

THE CHALLENGE OF DOCUMENT REVIEW

The crux of the e-discovery process is to weed out irrelevant data, code documents efficiently, protect privileged and confidential data, and extract and understand the important information contained in the documents. Corporations create and store more data every year, and finding methods to handle e-discovery in a cost-effective manner is increasingly difficult.

Until 2006, when the Federal Rules of Civil Procedure (FRCP) were amended, many corporations simply deferred to a law firm's recommendations on how to collect, review and produce relevant information. Now a large and growing number of corporations exert direct control over e-discovery and its long-term legal and financial implications. In addition, while e-discovery costs continue to rise, the economic downturn has forced corporations to search out greater efficiencies across the board. As a result, corporations have begun bringing e-discovery tools and processes in-house. Instead of letting a law firm or legal service provider decide how a legal review should be handled, corporations have begun to orchestrate the review as a controllable business process.

Today, one popular approach is for corporations to look across the nine EDRM steps and select the cheapest tool or service for each step in each phase. This strategy is motivated by the hope that reducing the cost of each step will reduce overall costs without negatively impacting quality. But local optimization does not usually result in greater efficiency, especially for processes as complicated as e-discovery and document review. Instead, piecemealing often creates inefficiencies and additional expense. The approach is analogous to seeking the best price on a new car by purchasing each part of the automobile separately from the cheapest supplier—no one is accountable for the quality of the finished automobile, and the result, even if it will run, is more expensive.

Given the complexity of e-discovery, the legal sensitivity of the process and the lack of standards or interoperability between tools, many corporations have actually found a piecemeal

approach using multiple vendors to be harder to manage and defend legally:

- It can be just as expensive, if not more so, than the traditional model. Defensibility depends on the chain of custody and integrity of the data, which are harder to maintain as the number of handoffs increases.
- As the number of separate vendors involved grows, the effort and time required to manage the process grow: more relationships are involved, and the chances of miscommunication, bottlenecks, and duplication of effort multiply.

The effects, including increased cost, inefficiency and delay, can become clear when the situation of e-discovery vendors and review providers is considered, particularly when they are forced to compete on price for a small and discrete step in the EDRM. They have little or no incentive to consider the overall cost of e-discovery, process integration with the law firm or other vendors, or minimizing data incompatibility and handoff costs.

The apparent attractiveness of choosing the best deal for each task during e-discovery is thus off-set by the real costs and risks of piecemealing. The preferable response to the challenge of rising costs in a complex system is an all-in-one offering, in which the company buys not a series of inputs, but a defensible end result, where price can be predicted and quality measured. Such a systems approach to the complexity of e-discovery and document review is both obvious and radical.

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