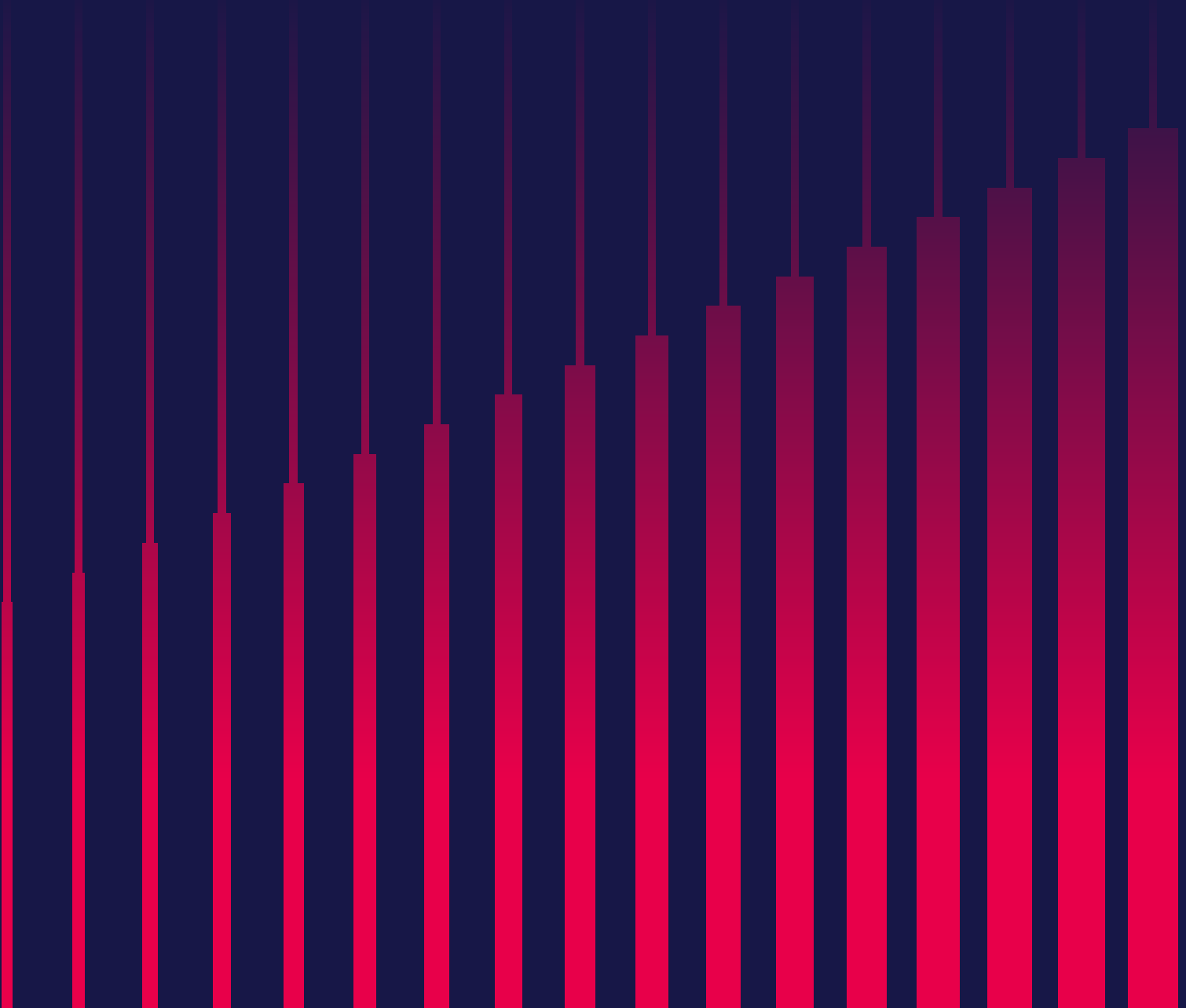




Optimizing Litigation Discovery Through KPIs



Imagine what could be gained if corporate litigation leaders were empowered to make better decisions about each matter.

Identifying and managing key performance indicators (KPIs) allows legal leaders to constantly optimize the discovery process and gain ongoing efficiency, at scale. In identifying metrics that matter, leaders can build on their existing discovery programs, while adhering to the business imperative for cost efficiency. In this white paper we define the top five KPIs and provide a way forward for leaders to gain 30-50% in financial savings, while building a best-in-class discovery program.

Discovery is central to every litigation as parties search for evidence in support of their case. Imagine what could be gained if corporate litigation leaders were empowered to make better decisions about each matter—leveraging metrics that matter to find the right information, faster, and at scale across all matters. Evaluating the following KPIs provides an advantage to law departments looking to strategically measure and manage discovery and its impact on cost:

- 1. Collection of Relevant Data**
- 2. Promotion Rate**
- 3. Data Relevancy and Re-Use**
- 4. Effective Review Speed**
- 5. Review Geography**

Practitioners understand litigation costs are steadily rising and usually constitute the largest line item in the corporate law budget of any given Fortune 500 company. Less obvious is precisely where and how all those budget dollars are flowing, making it difficult to identify the critical steps required to increase efficiencies and cost-effectiveness.

By tracking KPIs across the discovery process, legal departments are better positioned to save time, resources, and significant expense because these factors can inform decisions made regarding data. Enterprise leaders can evaluate key metrics of performance across the process on a real-time basis, including accurate measures of promotion rates, data relevancy and re-use, and Document-Per-Hour review speeds, which if left unchecked can dramatically increase costs.

Acquiring a clear view into the discovery process and associated costs across matters enables legal teams to not only transform the way litigation services are provided and procured—it transforms how the discovery process is managed.

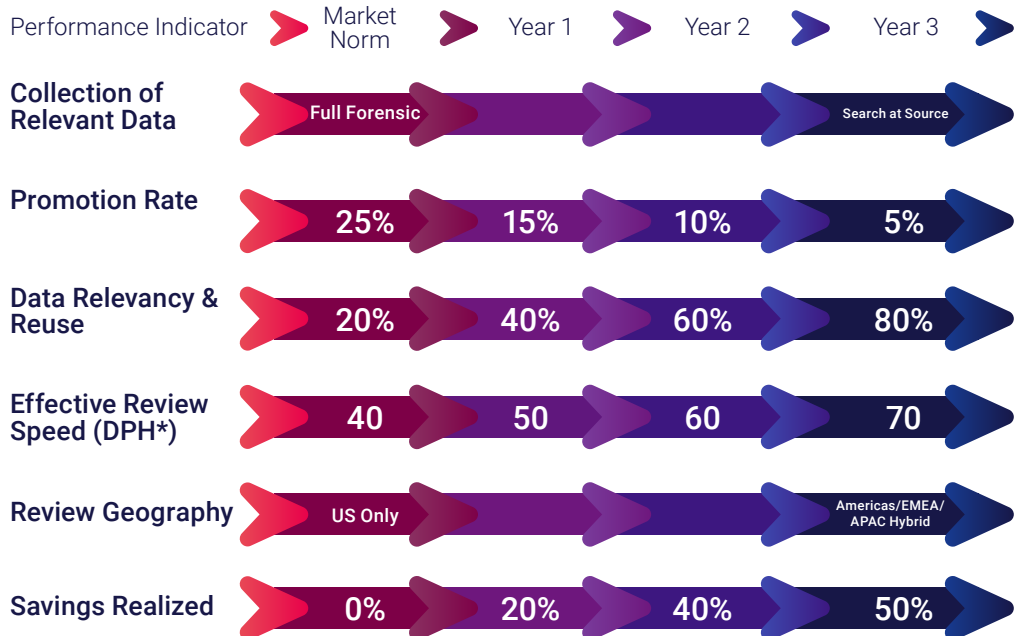
Discovery Benchmarking

As part of determining how an end-to-end discovery process is performing, legal departments must utilize assessments and benchmarks to define and identify areas of high risk or cost. Discovery benchmarking measures each KPI and pinpoints performance, providing valuable insight regarding where to optimize and improve the important processes of discovery.

Discovery benchmarking scores the state of each discovery function, measuring the level of program maturity and optimization: 1) whether the teams is aware of the function; 2) whether the process is currently repeatable; 3) whether the process is well defined; 4) whether the function is managed and monitored; 5) whether the discovery process is optimized and integrated into the overall discovery program.

Metrics That Matter: Key Performance Indicators

KPIs provide a framework to determine how effectively a company is meeting crucial business objectives. For litigation, specifically discovery, this means taking a targeted approach towards the data itself. Discovery KPIs must focus on an end-to-end discovery program that outlines success criteria from traditional forensics and collections, to early case assessment, document promotion rates, evaluation of data relevancy and reuse, and attorney review speed (see figure).



As companies focus on digital transformation in the wake of ever-increasing data volumes, process optimization, and technology, deployment of these five KPIs is the key to success. Determining what should be measured, and how to quantify it rigorously and consistently over time, allows for a holistic approach to the process.

However, many legal stakeholders focus on the amount of data processed rather than on the entire discovery process itself. In doing so, companies waste valuable time and resources on less impactful analysis. The downstream effects of time spent sifting through volumes of data or negotiating the lowest price per hour does not have the same high-value impact as optimizing workflows to efficiently measure what information matters the most.

These KPIs break down the end-to-end discovery process into constituent parts so that each sub-process can be tracked and measured, giving managers visibility into what is—and is not—being accomplished. Deploying one or a few of these goals will move the dial in the right direction. Deploying all five KPIs will create a holistic, programmatic approach that leads to efficiency gains and cost savings across the board.

Collecting Relevant Data:

The traditional standard in discovery is to conduct full collections by replicating all accessible data from every digital device and business application. Repeated full collections over time cause data volumes to rapidly soar, which impacts cost and creates an unnecessary risk of over-collecting unneeded data. Full collections previously made sense when data volumes were smaller and limited to workstations and email, but with a significant increase in data volume and complexity of sources—including mobile and cloud—data is everywhere.

In order to dramatically improve collection strategies, preservation experts should conduct defensible search-at-source targeted collections by identifying relevant custodians, and replicating only those specific directories, business applications, and repositories that contain relevant information within the timeframe important to the litigation. Search-at-source targeted collections take less machine time to execute, provide meaningful insight to data landscapes, and enable speed to data by reducing the overall volume of records to be processed and ultimately reviewed.



KPI: Measure collection sizes across projects based on the shift from full to targeted collection in order to collect relevant data, reduce overall collection size, and control downstream costs and time.

Promotion Rate:

The seemingly impossible deadlines in litigation discovery can often encourage speeding from collections to the document review stage as quickly as possible. But at what cost? By encouraging significant data reduction through technology and process-driven data culling, a targeted and highly relevant promotion set can be determined before review begins—without sacrificing critical deadlines and creating significant cost savings throughout the lifecycle of discovery.

In order to achieve maximum cost-benefit with a lower rate of data promotion, it is necessary to use more sophisticated tools that categorize and gather documents specific to the case, while defensibly excluding unrelated materials. These tools may analyze communication between witnesses, assist with building case timelines, identify key documents earlier in the process, and provide search term analysis and refinement before agreements have been made in court.

Utilizing traditional data culling tools prior to promotion involves running a set of search terms against an entire data set to typically reduce the number of documents by 70 to 75%. Encouraging use of the advanced culling techniques and processes as discussed above provides key data reduction strategies that leave a rich population of highly relevant data for immediate analysis by counsel—leading to more time to prepare for the key stages of litigation and closer to a 90% data reduction prior to review so that only 5% to 10% of the documents are promoted.

Over time, these methods are perfected, tools are updated, processes are made more efficient, and the number of documents promoted for hosting and review drops—resulting in significant speed to legal intelligence and a measurable performance indicator for program health and overall cost savings.

KPIs enable law departments to have visibility and control that drives informed decisions.



KPI: Reduce data by 90% or more by utilizing culling tools and substantive matter consulting to decrease the number of documents promoted to review.

Data Relevance & Reuse:

How many times has the same custodian been processed for a different matter? How often is that data stored for each matter, resulting in double or triple payments for the same information? Tracking all collected data at the original source can determine potential relevancy to multiple matters, avoiding the risk of re-collections, refresh collections, or potential spoliation.

Program-level tracking can assist in quickly determining the potential for data reuse, even for matters requiring collections spanning many years, or for key company officers that can be difficult to collect from. Data reuse will save the cost of re-collecting or re-processing the same data while also avoiding potential disruption to key stakeholders that can be subject of multiple litigations. Through these measures, relevant data is identified for reuse and increases the overall responsiveness rate for matters.



KPI: Use workflow and technology tactics to increase data reuse and move toward a target relevancy rate of 80 percent.

Effective Review Speed:

Document review can be the most expensive phase of discovery, with the industry average for effective review speed at 35 to 40 documents-per-hour (DPH). However, review speeds in excess of 70 DPH can be achieved by integrating analytics, technology, client-driven management and oversight techniques, and other advanced review processes into workflows to drive efficiency. This can be accomplished by leveraging a review strategy that combines workflow accelerators including Search Hit Only (SHO) and Single Instance Review (SIR), as well as utilization of the latest Technology Assisted Review (TAR) and Continuous Active Learning (CAL) techniques. By assessing the data for review, as well as the coding decisions that must be applied, companies can create a review strategy that maximizes technology and workflow efficiencies in order to improve review speeds, while also maintaining high-quality work product.



KPI: Using matter consulting, technology, and workflow efficiencies, attain effective review speeds of 70 DPH or greater.

Review Geography:

It is increasingly critical to take a global approach to discovery. Having global legal resources available enables discovery to proceed around the clock to maximize time utilization and meet challenging deadlines. Clients have continuous support from the review and technical teams, which can be extremely beneficial when important needs arise during a matter. Additionally, by leveraging skilled legal reviewers in multiple geographies, companies can take advantage of competitive local rates, which is key to reducing overall cost.



KPI: Utilize a global approach to discovery, maximizing local rates and time zones to control costs and increase speed to data.

Real-World Impacts

Determining discovery benchmarks and integrating KPIs into the discovery process, are critical and effective steps to making informed decisions and tracking results. Regardless of the industry, legal teams can transform their delivery by focusing both on the current status and desired outcomes to build a right-sized program that suits their needs. By starting with an assessment phase to benchmark current processes against the five KPIs discussed above, a client will be empowered to design an enhanced program and execute an agreed upon framework, while maintaining total visibility and oversight. This model has been proven across industries and client initiatives.

Consider this real-world example.

Discovery Program Management

Facing a rapidly growing litigation portfolio, the CEO of a multinational medical equipment manufacturer tasked the legal department with reducing spend by 10% in 12 months. At that time, legal was unable to distinguish litigation or discovery spend from overall department expenses and was suffering from a dysfunctional integration between internal HR, IT, and risk teams.

Engaging an end-to-end legal services provider, the company identified areas of risk and opportunities for cost savings, as well as benchmarked their current discovery processes against industry standards and best practices. Benchmarking current processes using KPIs also enabled the team to establish baseline metrics to track year-over-year goals and implement specific recommendations for future action.

KPIs provide a framework to determine how effectively a company is meeting crucial business objectives.

Based on this strategic action plan, the company was empowered to make more informed decisions to better manage litigation and control costs. First the team started using custodial identification interviews to perform targeted collections, instead of defaulting to a full forensic image in litigation. After collection, the team leveraged consultant-led data reduction methods to achieve a 97% cull rate before engaging a document review team. For document review, the strategic discovery plan called for a right-shore review model (leveraging off-shore resources to the extent possible), while ensuring knowledge management to reuse privilege coding and guidance regardless of where the review was performed. These steps, as well as utilizing analytics and advanced workflows, led to increase review speeds from 40 DPH to an average of 70.

These data reductions and increased efficiencies from the strategic action plan were tracked on a real-time basis and were transformative in reducing cost. The company achieved a seven-figure reduction in six months and exceeded the 10% cost savings goal in less than 12 months.

Conclusion

In numerous success stories like this, KPIs were leveraged to first measure and then manage discovery programs. The ability to track and review metrics from specific KPIs enables law departments to have visibility and control that drives informed decisions. Using advanced digital technologies and activating KPIs throughout the discovery process can work as a force multiplier for cost savings across litigation which ultimately will have a positive impact on the business.

With unpredictable and rising costs, litigation is one of the largest line items in the corporate legal budget. By quantifying your legal spend and establishing key cost and efficiency metrics—not simply reducing billable hours and unit rates—UnitedLex transforms how legal services are procured and delivered.

We combine technology, legal expertise, and process innovation to achieve lower total cost and higher operational performance throughout each phase of the litigation, investigation, and regulatory lifecycles.



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With more than 3,000 legal, engineering, and technology professionals globally, UnitedLex enables legal organizations to thrive in the Digital Age.