

Reuse document review work product to create resource and cost efficiencies in future projects

By: Andrew Guilbert, Senior Manager, Deloitte Discovery, Deloitte Transactions and Business Analytics LLP



Increasingly affordable data storage has helped to decrease traditional unit costs for eDiscovery, yet the overall cost of eDiscovery often continues to grow for many organizations. One factor driving increased costs is the proliferation of organizational data which creates a “digital landfill” of potentially responsive data that needs to be preserved. This has been a common challenge for some time, and while emerging technology and analytic tools can be used to chip away at the significant cost of document review, both outside counsel costs and document review costs remain high, and they continue to represent a high percentage of overall eDiscovery expenditure.

In recent years, technology-assisted methods have been adopted to help prioritize documents and to help reduce the amount of documents requiring review. However, one frequently overlooked method of reducing documents is simply to reuse and leverage prior reviews from outside counsel where issues and custodians were common. This practice may not be the most revolutionary but many corporations still struggle with the concept or they are driven back to traditional processes due to decentralized data collections and review platforms. Further, a common approach to document review is to treat each new matter with its own strategy because it has particular issues or

merits that dictate how collection, review and production will be managed. In reality, litigation for a particular organization frequently involves the same or similar issues with relevant custodians who are “frequent fliers” with respect to legal hold and preservation. As a result, instead of collecting from the same custodians repeatedly, corporations can save costs simply by unifying and centralizing document review repositories and building in work flow to capture relevant review information for potential reuse in future litigation.

Reduce risk of storing unnecessary data

Due to the affordability of data storage, business units are often reluctant to get rid of anything that may represent intellectual property or which may have a business purpose. Much like hoarders who find it difficult to discard large quantities of collected objects, many organizations too, are compulsively holding on to massive quantities of data because it is the path of least resistance with respect to enforcing records management policies. The aggregation of data is further complicated during an acquisition, in which an organization inherits the accumulated data from an acquired entity, often without the benefit of understanding the value of the data or even what the data actually is. However, from a legal and compliance perspective, holding on to data

unnecessarily also creates unnecessary risk; organizations often learn this lesson the hard way as data without an existing business purpose becomes subject to discovery. Suddenly previously unknown or unneeded sources of data become a minefield in litigation when the data is subject to disclosure due to a request from opposing counsel. Organizations who are able to leverage data across matters can also proactively address data that can be defensibly deleted from data stores within the organization. By using and recycling data from previous collections (as well as work product from review) organizations can significantly reduce the need for re-collecting data from frequently collected custodians, and more responsibly control the growth of unnecessary evidence retention.

Reduction of full collections

Once data is collected and preserved in a centralized document repository, the process of quickly identifying a corpus of relevant documents is made much easier. In fact, even if entirely new search terms and issues are used in a matter, a centralized document repository can help easily flag the documents which are responsive to terms that have been produced already in other matters. Perhaps more importantly, users can identify and locate documents that have already been deemed privileged in another matter, thereby reducing risk of inadvertently

producing privileged material. Further, by reusing prior work product, companies can take advantage of a potentially powerful accelerator at the beginning of a new matter which may afford counsel the ability to go on the offensive with the knowledge that a corpus of documents previously vetted is ready for production – with minimal review required. By tapping into the knowledge gained from other related matters, counsel may have a strategic advantage both in meet and confers with opposing counsel, and in dictating the terms for initial discovery timelines.

Overall, organizations can transform expensive outside counsel review fees into a potent investment, by reusing the work product to inform future review and accelerate the building of case strategy. By using a central document repository, data can be preserved, analyzed, indexed, categorized – and most importantly – reused across multiple matters.

Contacts

Andrew Guilbert

Senior Manager, Discovery
Deloitte Transactions and Business Analytics LLP
+1 415 783 5263
aguilbert@deloitte.com

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