

# REMOTE eDISCOVERY - DOCUMENT SCALABILITY AND DATA SECURITY



## BOTS, BITS & BYTES – MAKING LEGAL TECH WORK FOR YOU AND NOT THE REVERSE

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**‘In The Beginning, There Were Boxes’ ...dozens or even scores of cardboard boxes filled with thousands or tens of thousands of paper documents delivered to lawyers’ offices for physical ‘discovery’ or brought by law clerks navigating warehouse two-wheelers into courtrooms.**

By the 1980s, as documentation shifted from paper and ink to bits and bytes and the delivery method switched from postal to electronic, the challenge became ‘how to quickly unearth the smoking guns buried among otherwise irrelevant content’ within millions of documents. In 2021, the challenge remained the same, only now it is addressed by finely-tuned algorithms.

## Scope of the Problem—In Zettabytes

In the course of a seven-year-long patent infringement suit between Samsung and Apple, Samsung produced 3.6 terabytes of data, comprising approximately 11 million documents. The cost of collecting, processing, and producing such vast amounts of data over 20 months was over \$13 million. Although that eDiscovery process may have broken a record, both in terms of volume as well as cost, a more typical civil dispute can involve an average of 130 gigabytes collected from a dozen custodians. In 2012, the cost of processing each gigabyte of eDiscovery was \$18,000, resulting in an average case cost of \$2.3 million. Today, that cost has dropped by half to about \$9,000 per gigabyte.

The number of documents subject to eDiscovery continues to grow exponentially as new sources of electronic information become discoverable—including smartphones, which now account for 40% of all global eCommerce transactions, and a plethora of social media accounts. Almost 90% of the world’s existing data has been created within the last few years, and by the end of 2020, it was estimated that global data would reach 44 zettabytes. It is further estimated that by 2025, the amount of global data generated daily will be 463 exabytes.

## What does it entail for eDiscovery?

Paralleling this growth in electronic

data is the corresponding growth in the global eDiscovery industry, which is expected to grow from a \$9.3 billion market in 2020 to \$12.9 billion by 2025—a CAGR of 6.6%. Driving this growth are factors such as governance of data analytics, a restructuring of regulatory policies, and an overall increase in global litigation, especially among high-tech and bio-tech giants sparring in both domestic and cross-border forums. To meet this demand, eDiscovery vendors must constantly upgrade their tools and technology while simultaneously remaining cost-effective in a highly competitive arena. The logical means of efficiently capturing, managing, storing, and delivering Electronically Stored Information (ESI) is through advances in AI-based analytics for eDiscovery.

## Predictive Coding and Machine Learning

Artificial Intelligence (AI)-based analytics improve both the speed and quality of the eDiscovery process by interpreting meaningful patterns in collected data. Predictive coding is a Machine Learning (ML) process that employs algorithms to ‘train’ software by seeding datasets into a comprehensive database, which identifies and determines documents that are relevant to pending litigation. However, the self-learning logic of eDiscovery must still be based on a review of test documents ‘taught’ by trained lawyers. The ML process then applies the same algorithm to a larger document group. This streamlines the document review process and makes it more cost-effective.

## Executive Summary

### 1. The Issue

eDiscovery has introduced streamlined efficiency and scalability into the tiresome process of document review. But with that comes new challenges relating to security, automation, and data protection.

### 2. The Gravamen

Unquestionably, lawyers are responsible for their client’s documents and must maintain privilege and general duty confidentiality in their client’s affairs. These duties extend to managing documents carefully in an ever-changing data-driven eDiscovery process. Ethical concerns also require that the lawyers do not completely remove themselves from the review process.

### 3. The Path Forward

State-of-the-art technology and layered human review processes are the most certain ways of controlling any exposure to liability.

## Document Review and COVID-19

If the software is already trained to select what is relevant to the subject litigation versus what is irrelevant, the obvious question is - 'Why do we need hundreds of Document Review teams staffed by thousands of attorneys reviewing eDiscovery across borders and time zones?' Simply put, AI has not yet reached that point where the machine can sufficiently 'think' to decide what document is 'responsive' to the demand for discovery. For that, it still takes the other AI, which is 'Attorney Intelligence'.

Document Review teams generally assembled in designated rooms at Document Review centers operated by the Top 10 eDiscovery solutions providers until a year and a half ago—i.e., 'pre-COVID-19' times. But with the pandemic have come logistical changes necessitated by social distancing rules and travel bans. Although it is anticipated that the impact of COVID-19 is short-term, it will have significant ramifications for businesses and eDiscovery vendors, requiring new practices such as the work-from-home model, expanded Virtual Private Network (VPN) connectivity, and the adoption of cloud-based eDiscovery solutions. These changes have forced eDiscovery vendors to re-think where Electronically Stored Information is stored and how it can be accessed securely.

## Increased Risk of Cyberattacks and Data Theft

Although cybersecurity and data security have always been a top priority of eDiscovery vendors, that concern has been heightened in the wake of the transition to remote-staff operations. Between 2016 and 2017, the number of cyberattacks and data

breaches in general increased by 600%. However, most enterprises continue to pay too little attention to sound cybersecurity practices, and not guaranteeing the cybersecurity of data transmitted to and from home offices puts sensitive, privileged information at an even greater risk. As eDiscovery solution vendors, in particular, process crucial business data on behalf of business enterprises, data compromise under their watch may spell the end of that vendor's continued participation in the industry. The risk of cyberattack and data theft is one factor cited as a current restraint on the growth of the global eDiscovery market.

## Cloud-based or On-site

Cybersecurity concerns and the need to monitor the bottom line closely during a pandemic downturn have led some businesses to opt for on-site ESI. However, the costs associated with such a move may rival the expenses associated with outsourcing to professional eDiscovery solutions. It is true that licensing, uploading fees, coding, and other such costs may make the eDiscovery vendor option unattractive. However, enterprises must factor in the costs of new IT infrastructure, updating and maintenance of the systems, and increased self-service cybersecurity methods before concluding that they will realize a saving via an in-house solution. In this present environment, the on-premises option is expected to gain an increasing share of the eDiscovery market. This is due to the perceived benefits of flexibility, scalability, and lower infrastructure costs.

## Contemporary Staffing Solutions in eDiscovery-driven Trials

It appears that eDiscovery requires two major contributions from a law firm or service provider—legal and technical

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expertise. Managing terabytes and zettabytes of data require human talent with both hands-on experience in the technology and a strong handle on the legal aspects and responsibilities of the case, which can include knowledge of its subject matter chain-of-custody rules, rules of evidence, etc. Depending on the size of the trial available, the organizational effort requires the firm to orchestrate clients, technical experts, project managers (and their teams), document review attorneys, in-house counsels, service providers, and in-house technical experts across different time zones and entities.

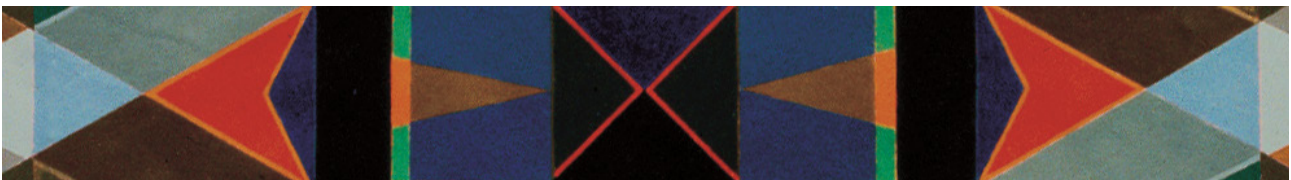
One standard solution seen in the industry is to hire skilled project managers, either in-house or through contracting a service provider. The 'holy grail' of eDiscovery project managers for most firms is an individual with a bar license (or law degree) with proven abilities in Electronic Document and Records Management Systems (EDRMS) along with platforms that support the hosting and processing of electronic records. However, as one would expect, such talent can be expensive. Therefore, an alternative path is to hire two separate project managers who work in tandem to manage the two buckets during eDiscovery – legal and technical. During the process, large volume firms also provide complex project management ecosystems layered with project coordinators, project assistants, data processing and hosting teams, information security

experts, and dedicated client managers.

Large, voluminous disputes are of incredible value to litigation groups as they can serve as a reliable source of client billables to help the law firm grow for years to come. This has made litigation and eDiscovery a very competitive space in the market, with clients assessing how a firm manages bigger cases from an organizational perspective. If a firm hosts and processes their data and does all document review in-house as opposed to through a vendor, it can be attractive for the client as the litigation group acts as a 'one-stop shop' for their needs. However, this requires an incredible investment and change management within the law firm – which is precisely why eDiscovery service providers remain a competitive option for firms still in their growth stages.

Getting around the high cost associated with the collection, amalgamation, processing, review, and preservation of documents when demanded for litigation eDiscovery is impossible, regardless of whether a company decides on cloud-based solutions or on-site storage. Due to the nature of huge eDiscovery-driven trials, it is easy for things to get 'lost' in a sea of documents and reports flowing within an organization. A firm must carefully allocate responsibilities to skilled 'point-individuals' in the litigation and eDiscovery process to manage quantity with quality legal and technical service.

**“...LAWYER SHOULD FAMILIARIZE HIMSELF OR HERSELF WITH THE APPLICABLE ETHICAL FACTORS...”**



## Action Items

### 1 Point-persons on a project:

Complex document-heavy litigations quickly become an organizational effort spanning different stakeholders. The first step in this long process is to appoint a project manager who will be responsible for the overall progress of an eDiscovery matter.

### 2 Weaponize the technology:

The idea is to work smarter, not harder. If cost-effective solutions exist to support your firm's eDiscovery needs, it is wise to invest in them as they ease many administrative burdens and redundancies that are prevalent in document review.

### 3 Gather the Troops:

Automation in eDiscovery is yet to reach a point where human intervention is not required. In order to avoid any risk of malpractice, law firms must ensure that document review teams are formed across different levels of seniority.

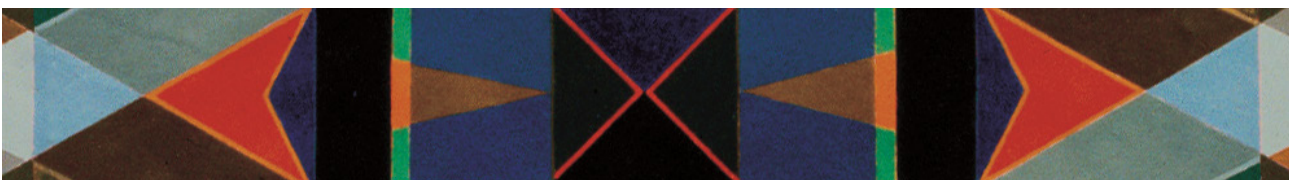
### 4 Organize the review process and oversee deliverables:

The project manager must carefully organize the document review efforts and maintain a tight delivery schedule to ensure that court deadlines are on track. Easier said than done, but in today's algorithmic and data-driven world, the process is much simpler.

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## Further Readings

1. <https://www.marketsandmarkets.com/Market-Reports/e-discovery-market-11881863.html>
2. <https://www.everlaw.com/blog/2022/01/14/what-is-predictive-coding/>
3. <https://zapproved.com/blog/on-premise-versus-on-demand-ediscovery-software/>
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5. <https://www.mimecast.com/blog/covid-19-and-the-dire-need-for-e-discovery/>







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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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## About GreenPoint Law & Compliance

- ▶ GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- ▶ Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- ▶ GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

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## About GreenPoint Global

- ▶ GreenPoint Global provides litigation support, finance and technology solutions to insurers, law firms, banks, and in-house law departments through our subject matter experts and process specialists.
- ▶ Founded in 2001 and headquartered in Rye, New York, GreenPoint has grown to over 500 employees with a global footprint. We have a stable and growing client base that ranges from small and medium-sized organizations to Fortune 1000 companies worldwide. Our production and management teams are located in the US, India, and Israel with access to deep pools of subject matter experts. Our greatest strength is our employee-base of experienced lawyers, paralegals, process specialists, financial analysts, and software developers. We have leading edge software development capabilities with over 50 professionals on staff, working on internal and client projects.
- ▶ GreenPoint is certified by the TÜV SÜD (South Asia) for the highest standards of Quality Management (ISO 9001:2015) and Information Security Management (ISO 27001:2013). GreenPoint is certified as a Minority and Woman Owned Business Enterprise (MWBE) by New York City and a Minority Owned Business Enterprise (MBE) by the State of New York. GreenPoint complies with all federal and state contracting requirements. GreenPoint is owned by its founders and principals and is debt free. For comprehensive information on our services and products under Law & Compliance and Finance, please visit our subsidiary websites through the division's menu.

