



Containing E-Discovery Costs

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E-Discovery Is Not Cheap



- No matter what we do to be efficient and cost-conscious, dealing with ESI is not cheap
- Be prepared for e-discovery costs to be some of the largest incurred in the case and budget accordingly
- Must balance cost with risk
- Invest time and effort for early planning for e-discovery



Common Pitfalls



- Rush to collect ESI without strategic plan
- Reliance on client to provide ESI for custodians without clear plan or understanding of sources
- Trying to deal with ESI on the cheap – not using review tools, not processing and indexing data for searching and culling, etc.
- Over-collection – don't always need to collect all data for all custodians, focus on relevant data sources and carefully document excluded sources
- Over-collection – who are the key players?
- Blind use of search term filters
- Failure to document what has been done to avoid repeating steps



How can costs be contained?

- Litigation readiness on client side (topic for another day)
- Biggest expense is review
- Must get universe to be reviewed reduced to save costs
- Explosion in volume of ESI stored by companies requires early case assessment and carefully planning to avoid spiraling costs
- Look for opportunities to contain costs at all stages (preservation, collection, processing, review, and production)



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Cost Containment Opportunities at Preservation Phase

- Avoid later costs associated with spoliation or sanctions by carefully crafting preservation plan
- Identify key custodians through careful analysis and early case assessment – expand or contract list as case progresses
- Use questionnaires and interviews to focus sources for preservation and collection
- Interview IT to identify sources for key custodians' ESI and potential areas for loss of data (automatic deletion policies, de-centralized systems, etc.)
- Consider seeking agreement of opposing counsel to limit scope of preservation
- Decide whether some (any?) back-up tapes must be preserved
- Consider whether some sources may need to be collected in order for them to be preserved
- Evaluate client's internal systems and practices to determine if adequate to preserve ESI

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Cost Containment at Collection

- Evaluate need for forensic collection by outside vendor - consider amount in controversy, nature of claims, client's internal IT capabilities, and risks associated with improper collection
- Consider risks associated with custodian "self-collection"
- Consider options for targeting collection
- Focus collection to key sources while preserving others
- Does the client have internal tools and skills for preservation and collection? Evaluate them and understand their limits
- Document the process to avoid repetition

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Cooperation Cost Containment Opportunities

- Seek agreement from other side to limit scope
- Offer specific plan for e-discovery based on knowledge of case, sources, and costs
- Outline ESI issues to discuss at meet and confer and list areas where specific information will be needed to reach agreement
- Limit custodians, date ranges, file types, sources
- Identify sources that are "not reasonably accessible" as well as the specific burdens and costs associated with producing ESI from such sources
- Consider staged or tiered discovery
- Be candid about e-discovery
- Consider shared production database

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Cooperation Cost Containment Opportunities

- Consider claw back or "sneak peak" agreement (may be part of protective order)
- Negotiate production format early and agree to cooperate to cure problems – and there will be problems
- Consider native productions (note risks and issues)
- Plan for rolling productions with set priorities
- Agree to global de-duplication with preservation of record of all sources
- Negotiate search terms – if appropriate
- Consider using e-discovery liaison to negotiate these points

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ESI Processing Cost Containment

- Use preferred vendors for preferred pricing
- Use hit reports and similar reports to help negotiate with opposing counsel
- Use vendors who can de-duplicate globally and preserve information regarding all original custodians
- Filter data by file type, date, key terms
- Consider how vendor determines duplicates to avoid duplicative review – MD5 Hash? Email threads?
- Use early case assessment tools for filtering data if appropriate

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Document Review Cost Containment Opportunities

- Use staff attorneys and contract attorneys for first level review
- Conduct quality control and upper level review by using associates and discovery attorneys
- Make sure your reviewers are trained in the tool as well as on the facts of the case
- Implement quality control protocols to oversee review including statistical sampling
- Use tools that track reviewer pace and audit decisions made on documents

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Document Review Cost Containment Opportunities

- Contract lawyer rates vary by agency – in the range of \$50/hour
- Consider off-shore review options and risks
- For review of opposing party's documents – make sure you request ESI in useable format with specific metadata needed for cost-effective review
- Craft your requests carefully to avoid data-dump from opposing counsel

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Document Review Cost Containment Opportunities

- Limit first pass review to initial privilege call (broad), responsiveness, and a few core issues
- Use near duplicate, email thread, and clustering to bulk tag documents (consider risks and use sampling to confirm results)
- Additional coding creates additional delays in review and greater room for error
- Have upper level reviewers conduct full second level review, or limit to statistical sampling depending on budget and risk
- Use "Big Brother" tools to ensure reviewers keep appropriate pace and monitor progress

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Document Review Cost Containment Opportunities

- Consider risk and benefits of producing without review and relying on reasonable targeted searches for privileged documents (Rule 502) or claw back agreements
- Select appropriate review platform for improved efficiency and monitoring – analytics, near duplicates, bulk tagging, work-flow tools, conceptual grouping, management tools for monitoring review, privilege log generation
- Consider targeted searches for privilege pre-screening
- Consider document review companies offering per GB or per page pricing for start-to-finish e-discovery and review

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Benefits of using Early Case Assessment Tools

- Identify significant concepts and key words
- Assess the numbers of documents associated with predefined categories including custodians, key concepts, languages, dates, entities
- Identify possible missing custodians through Social Network and email Thread Analysis
- Target custodians and documents most and least likely to be responsive
- Gain detailed knowledge of database for scope negotiations with opposing counsel

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Conceptual Analysis

Bookmark searches

Key Terms in relevant order

Automatic results categorization - relevance ranked

People, threads, and documents in relevant order

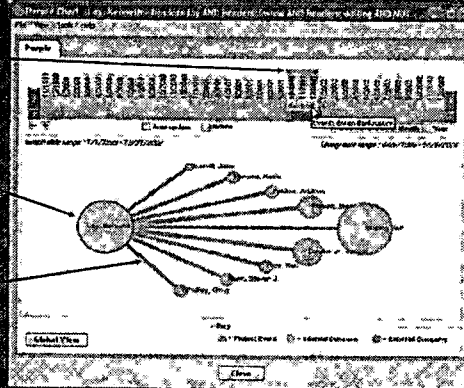
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Social Network Analysis

Dynamically visualize communications patterns over a date range to focus in on specific topics against events

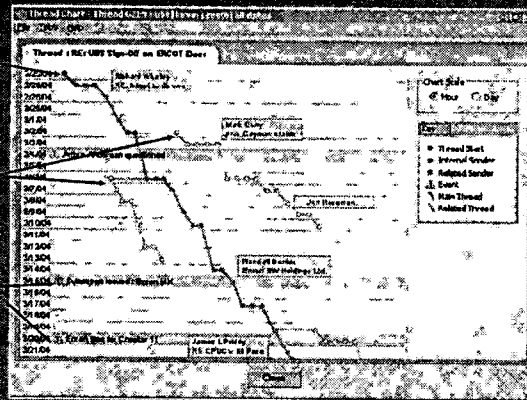
Social network in relevant context with query terms

Drill down to review specific traffic between individuals



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eMail Thread Analysis



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Smart Review

Integrated Review and Analysis

All metadata preserved and displayed

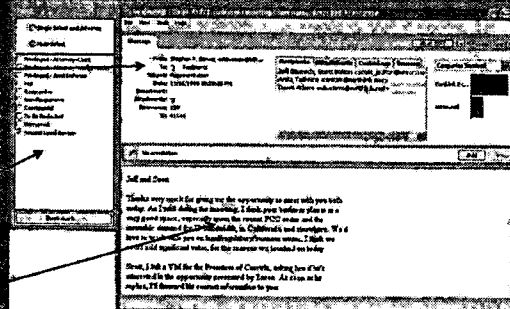
Review documents in native or HTML format

Efficiently tag documents with single click and advance workflow

Unlimited Customized Flags and Bulk Flagging

Progress Reports

Highlighted relevant terms



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Production Cost Containment

- Document everything
- Track productions by source and bates range
- QC vendor productions
- Native productions v. image productions
- Production of duplicates
- Vendor pricing – flat fee v. per page
- Consolidate production sets

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Cost Saving Trends

- Clients bringing e-discovery functionality in-house at varying levels – ESI management tools, document review, e-discovery teams
- Vendors (technology vendors, staffing agencies, and accounting firms) offering all-inclusive e-discovery services (including review)
- Greater reliance on technology for review – volume too great and human accuracy too poor
- Judiciary getting more sophisticated about e-discovery issues and expect lawyers to do the same

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Questions?

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