

# Antitrust Agency Request Support: An Integrated and Organic Approach to Second Requests

*How HaystackID Helped Multiple Cannabis Industry Consolidators Rapidly Respond to Six Comprehensive Second Requests*

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## Proven Experience and Domain Expertise for Second Requests

A proven provider of eDiscovery support for FTC and DOJ Second Requests, HaystackID was especially active during a four-month period of mid-2019 when it successfully supported six separate Second Requests. These six requests required both antitrust request process experience and cannabis industry expertise in order to meet and exceed reporting requirements for the time-sensitive and comprehensive information and documentation requests.

## Second Requests: The Requirement, Task, and Prevalence

**The Requirement:** The Hart-Scott-Rodino Antitrust Improvements Act of 1976 was adopted to help the federal government avoid anti-competitive outcomes during the course of mergers and acquisitions. The HSR Act requires parties to mergers or acquisitions of certain sizes to notify the Federal Trade Commission (FTC) or the Antitrust Division of the Department of Justice (DOJ) and to provide information and documentation regarding the proposed transaction. Upon review of submitted information and documentation, the FTC or DOJ may make additional requests, known as Second Requests, before rendering a decision on the proposed transaction. (1)

**The Task:** Second Requests are discovery procedures that consist of formal requests for additional information and documentation and generally follow the framework of the Model Request for Additional Documentary Material (Second Request) as published by the FTC Premerger Notification Office. (2) While leveraging many of the technologies, techniques, and tactics used in traditional eDiscovery activities supporting audits, investigations, and litigation, Second Request discovery is different in the fact that it typically has unique characteristics that need to be considered in each case. These characteristics include but are not limited to:

- Accelerated Timelines
- A Standard of Substantial Compliance
- Disparate Data and Locations
- Support for Multiple Languages
- Need for Advanced Technologies

### *Accelerated Timelines*

From a timeline perspective, merging firms generally make premerger filings with antitrust agencies on an average of 13 days after publicly announcing the deal. (3) These filings typically trigger a 30-day waiting period that commonly results in either the early termination or natural expiration of the waiting period without additional Second Requests. However, when antitrust agencies do make Second Requests, challenged parties must work with antitrust agencies to respond to the Second Request within an acceptable time frame that generally ranges from 30 days up to five months. Additionally, once a Second Request response has been certified as compliant, a second waiting period of an additional 30 days is initiated to allow for a decision on the transaction. *Based on this accelerated timeline, eDiscovery providers to the challenged parties must be able to support all elements of a Second Request discovery project in an expedited manner or potentially expose the challenged parties to legal and financial adverse outcomes.*

### *A Standard of Substantial Compliance*

The standard for certification of a Second Request response is that of substantial compliance. Substantial compliance (4) is compliance with the significant or essential requirements of a Second Request that satisfies the purpose or objective of the request even though the formal requirements may not be completely complied with at the time of the response. This standard is unique among discovery requests in that it is time-driven and represents a qualitative best effort at compliance instead of a quantitative, time-independent approach to compliance. *Based on the standard of substantial compliance, eDiscovery providers to the challenged parties must be able to balance time, effectiveness, and efficiency to meet certification requirements for Second Requests.*

### *Disparate Data and Locations*

Given the stakes and stakeholders involved, parties to proposed merger transactions should consider detecting, identifying, locating, and planning for the collection of information and documents before a Second Request is issued. With disparate types of business data located both on-premise and off-premise at potentially multiple multinational locations, time is of the essence once a Second Request is received, and having data maps and collection plans in place will significantly increase the speed in which an organization can respond with substantial compliance. *Based on the complexity of collecting data of different types from different locations, eDiscovery providers supporting potential Second Requests must be able to quickly translate collection requirements into plans and execute those plans to inform the downstream discovery effort required to respond to antitrust agency requests.*

### *Support for Multiple Languages*

With more than 70% of proposed transactions in 2018 being greater than \$200 million in value, it is reasonable to consider that supporting foreign language discovery and review in today's business ecosystem will be a part of most Second Request response efforts for larger deals. Larger companies generally have a higher propensity for conducting business in multiple languages. *Accordingly, eDiscovery providers supporting multilingual and multilocation discovery and review must be able to assemble language-appropriate and domain-qualified review teams quickly without sacrificing quality to allow for the achievement of substantial compliance with Second Requests within the typical accelerated timelines required for responses.*

### *Need for Advanced Technologies*

With short deadlines and potentially voluminous information and documentation requests, the extensive use of advanced data and legal discovery technologies supported by expert technologists may be required to ensure compliance with Second Requests. Using advanced technologies can substantially enhance an organization's ability to have responses certified as substantially compliant as they increase the velocity at which key eDiscovery tasks can be completed. This capability is vital given that HSR Act violations currently have penalty maximums of \$42,530 per day. (5) Additionally, as highlighted in the FTC Premerger Notification Office's Model Request for Additional Documentary Material (Second Request), challenged organizations are required to identify the use of selected advanced technologies or tools used for specific discovery tasks ranging from email threading and all forms of de-duplication to Technology-Assisted Review. *To comply with Second Requests, supporting eDiscovery providers not only need to be able to implement and execute tasks with advanced technologies, but they also need to be able to understand and explain the usage of these technologies to gain approval from antitrust agencies before use.*

**The Prevalence:** During 2018, 2,111 companies notified either the Federal Trade Commission (FTC) or the Department of Justice (DOJ) on Hart-Scott-Rodino reportable transactions. This number represents an increase of 2.9% over 2017 and is indicative of the increasing pulse rate of premerger notifications. Of these premerger notifications in 2018, approximately 2.2% were challenged and triggered Second Requests for additional information and documents with the challenges ultimately resulting in outcomes ranging from proposed transaction restructure or abandonment to acceptance of consent orders for public comment. *Based on the importance of Second Requests coupled with the fact that there are limited opportunities for eDiscovery providers to gain experience in this critical discovery area, it is important that companies notifying antitrust agencies of proposed transactions also proactively prepare to engage with a proven and experienced eDiscovery provider to ensure the best possible outcome should Second Requests support be required.*

### ***The HaystackID Solution: HaystackID and Six Second Requests***

With under 40 of the 2,111 reported transactions under the HSR Act being challenged in 2018 (6), it is readily apparent that HaystackID's positive reputation for supporting Second Request played an important role in its selection to support six specific Second Requests during a four-month window in mid-2019. Each of these Second Requests required not only eDiscovery provider experience in the specific processes and reporting requirements for antitrust agency requests but also needed to be supported by a provider having domain expertise in the information and documentation related to integrated medical and wellness companies. Having extensive expertise in the tasks required in Second Requests as well as an experiential understanding of supporting eDiscovery audits, investigations, and litigation for healthcare and pharmaceutical companies, HaystackID was selected to support the six requests and upon notification of each request immediately began planning and preparing to receive the specifics of the requests from the respective supported companies. Given the standard yet incredibly comprehensive requirements of Second Requests as well as the similarity of the requests supported by HaystackID in mid-2019, an aggregate overview of the four phases of support for each request is provided below to share an example of HaystackID's approach and proven performance in supporting Second Requests.

#### **One Focus, Four Phases.**

The one focus of all Second Requests is substantial compliance with information and documentation requests according to defined timeline requirements. To translate this focus into action on the six Second Requests supported in mid-2019, HaystackID quickly organized each request into four phases; phases that served to frame the tasks required to achieve positive support outcome and help clients meet both timeline requirements and substantial compliance certified responses. These four phases included:

- Phase One: Notification and Planning
- Phase Two: Collection and Processing
- Phase Three: Review and Production
- Phase Four: Termination/Expiration and Completion

From support request notification to the completion of support, HaystackID proactively defined, deployed, and executed the essential discovery tasks to create certified compliance with each Second Request.

#### ***Ready, Set, Go: Notification and Planning (Phase One)***

The first phase of each of the six individual HaystackID Second Request cases began with the notification of the supported customer of additional information and documentation being requested by the FTC Premerger Notification Office.

As the FTC has a model request guide for Second Requests, HaystackID already had pre-defined planning tasks that could be initiated immediately after contact from customers requiring Second Request support. The pre-defined tasks ranged from the administrative and contractual tasks needed to initiate support (e.g., Second Request Statements of Work and Project Timeline and Cost Estimations) to the operational tasks necessary to support the development of data maps, collection plans, and determine discovery resource requirements. Considerations for Phase One Second Request planning incorporated an understanding of potential requirements and included:

- Expected Devices and Locations Where Requested Information and Documentation Might Be Located
- Expected Requirements for Processing and Normalization of Disparate and Complex Data Formats
- Expected Requirements for Analytics and Assisted Review with Advanced Technologies
- Expected Legal Document Staffing and Review within a Compressed Timeframe
- Expected Reporting and Production Formats and Test Reporting and Production Requirements
- Expected Hosting Requirements

The timeframe from customer notification to HaystackID until the initiation of support could be measured in terms of hours for all six cases. This quick response capability based on proactive planning and previous experience was critical as each of the six Second Requests supported by HaystackID were paramount to the future business success of the challenged companies, and the cost of missing timeline expectations could impact antitrust agency decisions and result in adverse short-term and long-term financial outcomes.

Upon notification from customers and completion of the administrative and operational planning required to support the individual Second Requests, HaystackID formally established its case discovery team for each case consisting of experts from appropriate Second Request investigation functional areas including:

- Forensics and Collection (Forensics First Team)
- Processing and Analytics (Early Case Insight Team)
- Review and Production (ReviewRight Team)
- Case Management (Project Management Team)

These experts coordinated the support of customers with a team of four project managers under the leadership of an expert eDiscovery consultant. The HaystackID expert eDiscovery consultant then began to work with both customers and HaystackID teams to finalize plans and translate those plans into action.

#### *Rolling, Rolling, Rolling: Collection and Processing (Phase Two)*

While specific information and documentation requests were defined by the antitrust agencies in each of the six separate Second Requests, it was incumbent on the customers and HaystackID to finalize, initiate, and execute collection plans to support the requests. To accomplish this task, the HaystackID lead eDiscovery consultant conducted detailed interviews with critical organizational and information technology leaders to develop collection plans that comprehended the multiple geographical locations, differing storage locations, various storage/communications devices, and disparate data applications and types needing to be collected to meet information and documentation requests.

The geographic locations varied amongst the six individual Second Requests; however, the storage and communication locations and devices generally included the following elements:

#### *Key Storage Locations*

- Application/Email Service Providers
- Archived Data
- Audit Trails, Logs, and Registries
- Backup Computer Files
- Legacy and Disaster Data
- Removable Media
- Voice Mail

#### *Key Storage and Communication Devices*

- Servers (Network)
- Personal (Desktop and Laptop) Computers
- Mobile Computing Devices
- Mobile Telephone Devices

Understanding the collection plan requirements as well as the geographic and storage locations of data needing to be considered as part of Second Requests, HaystackID conducted a combination of on-site and remote collections for each Second Request with qualified forensics experts and leveraged industry-leading tools from Cellebrite, Oxygen Forensics, and HaystackID (Mobile Device Integrator) and tracked collection activities with defensible and comprehensive chain-of-custody best practices.

Given the expedited timeline requirements of each Second Request, HaystackID collection teams conducted rolling collections when appropriate, thus accelerating the movement of collected data and ensuring its preparation for processing and review as early as possible in the Second Request investigation window.

With collections from enterprise applications and systems ranging from O365, One Drive, and Team Drive (File Share) to G Suite and G Drive as well as enterprise platforms such as Slack and Jira, HaystackID eDiscovery technicians began the process of data ingestion and reduction using tools such as HaystackID's proprietary DataThresher technology for searching and culling text and metadata to reduce data set sizes prior to further processing.

After initial culling reduction, HaystackID then further prepared the remaining data collected as part of each Second Request with the Nuix platform to further process the data for Second Request specifications. This further processing typically resulting in:

- Initial Processing Status Report for the Customer
- Exception and Hold File (EHF) Identification
- Applied Second Request Protocol Guidance to EHF
- Completed Processing for the Customer

This proven approach resulted in significantly reduced sizes of Second Request data sets and prepared the data for further translation as required for foreign language documents and analysis with advanced tools that included Authenticity.AI and Brainspace.

For multi-lingual documents requiring foreign language translation, HaystackID leveraged a combination of Authenticity.AI machine-learning artificial intelligence assisted automated translation technology and expert human translators.

With translation accuracy rates of 80% when optimized, Authenticity.AI's translation technology, coupled with HaystackID organic foreign language translation expertise, allowed HaystackID to support language translation requirements, including both German and Russian language documents, for Second Request cases requiring document translation in an accelerated and accurate manner. Once foreign language documents were translated and QC'd by HaystackID translation teams, those documents were moved, along with all available documents, and analyzed using Brainspace analytics.

Using Brainspace's analytics capability, HaystackID experts conducted analysis tasks on all case data to determine responsive documents. These analysis tasks included but were not limited to:

- Document Collections and Tagging
- Cluster Wheel Visualizations
- Data Visualization and Objective Culling
- Communication Mapping and Analysis
- Keyword and Concept Searching

Additionally, leveraging Relativity-Assisted Review technology supported by a team of approximately twenty HaystackID Relativity Certified experts, (7) HaystackID further reduced Second Request data sets by allowing high-level review experts to execute first-pass rolling reviews of each Second Request data set to identify potentially responsive material quickly and to allow for the concentration of reviewers on priority documents as early as possible in the Second Request investigation window.

This Phase Two Collection and Processing approach prepared Second Request data sets for the final review of targeted requested data and provided a significant reduction of data set sizes for the critical phases of review and production.

- Collection – 100% Data Set (HaystackID)
- Culling – 100% to 20% Data Set (DataThresher)
- Processing – 20% to 5% Data Set (Nuix)
- Analytics and Assisted Review – 5% to 2% Data Set (Relativity)

This rolling collection and processing approach also expedited the movement of information and documentation into the review and production phase of Second Request support.

#### *Flexibility, Capability, Availability: Review and Production (Phase Three)*

The requirement to have a second pass review of documents completed within the expedited timeframes of each of the six Second Requests presented a challenge that very few eDiscovery providers can meet in a time-efficient and cost-effective manner. Given its integrated document review expertise, technologies, and resources, HaystackID was able to immediately accomplish three primary objectives for each of the six Second Request cases, objectives that would be critical to review success. Those objectives included:

- Establishment of On-Premise Review Centers (Flexibility)
- Use of ReviewRight Technology to Identify and Source Review Attorneys Best Qualified to Support Second Requests (Capability)
- Use of ReviewRight Sourced Reviewers to Conduct Second Request Reviews (Availability)

Having complete and fully functional review centers available to address the physical review presence preferences of Second Request customers, HaystackID immediately was prepared to support each customer's Second Request case from a state-of-the-art, secure review facility. This immediate capability to help the client was integral to getting the review of Second Request documents underway as early as possible. With the on-premise facilities ready for immediate use, HaystackID then sourced the best-qualified reviewers to support the specifics of each Second Request.

Using its proprietary ReviewRight Match technology, HaystackID was able to begin sourcing document reviewers at the inception of Second Request support for each customer. This sourcing process allowed for the identification of geographically available attorneys who were qualified to excel in Second Request document reviews. Essential elements of the review team selection that occurred before the initiation of case support as part of ReviewRight's on-going sourcing process included:

- Background Checking
- Document Review Skills Testing
- Conflict Checking
- Second Level, QC, Team Leads, and Review Manager Assessments
- Work History and Reference Checking
- First Pass Review Assessment

With a pre-qualified pool of Second Request reviewers ordered by a proprietary review attorney ranking system that also comprehended expertise in medical and wellness related reviews, HaystackID was able to put together qualified, efficient, and cost-effective review teams in a matter of hours from the notification of each Second Request. This capability allowed case leaders to quickly focus on the review of Second Request documents rather than concentrating on the usually required, time-consuming, and challenging analysis of reviewers.

With Second Request review teams that approached 100 reviewers in some cases, HaystackID was able to conduct rolling reviews to include specific privilege reviews and Personally Identifiable Information (PII) reviews for cases as large as 600,000 documents while meeting established timelines and quality expectations. This highly effective rolling review approach also allowed HaystackID to provide requesting antitrust agencies production samples prior to review completion to ensure that production formats and standards of final productions would be compliant with agency expectations.

Final productions, as well as the submission of custom-developed Privilege Logs that included tracking of entire email chains in addition to standard data, were provided on time and in accordance with established case timelines agreed upon during antitrust agency and challenged company discussions. HaystackID's performance in Phase Three (Review and Production) of Second Request support for each of the six Second Requests allowed each customer to meet timelines and the standard of substantial compliance for each request.

#### *Reflect, Record, Report: Termination/Expiration and Completion (Phase Four)*

While tasks in phases one through three of Second Request support for each of the six antitrust agency requests were important in successfully meeting request requirements and meeting customer objectives, HaystackID's support for each customer was not concluded until the reflection, recording, and reporting of the process and progress for each completed Second Request was finished. This after-action review and consolidation of learning from each request was accomplished by members of the combined customer/HaystackID eDiscovery Team and consisted of experts from the following areas and teams:

- Forensics and Collection (Forensics First Team)
- Processing and Analytics (Early Case Insight Team)
- Review and Production (ReviewRight Team)
- Case Management (Project Management Team)

This after-action review process and the corresponding lessons learned and applied to follow-on Second Request cases is one of the primary reasons that HaystackID has become not only the first choice but the best choice for Second Request support for eDiscovery tasks.

## An Aggregate Overview of an Integrated and Organic Solution

In the aforementioned aggregate representation of six Second Request cases supported by HaystackID within a four-month period in 2019, HaystackID provided supported customers with a combination of expertise and capabilities that allowed them to meet the timeline expectations and substantial compliance standard of responses to antitrust agency requests.

HaystackID's fully integrated Second Request support capability including Forensics First, Early Case Insight, and ReviewRight processes supported by forensics experts, eDiscovery experts, experienced and proven project managers, and qualified reviewers allowed HaystackID customers to detect, identify, locate, review, and produce data certified as compliant to Second Request specifications with unparalleled time and cost-efficiencies.

Based on integrated processes, a combination of proprietary and best of breed technology, and proven past performance support for these types of data-intensive, time-sensitive cases, HaystackID optimized each customer's opportunity to achieve their acquisition objectives.

## Learn More. Today.

Contact us today to learn more about how we can help you in your audits, investigations, and litigation as well as support antitrust agency Second Requests.

## About HaystackID

HaystackID is a specialized eDiscovery services firm that helps corporations and law firms find, listen, and learn from data when they face complex, data-intensive investigations and litigation. With an earned reputation for mobilizing industry-leading computer forensics, eDiscovery, and attorney document review experts, our Forensics First, Early Case Insight, and ReviewRight services accelerate and deliver quality outcomes at a fair and predictable price.

HaystackID serves more than 500 of the world's leading corporations and law firms from North American and European locations. Our combination of expertise and technical excellence, coupled with a culture of white glove customer service, makes us the alternative legal services provider that is big enough to matter but small enough to care. Learn more today at [HaystackID.com](https://www.haystackid.com).

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# Forensics First Employer Protection Program

*From Revenue to Reputation, Are You Protected From Departing Employees?*

Recently one of your company's most important employees resigned to pursue other interests. The resignation was a surprise, but the reasons shared for the resignation were sound and stated as non-competitive in nature. The exit interviews and out processing of the employee proceeded without issue. However, several months later your company experienced a surprise drop in business from those clients who previously worked with the departing employee. And after investigation and discussions with those lost accounts, you learned that upon departure the former employee had not only downloaded all key customer lists and contracts, but also the sales and product plans for the coming year. Additionally, the employee actually went to work for a direct competitor, contrary to the reason for resignation shared. This scenario is a risk nightmare experienced by many companies that do not take the proper protective measures during employee transitions. A risk nightmare that can be reduced significantly with HaystackID's Employer Protection Program.

## **An Overview of HaystackID's Employer Protection Program**

HaystackID's Forensics First Employer Protection Program helps employers proactively reduce the risk of computer-related theft, destruction, or misuse of digital access and assets resulting from intentional or inadvertent activities associated with the voluntary or involuntary separation of employees.

### *Departure Risks Warranting Employer Protection*

As harsh as it sounds, every departing employee poses a risk to your business if the transition is not correctly managed and documented. This risk ranges from inadvertent access to sensitive company information as basic as company internal organizational charts to deliberate efforts to acquire and use economically essential customer lists and contracts for competitive advantage. Examples of risks may include:

- Access to Regulated Data (PII)
- Competitive Analysis Compromise
- Intellectual Property Loss
- Loss of Data Subject to Legal Hold
- Proprietary Information Access
- Trade Secret Misappropriation

With HaystackID's Forensics First Employer Protection program, our expert certified forensics examiners can help you proactively protect your organization against access, theft, and destruction of digital assets by departing employees.

### *Forensics First Employer Protection Program*

Designed to be implemented at the time an employer becomes aware of an impending employee-employer relationship change, the Forensics First Employer Protection Program consists of passive and active protocols that deliver computer forensics expertise, audit and investigation experience, and best-of-breed technology supported by forensically sound and defensible eDiscovery best practices.

### *The Employer Protection Program Departing Employee Evaluation (Passive Protocol)*

Consisting of a six-point evaluation that provides context for the development of a customized protection plan for departing employees, the evaluation elements include:

- Why is the employee departing?
- Where is the employee going?
- What company property must be surrendered upon departure?
- What access to company systems must be terminated upon departure?
- What potential degree of risk does management associate with the departure?
- Has the employee been advised of confidentiality, non-solicitation, and non-compete obligations?

### *The Employer Protection Program Departing Employee Investigation (Active Protocol)*

A six-step comprehensive and customized investigation that includes but is not limited to the following forensics and collection services:

- Communication Device (Cell Phone) Imaging
- Computing Device (Laptop/Desktop) Imaging
- Device and Data Access Log Analysis
- Device and Data Usage Analysis
- Forensically-Sound Retention of Images
- Comprehensive Reporting on Departing Employee Investigation

The comprehensive reporting of departing employee investigation includes a package of six reports supporting the departing employee interview and investigation. Elements of the report package include:

- Complete File Listing: All active and deleted files from targeted devices.
- Internet Activity: Listing of website visits, cookies, and downloads to targeted devices.
- Recent Document Activity: Documents recently created, saved or downloaded to include full path and file type information.
- System Analysis: Key systems information including external device access.
- Keyword Search: File listing and all active and recoverable deleted files that contain search hits for an employer-specified number of keywords.
- File Extraction: An extraction of all active and recoverable deleted files of a single designated file type. Available file types include Word, Excel, PowerPoint, PDF, Standard Graphics, Video Files, Audio Files, Database Files, and Email Stores.

Delivered for a nominal flat fee based on your specific departing employee requirements, HaystackID's Employer Protection Program provides employers with timely access to key information to help employers proactively understand the state of digital data on departing employee computing and communication devices.

## **Learn More. Today.**

HaystackID is a specialized eDiscovery services firm that helps corporations and law firms **find, listen to, and learn** from data when they face complex, data-intensive investigations and litigation. With an earned reputation for mobilizing industry-leading computer forensics, eDiscovery, and attorney document review experts, HaystackID's Forensics First, Early Case Insight, and ReviewRight services accelerate and deliver quality outcomes at a fair and predictable price. **Contact us today** to learn more about our Forensic's First Employer Protection Plan at [HaystackID.com](http://HaystackID.com).

# Shaping Outcomes with eDiscovery: A Complex Defense of Intellectual Property

*How HaystackID Helped a Technology-Enabled Manufacturing Firm Protect and Defend Its Cutting-Edge Technology*

## The Punch Line: Presenting a Smoking Gun

Very rarely does the combination of capability and expertise delivered by an eDiscovery service provider make a decisive difference in shaping potential outcomes for patent infringement and trade violation defenses.

In a recent matter of between two technology-enabled manufacturing firms, HaystackID ventured into this decisive contributor realm based on its aggressive yet controlled delivery of Forensics First, Early Case Insight, and ReviewRight services to help its client find, listen, and learn from evidence in this matter between two emerging technology leaders.

These efforts resulted in the identification of date-centric metadata changes that, when viewed within the context of all available electronically stored information (ESI), substantiated the validity of the complaint of HaystackID's client, providing the proverbial smoking gun of evidence. These efforts were also accomplished by HaystackID while meeting aggressive timeline and budgetary targets.

## A Multi-Billion Dollar Market: A Big Opportunity and a Big Mistake

Seeking to give consumers an economical and efficient way to leverage technology advances in manufacturing, an emerging market company had raised millions of dollars from leading investors and investment firms with the goal of transforming a specific manufacturing process. The unique and niche manufacturing process represented a multi-billion dollar opportunity within the enormous manufacturing market. With such a tremendous opportunity for market participants, the planning for quick and aggressive protection and defense of intellectual property was an essential part of the go-to-market strategy for HaystackID's client as it was necessary to shield the opportunity from illegal encroachments from potential competitors.

Unfortunately, early in go-to-market efforts, HaystackID's client was forced to defend intellectual property elements of its technology and requested computer forensics and eDiscovery assistance for identifying, locating, reporting and reviewing electronic evidence to support its complaint against a prominent competitor. Simply stated, the complaint was entered with the goal of protecting valuable intellectual property, trade secrets, and other proprietary information.

This complaint set the stage for HaystackID to support its client in the discovery phase of the case.

### About HaystackID

HaystackID is a specialized eDiscovery services firm that helps corporations and law firms find, listen, and learn from data when they face complex, data-intensive investigations and litigation. With an earned reputation for mobilizing industry-leading computer forensics, eDiscovery, and attorney document review experts, HaystackID's Forensics First, Early Case Insight, and ReviewRight services accelerate and deliver quality outcomes at a fair and predictable price.

## Complex Discovery: Organizing for Success

From a discovery perspective, the project required HaystackID expertise not only in the investigative discovery and legal review processes but also with advanced eDiscovery technologies and emerging data formats. Some of the critical challenges presented in this complex discovery project included:

<ul style="list-style-type: none"> <li>• <i>Identification</i> of All Points Where Data Entry and/Updates Occurred (From File Servers to Print Server Logs and from Corporate Laptops to Third Party Productivity Platforms)</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Processing and Normalization</i> of Disparate Complex Data Formats (From Slack and Jira to G Suite and Traditional Document Formats)</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Analytics and Assisted Review</i> with Advanced Technologies (Processing with Nuix, Early Case Assessment with DataThresher and Brainspace, Technology-Assisted Review with Relativity Assisted Review and ReviewRight)</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Legal Document Staffing and Review</i> within a Compressed Timeframe (ReviewRight)</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Hosting</i> Data within Multiple Repositories for Different Yet Complementary eDiscovery Functions (HaystackID Data Centers)</li> </ul>

Upon request from the client through its outside counsel, HaystackID established its project discovery team consisting of experts from appropriate eDiscovery functional areas (Computer Forensics, eDiscovery, and Legal Review) and coordinated support of the client with a team of five project managers under the leadership of an eDiscovery expert consultant.

Based on the need to complete the project within 90 days of initiation, HaystackID also established multiple different and sequestered repositories to maintain integrity and separation of data. Those repositories included:

<ul style="list-style-type: none"> <li>• Early Case Assessment Workspace Repository</li> </ul>	<ul style="list-style-type: none"> <li>• Review Workspace Repository</li> </ul>
<ul style="list-style-type: none"> <li>• Mobile Data Workspace Repository</li> </ul>	<ul style="list-style-type: none"> <li>• Early Case Assessment Repository for Subpoena Data</li> </ul>
<ul style="list-style-type: none"> <li>• Legal Review Repository for Subpoena Data</li> </ul>	<ul style="list-style-type: none"> <li>• Opposing Counsel Repository (Data Added By Opposing Counsel)</li> </ul>
<ul style="list-style-type: none"> <li>• Trial Exhibit Workspace</li> </ul>	

These repositories provided the access, security, and separation necessary to support the entire electronic discovery project while allowing the streamlined workstreams essential to complete the project within the aggressive timeline.

## Accelerated Execution: Translating Data to Evidence

As the crux of the complaint was theft of intellectual property, the HaystackID client sought evidence from all digital communication conduits potentially leveraged in the theft. To develop a collection plan to support this evidentiary requirement, the HaystackID lead discovery consultant conducted a detailed interview with critical organizational and information technology leaders of its client under the guidance of the lead discovery counsel.

During the interview, it was determined that a collection plan that comprehended the following locational and device elements would be required to ensure a comprehensive evaluation of ESI.

### *Storage Locations*

• Application/Email Service Providers	• Archived Data	• Audit Trails, Logs, and Registries
• Backup Computer Files	• Cache Data	• Firewalls
• Internet Service Providers	• Legacy and Disaster Data	• Random Access Memory (RAM)
• Removable Media	• Residual Data	• Voice Mail

### *Storage and Communication Devices*

• Servers (Network)	• Personal (Desktop and Laptop) Computers	• Mobile Computing Devices
• Mobile Telephone Devices	• Faxes	• Scanners
• Printers	• Copiers	• Security Systems

Additionally, the collection plan highlighted the need for expertise by and tools from HaystackID for the collection of ESI from application/email service provider platforms used by the individual accused of the IP theft. Those platforms requiring particular expertise and tools included Slack, Jira, and G Suite.

Understanding the collection plan requirements, HaystackID internally developed special tools designed to streamline the collection of data from Slack, an emerging workplace productivity platform with complex data formats. The development of these tools allowed HaystackID to simplify collections and provided the ability to replicate the presentation of Slack communications as if they were in the actual Slack platform.

These internally developed tools combined with industry-leading tools used for more universally available data formats allowed HaystackID to conduct a defensible collection of multiple TBs of ESI from various devices and many data formats from disparate locations to include computers operating as part of a public print farm enabling client printing capabilities.

Once collected, HaystackID eDiscovery technicians leveraged DataThresher technology, HaystackID’s proprietary interface for searching and culling text and metadata, to reduce the multiple TB data set by more than 80% for further processing.

After the culling reduction, HaystackID then further processed the remaining ESI with Nuix. Trained Nuix experts on the HaystackID team used the Nuix platform to further process data to client specification and:

• Provided Processing Status Report to Customer
• Provided Exception and Hold File (EHF) Identification
• Applied Customer Guidance of EHF Handling Protocol
• Further Processed EHF Per Protocol
• Completed ESI Processing for Customer

The resulting processing effort decreased evidentiary data set size by an additional 80%. With ESI collected, culled, and processed for further analysis, the HaystackID team now moved to combine the power of Brainspace and Relativity-Assisted Review to analyze and initiate predictive coding on the available ESI.

## Advancing on the Smoking Gun: Advanced Technologies and Assisted Review

Using Brainspace’s analytics capability, HaystackID experts conducted vital analysis tasks to include:

• Document Collections and Tagging	• Cluster Wheel Visualizations
• Data Visualization and Objective Culling	• Communication Mapping and Analysis
• Keyword and Concept Searching	

Additionally, leveraging Relativity-Assisted Review with a team that had nineteen HaystackID Relativity Certified experts at the ready, HaystackID further reduced the data set to approximately 120 GB by allowing a high-level review expert to execute a first pass review by the system to quickly identify potentially responsive material and to concentrate reviewers on priority documents.

This analysis and assisted review approach allowed for the final review of targeted ESI.

• Collection > 10 TB	• Culling – 10 TB > 2 TB
• Processing – 2 TB > 430 GB	• Analytics and Assisted Review – 430 GB > 120 GB

The reduction of ESI from complex collection to assisted review resulted in approximately 120 GB of ESI, or about 550,000 documents, available for the critical eDiscovery phase of document review.

## Reviewing Right: Legal Document Review

The requirement to have the second pass review of documents completed within 90 days of initial ESI collection presented a timing and resource challenge that very few eDiscovery providers can efficiently yet cost-effectively address. Given HaystackID’s integrated document review expertise, technologies, and resources, HaystackID was able to immediately accomplish three primary objectives that were critical to review success to support the review requirements of internal ESI (for opposing counsel) and external ESI (delivered from opposing counsel).

• Establishment of Review Center (On-Premise)
• Use of ReviewRight Technology to Identify and Source Review Attorneys Best Qualified to Support This Particular Review Effort
• Use of ReviewRight Sourced Reviewers to Conduct Legal Reviews

Previously having established a complete and fully functional review center available to address the physical review presence preferences of clients, HaystackID immediately was prepared to support the client on this project from a state-of-the-art, secure review facility. This immediate ability to help the client was integral to getting the review project underway as early as possible. With the on-premise facility ready for immediate use, HaystackID then needed to source qualified reviewers to qualify, process, train, and deploy the reviewers to initiate the review phase of the project.

Needing to source approximately 200 appropriately qualified and proximity relevant reviewers within three days is a demand that requires the world’s leading review sourcing and performance measurement technology. HaystackID’s ReviewRight Match process supported by proprietary technology developed by ReviewRight helped meet this unwavering requirement by identifying geographically available attorneys who were qualified to excel in this type of document review. Essential elements of the review team selection that occurred before the initiation of the project as part of ReviewRight’s on-going sourcing process included:

• Background Checking	• Document Review Skills Testing
• Conflict Checking	• Second Level, QC, Team Leads, and Review Manager Assessments
• Work History and Reference Checking	• First Pass Review Assessment

With a pre-qualified review pool ordered by a proprietary review attorney ranking system, HaystackID was able to put together a qualified, efficient, and cost-effective review team in a matter of hours. This capability allowed project leaders to quickly focus on the review of ESI rather than concentrating on the usually required, time-consuming and challenging analysis of reviewers.

Using the ReviewRight Match sourced reviewers operating from the HaystackID Review Center, HaystackID was able to support the customer and complete the assisted and manual review of approximately 550,000 documents (almost one million pages) within two weeks. This unprecedented capability and performance allowed the client to proceed with an aggressive and conducive litigation timeline and best position the client for a positive outcome in defense of intellectual property theft and trade violations.

## **Decisive Difference: The Benefits of a Complete Solution from a Single Provider**

HaystackID provided its client with a combination of expertise and capabilities that allowed them to move quickly in their defense of intellectual property theft and trade violations.

HaystackID's fully integrated Forensics First, Early Case Insight, and ReviewRight processes supported by HaystackID employed expert witnesses, forensics experts, eDiscovery experts, project managers, and expert reviewers allowed the client to detect, identify, locate, review, and produce a high volume of complex data within an incredibly short amount of time.

Based on integrated processes, proprietary technology, and proven past performance in supporting these types of matters, HaystackID was able to reduce the time to trial, reduce the cost of trial preparation, and reduce the risk typically associated working with multiple eDiscovery providers and the communication and coordination challenge a multi-vendor approach presents.

In this project, HaystackID did provide a decisive difference to the customer and, from computer forensics, eDiscovery, and legal review perspectives, optimized the client's opportunity to achieve its defense objectives with unparalleled time and cost efficiency.

### **Learn More. Today.**

Serving more than 500 of the world's leading corporations and law firms from North American and European locations, HaystackID's combination of expertise and executional excellence coupled with a culture of white glove customer service make it the alternative legal services provider that is big enough to matter but small enough to care. Learn more at [HaystackID.com](http://HaystackID.com).

# Secure Remote Review Services from HaystackID

*An Overview of HaystackID's ReviewRight Virtual and ReviewRight Match Solutions*

HaystackID is a **specialized eDiscovery services firm** that helps corporations and law firms **find, listen to, and learn** from data when they face complex, data-intensive **investigations and litigation**. With an earned reputation for mobilizing industry-leading computer forensics, eDiscovery, and attorney document review experts, HaystackID's Forensics First, Early Case Insight, and ReviewRight services accelerate and deliver quality outcomes at a fair and predictable price.

ReviewRight is a specialized set of document review services from HaystackID designed to help law firms and legal departments quickly and accurately learn from their data to make the right decisions for positive and quality investigation and litigation outcomes. These specialized services address essential eDiscovery needs for complex, data-intensive reviews.

- **ReviewRight Virtual** (Secure Remote Review)
- **ReviewRight Match** (Reviewer Qualification and Sourcing)
- **ReviewRight Translate** (Foreign Language Review)
- **ReviewRight Manage** (Managed Review)
- **ReviewRight Host** (Review Hosting)
- **ReviewRight Automate** (Technology-Enhanced Review)

Powerful enough to be used individually and unmatched in capability when integrated, HaystackID's ReviewRight services are the first choice and best choice for document review services by the world's top corporations and leading law firms.

Within this offering portfolio, the core of HaystackID's remote review capability is enabled by **ReviewRight Virtual** and **ReviewRight Match**. When used in combination, these two offerings allow for the immediate mobilization of the best qualified and available reviewers regardless of language or location and provide a secure remote review infrastructure for delivering virtual review teams.

## ReviewRight Virtual

Review teams need the flexibility to securely operate as part of virtual teams from anywhere at any time. ReviewRight Virtual provides that capability through the delivery of a scalable, fully managed virtual desktop environment that enables remote reviewers to **communicate, connect, and conduct reviews** with best-of-breed technologies that are integrated and delivered securely as a single service.

ReviewRight Virtual Integrated Enabling Technologies	
Secure Email	Communicate using one of the world's most popular, intuitive, and secure email platforms delivered with G Suite from Google.
Encrypted Chat	Connect virtual team members with access-controlled chat powered by the messaging platform built for teams, Hangouts Chat.
Robust Review Platforms	Conduct reviews remotely leveraging HaystackID-hosted world-class review platforms, including Relativity.
Virtual Machines	Secure review communications, connections and conduct with a customized and highly secure Desktop-as-a-Service infrastructure.

HaystackID's ReviewRight Virtual service includes quick spin-up, virtualization software, patching and updates, security, bandwidth, productivity applications (email, chat, and review platforms), reporting and monitoring all for a predictable monthly operating cost.

Additionally, ReviewRight Virtual cloud-delivered desktops enable organizations to restrict access and capabilities using more than 100 available control attributes that can be customized to support access needs.

Commonly Implemented Controls	
Restrict User Administrative Rights	Disable USB Access to Peripheral Devices
Deny Printing (Local, Network, Screen)	Clipboard Redirection
File and Folder Redirection	Turn Off Copy Completely

*Key Security Benefits of ReviewRight Virtual Include:*

- **Endpoint Security:** Protect against device theft or loss and control where data resides by getting it off the endpoint.
- **Protection of Sensitive or Proprietary Data:** Control or restrict specific behaviors to ensure users can access only what they need.
- **Seamless Integration with Existing App Structure:** No need for duplicate authentication systems or to require users to manage multiple logins and passwords.
- **Elimination of Network Vulnerabilities:** Highly redundant, highly available balancers, front-side/back-side network isolation, VLAN and IP address, isolation and customer-specific security configurations.
- **Reduction of Device and OS Maintenance:** Hardened OS results in greater security and control while enterprise-grade anti-malware, rigorous patching and updates, and golden image management ease traditional IT burdens.

*Key Productivity Benefits of ReviewRight Virtual Include:*

- **High Performance:** Purpose built for speed and optimal performance on infrastructure that delivers 99.99% availability.
- **Business Continuity:** Ensure reviewers always have access to time-sensitive projects.
- **Proven Applications:** Field proven secure email, encrypted chat, and leading review platforms ensure reviewers have the best tools to help drive the best outcomes.
- **Compliant Desktops:** Independently verified PCI and HIPAA compliant cloud delivered desktops.

With a combined privacy capability that addresses requirements at the user level, endpoint device, endpoint session, OS and application, network, and physical security level's, ReviewRight Virtual gives organizations the flexibility they need to support remote reviews without any sacrifice of security or productivity.

## ReviewRight Match

ReviewRight Match sets the standard for document review staffing, enablement, and support through the application of a combination of proprietary technologies, innovative evaluation tools, and proven protocols that allow for the rapid and comprehensive sourcing, testing, and qualification of reviewers. This ReviewRight process enables us to present to clients individuals who are not only legal review experts, but review experts with the appropriate domain expertise, proper language skills, and necessary responsibility experience to accomplish the specific review tasks required in your review requirement.

### *The ReviewRight Match Selection Program*

The core of the ReviewRight Match process is the active and systematic recruitment and continuous evaluation of qualified document review attorneys as part of a comprehensive reviewer selection program. The reviewer selection program consists of four key elements, that when successfully navigated, allow review candidates to be considered for ReviewRight projects.

Core Selection Program Elements	
The Enrollment Process	The Qualification Process
The Assessment Process	The Certification Process

**The Enrollment Process:** The enrollment process consists of the registration of potential reviewers with ReviewRight via the ReviewRight.com portal. The registration steps introduce reviewers to the ReviewRight selection process and harvest reviewer information ranging from licensure and education to review history and referral sources. Additionally, the enrollment process presents reviewers with the opportunity to take the ReviewRight document review test.

**The Qualification Process:** Once enrolled, reviewers who seek to continue in the selection process for ReviewRight opportunities are administered a 15 question skills test that presents a basic review protocol, a short legal document for review, and asks reviewers specific questions that provide immediate and quantifiable insight into a reviewer’s legal review capability. The results from this skills testing, along with the information gathered during the registration process, allows ReviewRight to begin to assess reviewers as candidates for ReviewRight projects holistically.

**The Assessment Process:** Individuals who have completed ReviewRight enrollment and qualification processes are then evaluated by the ReviewRight reviewer selection committee to determine whether they meet the standards required for ReviewRight projects. This evaluation consists of the subjective consideration of a reviewer’s background and experience and the objective consideration of the reviewer’s skills testing as quantified by metrics to include precision, recall, and average documents reviewed per hour. These subjective and objective considerations are then applied to ReviewRight’s proprietary five-point rating scale to allow for the assignment of a numerical rating to each reviewer. This rating serves as the basis for certifying all enrolled, qualified, and assessed reviewers and ultimately determines whether a reviewer receives the designation of being ReviewRight Certified.

**The Certification Process:** Once reviewers have been enrolled, qualified, and assessed, they are assigned a ReviewRight rating that is used to separate individuals who are certified for assignment on projects and those who are not certified at their current rating level for assignment on projects.

Once review candidates successfully navigate this selection program and are certified as ReviewRight reviewers, they are further classified based on practice area expertise, language knowledge, role experience, and task skills. This allows for the assembling of targeted review teams with the highest level of expertise, knowledge, proficiency, and skills for each review project.

*Key Benefits of ReviewRight Match Include:*

- **Confidence in the Capability of Reviewers:** The comprehensive ReviewRight selection process ensures that the individuals recommended for your review project are the very best available reviewers for your specific needs, not just the best reviewers available. This process provides you with the confidence you need to focus on reviews and not the review selection process.
- **Speed in the Assembly of Review Teams:** The robust catalog of ReviewRight certified reviewers developed from a comprehensive selection process augmented with a detailed classification of expertise, knowledge, experience, and task skills, allows you to quickly and efficiently source appropriate reviewers for your specific needs. This speed saves you time and money while accelerating your ability to translate information into insight and insight into intelligence that can be applied to your audit, investigation, or litigation effort.
- **High-Performance Review Capability:** The detailed assessment of review backgrounds and experience coupled with objective testing and evaluation metrics ensure that your review team not only performs but performs at the very highest level possible. As past performance generally is the single best predictor of future performance, ReviewRight's continuous assessment and evaluation processes ensure you always have the highest performing reviewers at the time of your review project available for your use. This increases the efficiency and effectiveness of your review efforts and allows you to rapidly, accurately, and cost-effectively achieve your review objectives.
- **Seamless Integration with All ReviewRight Services:** Access to a full suite of review services beyond ReviewRight Match, including ReviewRight Translate, ReviewRight Manage, ReviewRight Host, ReviewRight Host, and ReviewRight Virtual. This integration provides you with a full review capability beyond sourcing of reviewers to support the entire breadth and depth of your review effort regardless of location, data reduction requirements, and case-specific expertise requirements.

## A Proven Combination

This combined capability of ReviewRight Virtual and ReviewRight Match has also been shown to increase the quality and speed of reviews (1) as the pool of available reviewers with needed qualifications is not constrained by geographical proximity to review centers, and the speed of engagement is not restrained by fixed facility operations. HaystackID has performed more than 425 remote review projects to date with the projects spanning the spectrum of vertical industry markets and supporting many of the world's top companies and leading law firms in matters requiring up to hundreds of reviewers.

As the leader in remote legal document review, HaystackID provides our clients with instant access to more than 16,000 (2) certified review attorneys who are available for selection and integration into our remote managed review teams through our ReviewRight Virtual offering. Our potential pool of virtual reviewers, the streamlined manner in which we can onboard reviewers for remote review, and our established base of current reviewers with ReviewRight Virtual experience, allows us to help those in the eDiscovery ecosystem maintain review continuity without sacrificing quality or increasing review costs.

## Learn More. Today.

Contact HaystackID today to learn more about our ReviewRight services and how they can help you initiate, execute, and manage secure remote reviews and maintain business continuity.

## About HaystackID

HaystackID is a specialized eDiscovery services firm that helps corporations and law firms find, listen to, and learn from data when they face complex, data-intensive investigations and litigation. With an earned reputation for mobilizing industry-leading computer forensics, eDiscovery, and attorney document review experts, our Forensics First, Early Case Insight, and ReviewRight services accelerate and deliver quality outcomes at a fair and predictable price.

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