

Reducing the Risk and Cost of Litigation: An eDiscovery Project from Start to Finish



introduction

All too often a business finds itself in the middle of a litigation with demands being made to provide records to an opposing party. As most legal practitioners are not spending their days reading the Federal Rules of Civil Procedure (FRCP), complying with these demands can be confusing and not following the rules can result in more legal exposure for the business. Terms like “eDiscovery,” “process,” and “produce” are thrown around, leaving people lost and not sure where to turn for help. Even as organizations become more familiar with these terms, add emerging technologies and new data sources to the mix and it can become very overwhelming.

Fortunately, Epiq is the largest provider of eDiscovery services in the world and has both the resources and expertise to assist with all facets of a project from beginning to end. This white paper will take you through the eight phases of the electronic discovery reference model (EDRM) demonstrating how our experts can provide the knowledge, experience, and skills required to consult and execute using the best tools available to reduce both the cost and risk of litigation.

Phase I: Information Governance

Information governance is the principle of managing all of an organization's information in accordance with regulatory, legal, business, and information technology requirements. Information governance can be thought of as an overarching conceptual framework which organizations may use to harmonize and synchronize the often competing or overlapping needs and priorities of various information stakeholders. Epiq provides information governance within the following areas:

- Records and information management
- Legacy data disposition
- eDiscovery and litigation readiness
- Office 365 consulting
- General Data Production Regulation (GDPR) consulting

Having a sound information governance program is more important than ever as there is so much data out there in many formats and from a multitude of sources. Operational data is no longer contained within the four walls of a business. Instead, relevant data exists on employee cell phones, chat applications, the cloud, and many other places. With the overwhelming amount of data out there, having clear policies around retention and deletion is crucial. Exploring cloud migration is one way to help manage information better that also reduces costs, controls risk, and keeps data secure. Epiq can assist with migration to Microsoft cloud and address information governance needs related to eDiscovery and beyond.

During the data migration process and when thinking about possible future litigation requests, it is important to consider where dark data resides so organizations can identify it and classify it accordingly. Dark data is data generated for business purposes that organizations may not realize is out there. This could include items like

unopened email attachments, raw survey data, website log files, and document drafts saved on personal devices. Failure to account for dark data in an information governance plan can present eDiscovery issues, as organizations must preserve, identify, and disclose any unstructured data subject to litigation even if it is hidden in various places. Dark data also raises potential costs associated with eDiscovery retrieval and review. Without a comprehensive dark data management system, it is difficult to know what data is valuable and what is useless. As a result, the time and cost spent looking through unstructured dark data to respond to a discovery request is wasteful. Utilizing auto-classification tools can assist with dark data management and eliminate these obstacles. Microsoft 365 is a valuable tool, as it provides the ability to move organized data to a centralized, secured cloud, and bucket it accordingly.

The rise of data privacy reform around the globe also dramatically affects information governance. In recent years, other regulatory bodies have followed behind the GDPR and enacted laws like the California Consumer Privacy Act (CCPA) and Brazil's General Data Protection Law (referred to as the LGPD). There will only be more global privacy regulation in the coming years due to the increase in data. Having sound information governance protocols accounting for the overlapping and varying compliance requirements under laws like these is crucial and will help organizations avoid litigation conflicts, especially when data potentially relevant to a lawsuit contains private information.



Phase II: Identification, Preservation, and Collection

Once a litigation has started, it's necessary to identify both the entities (custodians) with electronically stored information (ESI), as well as the locations where this data is stored. Attorneys and eDiscovery professionals use questionnaires and custodian interviews to locate data whether it is stored in email, on network shares, cell phones, hard drives, personal computers or beyond.

After ESI sources haven been identified, it is vital to preserve that data in accordance with the FRCP. Filing a complaint, or parties receiving notice a complaint will be filed, generally triggers a duty to preserve evidence. Preservation methods are implemented on a people level by instructing custodians not to dispose of any data potentially related to the matter; or technology can be employed to prevent data removal from electronic sources.

Collection is the acquisition of ESI from the sources for use in litigation, but it can also be used as a means of preservation. Forensic specialists use software designed to capture data exactly as it is in the source system and copy it in a way that no alterations are made to the metadata (data about the data) such as last accessed dates or created dates. These exact copies can then be stored on media as backups should the data ever be subject to analysis for litigation or can be further analyzed and processed for use in review. Collections can be undertaken outside of litigation such as when an employee departs an organization or when technology resources are changed within a company to preserve data in anticipation of a future need to reference.

In today's technology-driven world, it is important to consider potential collection obstacles. Think about chat data, which is a large component of business operations. There are chat apps, videoconferencing and collaboration-based platforms that incorporate chat functions, and internal company messaging systems that allow users to communicate in real time for extended

periods. However, since there is no uniformity or consistent structure with this data, exporting can be challenging. Additionally, some business-related chat data will inevitably reside on personal devices. This makes it harder to determine where relevant data resides, ensure preservation, and ultimately collect the data. Although this is not unique to chat data as people also store other documents and emails on personal devices, the amount of chat data on these devices is likely a lot more. Resolutions to these obstacles include utilizing experts and technological aids to collect chat data, creating clear policies around company communication and platform usage, and conducting more in-depth custodian interviews.

While some parties may decide to self-collect data from common systems like email servers, there is always a risk of inadvertently altering metadata or imprecise application of search parameters which can leave these parties open to complications or even sanctions from the courts. The safest method is always to employ professionals with the tools and experience needed to ensure defensibility. Epiq's forensic specialists are all trained in defensible practices, the technology required to collect data per court standards, and are prepared to testify to the validity of their work should they be called to do so. They also have the necessary tools and strategies to tackle difficult collection feats. For example, Epiq's compliance connector for Microsoft Teams can resolve hurdles to chat data collection. This tool will thread all chat messages and attachments together and put them into one place, making data collection so much easier than if all this information was scattered.





Phase III: Early Case Assessment

Before moving into the latter phases of litigation, it is advantageous to use collected ESI to gather case insights that assist with making fact-based decisions on how to proceed. Early case assessment is when organizations rapidly gather and analyze data about potential matters in eDiscovery, compliance, or internal investigations to reach informed decisions about litigation strategy. This is less intensive than the full search and review that comes later on for eDiscovery, but still relies on skilled analysts and artificial intelligence (AI) to identify early valuable insights, key facts, and hot documents at the start of a discovery effort. What results is a deep analysis report containing key fact and behavior patterns that can help shape the team's game plan for the case. These case insights also shed light on irrelevant documents, which will reduce the overall volume of documents hosted and need to review those documents during discovery. This cost-saving benefit will help teams manage resources better during a case's tenure.

Case insights are helpful for all cases, but especially beneficial for larger matters that will cost an organization a lot of resources and money over the course of litigation. Being able to determine whether settlement is the best option early on is a huge advantage that case insights can provide to litigation teams. Epiq provides a team of skilled experts having access to superior AI technologies. Bundling this offering with processing and hosting ensures that litigation runs smoothly, helps manage costs, and provides teams with the best data to make informed decisions.



Phase IV: Processing

Once collections are complete, data goes through processing, the next critical step in a project's lifecycle. Project managers (PMs) work with clients to associate data sets with their custodians to ensure proper tracking of the data. PMs also document the settings for processing including what time zone to normalize the data in, how to handle password protected items, and what level of deduplication should be applied. Each of these settings is discussed so clients can understand the decisions being made. PMs also set expectations as to how long this phase takes, so clients can plan accordingly and meet their deadlines.

Processing includes extracting item-level records from compressed formats such as email archives, zip files, and forensic images. Each item's metadata (e.g. date created, sender, subject) is indexed and can then be utilized for culling, or reducing the population of records. Examples of culling executed during this phase can include date filters, file type exclusion, and deduplication.

Epiq employs standard operating procedures (SOPs) to help guide our clients through this stage. These procedures have been fully tested and vetted for defensibility and accuracy in results. Detailed reports are also provided to clients after each phase of processing. This allows PMs to provide clients with the guidance to set the stage for a successful review. Whether it's related to processing settings, general filtering criteria, or nuances related to the data set, making the correct decisions at the onset largely contributes to the downstream success of a project. By working with Epiq PMs, clients know they are getting the advice and information needed to keep their projects on the proper course.

Phase V: Review

Document review is the most time and cost intensive portion of the EDRM. It is in this phase that the contents of documents are assessed by human reviewers for responsiveness, privilege status, and any associated issues they may relate to the litigation or investigation. During review, actual document contents are considered and case teams start to understand how their evidence can either support or diminish their case. As noted above, if a team deploys case insights focused review prior to this phase then they will already have eliminated a lot of unnecessary data and have a more focused strategy for eDiscovery review.

Case teams use document review platforms to create an environment for the review to take place in an efficient and organized fashion. With this technology, case teams can direct reviewers to look at specific documents as suited to the needs for the project and track coding decisions (e.g. Responsive, Privilege) per document. Review platforms also allow reviewers to electronically redact records and make comments for use in deposition or trial preparation later in the life of the case.

Legal teams often employ contract reviewers at a lower cost alternative than law firm rates to generate a smaller pool of highly responsive records. Case teams prepare a coding manual documenting the case background, key players, and criteria reviewers need to make judgments on documents for responsiveness, privilege and issues. Review managers monitor the reviewers' progress, perform quality control (QC) on decisions to ensure accuracy per the coding manual, and compile questions for feedback from the case team. They also use their expertise on numerous reviews to provide consultation on the most cost-effective way to organize a review using the technology available.

With many organizations relying more on remote work, there has been an increase in remote document review. The goal is choosing a vendor

that deploys virtual review that is a near match to traditional document review. In order to keep review secure and defensible, there must be a "clean room" environment in the cloud just as there would be at a physical location. To accomplish this, it is important to ensure virtual desktop setup and security, remote reviewer enablement, and review project oversight. Review managers can handle remote teams the same as always with the use of collaborative platforms and videoconferencing tools. Above all, security is of utmost importance as having proper security measures in place allows teams to safely conduct remote document review by protecting privileged and other sensitive data. Remote review has several benefits like increased productivity, ability to create diverse teams located across the globe, and cost savings.

Whether review occurs in person or remotely, teams should be aware of potential obstacles. Just like with collection, chat data can present review obstacles. If you do not pull everything from the chat together, when collected it will not be grouped together as a single conversation. When everything is comingled it becomes extremely difficult and time-consuming to review. Utilizing a tool like Epiq's Compliance Connector for Microsoft Teams will not only simplify the chat data collection process, but also makes for easier review. Additionally, since chat data is generally more informal than other type of business communication, it is harder to review and understand what is relevant. This is where appropriately tailored review policies become crucial. For example, it is best practice to utilize manual review for communications involving emojis since they are contextual and can have several meanings. Flagging commonly used abbreviations or slang terms in technology-based review is key to discerning context.



Phase VI: Analysis

The use of technology to reduce document populations, locate groups of potentially highly responsive records, and organize reviews all fall under the analysis phase of the EDRM. While in the model this comes after the review phase, analysis actually occurs at many points along the way to assist case teams in sorting through the large volumes of ESI typical in most litigations.

Analysis can be the use of search terms to locate potentially relevant records. Processing and review platforms both allow for search terms to be employed, along with powerful syntax such as proximity searching (having the system search for a key word within X number of words from another word; for example, find “apple” within five words of “pear”), wild cards to find variations of a word (jump, jumps, jumper, jumping) and more complex criteria to find patterns such as phone numbers or social security numbers. Searches can

cull records from the review set or help organize the review by grouping records that hit on the same terms together. Project managers at Epiq can assist with crafting effective search terms to suit case team needs.

More advanced analysis methods fall under the umbrella of technology-assisted review. This AI technology utilizes algorithms to assess the content of records to both cull review populations to the most likely responsive sets and aid in organizing reviews around similar documents or concepts. TAR software can quickly analyze massive data sets and provide statistics, categorization, and reporting data that is superior to traditional human review and requires less hours to produce. Although TAR requires some upfront costs, it will significantly decrease the work and time needed to complete the document review process and analyzing data for disclosure.

Some examples of TAR include:

- Predictive coding: where a subject matter expert makes responsiveness calls on a random sample of documents to feed algorithms that evaluate the remaining population to isolate the most likely relevant records to put in front of the review time for responsiveness and privilege calls
- Concept clusters: where documents are evaluated for similar words and grouped into relational clusters, often with a visualization component to make the connections between records simple to evaluate
- Email threading: where emails in a common exchange or thread are grouped so a reviewer can read a single thread as one document, the inclusive record, instead of reading distinct emails repeatedly due to each new email in the conversation
- Near-duplicate analysis: where contents of similar records are compared to minimize duplicative review of similar drafts or versions of documents
- Continuous active learning (CAL): where the machine performs relevance ranking to provide superior results. CAL is often referred to TAR 2.0. and is distinguished from earlier TAR versions by the ability to review data on a rolling basis, which is ideal for litigators since new documents frequently appear throughout the span of a case.

TAR professionals at Epiq provide consultation to clients to determine which of these methodologies are best suited to the case and data, and develop cost-effective solutions for client goals. Their experience enables them to explain these complex processes in easy to understand terms, and provide reporting case teams can use in courts to defend discovery procedures.

Many organizations are also exploring how to use AI for so much more than eDiscovery purposes. This includes case insights, settlement evaluation, and contract analytics. Another new endeavor is using AI tools for privilege review to decrease the stack of documents that manual reviewers ultimately need to examine by prioritizing highly suspect documents and weeding out unprivileged material. Superior detection abilities will identify context and semantics will yield a more targeted data set for manual review. This is transformative for privilege review and choosing a vendor that can provide these additional services is highly advantageous to improve litigation and case outcomes.

An additional tool for organizations to consider is a portable AI model, which gives the AI tool a head start for working on projects for the same client or related matters. These models can parse out terms unique to a client or vertical. By reusing a model that already reviewed data from the same client in a previous matter and leveraging past success, time and cost management is significantly improved. Epiq can provide consulting services to figure out whether portable AI models are right for a specific organization.





Phase VII: Production

Document productions involve each side of a litigation providing ESI to one another for review in an agreed upon format (e.g. PDFs). Only records material to the litigation - that are not deemed as privileged - are included in these production sets. As relevant and/or responsive documents are identified during review, they're coded as such so they're easily identifiable during production preparation. The project manager routinely works directly with the client to help determine the relevant population while also providing consultation. Determining which documents are (and are not) produced is critical in providing a complete and comprehensive production.



Phase VII: Presentation

Presentation is the act of displaying data and information before an audience, often in the courtroom in front of a judge and jury. This is done in an effort to validate existing facts or positions, persuade, and elicit further information. The steps throughout the EDRM process dictate what will be available to present at depositions, hearings, trials, etc. Performing proper diligence throughout each phase of the EDRM lifecycle will result in the most pertinent information for presentation at the applicable time



Services Outside the EDRM

While the EDRM outlines phases of eDiscovery, there are many elements to making a project successful. Serving as the primary contact for the case team, Epiq project managers are trained to track both timelines and budgets to help case teams meet their deadlines and manage their costs. Project managers work closely with the other departments who may be involved to assess the data and recommend workflows to utilize the best strategies to complete work in time for the case team to meet their deadlines. As costs accumulate throughout a project, project managers also keep an eye on the totals and communicate back to the case teams so they can decide whether to increase budgets or utilize other technologies to reduce costs and/or meet a deadline. At all phases of the project, the project manager acts as a partner to the case team sharing their goals and concern for the end client's time and money.

Project managers guide clients through the challenges of disparate data sources, review software usage and best practices, integrating use of technology solutions, production/disclosure specifications, and any custom technical requirements. Project managers provide recommendations for more defensible, cost effective or streamlined solutions.

Our operations teams can prepare physical copies of exhibits – whether binders, prints, or enlarged documents mounted on foam-core, our teams are



conclusion

Electronic discovery can be a daunting process for attorneys and litigants alike. By understanding the phases laid out in the EDRM and partnering with an experienced provider such as Epiq, the stress and uncertainty can be greatly reduced. Following the clear roadmap starting with developing firm policies around information governance, identifying sources of ESI, then executing sound preservation and collection procedures can help corporations avoid the pitfalls of discovery once they are involved in a litigation. The experts at Epiq will then be able to gather case insights to assist with making better strategy decisions, defensibly process the data, set up a review and conduct the necessary analysis to ensure a cost-effective and accurate data set is sent through to production. Our experts will also consult on the best mix of people, process, and technology for each matter. Case teams can then rest assured that they have the right set of documents available at their disposal for presentation to effectively support their case.

A dark blue world map is centered in the background of the top section. The continents are rendered in a lighter shade of blue, with some areas appearing slightly darker, possibly representing population density or regional focus.

5,500 people distributed globally

About Epiq

Epiq, a global leader in the legal services industry, takes on large-scale, increasingly complex tasks for corporate counsel, law firms, and business professionals with efficiency, clarity, and confidence. Clients rely on Epiq to streamline the administration of business operations, class action and mass tort, court reporting, eDiscovery, regulatory, compliance, restructuring, and bankruptcy matters. Epiq subject-matter experts and technologies create efficiency through expertise and deliver confidence to high-performing clients around the world. Learn more at www.epiqglobal.com.

Contact

legalsolutions@epiqglobal.com

Disclaimer: This publication is intended for general marketing and informational purposes only. No legal advice is given or contained herein or any part hereof, and no representations, warranties or guarantees is made in respect of the completeness or accuracy of any and all of the information provided. Readers should seek legal and all other necessary advice before taking any action regarding any matter discussed herein.

Class Action & Mass Tort

eDiscovery

Global Business Transformation Solutions

Regulatory & Compliance

Restructuring & Bankruptcy

epiqglobal.com

People. Partnership. Performance.

