

eDiscovery Economics

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Smart Phone Survey

- Audience Profile
 - Litigation Support
 - IT: In-House
 - IT: Law Firm
 - Lawyer: In-House
 - Lawyer: Private Practice
 - Service Provider

Today's Theme

- Disruptive technology is improving eDiscovery economics
- Clients and law firms that are prepared save \$\$\$
- Growing data volumes are countered by good processes
- Enough information is in the market to manage costs

Our Panelists

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Industry perspective

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Major Pain Points / Cost Drivers

- Reactive eDiscovery process is frequently managed today through a combination of applications, process and documentation
- Current ECA methodologies are not effective
 - Requires collection prior to Analysis
 - Imprecise
 - Iterative
- Employee self-collection increases legal risk
- Court rulings regarding the Federal Rules of Civil Procedure (FRCP) are placing greater demands on the eDiscovery process in terms of speed, accuracy and defensibility

Market Intolerance

- Inflated performance / capabilities
 - Request POC – even for smaller engagements
- Lack of thoughtful planning
- Overly broad data collection
- Imprecise results

Market Tolerance

- Holistic information management solutions that
 - Can be utilized across an organization – eDiscovery, information governance, records management, storage management
 - Provides tools for measuring performance and efficiencies over time
- Strategic advantage during meet-and-confer
 - Detailed data topology maps
 - Advanced analytics and reporting
 - Comprehensive view of all matter relevant data
- Immediate Analysis
 - Formulate “settle vs. litigate” decision sooner
 - Risk vs. cost perspectives
- Creative strategies to reduce legal review costs

Major Disruptions in the Market

- Comprehensive insight into scope of ESI:
 - Understand ALL potential data sources/types
 - Find ALL data associated with a custodian
 - Not just email, laptop, and home directory!
 - Data hides in random places (copier/printer hard drives, cash registers, turnstile machines, etc.)
 - Know what data is likely to matter in a legal dispute
 - Have a plan to access precise matter relevant data
 - Concept Extraction
 - Will (the person) vs. “will” (the document) vs. “will” (the verb)
 - Perform early case ‘analysis’ on matter-relevant data - where it natively resides - prior to collection

Common Pricing Models

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In-House vs Out-Sourced

- Data Under Management: Total size of unstructured data being managed across the enterprise.
 - Data residing on file servers, email servers, archives, document management repositories, and HSM-managed data.
- In-House: Fixed cost solution provides cost-predictability
 - Pay for solution 1x, begin seeing immediate ROI typically after only 1 case
 - Reduce ongoing legal expenses
 - Collect only matter responsive data; reduce attorney review costs
- Third Party: Disparate, per Unit Models
 - “All GB are not Equal.”
 - Valuable vs. Irrelevant Data
 - Reactive services

Experience from the trenches

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Experience from the Trenches

- The next level – implementing technology and metrics to drive up relevancy rates during review
 - Yesterday
 - Collect everything, filter some, review too much
 - 35% responsiveness
 - Today
 - Using key terms and dates for culling, removing non-responsive data prior to review
 - 60% responsiveness
 - Tomorrow
 - Leverage advanced technologies, e-mail communication patterns, domain analysis, date trending
 - 85-90%responsiveness

Experience from the trenches

- Storage
 - SAN up to 120 consecutive days of inactivity
 - Moves to 60 day holding then archived
 - Same day request to restore to virtual environment
- Processing
 - Gb ranges of 2,266 to 4,629 items extracted (3,447)
 - Deduplication ranges of 4 – 44% (24)
 - Keyword responsiveness ranges 13 – 83% (48)
- Review
 - Review rates linear 30 – 65 (47)
 - Review rates conceptual 200 – 1700 (950)
 - Review rates conceptual + confidence >2,000?

Experience from the trenches

- Vendor Arrangements
 - Always notify at milestones
 - Hold at 80% of budget estimate
 - Quarterly relationship meetings
- The Invoice
 - Always track and review at 80% of budget estimate
 - Keep a record of client billing dates
 - Review narrations before billing
 - Have dialogue about rolling up or expanding task descriptions
 - Consider taxation of costs

Experience from the Trenches

- Example
 - Corporate client implemented numerous and efficient procedures to manage high-volume of lawsuits annually
 - Initial focus on minimizing data volume outsourced to vendors for review
 - Highly efficient process, yet produced inadequate results
 - 35% Responsive-rate meant attorneys were spending 65% of their time looking at non-responsive data
 - Client implemented advanced tools/procedures to identify, focus on early in the matter
 - Result: 85% responsive rates on average saving additional 45-65% costs on each project

Experience from the Trenches

- Example (continued)
 - Small high-tech public company under SEC investigation and defending class action securities cases
 - Never even thought about e-discovery
 - No records policies or managers
 - No understanding of company data sources
 - No CIO
 - GC never met IT director
 - No legal hold procedures

Experience from the Trenches

- Example (continued)
 - Problem - untold millions in legal fees and vendor services and negative action by SEC due to delayed productions
 - Result -
 - Company built upon knowledge gained and learned from mistakes made
 - Developed comprehensive RM policy and e-discovery response plan
 - Approximately 75% reduction of e-discovery costs and related legal fees in future securities and patent litigation

Experience from the Trenches

- Example (continued)
 - Solutions that made a difference
 - Developed specific and understandable data retention policies
 - Developed comprehensive data map and preservation strategies
 - Assigned roles and responsibilities and trained ALL employees
 - Developed legal hold system with automated tracking
 - Developed custodian interview templates and questionnaires
 - Developed preservation status reporting system for use in each matters
 - Retained regional e-discovery counsel
 - Established preferred provider relationships with consultants and vendors
 - Invested in ECA technology
 - Implemented lift hold procedures

Case Study – Healthcare

- **Problem** – Healthcare organization was being served with litigation requests and taking weeks to produce ESI data to internal counsel. Lack of visibility of relevant data leading organization to produce excess data to outside counsel.
- **Solution** – Using StoredIQ’s eDiscovery appliance, the Healthcare organization was able to connect to live data sources across the enterprises, providing a consolidated view of all relevant data in minutes, not weeks.
- **ROI** – By reducing the amount of data sent to outside counsel, the organization was able to save \$200,000 in outside litigation fees. Also, the ability to produce the data quickly provided the organization’s counsel to have on average, 2 additional weeks to prepare for the meet and confer.

Case Study – Insurance

- **Problem** – Fortune 500 company overwhelmed with legal review due to lack of culling tools for relevant data.
- **Solution** – StoredIQ's eDiscovery solution provided advanced culling functionality, delivering only relevant data to legal team.
- **ROI** – Reduced the amount of data in legal review by 85%, contributing to hundreds of hours of time saved by legal team.

Case Study – Manufacturing

- **Problem** – A manufacturer had to quickly address a matter and thought there would be approximately 750 GB of raw data to analyze and 350 GB to be collected as ‘responsive’.
- **Solution** – The StoredIQ solution executed a metadata index against the target systems and identified a larger amount of discoverable data (1.1 TB). Using custodian and date range filtering, the customer was able to narrow down the data resulting in the collection of 240 GB of data. This subsequently yielded 27 GB of responsive data, completed in a 48 hour time period.
- **ROI** – Customer reported 6-figure savings from streamlined process.

Case Study – Professional Firm

- **Problem** – High recurring processing and review costs due to types of non-responsive data common to most custodians
 - Newsletters, confidentiality footers, signature blocks
- **Solution** - Developed strategies to cull out such data types prior to processing and to eliminate them going forward
 - Placed newsletters on intranet and utilized domain name culls to remove them from data collections
 - Required users to put email footers into separate field that could be excluded from privilege searches
 - Developed solution to cull out embedded image files and prohibited them going forward
- **ROI** - Company estimated reduction in pages processed and reviewed in the hundreds of thousands per case

Smart Phone Survey

- Do You Track Your Organization's eDiscovery Metrics?
- What eDiscovery metrics does your organization track?
 - Volume Collected
 - Culling Rates
 - Service Provider Costs
 - Relevance Rates
 - Privilege Rates
 - Reviewer Productivity

Cost Drivers

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Cost Drivers

- Corporate Influences:
 - Reduced appetite for litigation and capital investment in non strategic disputes
 - Commercial outcome at forefront
 - Seek to meet obligations on reduced budgets
 - Changing risk appetite for some industries with increased use of claw back or quick peak provisions
 - Shared or hybrid resourcing models
 - Corporate existing engagements
 - Corporate sustainability programs
 - Accurate forecasting of cost with scarce scope and no budget over run
 - Increased regulatory environment with secondary requests

Cost Drivers

- Law Firm Influences
 - Clients' increasing appetite for plain sight into law firms
 - Value and expertise are in sharper focus
 - Lawyer understanding of cost drivers
 - Understanding of value gained through transparency and cooperation with opponents
 - Increased single point knowledge with reduced head count
 - Industry bench marking
 - Technology continues to confuse the legal community
 - Court decisions holding outside counsel responsible for client conduct relating to discovery

Strategies to Capture & Analyze Cost

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Strategies to Capture & Analyze Cost

- Pitching
 - Track all pitches and pricing proposals
- Project Management
 - Focus on planning, tracking, resource assignment and outcomes
 - The person doing the task has to know how many hours were planned
- Processing Statistics
 - Start simple and add complexity
 - Track raw data through the funnel
 - Track by industry
 - Use vendor statistics

Strategies to Capture & Analyze Cost

- Review Rates
 - Simple verses complex
 - Platform
 - Define experience
 - Define number of fields
 - Define nature of fields
 - Discovery categorization may slow you down
- Accuracy Rates
 - Track value changes from human or automated

Strategies to Capture & Analyze Cost

- Understand Cost
 - Map and record process time and effort
 - Assign by experience level cost per hour
 - Assign overhead or technology cost
 - Know what you are giving away
 - Know what is “passed through” verses “written on”
 - Prepare budgets with optimistic and pessimistic ranges if scope is unclear

Strategies to Capture & Analyze Cost

- Agree on Narrations
 - Use existing time recording systems to interrogate
 - Phases are a great way to segment types of tasks
- Item Rates and Fixed Rates
 - Require maturity and deep understanding of cost drivers
 - Set price work needs project management

Strategies to Capture & Analyze Cost

- Pricing Models are Evolving
 - Not all gigabytes are equal
 - Internal pricing does impact market
 - Pricing needs to be understandable
 - Relationships can assist in navigating pricing turbulence
 - Value pricing requires education and confirmation
 - “Free” is sustainability challenged
 - Realized rates by practice / industry
 - Caps are motivating for all parties
 - Know buy price for key tasks, manage sell price

Peer-to-peer suggestions

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Take Action

1. Get to know your CFO and CIO
2. Develop preferred supplier arrangements and monitor on-going performance
3. Assign a cost (hourly or by unit) to every resource in your practice
4. Understand the client bill
5. Be able to articulate ROI on ediscovery strategy: risk vs. reward
6. Assemble the appropriate toolkit: processes and technology that improve quality and productivity
7. Implement *effective* ECA technology and legal hold processes to allow a defensible method of targeting data, while empowering legal teams to assess data early
8. Understand client ESI: substantive nature, data topology, custodian profiles, content types and volumes
9. Develop and monitor metrics and trends about data volumes, budgets and actual costs
10. Demonstrate forensically sound, defensible and auditable processes