

Special Report: ROI of Records Management for Legal Discovery



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Introduction

For most companies that implement records management software systems for legal compliance and corporate records departments, the return on investment (ROI) is most often cost avoidance rather than a true financial return. The assurance of never failing a regulator's audit, the ability to expeditiously locate and retrieve critical documents, or need to offer defensible protection in the face of litigation often motivate the adoption of records management systems and programs.

This report will present financial ROI scenarios for companies that employ effective Records Management software, such as Archive Systems' OmniRIM product, to improve efficiency, accuracy and productivity throughout the legal discovery process.

2010 Litigation Cost Survey

A 2010 survey, titled *Litigation Cost Survey of Major Companies*, was published by Lawyers for Civil Justice, Civil Justice Reform Group, for the U.S. Chamber Institute for Legal Reform. It surveyed Fortune 200 companies regarding their litigation activities and associated costs.

The survey indicated the following:

- The average litigation cost per respondent was nearly \$115 million in 2008 (excludes awards and settlements).
- Discovery costs are generally $\frac{1}{4}$ of the outside (non in-house) legal fees for a case.

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- Costs have increased at a rate of 9% per year since 2000.
- The average discovery cost of major cases closed was \$621,880 in 2008.
- U.S. costs were between 4 and 9 times higher than non-U.S. costs.

The large companies surveyed indicated that on average, 4,980,441 pages of documents were produced in discovery for major cases that proceeded to trial – of which only 4,772 pages were actually marked as exhibits. The survey concluded that for every document page produced as evidence, there were 1000 document pages that were collected, reviewed and preserved during the legal discovery process. This is what the U.S. Chamber of Justice Reform presented as its 1000:1 ratio.

The survey proposed reformation of federal and state procedural rules to help control increasing litigation costs. For the purposes of this white paper, we will use the survey data and the 1000:1 ratio to help extrapolate costs and present return on investment scenarios.

Legal Discovery Process

In the United States, discovery at the civil level is very broad and involves content that is “reasonably calculated to lead to admissible evidence”. Discovery is the legal process of identifying and reviewing all evidence that might possibly be relevant and to bring forward the actual evidence that is determined to be admissible. Parties involved in the litigation may need the court’s assistance to compel litigants to produce

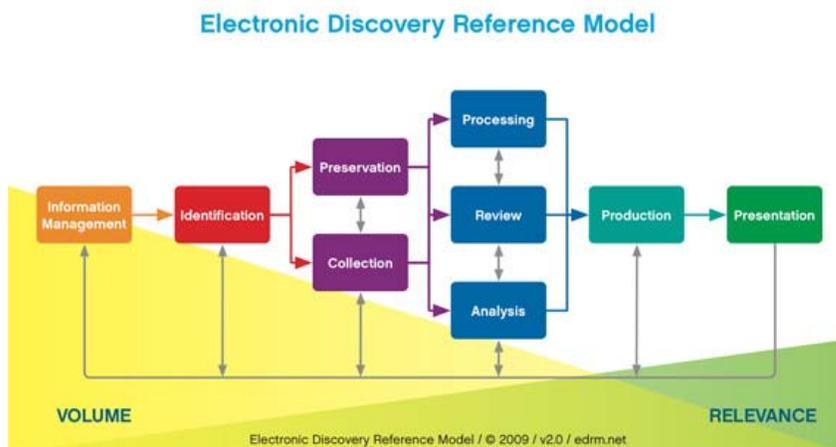
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ROI of Records Management for Legal Discovery

materials such as emails, contracts, financial records, letters, and other forms of correspondence.

When it comes to electronically stored information, the discovery (or e-discovery) process is even more complicated as the information can be voluminous, and it can be extremely difficult to filter for relevancy. Adding to the challenges is the proliferation of information – frequently duplicative - throughout often disparate systems within the organization. Electronic information can be unstructured, and with the advent of social media, can reside in unpredictable locations that are difficult to control and govern. As complication and complexity increase, as does expense to the discovery process.

Below is a diagram of the Electronic Discovery Reference Model created by EDRM.net, an association of lawyers, information technology suppliers to the legal industry and consultants. This model provides a conceptual view of the discovery process, and aims to establish guidelines to mitigate risk and expense.



The first box is *Information Management*. This refers to the establishment of records and information management systems

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to assist in the process. *Identification* refers to the locating of potential sources of relevant information, and assessment of the potential scope of the discovery process. The right side of the model has historically received the most focus; however, courts and regulatory agencies are considering information management with increased frequency.

Collection and Preservation refers to the iterative processes of gathering the information that represents potential evidence, and ensuring that it is securely protected against inappropriate alteration or destruction. It is during these phases that well-established records and information management systems can have the most impact in mitigating cost.

Analysis and Review refers to the processes for the evaluation of the information for content and context, including patterns, topics, people and threads of correspondence. *Processing* refers to the methodology for finding and filtering relevant information, to declare to the court that best efforts were made to find all relevant evidence, and that nothing has been inappropriately omitted, overlooked, or destroyed. This is the step in the process where the 1000:1 ratio applies. With highly effective records and information management systems, the efficiency and accuracy for Identification, Collection and Analysis is greatly improved. This mitigates the time, effort and expense, and mitigates the risk that pertinent evidence may be overlooked or lost. It is reasonable to assume that such software systems could reduce the ratio to 750:1 (improve efficiency by 25%). Some legal experts claim that efficiencies from records management and e-discovery software are more often in the range of 40%.

With highly effective records and information management systems, the efficiency and accuracy for Identification, Collection and Analysis is greatly improved.

ROI Scenarios

If we model these new efficiencies to the scenarios of the litigation cost survey, we can start to understand the financial implications. Hypothetically, if each member of my legal team involved in the discovery process can review an average of 30 pages an hour, with a median internal labor rate of \$150 per hour (actual rates range of \$100 - \$650 per hour), the cost of reviewing 4,980,000 pages is \$24,900,000. With a records management software system like OmniRIM, used by trained, professional records management personnel, a 750:1 ratio results in a cost savings of \$6.225 million.

In a second scenario, the legal team processed 25 pages per hour at a rate of \$200 per hour.

The additional scenarios are more conservative.

Pages to Review	Labor Rate / Hour	Pages Reviewed / Hour	Discovery Cost - Standard 1000:1 Ratio	ROI 750:1 Ratio
4,980,000	\$150	30	\$24,900,000	\$6,225,000
4,980,000	\$200	25	\$39,840,000	\$9,960,000
3,000,000	\$150	30	\$15,000,000	\$3,750,000
2,000,000	\$150	30	\$9,999,999	\$2,499,999
1,000,000	\$150	30	\$4,999,999	\$1,249,999

It is important to note that the ROI figures are calculated for a single case. The ROI is multiplied by the average number of cases per year, for an annual ROI total. It is clear that a records and information management software solution provides a significant ROI after the first litigation on which it is employed.

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In a recent 2010 Civil Litigation Survey conducted by Chief Legal Officers and General Counsel belonging to the Association of Corporate Council, Institute for the Advancement of the American Legal System (published by the University of Denver), 485 U.S. companies of various sizes responded with details regarding litigation activities. Of the total, 25% averaged more than 20 cases per year, 10% averaged 10 - 20 cases per year, and 15% reported 5 -9 cases per year. More than half the respondent companies indicated that they were involved in more than 5 litigation cases per year.

Pages-to-Review	ROI—1-Case 750:1-Ratio	Annual-ROI— 5-Cases-/Yr
4,980,000	\$6,225,000	\$31,125,000
4,980,000	\$9,960,000	\$49,800,000
3,000,000	\$3,750,000	\$18,750,000
2,000,000	\$2,499,999	\$12,499,995
1,000,000	\$1,249,999	\$6,249,995

The annual ROI numbers become quite compelling when viewed this way. This is even more compelling when you consider that discovery costs are increasing on an annual basis (9% per year).

Other Savings

The information provided above gives clear, concise examples of hard dollar cost savings that can be accomplished by the effective implementation and use of records management software. However, there are additional efficiencies to be gained that fall outside of the review process. The human resource element involved in implementing and maintaining a defensible legal hold can be significant. A records management

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software solution not only reduces the amount of relevant information, but offers a method of automation that alleviates the need for human intervention to manually execute workflows and apply the organization's retention policy. Keys to defensibility are the application of repeatable processes, demonstration of consistent application of policy, and the ability to document decisions and exceptions. A properly utilized records management system can close the gaps in this regard and thus, result in tangible, definable cost reduction, along with providing additional, more ambiguous, protections from potential risk and liability.

Records management software addresses comprehensive information lifecycle management – from creation to disposition, including retention management. This is particularly important during the e-discovery process. The duty to preserve arises when litigation is anticipated or “reasonably” anticipated. It is at this time that all retention activities on relevant information are suspended. It is important (especially for organizations subject to frequent litigation) that the retention “clock” be resumed at the earliest opportunity once the litigation is over and/or the need to preserve no longer exists. The over-retention of unneeded information may result in the need to locate, preserve, collect and analyze stale data in future litigation and thus incur additional expense. A records management software offers the ability to track and automate these types of activities, and provide visibility to relevant parties via direct access or reporting capabilities; thus, providing adequate information for practical decision making.

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Conclusion

This 2010 litigation cost survey helps us model the ROI for records management software with strong legal discovery features. As the software impacts productivity and efficiency, discovery costs are reduced by 25-40%. Risk mitigation is also an important aspect of the ROI, as completeness and accuracy of matter-relevant searches for discoverable information are also improved. For companies in litigious industries, a good records management software package has a fast and compelling ROI.

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Orrick has 23 offices in 8 countries worldwide, and provides counsel to financial institutions, public and private companies, emerging businesses and state and regulatory bodies on the

largest and most complex corporate transactions, novel finance, litigation and tax matters.

About Archive Systems

Archive Systems delivers products and services that enable organizations to manage paper and digital documents on-site and off-site throughout their lifecycle. The company provides a bridge to a paperless future by uniting traditional records management services with cloud-based Virtual File Room technology.

Archive Systems is changing the way the world manages documents. For more information, please visit www.archivesystems.com.

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