Conquer IT E-Discovery Challenges

With corporations' data becoming increasingly digitized, IT departments are being asked to play bigger roles in supporting their corporate legal departments.

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At the simplest level, you can reduce e-discovery technical challenges to scalability, performance, and data security. This article also covers other considerations of return on investment (ROI) and minimizing risk.

Review platform challenges

Scalability

The first challenge associated with litigation review platforms is knowing what scale you need. Like many applications, litigation review platforms suffer from large spikes in demand. However, unlike many applications where the spikes are fairly predictable (end of month, 9:00, or 5:00, etc.), litigation is almost impossible to predict. Litigants file lawsuits without warning, large-scale discovery may or may not occur, and cases can settle or be dismissed at any time.

The size of the spike a single large case can generate has increased significantly in recent years. A large case can now mean sorting through hundreds of gigabytes or even terabytes of data. Getting through this data quickly, and with no downtime, is paramount as many lawyers make up review teams, each billing hundreds of dollars per hour.

Historically, review platforms were built to run on a single server, or even a desktop machine, and law firms and corporate legal departments ran them in house. This worked fine when discovery involved a few boxes worth of documents, and presented manageable challenges to IT departments in terms of space, power, administration, cost, etc. It does not work so well in the current environment.

The specific characteristics of legal review have spawned the creation of grid-based platforms that can be accessed on a software as a service (SaaS) model.

(Software as a Service is a new delivery model where companies don't own the software itself, but pay for using it.)

Tens of networked servers to ingest data, index it, and serve it up to multiple users can comprise SaaS systems. They reside in glass house fortified data centers and are backed
by 24x7 support. This model can provide virtually unlimited scalability, high levels of performance that don't deteriorate even with massive volumes of documents or multiple concurrent users, and mission-critical levels of availability.

Performance

The combination of exploding volumes of data and the high rates charged by the lawyers reviewing it have created the need for:

- Technologies that cull data sets automatically before the lawyer review process begins
- Toolsets that let lawyers review more documents per hour during the review process

The tools and technologies in this space are rapidly evolving, with multiple providers offering a release of new feature sets that improve productivity -- often in a highly meaningful way.

This environment makes it difficult to predict the long-term technology winner with any sort of certainty. Many of yesterday's leading tools have not been substantially upgraded in recent years and have fallen behind newer companies that have invested more in R&D. Other seemingly promising new companies have fallen flat in either the performance or support of their products. Even if a product is backed by substantial R&D and support, hosting it in house means dealing with frequent software upgrades as features get added at the rapid pace of this industry. Thus, the risk (and cost) of lock-in can be unusually high in this area when you compare it to more mature areas.

The grid-based SaaS providers can offer an alternative to this risk of lock-in. While they may provide less opportunity to customize or directly control your individual solution, they have far lower switching costs (and on-going costs) than an in-house model.

Data security

Litigation review platforms store highly sensitive materials. As part of the litigation process, this data must be shared with a web of individuals that starts with the company's in-house lawyers, extends out to the company's trial lawyers and experts, then out to the opposing party.

You must design your litigation review platforms to accommodate cross-enterprise access. Corporate security policies, however, typically are written with a focus on employees and sharing with outside partners (let alone truly hostile parties who are suing you) may not squeeze into the definition of employee access. Additionally, network policies may require that the system be located externally to other production systems and require additional authentication processes for current employees. If the documents and access to them don't align with the security policy, you may require additional storage recreate the documents for the review platform. Once you've covered these bases, you must design security groups to accommodate all users and their privileges in the system. Depending on the goals, this can be case level, document level, or even field level.
Once again, the IT department has a choice. It may build and operate the review platform and deal with the often-conflicting goals of access and security. Alternatively, it may outsource the task to a SaaS provider.

**Business challenges**

In addition to the technical challenges discussed above, IT departments also need to confront a number of business challenges when implementing a electronic discovery review system.

**Funding**

The first real-world challenge is to get funding for the project. Building and implementing an in-house electronic discovery review system that can handle large cases is a capital-intensive effort. Some IT departments may have this type of budget and mandate, but many don’t, requiring them to obtain funding from another portion of the company. The main proponent of the system -- the legal department -- is a cost center that often lacks the resources for these types of projects.

One possible solution to this funding dilemma is to use a SaaS model instead of building an in-house system. SaaS models don’t require large, up-front capital costs. Rather, they typically result in variable per-gigabyte costs you can tie directly to specific cases, making it far easier to pass them through to individual units.

**Resource costs**

This type of project also requires access to data center space and other physical resources. More significantly, it requires an assignment of specialized technical resources to both implement the system and to operate it over time. The skills necessary to operate a review platform (ingesting data, building customized field sets, producing data in the proper format, etc.) can be fairly specialized and often don’t fall within the existing core competency of many IT departments. Adding these skills often means obtaining the authority to increase headcount, navigating the recruiting process, and training new hires.

Even if the IT department has the requisite skill sets and physical resources, it may need to decide whether it is appropriate to prioritize an electronic discovery review platform over other IT projects that deliver more of a direct impact on the corporation's revenue. Using a SaaS model can allow the IT department to avoid having to make this "either or" decision. Since the SaaS vendor provides all of the required human and physical resources the only required investment is the more generic one of money.

**Risk minimization**

Finally, IT departments need to be concerned about the risk that they take on when evaluating how to meet the corporation's needs for an efficient electronic discovery review platform. Running an electronic discovery platform is a highly complex undertaking that requires specialized skills and processes. A growing number of legal decisions chronicle the missteps made in this area by even the largest and most sophisticated corporations and litigation support companies.
Such missteps can cause evidence to be lost, and courts take them seriously. Judges have the discretion to impose large monetary sanctions and even to instruct the jury to assume that the missing evidence proves the other side’s case. Published decisions indicate a prevalence for judicial to send a message by imposing heavy sanctions as opposed to expressing sympathy for the tremendously complex challenge of managing electronic discovery flawlessly. In light of this risk, many corporate legal departments recognize that hiring a reputable outside litigation support vendor can provide the solution for insulating the corporation from sanctions in case anything goes wrong.

**Proceed with caution**

For better or for worse, litigation is a fact in corporate America. IT departments can provide tremendous value to corporate legal departments, but need to be aware of the challenges involved and choose how they proceed carefully.