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Trends in E-Discovery

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For

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It is axiomatic that any discussion about e-discovery begins with an understanding of the exponential growth in digital evidence, and the number of cases that involve the procurement, processing, and production of information in electronic format. We witness the yearly emergence of personal devices and peripherals with ever increasing storage and connectivity that disperses enterprise data and confounds efforts to collect and manage it.

Each year, the question is posed to industry leaders as to what are the emerging industry trends in e- discovery, and what market forces are expected to drive industry innovation in the coming year. Fortunately, while current events and legal decisions may alter the *degree* of influence individual market forces may exert from year-to-year, the actual forces themselves are relatively constant and shall remain with us for the next decade. The three main industry forces: case law, cost and technology can be shown to propel the same outcomes—the need for ever increasing data storage and processing strategies, and the demand for tools that increase the productivity and accountability of counsels, custodians, and vendors.

The Legal Evolution-Scope and Accountability

In the past, litigation was bound by the more narrow confines of formally produced documentation: memoranda, policy statements, design documents, and the like. In today's world of instant communication, collaboration, and distributed enterprise decision making, even the casual conversation contained in an email or text message may contain clues to support a case. Grey areas are becoming black, and decisions increasingly burden the defendant; and in the normal scope of a litigation matter, it is the defendant who shoulders the costs of production. This broadening of communication has led to the natural broadening of what must be produced.

The main issues arise concerning how legal holds are enforced, documented, re-issued and monitored, especially over mobile or personal devices. Vulnerabilities exist not just in an organization's obligation for identifying and advising custodians, but demonstrating the accuracy and completeness of production. The sheer volume of data and judicial expectations alone are creating the need for automated management and processing of internal data, as well as policies that more clearly define accountability. Legal staffs have greater reliance upon the tools and capabilities of in-house IT staff to support discovery response.

As such, the evolution in case law creates increasing demands for ever more sophisticated data handling solutions, and the commitment of IT resources to purchase and implement these solutions. Thus, the accessibility of corporate information weighs heavily into the company's overall legal strategy and IT budget. E-mail management across all system components, including personal devices, is the biggest issue facing legal issues of preservation and collection. From this standpoint,

planning and building a comprehensive data management system prior to litigation answers with “good faith” to a motion for production, and reduces the costs—and risks—associated with last-minute attempts to implement protocols. Thus, a comprehensive review of a company’s key custodians, data locations, and document management system components for storage and retention will pay dividends during the litigation discovery process.

The Process Evolution-Efficiency and Productivity

Increasing scope drives the need for larger investments in IT systems and software to store, retrieve, and manage data production. It is therefore not hard to imagine a “cost per litigation hour” measure growing out of control. Increasing cost sensitivity is driving the demand to improve the productivity of discovery operations, and commoditizing vendor operations. This is serving to generate the demand for improved software and hardware tools that efficiently capture and process enterprise evidence.

From the client perspective, business process improvement (BPI) is needed to support discovery workflow and to rationalize the use of technology to create efficiencies, not additional costs. Better management tools are needed to plan legal department budgets, and execute cases within those constraints.

From the vendor perspective, the capital investment required to enter and remain in the e-discovery market is becoming a barrier. It is now common for software licensing, data storage, and processing costs to approach \$500,000 per year, with recurring IT investments to upgrade infrastructure and support the processing of ever increasing data sizes exceeding \$1 million. Considering the other requirements to “on-shore” processing and maintain a skilled workforce, productivity improvements and efficiency will remain the hallmark of success for the foreseeable future.

The Technological Evolution- Interoperable Capability

We are entering a period in e-discovery where technology no longer drives requirements, but requirements drive technology. That is, expansions in e-discovery have traditionally been led by *what is possible* from a technological perspective. In the future, *what is needed* will drive new applications and features to satisfy requirements.

In addition to productivity, one of those requirements is interoperability. The integration of the corporate enterprise from an operations perspective has largely left out legal operations. Yet, legal needs to be fully integrated from an IT perspective with the data silos and policies of operational departments. Moreover, business rules must exist in interoperable hierarchies to guide retention and access that are responsive to the separate business requirements of operations and legal. As these data repositories grow, so the enterprise architectures will evolve to

incorporate more of an interoperable service-orientation. This will all serve to both empower legal departments, and overwhelm them.

From a solutions perspective, the confluence of interwoven technology parts creates an environment that is “mashable” – similar and complementary technologies can communicate together through a singular platform without needing direct integration. Data from enterprise crawling devices will be extended across advanced semantic searching engines and presented to data repository platforms through use of advanced XML scripting. Closed, proprietary systems will become less desirable, especially when viewed from the perspective of increasing licensing costs.

The Evolution of Support

Clients familiar with the evolution of e-discovery services will find that increasing financial pressures associated with higher capital investment costs and commoditization will create instability in the vendor market. Furthermore, the forces associated with case law, commoditization, and technology will place a premium on vendors who can adroitly navigate these changes and provide a range of services to support improvements in client's efficiency and productivity. Simple flexibility in being able to process Lotus Notes files will not be enough.

These trends were the key factors inspiring Access' evolution in litigation support services. As part of our practice, we provide the range of business improvement, data processing and hosting, and application integration expertise necessary to improve the cost effectiveness of e-discovery operations from both a corporate and vendor perspective. Going beyond providing forensics, collection, and processing responsibilities, our expert consultants can help streamline, rationalize, and integrate your e-discovery requirements, and have done so for major legal departments for years.

Call us today **(703) 766-3871** or write info@accesslitigation.com .