

# Holding Electronic Discovery Vendors Accountable for Quality



Control Discovery

Strategies and techniques for creating vendor  
accountability for electronic discovery quality.

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# Agenda

## Present Situation

- What Is Electronic Discovery Quality?
- Where Do We Stand Currently?

## The Causes of Electronic Discovery Errors

- Understanding the Content of Client Data
- Assuring the Quality of Vendor Processing Software

## Solutions for Electronic Discovery Quality

- Creating Vendor Accountability for Quality
- How Law Firms and Clients Can Help



# What Is Electronic Discovery Quality?

## “Quality, Accuracy, Speed”

- A Partner: "Discovery Should Never Be An Issue"
- Lit Support: "Getting It Right The First Time, On Time"

## “Discovery Processing Done Consistently & Accurately”

- Analysis - Knowing what’s “in” the clients data.
- Matching - Choosing a discovery vendor with capabilities that match content of client data (not just the file types).
- Collections - Gathering and organizing client data for rapid, accurate processing.
- Processing - Extracting “everything” quickly and accurately with consistently less than 1% of errors and exceptions.



## Where Do We Stand Currently?

- Low Satisfaction with Electronic Discovery Vendors
  - Four Surveys in 2003-2004 showed same results.
  - All involved AMLAW 100 Attorney and Lit Support.
  - Surveys covered all vendors. (Applied, Fios, Kroll, etc.)
- Lots of Difficult Shared-Quality Issues
  - Issues with shared responsibility. (Client / Vendor)
  - Solvable by better information about client data.
- Stubborn Vendor-Only Quality Issues
  - Quality of Processing Software.
  - Missing Processing Functionality. (Gaps)



## Where Do We Stand Currently?

- Frequent Electronic Discovery Processing Errors
  - Most AMLAW 100 firms are experiencing same kind and volume of quality issues.
- Defects Are Discovered Too Late to Repair Easily
  - Nearly all discovered after the start of the review.
  - Almost 60% discovered after at least one production.
- Electronic Discovery Errors are Costly to Repair
  - Defects identified during the review cost ten times more to fix than defects found before vendor processing begins.
  - We're discovering most defects during the review.



## Where Do We Stand Currently?

- Increasing Costs of Discovery Errors
  - Case Delays due to "3R's".  
(Remediation, Reprocessing, and Review QA)
- Added Client Costs
  - Burdens Lit Support with incident management.
  - Distracts Reviewers with QA and workarounds.
- Credibility with opposing counsel and courts
  - Morgan was also a massive discovery quality failure.
- Can we afford to keep doing business this way?



# The Causes of Electronic Discovery Errors

*Percentage of Incidents*

Client data conflicts with discovery vendor capabilities:  
**75%**



Vendor Software  
Quality Issues  
**14%**

Vendor Processing  
Capability Gaps  
**11%**

Source: CDI, 2005



## Discovery Vendors and Shared-Quality

- The 75% Problem: Client data/Vendor Conflicts
  - The content of Client data as a whole is getting more complex.
  - This is driven by two factors:
    - Each Client has slightly different Enterprise IT Practices that effects the *content* of email, attachments, and native files.
    - Each Custodian has slightly different ways of using standard software programs that effects the *content* of their particular email and native files.
  - Content differences in client data led to discovery errors in all common file types, including MS Office, Outlook, Lotus Notes, and Adobe Acrobat.



## The 75% Problem: How We Work with Clients

- Discovery vendors typically lack visibility into aspects of client data that can affect the quality and accuracy of electronic discovery processing.
- Up to 75% of problems have a root cause in conflicts between client data and discovery vendor processing capabilities.
  - Dozens of different issues have been identified so far .
  - Today, custodial collections simply “passes bad data along”.
- No two clients run their IT systems exactly the same way.
  - Small differences in data can make a big difference in the quality and accuracy of discovery processing.
  - Client *can* be part of solution: Advise clients to maintain accurate information about key IT practices prior to need to do collections.
- Differences between “best and worst” results .
  - It consistently costs ten times more to remediate errors identified during the review vs. those corrected before discovery processing.



# The 25% Problem: The Way Vendors Work

- Software Quality is not a traditional discovery vendor strength
  - Much of the critical knowledge on how things “really work” lives in a few very busy minds.
  - Yet software quality is entirely in the control of the discovery vendor.
- Companies spend \$1,200 to \$2,600 per GB on electronic discovery only to experience accuracy and quality issues.
- Client benefits of vendor excellence in software quality assurance include:
  - Fewer errors, greater processing accuracy
  - Faster error remediation (MTTR)
  - Longer time between errors (MTBF)
- Vendor benefits include, among others:
  - Substantial improvements in client satisfaction
  - Substantial improvements in profitability



# Solutions for Electronic Discovery Quality

- Recommended Strategies
  - Better Understand the Clients Data.
  - Hold Vendors Accountable for Quality.
  - Resolve Issues, Don't Just Fix the Data.
- Tactics for Getting Vendors to Own Quality
  - Use Control Discovery Retention Management services to ensure client data matched to fully qualified vendor.
- Best Practices for Law Firms and Clients
  - Improve problem resolution so vendors take prompt and verifiable action to ensure errors do not recur.
  - Use results of Retention Management to guide vendors to develop capabilities that meet the specific needs of your major clients.
  - Use reporting to keep vendor performance continually in focus.



## Better Understand the Clients Data

- No one knows “what we have” until it's too late
  - Best Practice is that client data analysis should always precede collections.
  - “Screen early and screen aggressively”.
  - Typical collections vendors may not have the skill.
  - Goal is to screen out data that accounts for 75% of discovery processing errors (Problem data can be processed separately).
- Control Discovery Data Collection services can help.



# Hold Vendors Accountable for Quality

- Today, our response to discovery quality issues is often just to change vendors (the next time)
  - Best Practice is to track vendor performance to identify and develop preferred vendors.
- Your Clients Understand Vendor Quality Management
  - "Good Service is Good Business" (Siebel).
  - Your Clients routinely do this with *their* vendors.
  - Many of Your Clients would be surprised if you're not!
- Control Discovery Can Help
  - Improved visibility into each vendors performance across firm, cases, and throughout time.
  - Ongoing information to guide selection of vendors, steering vendor development to meet the processing needs of your clients.
  - Greater awareness of “cost of bad discovery quality” throughout firm.
  - Ability to shift extra review costs back to vendors. (protect your client)



## Resolve Issues, Don't Just Fix The Data

- Today, Lit Support must manage quality incidents
  - They're already busy enough as it is.
  - Getting the data fixed has to be good enough.
  - Rarely have time to work with the vendor to really assure the error or similar errors will not recur.
- Best Practice: *Manage* Review Incidents
  - Help fix the case data, quickly and accurately.
  - Ensure that the vendor fixes the issue "for good".  
Fixing the data only solves half the problem!
  - Don't blame Lit Support - add skills that can help.
- Control Discovery can help.



## Contact Us

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*“Control Discovery offers a wide range of electronic discovery services designed to help law firms and enterprise clients control the cost, quality, and accuracy of electronic discovery.”*