



# THE E-DISCOVERY OSTRICH

E-discovery is a term that almost everyone is now familiar with - several high profile court cases over the past 4-5 years have made sure of that. When an e-discovery mandate hits an organization it could have as little as 6 weeks to comply - 6 weeks to discover, hold and extract potentially tens of thousands of documents and files, and 6 weeks of highly stressful project management at best, thinly veiled chaos at worst. [So do you start to plan for e-discovery now - or put your head in the sand and try and ignore it?](#)

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Recent research from AIIM shows that over half (53%) of organizations feel that the biggest potential issue from any governance failure within their organization is the risk of excess litigation costs or damages. This far outweighs concern about the actual infringement of industry-specific compliance regulations (26%) - or, to paraphrase, breaking the rules is not actually as bad as the cost of doing it. This extends to e-discovery, where the prospect of being investigated is not the main issue or concern - the actual process of performing e-discovery is the more costly and worrying matter.

Electronic discovery is the use of information technology to collate all of the organizational content required for civil litigation, and normally starts with a mandate issued from a general counsel (GC) or assistant general counsel (AGC) from within the organization. At this stage the countdown starts - with as little as 6 weeks on the clock - and for many, an untested and confusion-riddled e-discovery process begins.

E-discovery starts with legal discovery - a team of attorneys identifying the information assets that may be relevant to the mandate and tagging that information to be placed in "legal-hold". While sounding simple this actually places significant challenges on an unprepared organization - both from an IT and an operational perspective. Information sources must be identified, catalogued and made available for immediate analysis, all the while ensuring that nothing changes in that data.

Indeed AIIM research identified that just the legal discovery process takes on average 17 days for paper based records and 12.4 days for those operating electronic records management systems. A word of warning also - those performing legal discovery on electronic documents not in a records management system took an average of 25 days to execute, longer than for paper records.

The legally held information is then extracted from the organizational enterprise content management (ECM) and records management (RM) systems, and is likely to include both electronic and paper-based information. Information is normally extracted using a dedicated document review software platform, and then analysed using a series of techniques, often known as digital forensics.

The whole e-discovery process places a high-level of stress on the people executing the order, especially given that the general counsel within an organization often thinks that the process starts only when their mandate is issued. Effective e-discovery management should start well in advance of any mandate and research by AIIM shows that 80% of organizations intend to maintain or apply more budget and resources to their records management programs in the next 12 months, including e-discovery. Worryingly though Iron Mountain research shows that 72% have no strategic plans for how to do this. Is this a lack of vision, or more likely, a simple case of not knowing where to start?

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Planning for e-discovery is a little like planning for disaster recovery. Everyone knows they should have regular backups, disaster recovery policies and staff well-versed in both of these - but most don't. Failure to plan for disaster recovery can lead to fatal consequences for organizations when such disasters do strike, and while failure to plan for an e-discovery mandate may not be quite as severe, advance planning can make the whole process a lot easier to manage, less stressful, and, most importantly, less costly to perform. This is an area where expert advice from experienced practitioners such as outsourced records and information management organizations and e-discovery consultants can be beneficial - recent AIIM research has 23% of organizations either doing this already or strongly considering it - but there are also a number of simple concepts that can greatly assist in your e-discovery planning:

## **1. CONSOLIDATION OF INFORMATION SOURCES - ONE MANDATE, ONE SOURCE TO SCOUR**

As discussed above, the e-discovery process will likely require information from numerous sources, some electronic, some physical paper records. Put simply having these information sources in one location, or at least accessible via a single federated search mechanism, makes working through the legal discovery process, the actual exercise of performing legal-hold and then the extraction of content to the document review software much more straightforward.

Having these systems in one place in-house can be challenging and is an area where outsourced records management providers can be utilized - in this case offsite document scanning and archiving not only delivers benefits such as reduced in-house storage and online access to scanned documents, but also provides the basis for a faster, cheaper, and easier e-discovery operation.

## **2. IMPROVEMENT OF META-DATA**

Metadata matters! Efficient tagging of content as it is filed, stored and archived can significantly speed up the e-discovery process - whether the searching is being done manually or electronically. Again planning is required - as is a well thought out taxonomy and metadata classification scheme which will not only make the tagging process easier to execute, but will also facilitate fast retrieval of data directly from the metadata.

Building this into a digitization process works well, whether in-house or as part of an outsourced operation.

## **3. AUTOMATED E-DISCOVERY SOLUTIONS**

AIIM research has shown that over half of organizations (53%) are still reliant on manual processes for e-discovery searches across file shares, email and physical records.

Investment in e-discovery software systems allows for fast, accurate identification of content for legal-hold. Such software often integrates with key ECM and RM systems to perform both the placing of the legal-hold on records and the extraction to content review systems. However, in order to perform at their best these tools need access to consistent information sources with high quality metadata, re-enforcing the points made above.

## **4. SYSTEMS TESTING**

As with disaster recovery solutions, the key to any e-discovery solution is to actually test it, regularly. By doing this you can ensure your systems are not only effective, but that your staff know how to operate them - unless of course you are using an outsourced records management provider, in which case they will be regularly testing their systems on your behalf.

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## ABOUT THE AUTHOR



David Jones is a Market Analyst with the AIIM Market Intelligence Division. He has over 15 years' experience of working with users and vendors

across a wide range of vertical markets. His experience has focused on taking complex technologies, such as data mining and document management, and developing them into commercial solutions largely in the retail, web and customer relationship management (CRM) areas. He has also worked as a consultant and analyst providing content management, information security, data mining, big data and business intelligence strategy and implementation solutions to clients such as Hewlett Packard, Fujitsu, Canon, BBC, SAP, Alfresco and Cisco. David has produced a number of AIIM survey reports on issues and drivers for Capture Solutions, SharePoint, Cloud Computing, Big Data and Social Business and has a BSc in Computer Science, CIP, ECMP and SharePointP.

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E-discovery often induces ostrich-like ignorance - the "bury your head in the sand and deal with it when it arrives" approach. This can be at least partially attributed to the GC or AGC issuing the mandate - and then thinking that their work is done. While the arrival of an e-discovery mandate will never be the most pleasant of experiences, much like filling out a tax-return, a little planning can make life a lot easier and when the time comes the whole process will be less fraught, more manageable and less costly. The AGC or GC with an under-fire budget should be spearheading any internal initiative to make the e-discovery process more effective, and optimizing retention and management processes of both paper and electronic records from one system is an excellent place to start.

On the other hand you could, like me, simply outsource your tax-return to your friendly accounts clerk who will do it all for you - for a fee!

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