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REGIONAL NEWS

Law Firms, Corporations at Odds on Who Calls E-Discovery Shots

But They Still Share the Desire to Do More E-Discovery Work Themselves

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Of the Legal Staff

Despite a bevy of service providers in the e-discovery space ready to assist law firms and corporations in their litigation needs, more of that work is being brought in-house to control cost and predictability, a survey by one of those service providers found.

But when it comes to who gets to call the shots on how to manage the logistics of e-discovery, opinions between law firms and corporate counsel are divergent.

Both firms and in-house law departments are doing at least some aspect of the Electronic Discovery Reference Model (EDRM) process themselves at a rate of 86 percent, when combining the two groups. According to the survey, the most common task done without a service provider is document review, with 76 percent of law firms doing that in-house and 52 percent of law departments doing so.

For law departments, the largest aspect of e-discovery done themselves is collection and preservation, with 72 percent doing that in-house. At the same time, 59 percent of law firms handle collection and preservation rather than delegating that to a service provider.

The clear desire of firms and companies to avoid data hosting is a sign that the 'cloud' is the wave of the future.

Michele Lange, director for discovery product management at Kroll Ontrack, said the company is seeing a shift toward corporations doing certain aspects of e-discovery on their own, instead of handing it off to firms or vendors.

These corporations are doing the collecting, filtering and early data assessment on their own and

then handing to their law firm a much narrower sample for legal review, she said.

"This is a shift toward gaining more predictability over spend in this area of the budget in corporate legal departments," Lange said.

She said the industry as a whole is maturing and moving the handling of these issues closer to the original source of data generation.

As organizations get farther into the EDRM process, more work seems to be handed off to service providers.

At the start of the process, the survey showed 61 percent of firms and 66 percent of law departments are handling information management. After collection and review, the company asked about filtering or early data assessment and found 54 percent of firms and 52 percent of law departments conduct that themselves. On the production side, 60 percent of firms handle production while 48 percent of law departments can say the same.

The processing and hosting of data is done internally at noticeably smaller rates. Processing is handled internally equally at 46 percent of

law firms and law departments. Data hosting seems to be the least favored practice to do on their own, with 38 percent of law firms and 40 percent of law departments taking on that task themselves.

Lange said the variations from one end of the EDRM spectrum to another are due in large part to the still evolving technology in the e-discovery space, with no one product up to the point of the survey able to handle all of those tasks.

She said the clear desire of firms and companies to avoid data hosting is a sign that the “cloud,” or hosting data at external sites, is the wave of the future.

LAW FIRMS, DEPARTMENTS DIVERGE

Kroll Ontrack asked survey respondents what the most important factors — aside from cost and risk — were when deciding whether to handle an aspect of e-discovery in-house or send it to a service provider.

Firms had a different idea of what would require an outside service provider than did corporations.

For law firms, Lange said, the volume of data and the production deadline drove the decision, whereas for law departments, the types of data and staffing constraints were the biggest drivers.

Complex data or something requiring a lot of staff might be something for which a corporation would rather use a service provider, she said. For law firms that wouldn't be the case. The difference makes sense when looking at their business models, Lange said.

“At the end of the day, law firms and corporations have different strength areas and different resourcing models,” Lange said. “Law firms are heavy with litigation support people. Corporations are lean in those areas. You don't just hire a bunch of people to wait around for litigation to come up.”

Firms and law departments also differ on who gets to make the call when these situations arise. Of the survey respondents, 90 percent of in-house counsel said the primary decision regarding in-sourcing or outsourcing e-discovery work lies within the corporation. Conversely, 43 percent of law firms said it should be their decision over their client's.

Lange said that, at the end of the day, it most likely is a blended decision. She said, however, that she wasn't surprised by the divergent viewpoints because law firms and corporations have different drivers on when to send things out or when to keep them in-house.

“If one person has invested in a specific technology, they will do everything to drive that in-house whether it's the right decision or not,” she said.

Kroll Ontrack also asked about what would cause respondents to switch to an outside service provider in the middle of a project they had been handling internally. The survey didn't break out the responses between law firms and departments, but rather gave combined answers.

The biggest cause to switch mid-stream would be increased complexity of the project, with 44 percent of respondents selecting

that option. Coming in second was increased data volume, with 32 percent of respondents saying that would be the biggest reason for them to hand off the project to a service provider. The remaining responses dip to below 10 percent, with 9 percent selecting change of deadline, and 7 percent each selecting change in budget and discovery of new data sources, according to the survey results.

The survey was given to Fortune 1000 companies and medium- to large-sized law firms from August through September.

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