

A Project Management Approach to eDiscovery

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Introduction

Litigating a case is a complex process to manage, and the discovery phase, when viewed as a related subproject, adds additional layers of intricacy that make its management even more difficult. This is due to the large and disparate set of stakeholders involved and the numerous technical challenges that must be evaluated.

According to the Enterprise Strategy Group, 58 percent of all new corporate data consists of digital content and unstructured data, and this figure is expected to increase by a compound annual growth rate of 96 percent through 2010. Electronically Stored Information (ESI) collected for the average litigation discovery project includes more than 300GB of data from more than 100 custodians and more than 700 file types from source systems such as PCs, PDAs, phones, storage tape and stored enterprise data.

This electronic data is subject to a variety of state, national and international legal and compliance demands, all of which have led to electronic discovery (eDiscovery) becoming a significant facet of the discovery phase. Despite a high degree of automation, eDiscovery is a complex process that requires a great deal of time and effort due to the sheer volume of data, the mix of people, number of processes (transactions) and systems involved.

This paper shows how corporate clients, law firms and eDiscovery vendors can use Project Management principles to streamline the eDiscovery process and minimize the potential for costly coordination issues and missed deadlines.

eDiscovery Challenges

eDiscovery projects are complex because of three overarching realities: (1) eDiscovery, in and of itself, is multifaceted and multi-layered, (2) it is not the primary project involved and (3) its ownership is divided among several contrasting parties with diverse cultures.

First, managing the many layers of an eDiscovery project is a significant task. The average length of a project is seven months and averages \$250,000 and above. The increasing amount of time and money dedicated toward eDiscovery stems from many facets, including: millions of documents, hundreds of email custodians, complex matter and terminology and foreign languages, constant and rapidly changing deadlines.

Second, eDiscovery is a subproject of the larger project called the litigation strategy, and while it may last through much of a case's lifecycle, is just one portion of the case as a whole. Ultimately, eDiscovery is subordinate to the higher-level project goals of the litigation strategy, and those objectives are not always visible to all members of the eDiscovery team, including the eDiscovery vendor.

The third challenge of managing an eDiscovery project is that it is divided among at least

three organizations all with different cultures and expertise. Large projects require multi-tiered resources across numerous entities. At the very least, an eDiscovery project encompasses the corporate client being sued (or investigated), the law firm providing the contracted service and the eDiscovery vendor. Most corporations contract with an outside counsel for the litigation strategy. This includes the eDiscovery work because corporate legal departments do not have the resources to manage sourcing (i.e. Finding experts), acquiring and maintaining the necessary hardware, team building and planning for comprehensive eDiscovery work. This complex supply chain of information is easily disrupted, which leads to breakdowns in communication that can result in missed deadlines, court-imposed sanctions and even incarceration. History has shown that although eDiscovery vendors are tasked with owning the project, but they don't necessarily have access to essential information that can impact the eDiscovery phase, including (but not limited to): changes in the litigation strategy, new court-imposed deadlines and new motions that impact requirements.

WHO IS THE REAL PROJECT MANAGER?

The leading membership association for the project management profession, The Project Management Institute, defines project management as, "the application of knowledge, skills, tools and techniques to a broad range of activities in order to meet the requirements of a particular project."

In an ideal project management scenario a single person is on-point for managing all aspects of a project. He/she will also have access to the people, resources and information necessary to make smart, proactive decisions, meet deadlines and ultimately achieve the project's goals.

While methodologies guide and create an approach to project management, the specific details for controlling the transaction-heavy eDiscovery process have not been agreed upon in the eDiscovery market. While the general counsel (or associate general counsel) of the corporate client, coupled with outside counsel, is ultimately responsible for the litigation strategy, their expertise is in practicing the law and not in eDiscovery or project management. So while they manage the strategy and contract with an eDiscovery vendor to manage the workflow, there is still confusion regarding who is really driving the eDiscovery project. The complexity generated in this environment is due to the varying organizational cultures involved.

The law firm contracted by the defending corporation is the true project manager who drives the activities of all parties involved in order to satisfy the requirements of the litigation strategy.

The first step in understanding *why* the law firm owns the project's management is to understand these differing cultures.

The Corporate Client:

- Corporations are under duress at the initiation of the litigation. They are focused on business continuity, defense and the mitigation of negative consequences. Optimization of an eDiscovery process is not the priority. Instead, corporations are the subject matter experts regarding their particular products and/or services.
- The corporate legal department is generally comprised of a general counsel, an associate general counsel, and a paralegal team. It is common for them to have limited expertise with electronically stored information and eDiscovery.
- The corporate IT department provides technical knowledge about locating and accessing the required data.

The eDiscovery Vendor(s):

- eDiscovery vendors are not practitioners of the law, but a critical partner is providing the necessary resources, work and best practices to ensure an optimized eDiscovery process.
- Teams include:
 - o Project manager(s)
 - o Data collection experts
 - o Data analysis consultants
 - o Project consultants
 - o Operations team
- Law firms commonly appoint multiple vendors to conduct various aspects of the eDiscovery project.

The Law Firm(s):

- The contracted law firm (outside counsel) is the *primary delivery agent of the litigation strategy*, and its culture is built on knowledge of the law.
- Outside counsel, especially in large cases, may include:
 - o Multiple partners
 - o Multiple associates—both senior and junior
 - o Litigation support team
 - o Case team
 - o IT team
 - o All are potentially located across multiple offices

UNDERSTANDING THE ROLE OF THE eDISCOVERY VENDOR

It is the eDiscovery vendor's role to manage and communicate workflow, consult on best practices and ensure that agreed upon deadlines are met. An effectively run project begins with the eDiscovery vendor partnering with the corporate client and outside counsel to establish an action plan that outlines all associated processes and identifies clear challenges and milestones. In support of this plan, the eDiscovery vendor facilitates constant communication across all parties in order to collaboratively meet the project's goals and deadlines and is most effective when he/she:

- Brings a cross-functional knowledge of both the litigation process and the technical aspects of information storage, collection and analysis.
- Identifies and implements effective ways to communicate project status, such as:
 - o Pre-defined, weekly (or often as needed) meetings with project stakeholders.
 - o Email broadcasts to all parties involved with the eDiscovery project and the broader litigation strategy.
 - o A technology solution, such as a web-based portal, that provides clients real-time access to vital information to track their eDiscovery process and work status. This portal supports the construction and maintenance of the project schedule.
- Recommends best practices, functionality and processes to reduce process cycle time and reduce attorney review time
 - o New technologies in clustering and analysis enable the eDiscovery vendor to manage the culling, de-duplication and pre-review processes, thereby limiting the costs of attorney review.
- Utilizes tools for addressing all phases of an eDiscovery project, from initial project planning to data analysis, hosting, review and production.

FIVE GENERAL STEPS TO PROJECT MANAGEMENT

Before detailing the specific best practices and tools suggested for an eDiscovery project, it is important to highlight the foundation upon which they are built. The broadly defined project management approach consists of a five-phased system [Figure 1] for planning and implementing change. The project manager utilizes this system as a guide for implementing tried-and-tested project management tools to bridge the gap between planning and doing.

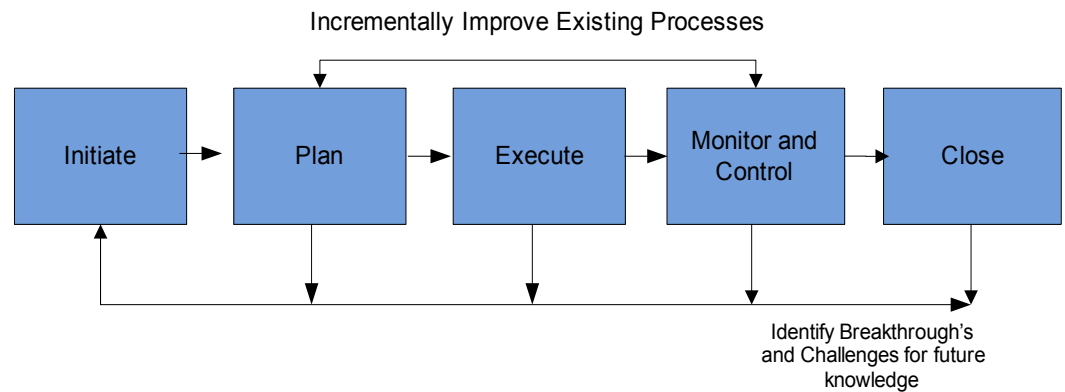


Figure 1. Project Management Phases

- **Initiate** – Define project, complete team selection, document problem(s) and objective(s) and describe the business case.
Tools:
 - o Workflow Process Maps – Describe and display relationships between people, processes, sub processes and steps.
 - o Milestone Chart and Report – Document and report on (major) tasks required to complete the project on time and on budget.
 - o Project Charter
 - Team selection, resources requirements
 - Document problem(s) and objective(s)
 - Describe business case
 - Identify measures of success
 - Project signoff by all parties
- **Plan** - Forecast the requirements for performing the project.
Tools:
 - o Gantt chart – A (popular) type of bar chart to create and monitor a project schedule which is built and maintained from the project’s dedicated Web portal which provides real time project status updates.
 - o PERT charts (Program Evaluation and Review Techniques) – Aids in planning and controlling projects, determining feasibility of meeting specific deadlines and identifying possible bottlenecks.
 - o Activity network diagram – Similar to a PERT chart; schedule dependent activities within a plan.
- **Execute** – Initiate the project.
- **Monitor and Control** – Review, measure and manage the project.
Tools:
 - o Web portal to allow clients real-time project task status
 - o Gantt chart
 - o Identify critical to quality items
 - o Analyze review metrics
 - o Specification sheets

- o Critical task designs
- o Status reporting
- **Close** – Conclude the project.
 - o Evaluate and close tasks once complete
 - o Obtain project sign-off in accordance with project charter
 - o Assess and learn from outcomes

This generalized project management approach, along with suggested tools, optimizes the process. The entire eDiscovery process [Figure 2]—from collection to production—can be treated as single project with subprojects representing each significant discovery phase: collection, process, review and production. Each phase is then systematically designed with its respective work elements, tasks, milestones and interdependencies. By breaking the overall project down into incremental phases, it becomes easier to forecast and plan for the work, fully understand the resource requirements of each phase and create deadlines. This approach also provides greater transparency and accountability for all parties involved.

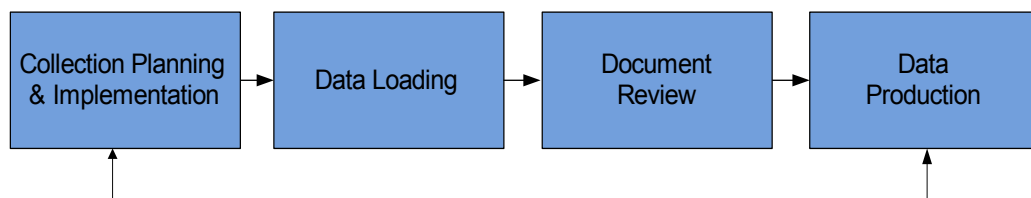


Figure 2. High-Level eDiscovery Process

eDISCOVERY PROJECT MANAGEMENT BEST PRACTICES

Those considering using a project management approach to eDiscovery should adhere to the following best practices for managing the teams involved in the project:

Establish the right mindset. Project management principles will require a high degree of collaboration between the corporate client, the law firm and the vendor, so it's important to establish a framework of partnership. This includes regular communication, agreement on completing deliverables by their designated deadlines and dedication to addressing any problems or issues early and directly.

Educate the customer. It's important for the eDiscovery vendor to provide an up-front explanation about how its internal processes work by describing each step, why it's important and how much time it takes.

Create and agree on a project charter and plan. The charter and project plan are essential elements in a successful project.

- A charter includes the problem statement, opportunity statement, importance description, expectations, deliverables and scope definition, project schedule and team resource outline.

- A project plan provides a detailed description of the schedule and milestones with processes and task structure. Establishing and agreeing upon milestones for the delivery of work is a critical step in developing a project plan. At a minimum, milestones should be created for custodian collection, data processing, first- and second-level review and production(s). To that end, the project plan should also include an agreed-upon strategy for accomplishing each milestone. Given the number of dependencies typically found in an eDiscovery project, it's important to understand how potential delays in any one area can affect the schedule of the entire project.

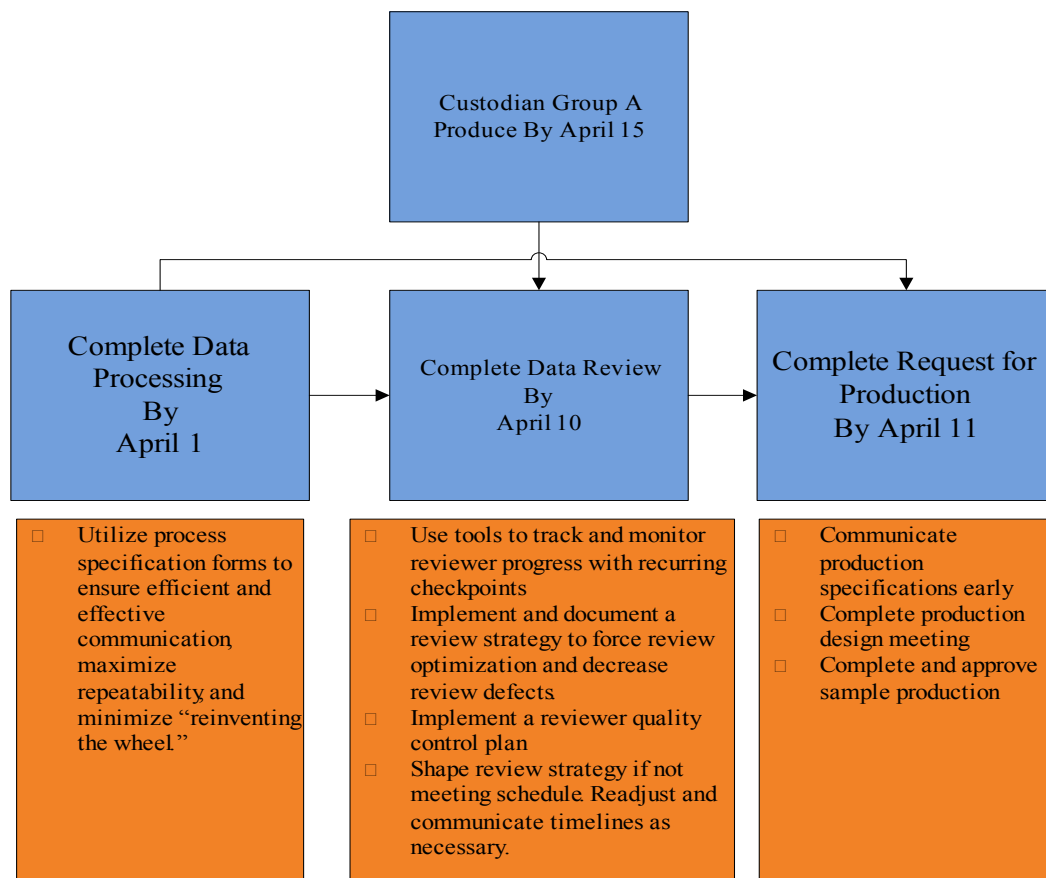


Figure 3. Example of a Basic Affinity Network Diagram for Custodian Milestone Planning

Realistically assess your resources. The vendor is only one part of the eDiscovery equation. Both the law firm and the corporate client must provide sufficient resources to collect and review data, so it is important to realistically assess the capacity of all parties' available resources in order to set and maintain realistic deadlines.

Meet regularly. Regular status meetings are used to discuss timeline updates and outstanding tasks and identify potential problems and bottlenecks before they become larger issues. Meetings need to include both overall project owners and the owners of individual subprojects.

Use templates. Many eDiscovery processes can benefit from simple documentation templates. Using templates promotes consistency, saves time and decreases the chance for variation, thus decreasing the chance for errors. Vendors and their customers should use templates for certain tasks specific to processing, review, production and general project management, including:

- Processing specification sheets
- Production design
- Review strategy
- Status reports
- Open-task tracking

Issue Description	Date Raised	Raised By	Owner	Must be Resolved to Not Impede Timeline By	Date Closed	Closure Comments
Remove Calendar Items	5/23/2007	BM	KW	5/27/2007	5/25/2007	Found
Corrupt Data Found	6/15/2007	IB	JC	6/18/2007	6/16/2007	Replacement data sent

Figure 4. Example of Open-Task Tracking

**BEST PRACTICES:
MANAGING THE
eDISCOVERY
PROCESS**

Once the best practices are established for communicating and collaborating with the numerous entities and individuals involved in the process it is important to set rigorous guidelines for managing document review and production. The following points should be built into the Planning and Monitor-and-Control phases of the project management process.

Pre-Document Review: In order to set a realistic project timeline, it's important to address the following considerations and associated questions before the document review begins.

- Production considerations — The selection of the eDiscovery vendor, as well as the resources required for document review and the review schedule, are dictated by the following questions.
 - o Will the production be done in-house or by the eDiscovery vendor?
 - o Which file formats will be used in the production (TIFF, PDF, native or some combination)?
 - o Is there a need to produce metadata for each document?
 - o Will the project necessitate differently formatted productions?
- Review considerations — These questions help to determine the appropriate production start date.
 - o What resources are available for review?
 - o Will there be contract attorney support in addition to in-house support?

- o How much data needs to be reviewed?
- o How many tiers of review will take place?
- o Are there any special circumstances involved in the review (complex data, proprietary data, databases or foreign language data)?
- Collection considerations — Consider the following logistical aspects of the collection process in order to set realistic deadlines.
 - o Where are the custodians holding data?
 - o Where does the data reside (on a network, local machines, laptops and other devices)?
 - o Are there data backups? Are there images to consider?
 - o Can key custodians help to group, prioritize and build project milestones and schedules?
- Processing considerations – Understanding processing requirements and timelines helps create an accurate review timeline.
 - o How much time is needed to process data for loading onto an interface for attorney review?

Vendor Assessment and Selection: Results of the pre-document review analysis will play a role in determining the best eDiscovery vendor partner. Specifically, the pre-document review results will help set parameters such as capabilities needed for the desired production method, necessary resources to complete the project on time and identification of technology features and resources to enhance the process, including review optimization and project task management.

Pre-Review Management: As discussed, the law firm plays a significant role in ensuring the overall productivity of an eDiscovery vendor and optimization of the eDiscovery project. There are two particular areas in which up-front preparation and participation can provide significant benefits:

- Training — Ensure all reviewers, no matter what level or extent of touch points, understand the full capabilities of their vendor's review tools. These tools can only achieve their full potential for accuracy, consistency and efficiency if users are properly trained. Do not make any assumptions about users' proficiency with vendor tools regardless of the users' past experience. Tools vary widely by vendor, and experience doesn't always translate. Because many eDiscovery projects last for months or even years, training sessions should take place more than once during the lifetime of a project.
- Review strategy — The firm should also work with its vendors to develop and document an agreed-upon review strategy. Conduct a meeting with representatives from the corporation's litigation support group, the lead attorney(s) (usually a partner or senior associate) and the eDiscovery vendor's project manager. The goal of this session is to recognize and understand the capabilities of the vendor's tools and identify the features for which training must be provided to the reviewers. A review strategy document should then be created to serve as a "cheat sheet" for answering a variety of frequently asked questions.

Document Review Quality Control: Once the document review process has begun, it's important to regularly check work to ensure overall quality. If common errors are committed it's possible that attorney reviewers need additional training. By ensuring the eDiscovery vendor's products are being used to their full potential, counsel can maximize accuracy and minimize billable time toward training matters. Regular check-ins can also help identify bottlenecks before they have a negative impact on the project.

Production: Creating a sample production early in the review cycle can prevent costly and frustrating delays later in the process, and it can also ensure the correct amount of time is allocated for production processing.

Conclusion

The eDiscovery industry itself is still emerging, therefore it will be some time before outside counsel, corporate counsel, IT teams and eDiscovery partners share a common language and set of practices for eDiscovery project management. The complexity of the project, the new technologies available to expedite the process and the various corporate cultures involved all add to the challenge of establishing industry-standard project management principles. It is time to draw attention within the industry to the problem-solving and trouble-preventing power of these methodologies.

This paper has outlined the basic framework and key tools to help optimize eDiscovery, such as milestone charts, process maps and vendor-driven Web-based project tracking tools. The intent is to provide a project management primer that provides a framework for building and honing an effective end-to-end eDiscovery project. While several industry organizations are pushing to standardize the management of eDiscovery, it will be a lengthy process, and it is possible to start benefiting from a project management approach in the interim. To that end, this paper provides one perspective for implementing tried-and-tested principles to benefit the eDiscovery process, and ultimately, the entire litigation strategy.

About Daticon Electronic Evidence Discovery

Daticon EED is a nationwide provider of eDiscovery services and technology with more than 20 years of experience managing the most complex and challenging eDiscovery projects. We combine a proven methodology, expert staff and our industry-leading Discovery Partner™ hosted review platform to significantly reduce the risk, cost and time of eDiscovery for global corporations and law firms. We offer services for both large and small cases, including case strategy, pre-review analytics, review optimization, early case assessment, as well as processing, hosted review and production. With headquarters in Kirkland, WA, and operations in Norwich, CT, Southern California, Chicago, New York, Washington, DC, and London, Daticon EED offers convenient regional support for national and international cases.

For more information, please visit www.daticon-eed.com



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