

## Electronic Discovery - Changing Litigation Support?

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I believe that the challenges of coping with electronic data discovery (EDD) will change the way in which litigation support is viewed within Law firms, and that it offers an opportunity for IT to sit at the heart of the legal process. The purpose of this article is to briefly set out the key issues and explain how Technology departments can add value to their firm's work.

The first factor is actually a by-product of how well we in Technology have done in our jobs. When questioned in a recent vendor survey, 80% of lawyers said that they expected that their Technology departments would host the client's EDD material. This might be an instinctive reaction but there are significant pitfalls. One firm tried to do this with 3.5 GB's of unknown data and it crashed their entire computer system for two days, until the Managing Partner and the IT Director threw it out and swore never to try such a thing again. In another case, the volume of EDD potentially represented something like twice the firm's current overall infrastructure. Are your lawyers aware of just what they might committing the firm to should they make this kind of offer?

Next is the thorny problem of collecting the data. The practical requirements are still evolving, as the impact of IT data retention policies spills over into the world of litigation. Clients having a practice of deleting all emails over 60 days, or of re-using monthly back-up tapes after a year, might derive practical benefits in terms of space and efficiency, but similar policies recently cost Phillip Morris \$2,750,000 in the US tobacco litigation. Once those boundaries have been established, you next have the problem of locating all the various sources of relevant material. One client IT manager recently summed it up well when he described the response of a typical user to the question of where their data might be:

"Well, I have network drive that my office PC saves its information to, and there are the various electronic forums within the firm that I contribute to, plus of course all my emails which I keep in my in-box as I can never get around to sorting them out. And I did switch roles a few months ago, so there's probably lots of material in the other site as

well. Oh, and I do synchronise with this PDA thing that the firm provides and sometimes there are emails on that which don't seem to make it on to the main system. And I bought this great USB data storage key fob that means I can transfer documents and other bits to my home PC so I can work at the weekends as well.”

Bear in mind, that is before you start looking at the practicalities of restoring back-up tapes, and you haven't even begun to touch upon the issues of preserving metadata and de-duplicating policies. Again, the common reaction from lawyers is to suggest that these are all issues for the client's IT department. I would suggest that a better approach is to early on constitute a joint team of technical people from the client, law firm and possibly an external vendor.

I mention an external vendor, because what you need to provide is a place that enables users to actually do something worthwhile with the material. One of the unique aspects of EDD is that it has data, such as spreadsheets, which are only comprehensible when viewed within their native environment. Distilling spreadsheets to PDF format can be a total waste of time and money. Once you have the data on-line there is then the practicalities of actually carrying out the work. A good quality EDD home provides built in control and audit mechanisms, so that you can manage the team of 20 paralegals doing the initial review and support the 10 lawyers carrying out on-line Privilege checks and legal work product preparation. There is a lot of interest in AI based review tools such as Discovery Cracker, Mobeus and Autonomy which can replace some of this human endeavour, but do not underestimate the months of time and effort it will take to train these tools to give the results you need.

How will all of this effect IT departments? I believe that the role of the Litigation Support manager will evolve from one focused on the processes of scanning, coding and hosting systems, into a more higher level of strategic advisor and project management. In parallel the IT function could start to move from being a cost centre to a business contributor. We will be exploring all of these issues in the Gleneagles think tank on EDD and I'm sure there will be some interesting results from the session.

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