

A Starting Guide To Choosing A Hosted Review Solution

Document Review

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Document review (also known as **doc review**) is a task performed by attorneys in anticipation of legal proceedings or during the discovery phase of litigation. Document review requires attorneys to assess the relevance and/or responsiveness of documents, using knowledge about the facts of the case and the issues of law. Later stages of document review (sometimes called privilege review or second level review). Also to consider whether a document is privileged (on the basis of attorney-client communication and/or work product) and may be either withheld from production or redacted for content based on requirement and relevance. Some law firms also utilize document reviewers to do more substantive work, depending on the experience and requirements of the case. The actual review of the documents is performed either electronically (e-mails, files, scanned copies of documents) or manually.

Document review is often performed by temporary, or contract attorneys. The hourly rate for such attorneys depends heavily on the metropolitan area, region in which the project is located, the particular client for the project, the agency which staffs the project, and law firm performing the review.

Review Methods

The **linear method** is a *traditional* review of documents within an electronic discovery review platform. This means that the legal team, review team, or investigators, will look at one document after another, ordered by date or keyword relevance. The files are lined up in an order and the review proceeds from beginning to end. When dealing with paper this approach was necessary since reorganizing and re-filing the paper was not feasible. This approach is sometimes used with electronic files – for example, reviewing all documents from one custodian in their original order.

A **non-linear review** provides review sets that are populated based upon the content of the files. This allows the reviewers to specialize on topics or prioritize the content they review, leveraging the use of technology to increase the efficiency, cutting down time and thereby reducing costs. Regardless of the approach used, Service Providers can suggest the best practices to accomplish the review in the most efficient manner. Whether files are organized within each custodian or across an entire collection, dynamic methods for reviewing can use the content of the files to categorize them. For example the files for a key custodian can be reviewed in chronological order to see the storyline of that witness' involvement in case activities. More sophisticated options use conceptual searches to find similar documents and segregate them for review - whether in physical folders or by tagging the documents in the review program.

Native Review with Metadata

The files are opened for review in their original source format such as Word, Excel, Outlook, etc. From a practical aspect, the advantage to this format is that the reviewers see the file as was originally created, hidden data as in Excel formulas or links are displayed, the content of the files are fully available, and the cost for promoting to review can be less.

The cons of this method is that certain review platforms do not have a built-in native viewers which means the review will take longer, since every file needs to be opened in its original program. If you are doing a native review, confirm with your Service Provider that their platform has a native viewer to avoid viewing delays.

TIFF Review with Metadata

The files are run through a program that "prints" them to an image file instead of printing paper. These images appear exactly how the document would print when originally created. The advantage of this format is a faster review without requiring any special software other than the review program.

The drawback of this method will be the cost – many Service Providers charge to create images for review. Unless the non-produced relevant documents are going to be imported into a litigation support program or used further in the case, that expense could be unnecessary. Additionally, depending upon the use of culling and filters, the amount of non-responsive files can be considerable - so the expense can outweigh the value of reviewing images.

TIFF Review with a link to Native

This method provides a TIFF files for review that results in speed of review as well as a link to the native file format which is required for further evaluation of the hidden or suppressed data. In addition you will need to select one of the two approaches for your review: linear or non-linear.

TIFF processing (Imaging)

Still widely preferred in court due to its open accessibility, tiff conversion is the accepted medium for production of responsive data.

Imaging is a process that converts electronic data to snapshot images, usually in the form of a TIFF or PDF file. Text and metadata from the document is extracted and attached to the image file in a searchable text format. The benefits of imaging are that it provides all reviewers a standard format for all documents; it also enables a faster review process and can streamline production timelines since all documents are in a production-ready state. Imaging also allows control over which metadata are produced or made available to the opposing side.

Conversion to TIFF/PDF for review provides these benefits:

- It gives reviewers a standard, locked in formatting for all documents.
- Ease of Bates Numbering.
- Easy of Redaction.
- Control over what metadata, and hidden information is produced to the opposing side.
- Documents are in a production ready state so production timelines may be reduced.
- Tiffs offer a universal way of viewing the data across groups.
- In most cases, reviewing tiff files are much faster than reviewing native documents. Each click opens a tiff image or an entire native document.
- Tiffs are still the standard for Productions, so the need of native documents to Tiff format is eliminated. The tiffs need only branding/redactions and they are ready to be delivered.
- It is easier to segregate privileged information.

Disadvantages of TIFF File Productions

TIFF-based productions are still very popular; however TIFF productions have a number of disadvantages compared with PDF and native productions.

- The tiff format can be an issue for dynamic documents like spreadsheets with embedded formulas or Word documents that have an array of track changes and macros.
- Spoliation of documents can occur during tiff processing.
- Metadata Not Retained in TIFFs.
- Cost of TIFF Conversion and Load File Creation.

Production in Native File Production

Some practitioners pursue discovery in **native file format**, the original file format in which the electronic file was produced, such as the Word, Excel or Outlook etc. This has become more popular per the new federal e-Discovery Amendment which enables the requesting party greater leeway in document requisition and associated files in native format.

Native review provides these benefits

- It saves the time and expense of converting the entire dataset to TIFF/PDF prior to review, thereby saving the cost of imaging documents that are not going to be produced.
- It allows one to see and review data that may not appear in some types of images such as tracked changes, formulas and hidden rows or columns.
- It ensures that potential spoliation from inadvertently opening a native file is eliminated.
- Faster processing time.
- Reviewing more dynamic documents like spreadsheets is preferable in native format.
- Spoliation of data is not an issue with native processing.

Disadvantages of Native File Format Production

- Harder to authenticate and requires several viewer applications, so will require additional software to acquire and maintain.
- Click-through for each document is significantly slower than when in tiff format.
- Difficulty in Bates Stamping at the Page Level.
- Inability to Easily Redact.

Choosing a Review Platform

There are no clear cut rules surrounding the choice between native vs. TIFF. Rule 34b of the Federal Rules of Civil Procedure states *"A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request."*

This would seem that parties would be required to produce natively, but the courts have long accepted alternative formats, including TIFF/PDF images as long as the text of the documents is provided in a searchable format. In *Zakre v. Norddeutsche Landesbank Girozentrale*, 2004 U.S. Dist. LEXIS 6026 (S.D. N.Y., April 9, 2004), the court addressed the right to request a certain file format. The court found that the defendant was not obligated to provide more than a text searchable format.

The native vs. TIFF/PDF decision may be driven by the requirements of your production. If the requesting party has asked you to produce in a native format, it may not be a wise choice to convert everything to TIFF/PDF first, only to have to revert back to the native format for production purposes.

On the other hand, you might have more control over your production if your images are in a uniform converted format.

The document review is a critical component to most litigation. At its most basic level the document review is used to sort out responsive documents to produce and privileged documents to withhold. At later stages it is the time where the legal team can begin to gain a greater understanding of the factual issues relating to a case. It is also a time where legal strategies can emerge and begin to develop based on the type of information that is found in the collection of documents. There will inevitably be different strategies implemented for reviewing documents in preparation for production versus documents produced by opposing counsel; however the common thread is the need: (a) to understand the scope of the review, (b) to put in place supervision and procedures for managing the reviewers and (c) to select the appropriate vendor, tools and platform for the review.

A meet-and-confer conference between the parties should be conducted early on in the planning stages to make these decisions. The proposed change to the Federal Rules of Civil Procedure 26(f) states that these initial meeting are to include discussions and decisions on matters pertaining to electronically stored information (ESI). Topics to be determined include preservation of ESI, the form of production for the ESI, and approaches for asserting privilege and work-product protection claims. Each of these decisions impact the planning of the document review

There are many factors that need to be considered when selecting a third-party vendor for the review portion of your electronic discovery project. Optimally, the vendor requirements are detailed during the initial planning phases of the project and the vendor of choice is involved in or possibly even charged with the collection, forensic analysis and restoration portions of the project. The more involved your vendor of choice is in the overall development and execution of the project, the smarter and more prepared they will be regarding your needs and requirements.

There are several high-level choices to be made when examining a review platform the for your document review. Should you go with a native format vs. a TIFF/PDF format or should you perform the review through an online system or on an in-house platform? Other factors to consider include the functionality available within the platform, IT issues and cost considerations as well as vendor reputation, reliability, scalability and security. It is always helpful to get the Service Provider to be involved in the process of examination of these areas and to provide you with tools and guidelines that will assist you in making an effective decision.

As there will always be a need for TIFF and native processing options, the primary consideration for the legal team is to know the type of data being collected for review.

Every case merits a customized review solution and needs to be well planned from the infancy stages of the case. Early planning and selection of the appropriate review tool will equate to saved time, energy, effort, and money further down the line.

Questions to ask??

1. What type of data will be hosted?
2. How big is the data population that will be hosted?
3. Will the review be linear or dynamic?

4. Will the case team need to be performing redactions, documents markups, or image highlighting?
5. What review efficiencies are built into the review platform?
6. What type of security does the data set require?
7. Who will administer, train, and support the user base?
8. How many people will need a user license to access the database and review?
9. What rights will be given to the user base?
10. How will you handle document productions?
11. How long will the database need to be online?
12. What type of internet connectivity and operating systems does your firm have available?

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