

POSSIBLE SHORTCOMINGS IN OUTSOURCED LEGAL REVIEW OFFERINGS

Over the past few years, a number of providers have begun bundling various services to help improve the e-discovery process for corporations. All-in-one 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, an all-in-one approach generates numerous benefits to reduce 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. Many all-in-one 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.

Despite their promise, there are a number of flaws in existing all-in-one offerings, demanding diligence in selecting a provider. It takes much more than simply adding temporary staff attorney reviewers to a review platform to be successful. There are three key reasons why the current all-in-one offerings are not working:

1. ALL-IN-ONE PROVIDERS FREQUENTLY SEEK TO REPLACE LAW FIRMS, NOT INTEGRATE WITH THEM.

The pitch from service providers is often this: select us to conduct review instead of your law firm, and you'll see immediate cost benefits. From the very beginning, this creates an adversarial relationship between the law firm and provider when they should be working collaboratively to structure the review, assess and circulate relevant documents, and understand the facts of the case

from the data set. In-house counsel may respond by managing the service provider themselves, but a bottleneck is created between the law firm and document review team, frequently causing delays and friction. The result is a worried outside counsel, uncomfortable with the process of document review, and an in-house team attempting to determine if outside counsel is "crying wolf" or facing legitimate obstacles to prosecuting or defending the case. Unless the review team is closely integrated with counsel, divorcing the review team from the litigation team makes it harder effectively to use documents for depositions, to establish fact-based arguments in the case, or to support substantive submissions like briefs and whitepapers.

2. COST HAS BECOME A SHELL GAME.

What makes a document review? All-in-one review providers may leave significant work yet to be done, and thereby re-create the problem of cost-shifting. An all-in-one offering must increase the efficiency and integration between all parties (counsel, the review team, and the in-house legal team). Otherwise, a time-intensive and round-about workflow is created, and law firms may have to re-review documents so that they understand them. It is, after all, rarely sufficient simply to code documents for production. Counsel must know whether arguments are borne out by the facts and documents. In effect, review costs may double; yet, the all-in-one provider can point to the law firm's additional efforts as the cause of higher costs. Again, clients may be getting the best unit prices for review services, but if the incentives are not aligned, the provider and law firm may not be on the same page. Total costs will be both higher and unpredictable.

3. THEY ARE RENTERS, NOT OWNERS, OF THE REVIEW SOFTWARE.

Some popular review software has drawbacks that have nothing to do with its feature set. For instance, the review provider depends upon the software company to continually innovate and develop

the toolset for the specialized function of legal document review. If the review service provider has insight on what new features should be added, it has to compete with other customers for inclusion of certain features into future versions of the software.

In addition, if a service provider does not own its review software, but licenses it, the provider is often contractually restricted in how the software is used. For example, a review service provider may not be able to provide clients and counsel with real-time access to the platform it uses during the “first-pass” review. This may mean that the counsel firm will have to conduct its own expensive review after the review provider has finished, a cost hardly justified by the label “first-pass” review.

FOR MORE INFORMATION ABOUT FTI

 www.ftitechnology.com
 ftitechsales@fticonsulting.com
North America +1 (800) 959-8001 or
+1 (206) 373 6565
Europe +44 (0)20 3077 0500
Australia +61(2) 8216 0814