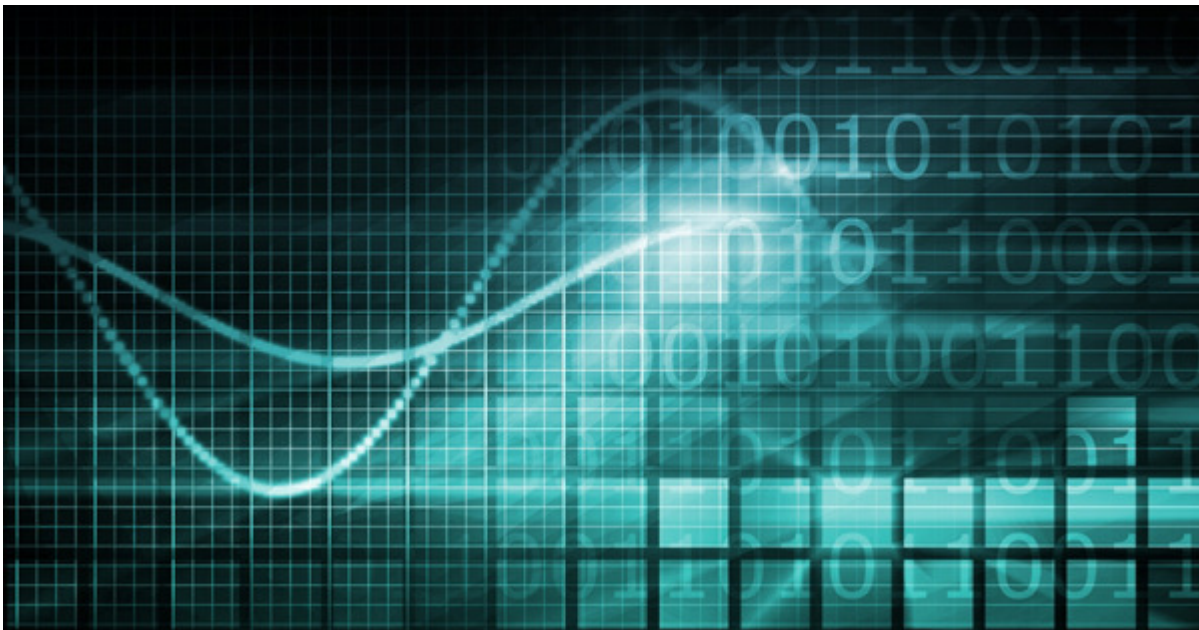


# New Trends Shape Ediscovery Protocols

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Each day, companies generate massive amounts of new data that must be classified, archived and made easily searchable in order to meet increasingly stringent corporate compliance guidelines and legal issues. Saving it all sounds like the safest, easiest way to go, but storing hoards of data can make electronic discovery a nightmare, not to mention extremely expensive.

The challenges created by this proliferation of data have given rise to a number of trends—both good and bad—that are shaping the future of ediscovery. As requirements grow and systems evolve to meet them, enterprises must stay on top of the latest developments in order to avoid getting caught unprepared.

## **Predictive coding a.k.a. automated document classification**

Predictive coding, or automated document classification, (depending on which vendor you are talking to) combines human review with technology to tag documents and train software to recognize those which must be preserved.

This ongoing process can dramatically reduce the time and costs involved in document classification.

However it's not without caveat. To be effective, this methodology presupposes that the proper document custodian has been identified and that the data has been bucketed properly from the get-go.

Unfortunately, such systems are not being implemented at the enterprise level, but instead at the matter level and typically only for those documents that are collected as likely targets. Everything else is being ignored. While this is a step in the right direction, the model must be expanded and adopted on a broader scale in order to truly be effective.

## Getting a handle on data

To deal with the glut of data, more companies are bringing in utilities that can help them get a handle on their data. Implementation of software platforms that give some degree of legal document review internally is growing.

As an unwelcome side effect, this has created yet additional silos of data and documents that must be reviewed, classified and preserved purely for legal purposes, with little to no consideration for a bigger-picture approach to records review and compliance.

## More engaged court systems

The court systems are becoming more engaged with how the industry is handling these massive volumes of data and how these systems will affect cases. In late September, chief judge Randall Rader of the U.S. Court of Appeals for the Federal Circuit unveiled a new Model Order for the governance of ediscovery in patent cases that essentially imposed limiting provisions on the ediscovery process.

The Model Order basically excludes metadata collected without due cause, limits email production requests to the specific issues at hand, limits the scope of requests to five custodians and no more than five keyword search terms per custodian and the relevant timeframe for such requests, among other provisions. This action in the context of patent cases will no doubt soon make its way across the legal landscape, paving the way for yet another new set of protocols for the industry as a whole.

## More silos

These piecemeal requirements for ediscovery are creating more and more silos. As the scope of compliance guidelines grows, so too does the range of disparate types of data that are making their way into the corporate environment.

Multimedia files, including video, images, audio and gaming/app files, have introduced an entirely new set of challenges that will likely worsen as these become more ubiquitous. The snowballing situation demands a more unified approach to compliance-quality records management, archival and ediscovery that breaks down these silos and streamlines the entire process.



## Holistic approach to data management a necessity

We must adopt a holistic approach to data management. While growing challenges with ediscovery are becoming the pain point, the solution lies further up the chain. Enterprises must begin to take a more measured, holistic, systematic approach to records management in order to solve problems with ediscovery.

The old adage, “Garbage in, garbage out,” applies perfectly here; only in this realm, the garbage is costing corporations millions of dollars each year.

The data produced is only as good as the system for classifying and storing it. And, more importantly, the ability to retrieve data in a timely manner, knowing that you have retrieved what you should have, and purged information (absent a legal hold) that either has 1) no business purpose or 2) passed its useful lifecycle is critical.

To get the most value and protection out of ediscovery, begin with a unified strategy for data management. A unified strategy looks at records, compliance (when appropriate) and legal from a holistic approach.

## The holistic approach

So, what would a holistic approach to ediscovery look like? At its core, the best solution is a single application that provides utilities that meet the needs of legal, records and compliance. This solution must be cost-effective to deploy and administer, and must fulfill the following roles:

- **Legal**—with true end-to-end ediscovery that keeps data in-house until production, including automated legal hold processes that save time and money on review, the ability to refine search as you go rather than just take “one bite of the apple,” establish digital chain of custody and provide a single application to meet legal holds, ECA and review requirements.
- **Records management**—with DOD5015 compatibility in a scalable solution that accommodates the management of many data types from a single platform with automated and manual declaration of records through a variety of means: from email client, file systems, end-user, archive access, etc.
- **Compliance**—including auto-promotion, targeted review and release capabilities with pre-review, advanced sampling and advanced supervision capabilities with built-in transparency, flexible and granular with rules and policies and a powerful, lexical engine to automatically classify messages for review.

The bottom line is that without a unified system in place, ediscovery will not only cost more and take more time on the search side of the equation, but the cost to catalog, archive and store massive data sets will also increase dramatically over time. Implementing a comprehensive system today will save time, money and headaches down the road.

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### About the Author

**Linda G. Sharp** is associate general counsel at ZL Technologies. An experienced attorney and ediscovery consultant, she is a frequent presenter on the topics of records management, compliance and ediscovery. Ms. Sharp has her MBA and is licensed to practice law in the state of California.

