

Top Ten E-Discovery Challenges & Solutions



LITIGATION CONSULTING

Lynbrook ■ New York City ■ Washington D.C. ■ 1-800-875-8705 ■ Fax 516-823-4400

www.DOAR.com

#10 - Estimating the amount of time it will take to gather data

It's tough enough to estimate how long something will take to do when you know the location of the data and parameters of a request, but determining the amount of time it might take to gather data from multiple sources could become a daunting task. Make sure to do your best to account for all possible data and leave enough time for unexpected surprises like finding spare drive space and old media formats.

#9 - Estimating the total size of certain data sets

Much like estimating time, being able to get a handle on the relevant size is extremely difficult when it comes to a large number of data sets. It can become even more of a challenge when data is stored on removable media and mixed with non-relevant data. There are different approaches that could be taken to obtain this sort of information, but one rule of thumb is to address a finite set of data and work with it in smaller, more manageable chunks. Try to restore archived data into a central location so that estimating size becomes much easier. Also, search through backup and communication logs to get a better sense of how much information is really there.

#8 - Making sure no information is altered during gathering process

From a disaster recovery standpoint, retrieving the appropriate information in any form may be sufficient for those users that deleted a file by accident, but when dealing with evidence collection and gathering, nothing short of the original version will do. The simple process of transferring data from one directory on a file server to another will change the metadata of those files. If attorneys are looking to build a timeline of events that is derived from file and system information, maintaining original attributes of files is crucial. If custom scripts that preserve file information are beyond your capabilities, look into using archiving software that allow you to write to a file or compression utilities that preserve this type of information. Finally, document every step along the way. Regardless of the method, make sure to keep track of what goes where and how.

#7 - Identifying the entire universe of relevant data

IT professionals have to deal with many different servers within an organization that handle day to day backend operations. With everything from e-mail and file servers to remote access and web servers, data can reside anywhere in between. With unified messaging gaining a lot of popularity, it becomes the IT manager's responsibility to find what data may

be relevant without having it being requested directly. Try to take a step back and map out the entire organization from a high level and determine what type of information is needed. Then, make an action plan to inspect all possible areas where relevant data can reside. Once these key locations are identified, it is much easier to talk about what exists where and what specifically is needed.

#6 - Finding the archived media from which to cull data

Trying to respond to the day to day needs of active users is hard, but trying to deal with inactive users that may have transferred into another department or are possibly no longer with the company can be a nightmare. Attorneys typically request a certain range of information for a particular group of people in a defined timeframe. Depending on how data is maintained and backed up, it may be necessary to cross reference information from HR to determine what department a particular employee worked in and the appropriate media set that backed up that department's data. Also, access rights and universal drive mapping might become an issue when a request encompasses getting all information that a particular person had access to during a certain period of time. Unless specific rights and policies are maintained by the Network Administrator down to that level of detail, this type of request could result in the necessity to provide an over encompassing amount of information. Therefore, good record and user management should include some HR specific information that could be useful in the future.

#5 - Searching through information and extracting the relevant data

Even if the all relevant data is within your grasp, there might be a request to search through data sets to create smaller subsets based on certain parameters. If the request is based on user name, date or file type, a simple filter in the file system or e-mail server might give you some leverage in selecting the appropriate information. However, if you need to sift through actual content based on keywords, names or other information, you will need to create an index of every document, e-mail and attachment to perform a search in order to create a subset of relevant information. However, filtering by file type may not necessarily get you the results that you want given that an extension is not always representative of the actual file type. Be careful when using a catchall approach to data gathering. At this point you may wish to consider the services of an electronic discovery expert to inspect the header information of files rather than just the extension.

#4 - Re-creating the native environment that contains the data

How great would it be if all of the data ever created by all of your users was online and available at a moments notice? Unfortunately, since hard drives don't exactly grow on trees, we are forced to implement stringent backup

rotations and archiving policies to ensure that data is preserved in case of system failure or natural disaster. However, backed up data that was once intended to be used only in case of a technical problem is fast becoming a routine part of the legal discovery process. This new reality has forced many corporations to reconsider their retention policies.

Nevertheless, if the data is available on tape or other archived media, it is the overwhelming task of the IT professional to be able to restore it. This is often times more difficult than it sounds and creates enormous problems. The difficulties come into play when the software used to create the archive is no longer available, not supported or not easily usable. Legacy systems might involve outdated hardware and comparable systems with enough storage to hold the data after it is restored. Likewise, e-mail systems often require the creation of an exact server environment with specific permissions and access rights in order to access the data. Working in native environments requires the knowledge of the system so if documentation is not available for an unsupported application, you may need to call in recovery experts to extract information at the lowest level in order to recreate the environment. No one can foresee the future, but good documentation can one day get you out of a bind.

#3 - Setting up a review environment for attorneys

Once the data is gathered and stored in one place, the most common request by counsel is to access the data for the purpose of review. Be very careful with this as all of your hard work in gathering and preservation may be jeopardized. Often, technology departments will go to great lengths to come up with a solution for document review. Having attorneys open files from a file server may seem like a no-brainer. All one has to do is set up the appropriate security group, assign the access to the folder with the data and you're done. What most systems people do not realize is that allowing attorneys to access the original information is a potential recipe for disaster.

Aside from easily changing metadata by simply opening a file, reviewers can unknowingly change or delete information. Not to mention that each user will need a copy of every application used to create those files loaded on their desktop. In addition, the attorneys will need to keep track of the files that are relevant and those that are confidential and so on. Some people have gone so far as to create custom databases to track this information. When it comes to e-mail review, you run the risk of having documents printed out from an attorney's mailbox with their name at the top of each client e-mail. You can see how a single request can create a support and development nightmare that can cost you countless hours and dollars in lost productivity.

Depending on the size of the collection, a native review might be possible, but please be sensitive to read-only access so that metadata, date sensitive field

codes and formulas are not altered. If you find yourself in the middle of a large data collection and review, think about consulting a litigation support company that could provide you with an internal solution or even consider using a web-based repository. This is the easiest way to facilitate attorney access and review of data without needing to maintain a system in house.

#2 - Making time in lieu of day to day activities

If there were only enough hours in the day to get the typical work done and fires put out, no one would complain. However, overworked IT staff find themselves with no hope in sight as extremely critical and time sensitive requests come in for information and data that has to be restored, collected and transferred. Many firms have needed to bring on additional support in order to dedicate knowledgeable personnel to the sole purpose of searching, restoration and production. This is becoming an extremely difficult task for corporations to deal with as they respond to litigation and a never-ending supply of electronic data.

Another approach is to restore as much data as possible in anticipation of production. This is usually a very cost intensive process that requires the aide of outside service bureaus and data repositories. In either case, the requests will not go away and can create a bottle neck that leads to sanctions for failure to produce in time. Therefore, it is the responsibility of every IT professional to look into a solution that will deal with responding to requests for data residing in electronic form. You might not be able to do anything about existing data, but you can certainly think about how to resolve the problem going forward. If you put in the necessary tools now, future requests will become much easier.

#1 - Communicating with attorneys

IT staff are from Mars and legal counsel is from Venus. This is a simple but painful truth in the corporate and legal world that many have trouble understanding. There are probably enough stories about miscommunication out there to write a three volume anecdotal book on the subject. The most common problem from a data collection, information management and review standpoint is the inability of legal professionals and technology support personnel to communicate effectively. Attorneys are very often driven by the facts and legal issues surrounding a case and tend to think and speak rigidly about how things relate to the law and what is needed. This too often translates into a misunderstanding on the part of the IT person that is ready and willing to provide the attorney with exactly what is asked of them. Therein lies the problem.

For example, when a request is made for “all of User X’s files from the server”, the IT person will leave no stone unturned and retrieve every file from

the user's home directory. The IT person thinks they did a great job in a very short period of time. When the attorney and their staff get the information, review the data and get ready to make the production a day before it's due, everyone feels great until someone asks if anyone has seen the reviewed e-mails. It is important to understand from both sides that what an attorney asks for is not always what they want or need. The art of identifying discoverable data is a fine mix of legalese and geek speak. It is important to understand that attorneys are not always keen to the problems of transfer rates or packet header information and that a request for User X's files may mean more than just the My Documents folder on the server. The process of educating IT staff about the importance of all inclusive productions and the sensitivity of the preservation of data is just as important. For all of the attorneys out there, be careful what you ask for, you just might get it.