

How to Handle Records for a Successful Digital Transformation



Digital Transformation Is Key for the Law Firm of the Future

COVID has changed the way law firms and business in all sectors function, forcing firms to discover new ways to operate their practices and serve their clients with nearly all their attorneys and support staff working remotely.

Many of the changes are permanent, and it now befalls law firms to define their opportunities in the paradigm shift and make their operations more efficient and competitive, i.e., become the law firm of the future.

Digital transformation is the key element to firms' success. Prior to the pandemic, only 19% of in-house legal teams were well positioned to support enterprise digital efforts, with law firms themselves faring even worse.¹

One of the unexpected outcomes of COVID was that large law firms prospered. Profits per equity partner grew more than 20% last year through November for the Am Law 100, according to a report by Georgetown Law and Thomson Reuters Institute. That's more than double the growth rate in 2019. And U.S. productivity overall soared because of digital transformation in Q2 and Q3 2020, causing the largest increase in productivity in over 60 years—and this includes the legal market. One of the keys to that success was that firms were willing to adopt technology forward-thinking positions that were previously off the radar.²

4 Steps to Address Records in Your Digital Transformation

Technology adoption has always been a challenge for firms, but when forced, firms were successful in leveraging it to create a remote workforce—and the surprise was that it worked. Nearly half of the current workforce is now remote.³ In law firms, nearly 67% of lawyers report that they would like to continue working remotely even post-pandemic, even for a few days per week⁴; a Cushman & Wakefield study stated that firms may be looking to reduce upwards of 40% of their in-office personnel.⁵

As law firms likewise look forward to a world with more distributed workforces, firms have large opportunities for real estate reduction and technology enabled workflows that will make them more competitive against the rising sector of alternative legal service providers (ALSPs). These opportunities cannot be fully leveraged without addressing how we interact with the paper that moves our businesses.

In this white paper, we address firms' digital transformation as it pertains to records. This plan includes 4 steps:



Get Out of Off-site Storage: Lay the Groundwork Now

Traditionally, the way that law firms addressed their glut of paper records was to send them off-site to a records storage vendor (a less popular option was to create your own storage facility to house records). Other realistic options simply did not exist at the time. With nowhere else to turn to place hard copy records, firms generally turned to service providers who could store their records for them.

The problem was that for years, firms were sending hard copy storage off to these warehouses and, in many cases, had no long-term plan for how to address them once they sent them off-site. Out of sight, out of mind as the saying goes. Storage accumulated steadily over time and never reduced.

Now firms are paying the price – quite literally – for those past necessities. But there is a way out. Mattern's approach helps firms structure current off-site storage contracts to get out of off-site records permanently.

Reductively, digital storage, where possible, is dramatically less expensive than physical real estate storage. The cost to store vast amounts of data is significantly cheaper than in your friendly local warehouse.

Consider that 1 TB of data on the cloud would cost you perhaps less than \$10-15 per month. And also consider that 1 TB can hold approximately 6.5 million pages of documents.⁶ If you wanted to physically store 6.5 million pages, that's the equivalent of approximately 3,250 cubic feet of storage (assuming 2,000 pages per box). If we estimate storage as \$0.20 per cubic foot (which is a decent midpoint number), that's \$650 per month in storage costs. When you consider that many large law firms have in the hundreds of thousands of cubic feet of storage, it is easy to see how the dollars add up.

But most firms are handcuffed by their contracts to move on these opportunities. A particularly stubborn aspect of most off-site records contracts are the permanent withdrawal fees, the stumbling block most firms come up against.

Mattern's approach helps firms reduce permanent withdrawal fees to \$0, enabling firms' business objectives of getting out of off-site records altogether. We recently helped Chamberlain Hrdlicka do this. In the near term, the firm reduced its permanent

3. https://www.nber.org/system/files/working_papers/w27344/w27344.pdf 4. Altman Weil Law Firms in Transition 2020 5. Cushman & Wakefield Bright Insight 2020
6. <https://www.dropbox.com/features/cloud-storage/how-much-is-1tb#:~:text=1%20TB%20gives%20you%20the,files%2C%20PDFs%2C%20and%20presentations.>

withdrawal fees by 82% during the term of the agreement which will, at the contract's expiration, be reduced by 100% while still being liable for a reduced retrieval fee.

It is estimated the firm will save 40% over its current storage and service costs through the life of the agreement. Cumulatively, the savings will allow Chamberlain Hrdlicka to implement the changes they need to ensure a streamlined, reduced off-site storage practice for all their locations well into the future.

On the other hand, firms will also want to look at records storage and Information Governance (IG) from a holistic point of view. Mattern assisted Am law 100 firm, Holland & Knight implement an IG program while also helping the firm drive down its off-site holdings

as part of this. Key terms of their agreement included:

- Lowered the firm's storage, service, and shredding costs by an estimated 34.5%
- Reduced their permanent withdrawal fees by close to \$1 million
- Allowed the firm to destroy up to 96% of their off-site holdings over the course of the agreement
- Kept rates locked for the first 3 years with sporadic minimal increases
- Performance standards with penalties for non-compliance and a detailed termination process

This brings us to the importance of addressing IG when looking at off-site records.

Digitization Requires Information Governance

Governance and security are critical to digitization. Any plan for digitization must start with putting information governance and security policies in place. These policies provide the roadmap for how to address all records, digital or otherwise.

Firms cannot effectively govern paper scattered in non-firm locations. Transitioning to an electronic-first mindset as it relates to the declaration of records is the cornerstone of an effective information governance policy.

Law firm operations have always been paper-centric – but this now presents logistical and information security challenges. Setting up and managing a system where attorneys and support staff working remotely can request and receive paper documents from the firm's records department is complicated

and poses significant risk to data privacy. Having paper documents scattered in various, non-firm locations in an unsecure, remote environment is the stuff of an information security administrator's nightmare.

And cyber security risks to law firms are very real. As cautionary tales, in 2020, two high profile law firms (Seyfarth Shaw LLP and Fragomen, Del Rey, Bernsen & Loewy, LLP) both disclosed security incidents where clients' information was put at risk.⁷ And these two firms were not alone. Cyber attacks on law firms are becoming the norm as law firms make for attractive targets given the nature of their clientele.⁸

Consider that an effective information governance policy will need to address a complex range of issues from information lifecycle, to retention schedules, security, ease of document access, file nomenclature and taxonomy, and of course, records disposition. Further, think about the breadth of types of files and subject matters that your firm handles, each of which may require its own considerations.

Then consider the regulatory landscape that we live in today, which includes regulatory requirements such as HIPAA, CCPA, GDPR, Sarbanes-Oxley and so on. Your policy will need to effectively address all these items and more. If your firm does not have the internal resources or expertise to address the range of requirements of an effective policy, you may need to seek outside help.



7. <https://www.law360.com/articles/1326001> (discussing cyber security attacks on law firms) 8. Ibid.

Further, without comprehensive policies in place, you will end up with two repositories of records (hard copy off-site and digital) with all sorts of confusion about how to manage it all. With effective governance policies in place, information can be searched and retrieved quickly and effectively in a single, safe repository, overall adding to attorney productivity.

Moreover, as part of your governance policies, you will need retention schedules in place to define a roadmap for reducing your hard copy records footprint. This is a critical component of getting out of the the off-site record game in a legally defensible manner.

Mattern's expertise has helped firms along the spectrum of their information governance initiatives, from Holland & Knight cited above who wrapped IG and off-site records together, to smaller firms that require full development and implementation of information governance practices and best standards. Some firms do not have an approved information governance policy, and therefore, had no established user expectations regarding the proper handling of

electronic and paper records. Mattern develops these policies.

At the other end of the spectrum, sometimes larger Am law 100 firms need assistance in implementation of their information governance programs. As is a common case, in one recent client engagement, the firm's legacy standard practices had not always been adhered to, nor was the integrated use of company systems. One key element of Mattern's plan was the successful implementation of retention schedules that would first require discerning the location of all information assets – email, network shares, archives, DMS, physical media, and 3rd party cloud storage or file sharing tools.

In the end, the firm implemented an information governance program that allowed for defensible management of all information assets regardless of media or location. This ushered in uniform user behavior integrated with the firm's technology systems to create less paper and thus, send minimal paper off-site in the future.

A Two-Pronged Approach: Back File Conversion and Upfront Digital Workflow

Firms must look at a two-pronged approach to their records. As we pointed out already, firms spent years sending records off-site. As such, there are mountains of hard copy records to contend with. The two prongs are back-file, or off-site records and day-forward, or on-site records.

Mattern recommends that law firms do not attempt to digitize their back-file records. Instead, the focus of digitization should be on day-forward documents. Below, we will discuss why that is the case.

However, we should note that in certain limited circumstances there can be benefits of a back-file conversion, particularly in the new digital operational model. Such limited circumstances would be for those high usage files that firms retrieve regularly. A back-file conversion allows authorized users instant access to documents from anywhere, including mobile devices. The information security and governance benefits of a back-file conversion are also a key reason for firms to consider this option.

It is important to note that the cost of back-file conversions can be very high, which is why it should only be used in those limited circumstances. But,

when it is warranted, the long-term benefits of eliminating physical document storage can offset the upfront cost. Outside of the obvious physical storage, consider savings associated with retrieval, transportation, and ever-increasing permanent withdrawal fees, in addition to improvements in soft costs achieved through increased productivity. Given the steep initial investment, one strategy of some firms is to limit back-file scanning to material that is still housed on-site, treated as project work to be completed as time permits.



Upfront Digital Workflow vs. the Costs of Storage

One of the biggest reasons for focusing on day-forward materials instead of back-file is cost. Firms must also do all that they can to stem the tide of records going off-site. Again, the policy should provide guidance on this, but if no policy has been formally adopted, then take measures to ensure firm-wide adoption of practices that assist in limiting the volume of paper that gets sent off-site or eliminate the practice altogether. Because, while storage is cheap, it is not cheaper than digital storage. Further, once that storage has been sent off-site, there are additional costs beyond simply storing it.

A firm has essentially two choices with what to do with the storage. First, it can leave the storage there and wait for it to become ready for destruction, which is the right choice at this point. The firm will have to pay additional dollars to retrieve and destroy it. Here is a quick example of one box's costs, using the \$0.20 per cubic foot example from earlier (1 file box equals 1.2 c.f.) and assuming the best-case scenario that this box can be destroyed at the end of its life cycle without content review:

Item	Fee
Storage for 10 years	\$33.02
Retrieval Fee in 10 years	\$3.91
Destruction Fee in 10 years	\$6.52
Total	\$43.45

**All fees include 3% YOY escalator*

A subset of the above example considers a firm leaving its record in storage for 10 years, but addressing the file in a different manner. This is a realistic example that Mattern finds with most off-site holdings that exceed 10 years in storage. In this scenario, content detail is lacking or nonexistent and most of this material requires some form of "flip-the-lid" review to verify contents are eligible for destruction. This does not take into account labor expense for firm Records staff to review contents and assumes material is destroyed on-site at the firm, which also requires permanent withdrawal with the storage provider in order to stop the clock on storage expenses.

Item	Fee
Storage for 10 years	\$33.02
Retrieval Fee in 10 years	\$3.91
Handling Fee in 10 years	\$2.41
Destruction Fee in 10 years	\$6.52
Permanent Withdrawal Fee in 10 years	\$6.52
Delivery Fee in 10 years	\$26.10
Total	\$78.48

**All fees include 3% YOY escalator*

Thus, each box would cost anywhere between \$43 to \$78 to address, assuming that no other services were utilized, such as storage provider labor to perform the flip-the-lid review in our subset example. If there were other services, obviously those costs go up.

The other option is that once it is sent off-site, the firm could decide to digitize it, which is the wrong choice. To digitize that same box, you typically have several fees involved with any off-site records vendor: (1) the cost to retrieve that box, (2) a setup fee – which will usually be inclusive of a certain number of pages, such as 50 pages, (3) the cost per page to digitize any pages over the included amount – we are going to assume roughly 2,000 pages in a box, (4) the cost to then destroy that box. We can assure you that no matter what provider you use, the total cost for all of this will exceed the amount you would pay for just leaving that box in storage for 10 years. To prove it, let us play it out using the sample costs from the above example:

Item	Fee
Retrieval Fee	\$3.00
Setup Fee (incl. 50 pages)	\$15.00
Cost to Scan Remaining 1,950 Pages (\$0.10/page)	\$195.00
Destruction Fee	\$5.00
Total	\$218.00

**Most providers do not charge permanent withdrawal fees as part of back-file imaging projects*

Thus, as you can see, once you send a box off-site, the options are pay some or pay more.

There is an important lesson here. As we have discussed, there are two sets of records that firms must manage. The records that already exist off-site and the day forward records. The above case study is instructive for both situations. It makes the case for not sending day forward records off-site if you can because, once you do, you are locked into the costs of ingesting it into the off-site provider's inventory, the costs of permanently withdrawing it, and year-over-year escalators.

It also makes the case that for all records already off-site, the strategy ought to be: let sleeping dogs lie. Leave those files alone until they are ready to destroy,

then destroy them. Do not attempt to start a massive look-back digitization program unless you feel the overwhelming compulsion to burn money.

The way to handle day forward files, if you want to avoid the off-site records trap, is to digitize on the front end. To do that, there is obviously a front-end cost to digitize, but once done you are free to do whatever you wish with the information. With a digital record there is no cost to destroying it, calling it back from storage, sending it back to storage, etc. The record now exists in your firm's document management repository, which affords you flexibility.

Two Components of Upfront Digitization: Technology and Workflow

In order to digitize, there are two components. First, is the technology. Your firm will need the proper equipment with which to scan the records and a defined repository to store said records. Second, is the process by which you will digitize the records. This entails labor as well as a roadmap to follow.

First, let's look at the technology (i.e., equipment and repository) component. Equipment means scanning equipment. This is a minimal cost. You can either obtain a dedicated scanner(s) or utilize existing multi-function devices ("copiers" or MFDs) to handle the work. When deciding which to use, investigate the options. Dedicated scanners have certain advantages over MFDs.

Simply put, tabletop scanners are devoted to this singular task and given this specialized purpose, perform this task well. MFDs are multi-use devices but, in terms of strict scanning capabilities, do not have the same functionality as a dedicated scanner. For instance, quality tabletop scanners will auto detect issues such as double feeds even down to the presence of "Sign Here" sticky notes and stop, allowing the operator to separate pages and/or sticky notes and resume scanning.

Dedicated scanners will also retain all images in progress in paper jam events, not to mention more robust image quality settings (despeckle, deskew, exposure and contrast). MFDs, on the other hand, will either carry on without noticing that sticky notes cover underlying text, or miss pages due to double feeds, or jam and lose all images in progress. Mattern would recommend utilizing a dedicated scanner if the intention is to set up a full-service, front-end scanning operation. From a quality and workflow perspective,

dedicated scanners are superior to piecing together a digitization solution utilizing one's existing MFD fleet.

Next, you will need to come up with a process. As noted, this entails labor and a roadmap. Labor is either going to be labor that already exists and will be tasked to handle these responsibilities in addition to other regular responsibilities. Or it is something you will need to add. If you already have the onsite personnel equal to the task, the labor could be viewed not as an additional cost, but an existing one. However, if you must add staff, then you are looking at additional costs.



In such a case, you will have to examine the scale of the digitization you intend to do in the context of the cost of the additional labor as compared to that cost avoidance per box you do not send off-site as well as other factors. In our earlier example, that was \$43.45 if the box sits there for 10 years, in a best-case scenario with no other services on the box, then is destroyed. So, if your firm avoids sending 1,000 boxes per year off-site, you potentially save \$43,450 by not sending those boxes off-site. But that does not account for the added utility (and unquantifiable costs) of having a digital record, which should lead to more efficient working.

Cultural Change + Leadership

Of course, the above outlined plan is all well and good, but enacting these tenets is not a simple snap of the fingers. And even when expertly crafted, the plan will need wide adoption within the firm. Thus, in the background, while all the above is being devised, the firm should address cultural change, and this is best handled through assembling a steering committee of representatives from a cross section of firm administration and practice areas. This is essential to consider the various ways in which administrative and practice groups operate so that policies can be molded with their needs in mind to deliver the greatest chance for success.

Further, there must be active investment, from the top down, to having people work digitally. In fact, in a 2018 study by McKinsey, various factors were examined about enterprises who were successful in digital transformations. While there were several key factors, 4 of the 10 were dedicated to management leadership, with active engagement increasing the odds of success by anywhere from 1.6x to 3.1x.¹⁰ The study went on to highlight that having the right, digital-savvy leaders in place was key – with 70% of respondents highlighting that top teams changed when leaders were familiar with digital



technologies.¹¹ Thus, firm management needs to be actively involved, and people need to know that what firm leadership is selling isn't just lip service. The firm needs to match its actions to its words. Aggressively pursue your policy and let people know you mean business.

A Fully Digitized Law Firm of the Future

Pandemic or no pandemic, law firms have lagged their corporate counterparts regarding digital transformation for too long. Firms that successfully face the business mandate to fully digitize and become a law firm of the future will reap the rewards

of streamlined client service, while repositioning long-discussed plans for addressing information security and data governance to the front burner along the way.

10. McKinsey Study "Unlocking success in digital transformations" 2018

