, LEGALLY DEFENSIBLE PROCESSES

Every attorney with an in-house practice today has probably spent at least a few minutes worrying about the “what if” associated with a significant challenge to the company's data management and eDiscovery practices—including the moving target of a defensible legal hold protocol. With recent decisions from Judge Shira Scheindlin and Judge Lee Rosenthal<sup>2</sup> offering very specific—and very different—guidance about a company's legal hold obligations and other eDiscovery duties, the pressure to establish repeatable, defensible practices has never been greater.

When you implement an eDiscovery action plan based on a single technology platform, advanced analytics and an established relationship with a trusted solution provider, you will be able to create and document defensible search and analytical processes, together with filtering and review. Your team will be able to follow repeatable processes to efficiently move data through the system from early stage filtering to substantive review and selection for production. When a question about the defensibility of a particular element of your eDiscovery approach arises—whether related to data collection, culling or any other element of the workflow—you will have confidence in the system and methodologies used. The ability to clearly describe and defend these practices will save considerably on time and money frequently wasted on motions practice in discovery disputes that most commonly arise from a haphazard approach to eDiscovery.

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<sup>2</sup> See *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC, et al.*, 2010 U.S. Dist. LEXIS 4546 (S.D.N.Y. Jan. 15, 2010) and *Rimkus Consulting Group, Inc. v. Cammarata*, 2010 U.S. Dist. LEXIS 14573 (S.D. Tex. Feb. 19, 2010). For a complete summary of either case, please contact your Stratify account representative.

## CONCLUSION

While electronic discovery costs can be significant for those who approach each matter on a case-by-case basis, significant cost-saving opportunities are available to those who have a comprehensive plan in place. The technology exists to provide lawyers with tools and resources to handle complex discovery in a speedy, cost-efficient manner without interrupting the workflow of familiar business and discovery practices. By partnering with a trusted solution provider and taking advantage of these innovative tools, in-house counsel can gain control over data review and analysis processes and reduce their costs, and outside counsel can enjoy a tremendous advantage in preparing all client matters for the best resolution and exceed their clients' expectations.



501 Ellis St, Mountain View CA 94043  
sales@stratify.com | 866.400.8484

Iron Mountain uniquely delivers end-to-end eDiscovery solutions consisting of Connected® Classify & Collect simplified laptop and desktop data collection, NearPoint content archiving, eVantage on-site data reduction and analysis, and Stratify Legal Discovery® review and production services.

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