Leveraging Managed Review for Better Case Strategy and Efficiency

By Manfred Gabriel

The crux of the e-discovery process is to weed out irrelevant data, identify documents for production 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 complex.

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.

Today, one popular approach is for corporations to look across the nine EDRM steps and select the cheapest tool or service for each phase or step in each phase. Perhaps counter-intuitively, this piecemealing approach often creates inefficiencies and additional expense. It 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.

As an alternative to piecemealing, a number of providers have begun bundling various services to help improve the e-discovery process for corporations. These managed or integrated document review offerings are handled by a single provider, under one contract, and can cover all EDRM steps from identification through production. In other instances, some but not all portions of the process are bundled. The key characteristic of these offerings is that review capability is combined with technology products and services such as data processing, hosting, and productions or exports. Done right, a managed document review approach reduces the cost and frustration of e-discovery and document review by giving a service provider an incentive to reduce cost (rather than to shift it) and to control enough steps in the process to eliminate inefficiencies.

With managed review, the relationship with the law firms should be treated as a partnership. The challenge lies in bringing counsel's substantive guidance and strategic direction directly into the review. This cannot happen by lip service alone; it requires integrating workflows that go beyond simple training of review attorneys and a technological solution. To be effective, managed review must achieve technological integration of outside counsel and collaborative workflows to embed substantive guidance from the law firm throughout the review. This collaboration must work in two directions: counsel must provide substantive guidance and must receive effective feedback of the review findings to permit fact-based strategic decision-making.

Here are some key areas where managed review offerings can benefit legal teams:

- **Budget predictability:** Many managed document review offerings can be purchased at a flat rate per document reviewed or per gigabyte and ensure greater cost control and predictability. In addition, by centralizing a sufficient number of EDRM steps with one provider, in-house attorneys and outside counsel can spend more time on case strategy and less time on project and vendor management.

- **Accountability:** To overcome the risks and costs of piecemealing, the total-cost model focuses on organizational integration and alignment of incentives. Legal teams only manage one contract and one service provider, and the accountability is with one provider rather than many. This eliminates finger-pointing, and less time is spent on contract negotiations and vendor management. The legal team is freed up to focus on their core concerns, like timeliness, quality, and staying within budget.

- **Project management:** Project management should be the core competency of the managed review provider, as should be the ability to fully maximize the benefits of e-discovery software and innovations. The e-discovery and review strategy are put in place holistically so that search term definitions, coding template designs, and initial data analysis all drive to an efficient review with high quality results. This integrated approach also allows legal teams to more quickly identify information that shapes the case and requires production.

For simple and routine e-discovery matters, or for more complex matters that can be effectively managed by your team, a piecemealing approach may provide all of the cost efficiency and transparency needed. For more complex matters, repeat matters or for companies that don't want to invest in a large in-house team, or that are otherwise facing budget pressure, a managed review approach may provide greater efficiency.

About the author

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