

The top 5 e-discovery trends for 2012

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When it comes to e-discovery best practices, if your organization is standing still, you are losing ground. Law firm lawyers, corporate counsel, litigation support professionals and IT staff face a vicious cycle of looking for technology and processes to help them stay ahead of the curve.

As we head into 2012, there is no better time to take stock of the ever-shifting e-discovery landscape and predict the top trends for the New Year.

5. FRCP amendment dialogue will continue to sputter along. In the last 12 months, discussions regarding possible amendments to the Federal Rules of Civil Procedure (FRCP) picked up speed, with the Discovery Subcommittee of the Advisory Committee on Civil Rules holding mini-conferences and issuing calls for comment in 2011. The primary issues debated **were** preservation and sanctions. While consensus around the need for rule amendments is still building, we will not likely see any massive change in the near term. If the past is any indication of the future—with the 2006 amendments taking more than five years to formulate and promulgate—it may be 2015 before we see official revisions to the FRCP. If you want to stay up to speed, **monitor the U.S. Courts website.**

4. Social media and e-discovery will continue to grow friendlier. We are increasingly turning to social networking sites to conduct our day-to-day personal and professional communications, outpacing other mediums such as text messaging and e-mail. While friending and tweeting may provide users with innumerable benefits, these new platforms bring nothing but ESI headaches for legal professionals. Several salient 2011 social media opinions exemplify that courts, experts, litigators and commentators have surpassed the simple notion that “social media is discoverable” and have fixated on the next step—grappling with the intricacies of social media discovery head-on. Watch for e-discovery best practices to continue to advance in 2012, with solution providers bringing innovative social media collection and preservation tools to the market and judges issuing more intricate opinions on the discoverability of this new source of ESI.

3. One platform for the entire Electronic Discovery Reference Model (EDRM) will emerge. Most organizations know all too well the pains of jockeying data between multitudes of “point-solutions” to move ESI through the various stages of the EDRM. Data and tool jockeying not only drive up the costs associated with purchasing and supporting numerous e-discovery platforms, but more importantly, there is increased risk in “piecemealing” platforms from diverse providers that were not designed to work together seamlessly. In the next 12 to 18 months, look for compelling, integrated platforms that can manage most or all of the e-discovery lifecycle.

In addition, this movement toward a single EDRM toolset will also reduce the heightened challenges associated with global e-discovery, with fewer chances for error when handling multilingual data in a single platform. Just remember, the magic box does not guarantee success without the proper processes being built around it.

2. Cloud computing will look less stormy. There is little argument that cloud computing and software-as-a-service (SaaS) platforms have created a paradigm shift in enterprise technology and IT as a whole.

With more e-discovery options now than ever before, organizations will need to weigh the advantages and disadvantages of the various technology platforms.

How will cloud or SaaS applications fit in? Based on a 2011 Kroll Ontrack DIY Trends survey, law firms and corporations are considering cloud and SaaS-based tools more than ever before, with more than 80 percent of organizations and law firms planning to leverage the cloud for e-discovery and information management in the next two years. While evaluating the security and scalability of such platforms will be critical prior to adoption, organizations must become nimble in order to adapt to the changing e-discovery environment, and considering a switch to a cloud-based discovery platform may just give them the flexibility and cost savings they need to succeed.

1. Technology assisted review will blast off. Technology assisted review? Intelligent review? Predictive coding? Smart review? Whatever you call it, amidst growing data volumes and dwindling resources, traditional linear document review is quickly going the way of the dinosaur. In 2011, many organizations experimented with intelligent review technology, looking for ways to integrate these innovative solutions into their tried-and-true review protocols.

In 2012, watch for increased adoption, with compelling case studies emerging, proving increased efficiencies without compromised quality or defensibility. Plus, perhaps 2012 will bring the first official judicial endorsement of this technology in a published judicial opinion, complimenting the judicial commentary at conferences and in articles that we saw in 2011.

2012 will be the year of new perspectives, with corporations getting a better handle on managing e-discovery as a compliance, risk and governance process—and in some cases creating new best practices. Further, in the coming year, we will continue to see developments in both the law and technology, with each spurring the other to constantly innovate and advance.