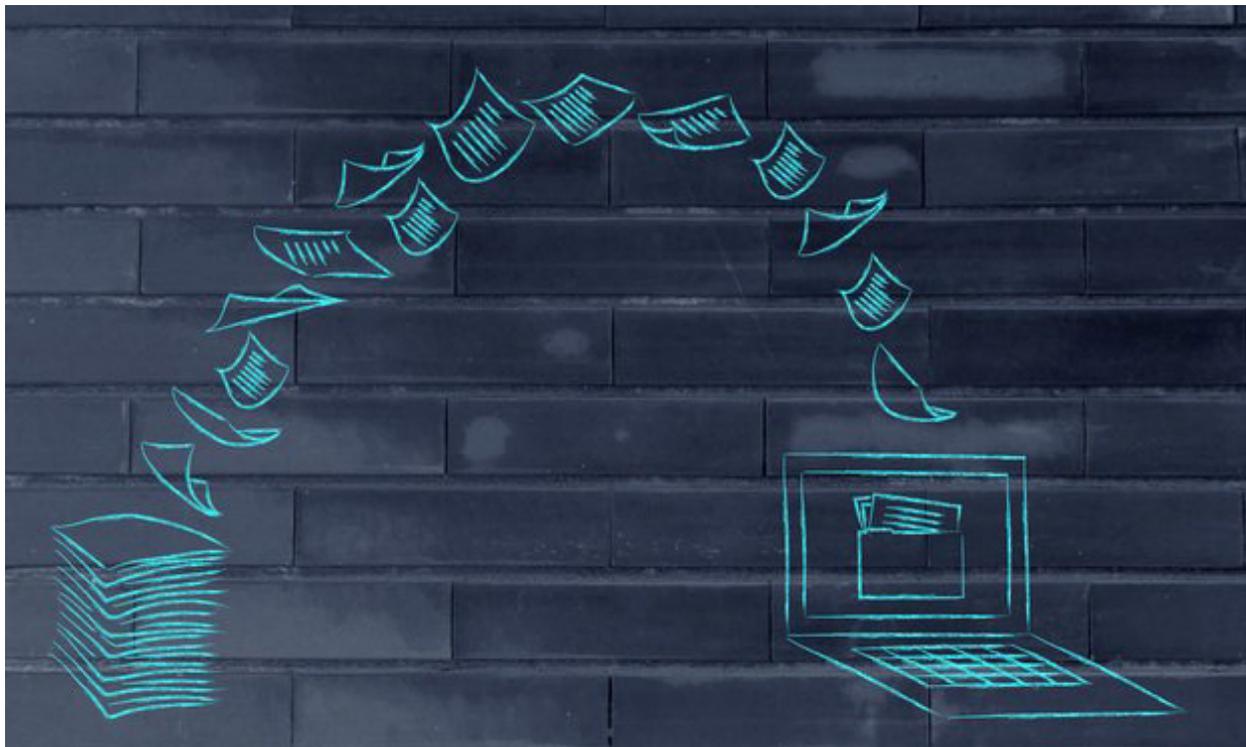


7 Steps to Make Your E-Discovery Process Pandemic and Recession-Ready

To weather a recession, we need to be prepared to do more with fewer resources. Fortunately, legal technology has advanced significantly since the last recession, helping to meet that need for attorneys.

by **Brian Schrader** | April 20, 2020



While the novel coronavirus (COVID-19) pandemic has brought the likely reality of a pending recession to the forefront, some world economists have been forecasting a global recession for some time. Whether it's a cyclical economic trend, a pandemic or a global emergency, recessions are a recurring reality for which we should all be prepared.



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For the legal profession in general, and e-discovery specifically, one of the biggest ways a recession is felt is through litigation budget pressure. To weather a recession, we need to be prepared to do more with fewer resources. Fortunately, legal technology has advanced significantly since the last recession, helping to meet that need. In fact, there's no need to wait for a recession or emergency—you should consider adopting these approaches now.

First: Create a Standard E-Discovery Business Process

Business continuity plans are created so that when an emergency (or any unusual event) happens, your teams know exactly what steps to take to prevent your business from experiencing significant disruption or drastic unexpected costs. The plan for your e-discovery process should be no different.

Planning for e-discovery helps ensure that your core business isn't disrupted when a legal event occurs under normal circumstances and better prepares you to weather the impact of a pandemic or recession. A good plan will help control e-discovery costs, keep your entire process comprehensive and defensible, and eliminate once and for all those chaotic fire drills that are often caused by e-discovery.

Second: Centralize Your E-Discovery

Centralizing any of your business processes is key to leveraging spends, controlling costs and ensuring quality; e-discovery is no different. With the right planning, you can do more—and do it better—with less.

Keep in mind also that litigation almost always involves some of your most sensitive corporate information. If you don't centralize your e-discovery, you're vastly increasing your exposure, risks and costs. By centralizing your e-discovery with a single, end-to-end provider, whom you've fully vetted, you can maintain clear control and security over your most critical enterprise data.

Third: Leverage Custodian Questionnaires

During a pandemic, travel and in-person visits for custodian interviews may not be safe or appropriate options. And, during a recession, the interview process can strain human resources and legal budgets. But when used correctly, custodian questionnaires can vastly improve the custodian interview process, significantly reduce costs and, in some cases, entirely eliminate such costly interviews.

Using custodian questionnaires properly, counsel can reduce the number of custodian interviews needed, collect more information to better prepare for those

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interviews, focus their efforts on key players, and significantly improve their overall fact-gathering process—all while significantly reducing costs.

These questionnaires can be leveraged to gain an incredible amount of intelligence from custodians both inside and outside your organization, all in a highly organized and efficient way, that can be used by your counsel, internal teams and other experts. And, best of all, it's all covered by privilege protections. So, in addition to asking custodians who inside or outside the organization might have relevant documents in a particular dispute, ask fact questions about the dispute itself or the custodian's involvement in key activities as well.

Fourth: Remotely Collect Data Wherever Possible

Many companies and law firms still rely on technicians to travel all over the nation (or the globe) to collect data that might be relevant in a legal or regulatory matter. But pandemics make travel—and even shipping—difficult or impossible, and a recession will strain resources and budgets, making such manual efforts more expensive, less reliable and more burdensome. Done correctly, truly remote data collections that don't require even shipping hard drives can accomplish the majority of your data acquisition needs, should be practically seamless and unseen, cost vastly less than old-school methods, and nearly eliminate costly employee disruptions.

Data from any cloud-based system can be collected remotely from anywhere, which is actually one of the greatest benefits of the cloud. In addition, companies can collect local data stored on their company's traditional servers and systems, employees' local computers and laptops, and—depending on the device—mobile devices like smartphones and tablets. You can even collect data remotely from your work-from-home employees. Some data resources may still require on-site visits or physical access, but that should be the exception, not the rule.

Fifth: Targeted Data Collections Vastly Reduce Costs

One factor will control your e-discovery costs more than anything else: The more you can avoid collecting unnecessary data at the outset, the more you'll reduce your costs at every other step in the process. Start by employing defensible targeted data collection processes and tools.

Perhaps you've heard terms like "de-NISTing" or "Known File Format (KFF) Elimination"—terms that refer to the elimination of programmatic and system files from the data collected. While that's still a critical step in e-discovery, as you can't always eliminate such files entirely during collection, the technology you use to collect the data at the outset should help you eliminate much of that data from being collected in the first place, sending ripples of cost and time savings through the rest of your e-discovery process.

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Sixth: Leverage Data Processing, Early Analytics and Professionals

In the early days of e-discovery, much closer attention was paid to data processing, mainly because it hadn't been standardized yet. But today, most data processing systems provide the same basic functions. The difference now comes in how professionals use those systems and the early case analytics or other tools that some platforms offer.

Data hosting and document review are two of the most expensive parts of the e-discovery process. But data processing and early data analytics tools can help reduce your overall data earlier in the process, reducing the amount of data loaded to review platforms and helping you to control those costs.

In addition, a qualified, experienced team using methods like cross-custodian deduplication, advanced email threading and other more intensive data analytics tools can have a dramatic impact on reducing your data hosting and review costs. Yes, a truly skilled analytics professional will cost you significantly more than most document reviewers. But just as a senior partner can accomplish a task in a fraction of the time as would most associates, analytics professionals can defensibly eliminate large swaths of documents more efficiently and at a lower cost-per-document than even the most skilled reviewers.

Seventh: Leverage Document Review Providers

Document review can constitute anywhere from 50% to 80% of your e-discovery costs. But using the right processes, the right artificial intelligence or machine learning systems, and the right people for the task, you can reduce those costs while increasing the accuracy, quality and efficiency of the process.

Independent studies and judges agree that machine learning systems (often called technology assisted review, or TAR for short) can outperform humans every time. This shouldn't be a surprise. Document review is labor-intensive, monotonous, grueling and repetitive work—work that machines do better than humans, since machines don't get bored, fatigued or frustrated.

However, that is not to say that humans are not still critical to the document review process. Machine learning systems amplify the intelligence and experience (or lack thereof) of the people involved, which means that experienced and knowledgeable people are all the more crucial. Blending the right technology and the right team can result in benefits that apply across every single case, regardless of size or complexity.

Planning for Good and Bad Times

Even in the best of times, there's nothing more frustrating than wasting costs, hours and efforts on something that doesn't even touch the true nature of the claims in a given litigation. When faced with the realities of a global pandemic or recession,

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where both your human and fiscal resources can be strained to their limits, controlling those costs becomes an incredibly important part of your company's continuity.

With a little advanced planning, and by leveraging some of the latest developments, workflows and technologies discussed above, not only can you tackle the added stresses and accomplish more with less, but you can improve your e-discovery processes for the good times as well.



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