



Adding IT Value to eDiscovery A Resource Guide for IT Professionals

Responding to electronic discovery (eDiscovery) requests has become an expensive, overwhelming burden for most companies. However, the IT organization is uniquely positioned to contain those skyrocketing costs while minimizing the impact eDiscovery requests can have throughout the company. This paper will show how combining best practices, the right technology and a proactive mindset can reduce eDiscovery costs, ensure that the legal team quickly gets exactly the data it requests, and minimize the impact of such requests on the IT organization.

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INTRODUCTION

When an eDiscovery request is submitted, the IT organization must deliver. It doesn't matter how labor-intensive or expensive it is to locate key digital assets, or what business-critical projects must be pushed aside to meet the court's deadline. Electronic evidence must be made available upon demand, and failure to do so can mean fines, further litigation or, even worse, a tarnished public reputation from which the company may never recover.

Still, even the most sophisticated organizations are struggling to successfully execute eDiscovery requests because of the sheer volume of data being created and stored every day. According to Forrester Research, the average company creates at least a million messages *each day*. Over 90% of new corporate data is generated electronically in a wide array of formats: e-mails, financials, medical records, transaction logs, video files, word processing documents, digital images, scans, audio files, instant messages and more.

All this data is potential evidence that must be securely retained, yet accessible upon demand. For IT organizations, an eDiscovery request can be a time-consuming, labor-intensive, costly experience that drains resources from other important tasks. The legal team, meanwhile, is burdened by tight court deadlines, the need to uphold the company's reputation and the possibility of fines or further legal action if they are not successful.

The IT organization, however, is uniquely positioned to add value to this critical task and significantly improve the way a company responds to an eDiscovery request.

The goal of this paper is to show IT professionals how combining best practices, the right technology and a proactive mindset can result in fast, accurate turnaround of eDiscovery requests while reducing the cost and effort involved. By adding IT value to the process, IT organizations can be instrumental in helping the company manage eDiscovery costs, while putting the legal team in the best position to accomplish its objectives.

AN OVERVIEW OF eDISCOVERY

The statistics are sobering: U.S. companies with at least \$1 billion in annual revenue are engaged in 147 lawsuits simultaneously, according to an October, 2005 study of corporate counsel by the law firm Fulbright & Jaworski LLP. While healthcare, energy and technology companies top the list in terms of number of lawsuits, the study found that, on average, most businesses with average revenues under \$1 billion are managing 37 lawsuits at any given time.

The reasons for these lawsuits are as diverse as the people who file them: personal injury, malpractice, negligence, wrongful termination, discrimination, harassment, deceptive business practices – the list is endless. Some suits are valid and others are frivolous but regardless of merit, every lawsuit must be addressed by the corporation.

Mounting a defense comes with a significant price tag. Nearly a third of the firms in the Fulbright & Jaworski study reported spending more than 2% of their gross revenue on legal expenses. Ten percent of the firms put the figure even higher, at 5% of gross revenue.

Electronic Discovery (eDiscovery) Basics

Discovery is the period of time prior to a trial when the plaintiff and the defendant search for evidence that is pertinent to the case from a variety of sources, in a variety of forms. Data can be sought from individual computers, on an enterprise-wide network or in archives. While e-mail data is the most common, all corporate records are subject to discovery.

Once located, the information is secured and searched. Most United States courts are applying the Federal Rules of Evidence to digital files just as they do with traditional evidence. This means that, as with any other form of evidence, companies must guarantee the identity and integrity of all records from collection through delivery with what is known as a defensible chain of custody.

The Challenges of eDiscovery

Digital evidence adds an entire new set of challenges to the discovery process. Digital evidence is:

- Exceedingly difficult and expensive to locate and, due to the proliferation of “information silos,” commonly requires technical expertise and a significant resource investment to dig through millions of files stored on disparate systems across the enterprise and at off-site storage facilities;
- Time consuming to locate, particularly within the tight deadlines typically ordered by the court;
- Created in a highly mobile, frequently changing IT infrastructure, making it difficult to apply uniform data management and retention policies;
- Fragile and easy to duplicate or modify;
- Difficult to destroy permanently.

Cost has also become a huge issue. The more electronic information a company generates, the costlier it becomes to satisfy an eDiscovery request. Industry experts peg the cost of discovery searches at \$1000 to \$2500 *per backup tape*. Now, multiply that number by the hundreds, thousands or even tens of thousands of tapes in a typical archive. Factor in the number of cases a company juggles at one time, and the magnitude of the problem becomes crystal clear.

The impact of an eDiscovery request to the IT organization can be significant:

- Critical projects are pushed aside in the “drop everything and get it done” rush.
- Far-reaching requests quickly become expensive, labor-intensive tasks.
- Pressure mounts to complete the request quickly, and accurately.
- Resources need to be pulled from other projects or purchased to perform data restoration.

The legal department, meanwhile, is under tremendous pressure as well:

- The company’s reputation may rest upon how quickly and accurately the eDiscovery is performed.
- The courts may have imposed impossibly tight deadlines.
- Fines, sometimes running into millions of dollars, are always a risk.
- In certain cases, legal problems for employees or executives may be hanging in the balance.

But, as challenging as it can be, companies must comply with every electronic discovery request ordered by the court. When asked, defendant companies must provide “relevant” discovery information in a litigation process regardless of the information’s format, according to the Federal Rules of Civil Procedure which regulate the production of evidence in litigation. Failure to do so can negatively impact a case, leaving a company vulnerable to countersuits, costly fines or a damaged public image.

HOW IT CAN BRING VALUE TO THE eDISCOVERY PROCESS

Discovery requests are now a fact of corporate life. The positive news, however, is that IT can play a key role in increasing the efficiency and accuracy of the eDiscovery process.

By taking a proactive role in employing best practices combined with technology solutions, an IT organization can help the company:

- Achieve faster turnaround on discovery requests;
- Ensure an accurate, defensible chain of custody;
- Reduce the risk of non-compliance;
- Better manage eDiscovery costs.

There are very specific, actionable steps an IT department can take to ease the burden on its own organization, improve the ability of legal counsel to respond to litigation effectively and help manage costs for the company overall.

HOW CAN IT ADD VALUE?

PREPARE IN ADVANCE to be able to respond quickly to discovery requests

SLASH TURNAROUND TIME to assist the legal team and free up IT resources.

CONTAIN COSTS to benefit the bottom line.

PROVIDE ACCURATE, DEFENSIBLE, SEARCHABLE DATA to bolster the company's legal position

Preparedness

Don't wait for the request from legal; anticipate it. Taking steps ahead of time moves IT from a reactive to a proactive mindset, which substantially reduces turnaround time and cost, and ensures the legal team has quick access to the information they need.

- **Establish and maintain a legally credible records retention program.** A records retention program, including a retention schedule, establishes the company's plan for document retention and disposition. Maintaining and frequently updating a records retention schedule (as required by the regulations which govern many industries) makes companies far more efficient in responding to eDiscovery requests, which translates into significant cost savings.

When applied to eRecords, a legally credible retention schedule enables companies to dispose of a great deal of information that does not need to be saved either because it is officially not a record or its retention, as dictated by the schedule, enables it to be destroyed. This results in far less information available for discovery and saves money. In addition there are lower storage costs because you are not saving everything forever. If the retention program is maintained, updated and consistently applied, substantial benefits are gained over time.

- **Take a programmatic approach.** Developing and adopting a Compliant Records Management program will go a long way to protect the legal and financial interests of your company. By establishing a program that is consistently managed and implemented at all levels of the organization, you will be able to ensure that all employees are handling information and data in the proper manner. This helps ensure that key records which the company may be required to produce during discovery can be easily accessed and have not been inadvertently destroyed in the normal course of business.
- **Conduct an internal audit of data formats.** Moving data from one media type to another can involve complicated format changes, compression algorithms and unexpected challenges. Rather than attempt a time-consuming data conversion when in the throes of an eDiscovery request, implement consistency across the enterprise by converting all older data to the current format ahead of time. This speeds response time and reduces the time and effort expended by IT in data collection.

- **Logically catalog all media and data.** Proper cataloging improves efficiency and makes all data (legacy included) more accessible by helping IT to swiftly and accurately identify and organize media, determine what data it contains, and upload it to fast-access drives. Cataloging helps slash turnaround time and eliminates the tedious, often frustrating IT task of poring through thousands of tapes in search of a particular file.
- **Choose technology solutions that leverage current investments.** To help ensure effective Retention Management across the organization, choose a solution that can help manage, monitor and audit various systems that contain records and information to meet compliance and litigation requirements. Look for solutions which offer the ability to enforce established retention policies and schedules to meet compliance objectives now and in the future. A comprehensive status of records management applications and data repositories can help support legal discovery and litigation holds or preservation while substantially reducing risks. Managing retention at the system level regardless of media type ensures proper disposition of information while reducing storage and discovery costs.
- **Conduct an internal audit of technology.** To protect vital records, conserve tape library space and ensure that data is accessible, migrate irreplaceable data from older, unsupported media formats to one used in your current infrastructure. Digital archives can be especially valuable in fulfilling eDiscovery requests by offering incredible visibility and accessibility for huge volumes of data, including legacy data from outdated technology.

Turnaround time

Courts are imposing very tough deadlines for counsel to respond to a discovery request – sometimes just days or weeks. Failure to comply means fines, or worse. Every hour IT takes to provide the data is one hour less that legal has to search it. To ensure the legal team has the maximum amount of time for its search, IT should strive for the fastest possible turnaround of every restore request.

Converting data to a consistent tape format eliminates the time-consuming task of recovery from obsolete media. Migrating data to current technology eliminates the laborious task of resurrecting old backup software. Cataloging data removes the painstaking challenge of sorting through tape after tape after tape. In addition to speeding response, these steps make the task far more manageable and less disruptive for IT.

Another way to dramatically reduce turnaround times is to implement a digital archive. With fast, easy access to all your data, you can quickly locate key information, zoom in on the data legal has requested and provide it in a format that is easy to search and admissible in a court of law.

Cost containment

Everyone in the organization needs to do all they can to minimize the impact on the bottom line. Data conversion, migration and cataloging can go far to keep expenses contained, but IT can also help minimize attorney review costs by reducing the sheer volume of data provided.

In every business, the potential for record duplication can be enormous, especially with e-mail. Multiple levels of de-duplication are available, and IT can choose the method that is most appropriate to the task at hand. De-duplication can take place within a single mailbox, a server or across the enterprise. Effective de-duplication can reduce data volume by up to 90%, which will significantly reduce the amount of time high-priced lawyers need to spend poring through digital assets.

Accuracy and defensibility

An opposing counsel can dramatically impact the outcome of a case by casting doubt on the credibility or completeness of the information. IT plays a huge role in ensuring that the data the legal team is presenting is accurate, complete and defensible.

To ensure defensibility, every organization should have a proven, auditable chain of custody that testifies to the data integrity and evidentiary qualify of each record's context, content and structure. This means knowing – and documenting – exactly where each electronic asset was restored from (i.e., tape ID) and from where the asset was taken in the database or file system (i.e., which folder in which custodian mailbox, PST, NSF file for an e-mail asset).

Searchability

Digital archives can be a tremendous boon to both IT and legal by serving as a secure, scalable, cost-effective archive for large volumes of electronic records. They provide fast access to vital data and robust search capabilities to all types of information, including e-mail messages, text, images, and so forth.

Implementing a digital archive independently is a difficult, complex undertaking, although with enough resources and senior management backing, it can be done. Many businesses instead choose to work with an independent third-party provider. The best firms have invested heavily in state-of-the-art archive technology, can provide experienced resources and can handle 10,000 tapes as easily as a single tape. They provide the fast turnaround, accurate results and data accessibility required for effective eDiscovery.

Even companies that do have their own digital archives often use a third-party provider as an extension of their own resources. They may rely on the provider to support their legacy media, for example, or to provide extra capabilities when necessary.

REACTING TO AN eDISCOVERY REQUEST

Imagine your company has just received a discovery request that includes all e-mails that reference a specific client from January 2001 through July 2003. Typically, the most onerous part of the discovery process is restoring thousands of backup tapes and making the data easily accessible for review. Here are recommendations on how to restore requested data quickly and effectively.

1 Understand the Scope of Data Requirements.

Define the parameters of the data gathering required to meet the discovery request. You will need to determine:

- Who are the specific employees affected?
- Are specific e-mails or documents requested?
- What are the date boundaries?
- In what form does the data have to be produced?
- What systems did the specified employees use (such as e-mail servers and file servers)?
- Do you have the resources (hardware, software and staff) to rapidly restore the requested data from your backup tapes?

2 Locate the Specific Backup Media You Need to Restore.

The affected employees may have worked in different divisions in the time period covered by the discovery request. You should work with your Human Resources department to determine what divisions the affected employees were in at the time, so that you make sure you have identified the right backup media you need to restore. Create a master list that includes an itemization of the backup media that is required, where that media is presently located, and how you are going to consolidate all of the media.

3 Consider Outsourcing the Data Restoration Process.

After completing the first two steps, you are likely to find that you need to restore from:

- Tapes in multiple formats (i.e., DAT & DLT)
- Optical media
- Numerous backup software environments (i.e., Tivoli®, ARCserve®, NetBackup™)
- Three or more e-mail systems (i.e., Microsoft® Exchange 5.5, Windows® 2000, Lotus Notes®, ccMail)

If you are under a time constraint to restore the data, or you feel your IT staff can't execute this complex restoration and still manage their daily tasks, consider outsourcing the data restoration process to a qualified firm with extensive experience executing both small, straightforward data restoration projects as well as large, complex ones. Iron Mountain, for instance, has securely and rapidly recovered critical e-mails, documents and other records in thousands of backup media and is able to produce the data in less than half the typical time and with dramatic savings.

4 Make Sure the Data is Not Modified in Any Way.

It is very important to ensure none of the metadata is modified during the gathering process. Simply copying information for the purpose of creating data sets may inadvertently change file metadata for the files. Opposing counsel may attempt to prove that the original attributes of the files have been changed, so it is critical that the original attributes remain intact.

5 Organize the Data for Easy Review.

Many requests require you or your legal team to be able to search through the contents of the data, including attachments, to find specific names or other information. In order to be able to do this quickly and cost effectively all the restored data needs to be de-duplicated and indexed. Large production requests can involve thousands of backup tapes so you need to make sure that you have the tools for efficient extraction and de-duplication of hundreds of thousands of records.

6 Make Sure Your Review Environment is Secure.

Many companies learn the hard way that reviewers can unknowingly change or delete information. Simply opening a file for review can change the metadata. If data is stored in a hosted Digital Archives, such as that provided by Iron Mountain, you can be assured that both your internal team and outside counsel can view it without it being modified in any way. This service even tracks and logs every interaction to provide a complete audit trail. You always know who has accessed the restored e-records, and when they accessed them. You can even setup multiple levels to define who has access to what information.

HOW TO GET PROACTIVE WITH eDISCOVERY TO REDUCE RISKS AND COSTS

Below are Iron Mountain's recommendations on how to rapidly implement effective processes and archiving technology for your discovery data — without tying up all of your IT resources with non-core IT functions. These recommendations were developed as a result of more than 50 years aiding organizations in protecting, storing and managing their records programs with compliance in mind:

1 Form a Litigation Response Team.

Assemble a response team that includes legal, IT, records management, HR, outside counsel and your electronic discovery vendor. This team should be responsible for:

- Identifying what types of records have been or are likely to be requested
- Deciding what systems should be included in the discovery environment
- Defining the archiving system requirements
- Establishing the company's rapid response collection and review processes
- Establishing and communicating the company's litigation hold processes

2 Migrate Records from Backup Tapes to a Searchable Archive.

All key records identified by your records management team should be migrated from backup tapes to a searchable, Web-based archive repository. Potential discovery records that were virtually inaccessible on backup tape could then be accessed anytime, anywhere. This will allow your response team to respond quicker and more efficiently. Your team could assess your legal exposure at the first sign of pending litigation.

The end result? You can save millions in settlement costs and electronic evidence fees. Plus, by selecting Iron Mountain's Digital Archives outsource service, you can migrate records to a secure Web-based repository in a matter of weeks, instead of the months it might take to implement internally.

3 Apply Retention Policies to E-mail.

Applying corporate retention policies to e-mail and other electronic records can significantly diminish your company's litigation risk and lower your e-mail storage costs. By establishing a consistent e-mail retention policy across your organization you can ensure that the necessary e-mails are being retained and that the majority of e-mails, which are not official records, are purged on a regular basis.

Iron Mountain's e-record consulting services can show you how to implement a Compliant Records Management Program to address litigation, compliance, avoidance and risk management challenges. By becoming a records management-oriented organization with a legally credible retention schedule which includes e-mail, you will be better prepared for litigation now and in the future. The company's e-mail archiving service can provide complete Information Lifecycle Management (ILM) for all your organization's e-mail and other electronic records.

4 Automate the Retention Process for New Discovery Data.

For collecting new discovery data, use enterprise records management software or services. Services, such as an enterprise e-mail management service can collect e-mails and their attachments and archive them in a searchable, web-based repository that can be rapidly implemented — so you can be proactive.

5 Document Everything.

Document all the steps you take to create a more proactive discovery environment. When litigation events occur, log, tag and document everything to guarantee chain of custody. You should also have a formal e-mail policy so that employees understand the proper use of e-mail. This policy needs to be well documented and clearly communicated to all employees.

IRON MOUNTAIN: HELPING IT DELIVER eDISCOVERY VALUE INSTANTLY

Despite the fact that an increasing number of legal cases will involve electronic discovery, most companies are not completely prepared to produce requested documents in a timely manner. Electronic discovery is not easy, but it is absolutely necessary that your IT organization is able to deliver.

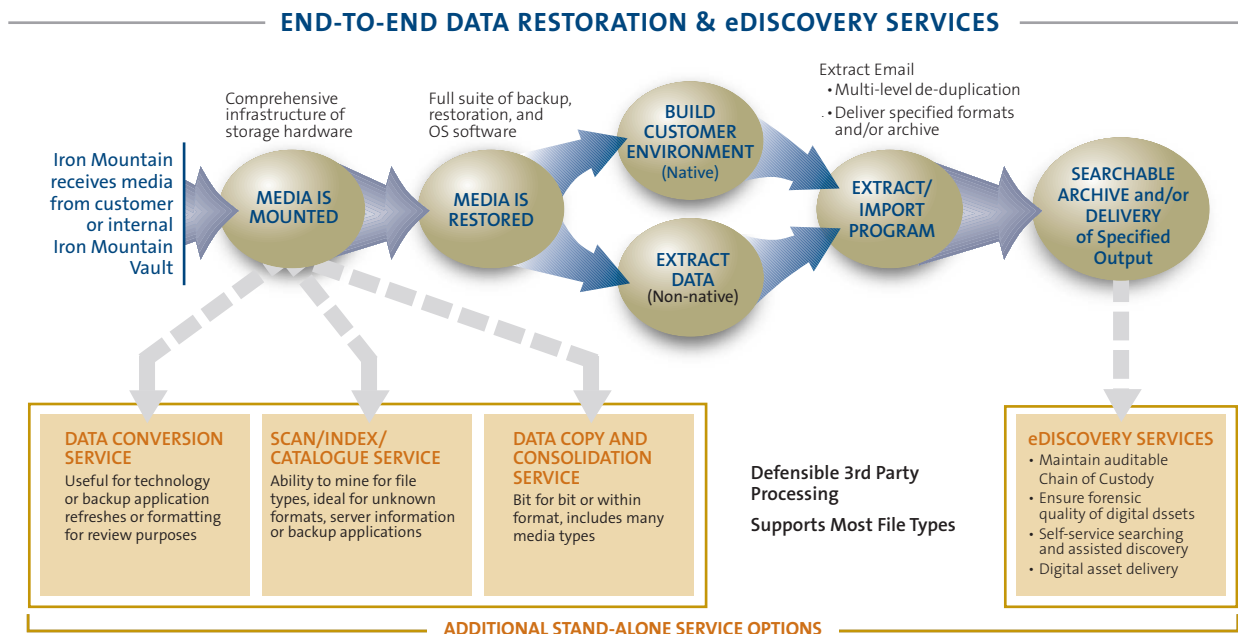
To ease the burden, many firms rely upon Iron Mountain’s Data Restoration and eDiscovery Support Services. These services enable you to gather, restore, search, organize, and deliver e-mail and other records in response to litigation discovery, internal data management requests and regulatory compliance inquiries.

Preparedness

Iron Mountain offers a range of services to ensure that you are prepared to react quickly and accurately to any eDiscovery request, including:

- Creation and maintenance of a records retention schedule;
- Accurate, safe data conversion from one media type to another to ensure uniformity;
- Swift, accurate identification and organization of improperly labeled or unlabeled media;
- Successful migration of data from one media format to another. Potential discovery records that were virtually inaccessible on obsolete backup tapes can be accessed anytime, anywhere. As mentioned earlier, Iron Mountain can migrate large volumes of data to a secure Digital Archives in just a matter of weeks.

Bottom Line: Improved efficiency, faster response, reduced costs.



Turnaround Time

Iron Mountain's Data Restoration service efficiently and cost-effectively restores data from a wide range of file types stored on virtually any media format. Every restoration request is personally managed by an expert who can quickly navigate the expected and unexpected challenges common with restorations. In addition, Iron Mountain's Data Conversion, Cataloging and Data Migration services eliminate many time-consuming tasks while its Digital Archives allow IT to quickly locate and retrieve data, even legacy data, from huge repositories.

Serving as an independent third party, Iron Mountain can even help you establish reasonable turnaround times with the regulatory agency or court.

Bottom line: Quicker turnaround, fewer IT headaches, reduced costs.

Cost Containment

As data volume expands, the potential for record duplication can be enormous, especially with e-mail. With multiple levels of de-duplication — within a single mailbox, a server or across the enterprise — you can reduce data volume by up to 90%. This, coupled with data conversion, cataloging and data migration, dramatically reduces the amount of time the legal team must spend reviewing files to locate relevant digital assets.

Bottom line: Reduced costs, greater efficiencies.

Accuracy and Defensibility

Iron Mountain provides a proven, auditable Chain of Custody for your records. All digital assets are authenticated and cannot be altered, which testifies to data integrity and evidentiary quality of each record's context, content, and structure. This means that you will know exactly from where each electronic asset was restored (i.e., tape ID) and from where the asset was taken in the database or file system (i.e., which folder in which custodian mailbox, PST, NSF file for an e-mail asset).

Having an independent third party involved in an eDiscovery increases the likelihood of admissibility of digital evidence and provides validation if data is unable to be recovered. Iron Mountain's Data Restoration Process Audit gives your legal team independent proof that every effort was made to restore the data on the corrupted tapes, but that this data could not be produced.

Bottom line: Improved accuracy of data, proven chain of custody.

Searchability

Iron Mountain's Digital Archives is a web-based service that enables customers to search and view digital assets within a secure hosting environment. This controlled environment makes it easy for the legal team to search through large volumes of data, but never sacrifices security or compliance. Data can be viewed but never modified in any way.

Bottom line: Robust search capabilities, enhanced record protection

LEARN MORE ABOUT REDUCING YOUR eDISCOVERY RISKS AND COSTS:

IRON MOUNTAIN DATA RESTORATION AND eDISCOVERY SUPPORT SERVICES rapidly locate and restore electronic records from backup media for a pending discovery request or investigation.

IRON MOUNTAIN DIGITAL ARCHIVES, a Web-based service that helps ensure compliance and support discovery requests by retaining electronic records in a secure, auditable format.

With more than 275,000 organizations worldwide putting their trust in Iron Mountain for information protection, storage and management, we're the organization to turn to for Data Restoration and eDiscovery services.

Contact your Iron Mountain representative, call 1-800-899-IRON, or visit www.ironmountain.com/ediscovery

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