



eDISCOVERY FOR SECOND REQUESTS

SIDLEY

Track Record of Success

Sidley's eDiscovery Group has led compliance for Second Requests on transactions totaling more than US\$230 billion in value. Our eDiscovery team is widely recognized for our successful track record representing large companies in high-profile antitrust matters. Our *Chambers*-ranked eDiscovery practice, which includes multiple individual *Chambers*-recognized practice leaders, routinely advises clients in a wide array of industries on issues ranging from investigation and prelitigation readiness through trial.

We effectively adapt to the challenges involved with antitrust engagements because our lawyers bring their vast experience and skills, including Six Sigma certifications, understanding of structured database and programming, and a deep knowledge of data science and statistical methods. These skills complement our legal experience and have become increasingly important as competition regulators have grown more aggressive in negotiating the use of advanced technologies to streamline discovery.

A major reason for our eDiscovery team's success is that we believe successful execution requires a team-focused approach, as well as careful attention to preparation, communication, and collaboration. Because of our focus on collaboration, we are highly skilled at working with stakeholders from our clients' legal, business, and technical teams, in addition to vendors and co-counsel at other firms.

Roadmap to Compliance

Starting Early: Success in responding to a Second Request often depends on the work performed before it is ever received.

- We start early, and we work ahead. We move forward with all aspects of the review—collections, processing, review, and privilege logging—earlier than others.
- We actively engage internal stakeholders early on and on a regular basis to achieve success.

Review Team Management

- We take special care in training the contract lawyer team, as they are the first-line decision-makers for the review. We engage the contract lawyers in a continuous feedback loop to improve results.
- We staff a dedicated associate team to supervise the contract lawyers and to answer their questions in real time, and we conduct sophisticated QC processes to assess their performance.

Vendor Relationships: We have worked with nearly every established vendor and can work with anyone. The Second Request response processes that we have developed and refined over the years are not dependent on a single tool or technology and are not tied to any particular vendor.

Communication: We have found that close collaboration and open communication, especially between internal and external counterparts, is key to an efficient Second Request response. We provide clients:

- Regular cross-functional check-ins, particularly between the antitrust teams and the eDiscovery teams, are key to spotting issues early and avoiding unwanted surprises.
- Regular briefings from in-house/outside counsel to senior legal leadership, as well as from senior legal leadership to senior business leadership, help to keep expectations aligned and ensure that our clients' priorities are met or exceeded.

In short, we understand that eDiscovery is only one aspect of Second Request compliance and that Second Request compliance is only one step toward the ultimate goal of ensuring timely completion of the desired transaction. Most of all, we pride ourselves on our flexible, collaborative approach and our ability to help any Second Request team be successful.

Adapting to New DOJ and FTC Requirements

Contributing to Sidley's record of successful Second Requests is our ability to adjust our process to account for changes in agency requirements. We apply strategic approaches, such as:

- **TAR vs. Manual Review:** Over the past few years, the government has been less willing to permit multiple filtering strategies, such as a hybrid use of TAR, search terms, and manual review. Sidley has successfully negotiated with the DOJ Antitrust Division to allow a "supplemental" manual responsiveness review for certain custodians, particularly C-suite-level custodians.
- **Privilege Log Challenges:** The Division has developed scripts and searches to programmatically identify what it deems to be insufficient privilege log entries. Sidley has deep experience in addressing these challenges and has developed strategies to mitigate the risk of receiving a privilege log challenge letter, including the development of our own scripts that mirror the Division's scripts for catching potential errors.

The FTC announced it would be bringing its requirements in line with the stricter standards of the DOJ Antitrust Division, including requiring greater initial disclosures, preclearance of search methodology, and more comprehensive privilege logs. We are already seeing this firsthand.

Due to our extensive experience and flexible approach, Sidley is well-positioned to meet these challenges, as well as any future requirements the agencies impose.

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