



WHITE PAPER

Adapting to the Curve: eDiscovery Strategies for a Changing Regulatory Landscape

By Austin J. Hagen
VP, Operations, Proteus Discovery Group

A Letter from the Author

Dear Colleagues,

Last year, the Association of Corporate Counsel (ACC) published an annual survey that showed General Counsel and Chief Legal Officers are increasingly focused on managing regulatory complexity and meeting rising operational demands with limited resources.

At Proteus, we operate at the intersection of litigation, investigation, and technology. We have seen firsthand how ephemeral messaging, bring-your-own-device policies, and emerging AI capabilities are prompting legal departments to reevaluate how they approach discovery in increasingly complex regulatory environments.

Our team is composed of litigators and technologists who recognize that eDiscovery is rarely a legal department's highest priority. However, when managed poorly, it can disrupt broader strategic and operational objectives. This paper outlines recent regulatory guidance, common pitfalls, and actionable steps to help legal teams approach eDiscovery with greater confidence and control.

Sincerely,

Austin J. Hagen
Vice President, Operations
Proteus Discovery Group
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Executive Summary

Regulatory scrutiny is intensifying. In the ACC survey, 53% of GCs said they were most concerned about “regulations and enforcement”, while 40% prioritized operational efficiency as a strategic initiative. Legal teams are expected to achieve more with fewer resources, while remaining compliant, efficient, and defensible

This white paper highlights practical steps and emerging risks in discovery workflows – from ephemeral messaging to short message formats, AI in review, and centralized data control. These insights are designed to help both corporate legal teams and their outside counsel partners proactively manage risk, reduce cost, and maintain control in today’s regulatory environment.

“This preservation responsibility applies to new methods of collaboration and information sharing tools, even including tools that allow for messages to disappear via ephemeral messaging capabilities.”
– Henry Liu, FTC Bureau of Competition

1. Data Preservation in a World of Ephemeral Messages

In January 2024, the FTC and DOJ jointly issued guidance that elevated expectations around the preservation of short message and collaboration data, including Teams, Slack, Signal, and Telegram. These updates closed the door on claims of ignorance or technical impossibility. Regulators now expect proactive policy enforcement, especially in organizations with bring-your-own-device (BYOD) environments.

Key focus areas for regulators include:

- Whether a company has policies prohibiting business use of ephemeral messaging.
- How consistently those policies are enforced.
- How exceptions are handled, documented, and remediated.

Practical Actions:

- Audit your current policies and ensure they explicitly prohibit or control ephemeral messaging for business use.
- Expand legal hold language to include modern messaging platforms.
- Collaborate with IT to understand what is technically feasible for device access, backup, and preservation.

2. Data Privacy and Targeted Collections

While emerging state-level privacy laws (like CCPA, CPRA, and others) do not override litigation obligations, they influence custodian attitudes. Many custodians are increasingly privacy-conscious, especially when asked to turn over mobile devices or personal content.

Some legal teams have turned to “targeted collections” as a privacy-preserving solution. However, this approach brings risks. For example, applying filters before collecting data from Microsoft 365 can result in missing responsive documents due to the way attachments and threads are indexed.

Guidance from the Trenches

- For high-value or expanding matters, a full forensic image can offer defensibility and future flexibility.
- Targeted collections should be reserved for clearly scoped matters with low complexity and minimal likelihood of expansion.

3. State vs. Federal Agency Expectations for ESI

Federal agencies have long had rigorous eDiscovery protocols. The FTC, SEC, and DOJ all provide clear formatting expectations and aggressive production timelines – especially under Second Requests in merger investigations.

State agencies, by contrast, are still in the process of aligning their approaches. Their influence, however, continues to expand. A [2024 Law360 report](#) identified more than a dozen AmLaw 100 firms that have launched State AG practice groups in recent years, signaling the rise of state-level scrutiny.

Tips for Managing Government Productions:

- Centralize oversight and build in time for multiple QC layers.
- Treat state productions with the same level of diligence as federal standards are catching up fast.
- Proactively request production specifications in writing and confirm before delivery.

4. Driving Operational Efficiency in Legal Holds and Protocols

Legal Holds

Many legal teams continue to rely on Excel for managing holds, which is prone to human error and lacks defensibility. If you are on Microsoft 365, explore the Compliance Center. Otherwise, evaluate tools like Relativity Legal Hold.

Best Practices:

- Track custodian acknowledgment electronically.
- Document hold releases promptly.
- Automate reminders and escalations when possible.

Case Law Reminder: Courts frequently defer to the producing party's methodologies when defensibility is adequately supported. Early agreement remains essential to avoid unnecessary conflict.

ESI Protocols:

Whether to negotiate an ESI protocol is a matter of debate. At Proteus, we generally recommend negotiating a protocol, though we encourage a measured approach. Over-engineered protocols can backfire. At a minimum, clarify:

- Scope of preservation.
- Production format and metadata fields.
- Claw-back agreement under FRCP 502(d).

5. Generative AI in Doc Review: Emerging Strength with Human Oversight

Generative AI is rapidly transforming how legal teams approach document review. Modern AI tools can now summarize documents, identify key entities, parse short-message formats, and detect patterns across large and diverse data sets.

These capabilities enable faster triage, earlier insight, and more focused downstream review. In particular, legal departments are using generative models to:

- Surface potentially relevant documents for human validation
- Generate short summaries and privilege flags
- Analyze chat threads and ephemeral communications with improved contextual awareness
- Support multilingual review

Human Oversight Remains Essential

Despite its utility, Generative AI does not replace professional judgment. It introduces risks around hallucination, inconsistency, and defensibility—especially in high-stakes litigation or regulatory matters. For these reasons, AI outputs are best treated as directional. Legal teams are finding the most value when pairing GenAI with structured workflows and experienced reviewers who validate decisions and ensure defensible results.

Best Practices:

- Deploy AI for prioritization and early case assessment, not final decision-making
- Involve experienced professionals to interpret AI outputs and apply legal judgment
- Disclose AI use when appropriate, particularly in regulatory or government-facing matters
- Design workflows where technology enhances—not replaces—human expertise

Generative AI has become a powerful force in modern discovery. Its value is realized most fully when used to amplify the insight, experience, and judgment of legal professionals.

6. eDiscovery Hosting: Regain Control of Your Data

One of the costliest mistakes corporate legal teams make is deferring hosting decisions to outside counsel. This often results in:

- Fragmented data across multiple vendors.
- Inconsistent pricing and lack of economies of scale.
- Little to no visibility for in-house legal ops.

Many legal departments engage multiple law firms yet lack visibility into the even larger number of eDiscovery vendors managing their data behind the scenes.

Recommended Models:

1. eDiscovery Provider with MSA: Predictable pricing and centralized access.
2. Direct License+Project Management: Full control over access, analytics, & spend.

Security Tip: Every vendor has a different posture. Choose partners who are SOC 2 certified and experienced with IP, PII, and cross-border compliance.

Conclusion

Regulatory discovery has grown more complex, and more navigable for legal teams who plan, choose the right tools, and maintain visibility over their data. From ephemeral messaging to emerging AI, today's discovery challenges require practical policies, transparent workflows, and expert guidance.



Austin J. Hagen

VP, Operations

Proteus Discovery Group

austin.hagen@proteusdiscovery.com

About the Author

Austin leads the client services team, overseeing the strategy and execution of forensics, ESI hosting, and managed review. His 15 years of eDiscovery experience include project management, training, and consulting.

Austin is responsible for process creation and documentation, workflow automation, and ensuring Proteus' growth is geared to maintain the white-glove service Proteus clients have come to expect.

Proteus Discovery Group was founded by litigators who have lived these challenges firsthand. We offer technology-enabled services that combine cutting-edge tools with human judgment—so your team can stay compliant, focused, and in control. [Get in touch.](#)