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Collect. Process. Don't Repeat.

Top 10 Tips for
**Selecting a Managed
Litigation Repository
Provider**



Leveraging Digital Collections

Living with digital collections is becoming second nature to most of us these days. Photographs, recipes, music: if it can be digitally corralled, you've got yourself a collection. We even have digital collections—bookmarks, for instance—that organize digital collections!

Think about ESI amassed for a litigation, a digital collection if there ever was one. Now think about a digital content management system, like iTunes. It's not much of a leap to see how the organizational concepts of iTunes could be applied to effectively manage ESI collected for litigation. iTunes, after all, is just a centralized repository. When I rate my favorite songs, I'm creating "work product." When I create playlists, I'm creating searches that identify music I want to gather together (read "collect for a new matter"). Once I've downloaded songs and grouped them, I just push them to my devices (think review workspaces) when I need them. If my taste in music or mood changes (a new matter comes along), I can go out there and add new material into the digital collection without having to start from scratch.



So, if it works for digital music, why shouldn't it work for digital documents?

Well, the simple answer is, it does, and frankly, it's a bit crazy not to apply the same principles. If my company has repetitive litigation, or even just a group of custodians who are collected from frequently, why in the world wouldn't I keep it all in one place to leverage work I've already done? Why go back to the well to re-collect, or re-tag or re-review for privilege? Do it once and manage the data. New material can be added, if necessary, but starting over each time to do what's been done before is a waste. A managed litigation repository is very cost-effective and solves a number of problems—in the right hands. But, *buyer beware*. Before you pick your repository solution provider, make sure you consider the following tips and ask the right questions.

1 Commit to one platform.

If your house is divided, it's like having your iTunes and your family's iPhones fully stocked with music, but you're stuck buying that Bieber album again because of that darn outlier—your Samsung Galaxy.

When you consider your repository solution, commit to one platform (or in this case, provider) so you can take full advantage of the economies of scale that a managed repository offers. If you spread yourself across multiple providers, you negate the advantage of minimizing (or eliminating altogether) re-collection and re-processing of data and you won't be able to optimally leverage opportunities to reuse work product.

The biggest financial plus: when you stick to one provider, you will likely be able to command substantially better pricing due to increased volume and your demonstrated commitment to be in it for the long haul.



2 Find a provider you know you can trust.

The relationship with your chosen provider is potentially long-term and it requires the requisite trust and mutual support that makes any relationship successful. A poor choice can cost you time and money, especially if you have to “break up” and find another place to live (migrate to another provider).

That said, this relationship is a two-way street—they're in it too—and you should be sure that the commitment to good relationship etiquette, such as open communication, understanding, and compromise, is mutually understood. This should be demonstrated by flexibility and sound guidance in helping to craft a solution that meets your ongoing needs, and in working closely with you to develop a fee structure that is consistent with your own business model.

3 Make sure the pricing reflects the repository's economies of scale.

With a managed repository, your good deal is your provider's good deal, and this should be reflected in discounted pricing on services and significant support commitments.

Your provider (and you) will be reaping the rewards of economies of scale due larger volumes and longer hosting timeframes. The potential hosting of your data (or some subset of it) in perpetuity means you're providing them meaningful and reliable revenue. And, since the amount of support and overhead for keeping the repository lights on is significantly less than what's needed for a live matter and an active case team, data hosted in the repository should be billed at a significantly lower rate than data in actively utilized workspaces.

4 Will the provider be able to deliver the support you need?

Technological bells and whistles are great, but your primary focus should be on level of support you'll be receiving. A good provider will make sure that project managers have appropriate bandwidth to focus on your needs and will be able to provide the planning and organizational support you deserve. Depending on your case needs, supporting you may be a full time job. If your provider can't allocate the dedicated service that will eliminate the distractions that may come from other clients, your projects may suffer.



A managed repository is a complex and interconnected ecosystem and bad habits can introduce lingering data organization issues that may call into question the integrity of your repository down the road and impair your ability to leverage content. Once corners are cut for even just one matter, it can be very hard to get back on track. That's why you need to make sure from the outset that there will be committed resources available to meet your needs on current and future

projects. Always ask to meet the project manager(s) that will be supporting you, and go with your gut. Remember, OCD is a virtue with project management, and repository project managers tend to work best when empowered to police with an iron fist the organization of your data and work product.

5 Does the provider deploy sophisticated storage strategies?

The next area of focus should be how much your provider's technology or processes can condense the managed data to keep your data volumes under control. A sophisticated provider should be employing technology to "single instance" your aggregated data so that you only retain one copy of a record while at the same time keeping track of custodian and source information for each duplicate instance of the record.

With single-instancing, you can meet the obligation of knowing who owned what information and where it was kept without having to retain endless duplicative copies of the record. Ideally, your provider will take this single instancing even further and simply link new matters to your stored images and native files for maximum density of your hosted data. This should eliminate unnecessary propagation of duplicate records and should mean big savings, especially if billing is based on hosted data volumes.



6 Will the provider enable quick and easy visibility into your repository?

Make sure you have access to a living inventory of what is in the repository to confirm that your content is being responsibly managed. If your provider cannot give you quick and easy visibility into what matters are being managed and the custodian composition of data held in the repository, chances are something is being tied together on the back end with string (MS Excel) and it may eventually snap from the strain.

A carefully managed and easily accessible inventory, either web-based or available via some form of remote portal, will provide insight into what's been accounted for and how to target your next collection. And, a well-organized inventory can help you determine whether you should push work product from previous matters to new ones. Re-using privilege calls, for instance, can give you a huge boost in time and cost savings for your next matter, but you will likely want to know who coded the documents the first time around and for what matter the privilege review took place. Armed with such knowledge, you'll be able to address new collection requirements sensibly, productions will be faster, and savings will be greater across the board.

7 Can the provider add intelligence for review or other case imperatives?

Given the volume of documents that will accumulate over time in your repository, you may need more sophisticated lenses and hooks for zeroing in on the documents you're looking for. In this day and age, with the introduction of linguists and search experts in the realm of e-discovery, there are more and more creative ways to identify and classify key or risky documents.

For example, some services providers can help identify emotionally charged communications (and even tell you the emotion being expressed—disappointment, anxiety, anger, glee, etc.). This ability, intersected with specific custodians and time periods, can help quickly identify key documents for a new matter.

Or, take the rapid identification of custom document types. Not the easy stuff like MS Excel or PDF, but rather the use of search expertise to identify specific types of forms, contracts, reports, and design documents that are particular to your organization. And finally, more sophisticated providers can use linguists and search experts to stratify your repository data by topic area or subject matter to map directly to legal holds, complaints, or RFPs while also identifying which documents are potentially privileged or confidential. Having documents pre-



classified with such information can allow you to publish and reuse these details with each new matter, so that the review can be intelligently prioritized and accelerated.

8 Can the provider leverage what you already have?

Starting a repository with a clean slate has a certain amount of appeal to it, but what about all of your current (or recently retired) matters that are parked across multiple providers? Data sets are likely being held in a hodge-podge of different review platforms with different fields, different de-duplication methodologies, different organization structures, and likely even different custodian naming conventions. The idea of aligning and normalizing data sets probably sounds as daunting as getting a bill through Congress. Where do you start? How do you deal with overlap and duplicates across data sets? Reviews are at different stages, so how do you coordinate any of this consolidation?



While migration and consolidating data from multiple providers is complex, all of these problems are solvable. A good vendor should be highly motivated to make this work in return for the nest egg of data that you will be providing them.

Let them do the hard work and put together a plan that includes:

- Normalization of field mapping, custodian names, data organization, work product, document error flagging, and duplicate identification
- Carefully staged coordination of case migration so you can turn the lights off in one provider's review environment and have the lights turned on the very next day in the new environment
- A project timeline that meticulously details hand-offs and milestones to ensure protection of review activities and production deadlines
- Fixed fee (or no fee) pricing for administrating and executing the migration

9 I don't need these records anymore. Now what?

So, aggregating all of your documents sounds good and all, but what happens if anticipated litigation demands disappear and you want to get rid of something? A repository is not meant to be an ESI prison where every record is serving a life sentence. As matters go away and preservation needs change, your provider should have options for putting records on ice or doing away with them entirely. Putting records on ice should mean paying some nominal fee for having the provider put the records into hibernation with the ability to restore them—complete with all historical work product—if absolutely necessary.

Doing away with files entirely should mean securely disposing of the records from the repository environment, but retaining key source and work product information in the event that duplicates of that record somehow make their way into a future collection. Also, a key point here is that you need to make sure your provider has a bulletproof system for making sure a file cannot be retired from your repository if any of your active matters are directly linked to or relying on that record. Ask to see the process for ensuring this safety precaution. If not managed properly, this can wreak havoc on an unsuspecting review team trying to make it to the finish line on a production.

10 Is your provider “future proof”?

If you've thoughtfully considered tips 1 and 2, you know that this relationship should be seen as a serious commitment. When you sign up, you should feel that you're in it for the long haul. With that in mind, you'll want to be sure that your provider is forward-thinking with an eye to the future. Because, let's face it, you're probably going to want that fancy new phone with the holographic personal assistant and the virtual reality conference calling. Technology and data



management solutions are evolving constantly. A partner that is always assessing what's on the horizon is instrumental in making sure your solution stays current with the times. Before you sign on the dotted line, ask to see a roadmap of what technologies and offerings your prospective provider is following for the next 12 to 24 months. Ensure that there's ongoing communication between the provider and your organization to discuss how the roadmap is evolving and what new solutions may be on the horizon that could benefit your organization.

Also, if your provider is offering completely proprietary solutions, be sure to delve more deeply into how they make product development decisions and find a way to be able to exert influence over decisions that may affect your world. Some service providers that develop their own software often get stuck playing catch-up with bugs and feature requests to keep their existing clients happy and not enough time devoted to proactively tackling the future. It's quite a bit easier for technology-agnostic companies to cherry-pick the solutions and features that will best serve their clientele.

Either way, if you've considered these tips and chosen wisely, your litigation challenges will be much less complicated and your future will be looking brighter.



Jason Richard has more than 12 years of experience in the legal services industry. As Director of E-Discovery for **H5**, Jason Richard's main area of expertise is in the area of Electronic Discovery, Litigation Readiness and Data Analysis with a focus on strategic consulting and identification, preservation, collection, data processing, review solutions, and production of electronic records in support of all phases of litigation, investigations, and litigation preparedness initiatives. Prior to joining H5, Mr. Richard served as the Director of Technology Services at Document Technologies, Inc., a national litigation services firm, where he was responsible for managing document services ranging from data processing to scanning to document printing, servicing law firms and corporations with large scale document service needs.