

The Importance Of Project Management In e-Discovery

A Carefully Planned And Monitored Process Is Better Done Now Than Later

By Thomas Barnett and Sara Wood

The failure to deal effectively with potential risks in an e-data discovery project can lead to significant budget overruns, missed deadlines, communication snafus, or all of the above.

But in addition to those issues, a worst-case scenario includes indefensible results and case-ending sanctions.

Trial lawyers, especially in civil litigation, have found that challenging the manner in which electronic discovery was handled can lead to favorable rulings and influence the outcome of litigation regardless of the merits of the action.

Fortunately, sound project management can identify and minimize such risks before they result in adverse effects.

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Effectively managing costs increases the chance of any project going smoothly. Other critical areas where EDD projects are likely to go wrong include schedule, communications and overall defensibility of process.

KEEPING ON SCHEDULE

In the course of an EDD project, there are countless variables that can jeopardize the schedule. The data set may contain unknown file types that require extra steps and significantly more time to process. Legacy backup tapes may need to be restored to obtain data for certain time periods for which no other source of information exists. Midway through the process, more custodians may be added to the matter.

In the face of fixed deadlines imposed by a court or regulatory body, it is imperative to move quickly to address and rectify the problem. The sooner any problem is brought to a court's or a regulator's attention, the greater the chance of addressing any necessary modifications to the deadline that may be needed — and of avoiding punitive measures.

Once deadlines and milestones are determined, the next step is to create a timeline. The most effective way to accomplish this is to work backward from known, fixed dates. Creating a timeline can assist in identifying unrealistic deadlines or milestones that can endanger the success of the effort and, ultimately, compliance with legal obligations.

Another area that can derail an EDD-project timetable is speculating on how long it will take a vendor or in-house litigation-support department

to process a specific amount of data. Calculating that time in the abstract (eg, assuming all resources are available 24/7 for that particular project) can lead to overestimating the actual capacity and overlooking the likelihood that intervening events, missteps and demands will significantly reduce the amount of work that can be performed. What is needed are real-world metrics, not perfect-world projections.

While difficult to plan for and not pleasant to anticipate, re-working can quickly undermine the schedule. Providing clear requirements and verifying mutual understanding can go a long way toward minimizing the need for redoing work. It's important to determine assumptions — such as the number of pages expected per megabyte, the anticipated production rate, the responsiveness rate, and similar such concerns. It's also important to adjust these assumptions to accord with the actual results of the process as they become known.

Also, ongoing assessment is critically important to maintain effective project management. Frequent and detailed status reports keep all interested parties updated and help identify anything that could delay or jeopardize the project. Defining the content and format of required reports sets appropriate expectations early, resulting in closer monitoring of compliance.

However, reports alone don't always provide sufficient information. When complex issues are involved, it may be better to call a team meeting to encourage discussion and reach consensus, rather than simply rely on static status reports to relay the substance of

these important topics.

Finally, making major changes in the middle of a project can increase the risk of missed deadlines. Introducing an unfamiliar review tool or bringing in a new vendor, for example, are likely to compromise the project's schedule, and should be avoided when possible. Similarly, even small changes (to an online review application, for example) may have a big unanticipated impact and should be given careful consideration with the timeline in mind.

COMMUNICATING EFFECTIVELY

A matter involving a large group of attorneys and vendors creates numerous opportunities for misunderstandings. The first step in building good communications is to designate someone, usually the project manager, as the main point of contact. Having one person responsible for distributing information, including status reports, helps keep changes under control and limits the number of wasted and duplicative efforts.

Informal lines of communication are not necessarily a problem, either; provided that critical information makes its way back to the key point of contact, and that a single repository of information is maintained.

Poorly defined project specifications are a major source of miscommunication and re-working. It is important to know the volume of data that needs to be processed, the deadline by which it must be completed, the tools to be used, and what the key assumptions are. These specifications and assumptions should be documented in a formal way, understood by the legal team, and accepted by the client and the vendors.

Throughout the project, it is important that everyone involved is aware of changes made to the scope of the project and that the impact of those changes is understood. When dealing with project changes, it's important to document and communicate the scope and impact of the changes. Requested changes should be acknowledged with a confirmation agreeing that the changes need to be made (or declining the request). Obtaining written agreement to the changes ensures

consensus on what needs to occur, and verifies understanding of the new requirements and any effects on the cost or schedule.

Anytime data is passed from one team member to another, or from one vendor to another, a record should be kept of the data transfer. If someone transmits 500 gigabytes of data, it is important to have documented verification that the 500 gigabytes of data was actually received.

As discussed above, regular status reports are one of the best ways to keep the project team up-to-date on events such as data transfers. When everything is going well, this creates an audit trail of steps that are taken that may be used to defend the process if it is challenged. And when problems arise, status reports can provide early notices and allow the problems to be addressed — and remedied — as early as possible.

Clearly communicating what information is required in regular reports ensures that they are meaningful, and not futile, exercises. Defining reporting requirements and providing sample reports sets expectations for team members and for vendors. Frequent, detailed reports are invaluable in keeping the project on track and everyone working on the same page, but the reports must be defined and the requirements understood for them to serve any purpose.

DEFENDING YOUR WORK

EDD is no longer simply a matter of completing the project and moving on to the next case. No firm can afford to ignore the possibility that the work may be challenged, either during or after the discovery stage, regardless of whether anything went wrong. As noted above, litigators see the e-discovery process as an attractive attack point.

When the discovery efforts performed on a matter are challenged, it is essential to have a detailed documentary record of all steps taken. Recalling details months or years after the completion of an undertaking is difficult, especially when numerous other projects, possibly for the same client in new or related matters, have been completed in the intervening time. Written confirmation of crucial steps

provides documentation that those steps were approved and authorized.

Building defensibility begins with creating a carefully documented audit trail. An audit trail can consist of a catalogue and description of steps that were used in the process. These steps typically start with assessing the data involved in the matter and continue through preserving, collecting, processing, reviewing and — ultimately — producing that data. Without an audit trail, creating the steps again in a meaningful way at some future date is an extremely difficult (if not impossible) task.

Creation of an audit trail is most effective when built right into the process. Explaining a mishap to a court or regulatory agency with a documented explanation of the process used, the reason the process broke down and the measures taken to resolve the problem is far preferable to attempting to re-create the process over from ad hoc notes or recollections. In some cases, the inability to explain poor results can itself lead to imposition of severe sanctions, such as adverse-inference instructions and fines.

Besides building documentation and audit trails, it's useful to create standards that outline how data is to be collected, including the tools to be used and steps to be taken in the collection. These could include basic kinds of protocols for such things as collecting e-mails from a server, imaging a hard drive or copying files.

CONCLUSION

Effective management of an EDD project helps ensure that the project finishes on schedule and within budget — and that the results will be defensible. Timelines — including key deadlines, milestones and data-prioritization — help keep e-discovery projects on schedule. Building an audit trail into the process and following strict standards every step of the way not only will contribute to a successful project at the moment, but will also help to ensure preparedness for disputes well into the future.