

E-discovery - Go Native or Go Broke

As the volume of E-discovery continues to grow, so do the providers, seemingly exponentially. The rhetoric and sales pitches articulated are both deep and confusing. There still exists an industry bias that electronic files need to be converted into TIFF or PDF for review. Many companies overbuilt capacities and over-estimated that the legal market, in light of Zublake and other such cases, would be forced to do it; when in reality the blind conversion of E-discovery came to a near screeching halt due to the rapid escalation of costs.

With one gigabyte (GB) representing 75,000 pages, and TIFF/PDF file conversion costing on average \$0.10 per page, the step of getting e-discovery to image is \$7,500 per GB in additional cost. Think for a moment what it would cost to convert just your PC's hard drive? With client companies' computers storing terabytes of data (noting a terabyte of data is estimated to represent 75,000,000 pages or \$7.5 million to convert), one can see why many vendors thought the gold rush was on. However, a funny thing happened on the way to the store. An alternative was born - known as meet and confer, allowing parties of reasonable minds to work out how they would gather and exchange data to keep client costs as low as possible for the matter at hand.

The vendor market responds with what is affectionately known as Native File Review. After all, they have all this computing capacity, why not try to use it for another service. Again, an almost over-bearing number of companies are offering a variety of native file review services at a wide spread in pricing. Most of these involve using their existing services, including web- hosted repositories.

With an estimated 93% of communication now performed electronically, the days of associates rifling through boxes of paper documents in a warehouse are becoming much less common. Daily email communication alone in the United States has far surpassed the annual mail messages delivered by the US Postal Service.

While I couldn't agree more that native file review is the way to go, the number of options for doing so all seems to require some sort of repository with the vendor. What is not being said is that if you have Summation or Concordance software, you are able to be your own host for in-house review of native files.

In my humble opinion, there is still one step that is being overlooked before you ever get that far. That is the age-old "getting your arms around the collection" to know what you have before you decide what to do with it, including native review. Anyone who deals with discovery understands the importance to scope out the cost of the project before the processing and conversion work gets underway.

There are several questions that arise in costing out an e-Discovery project, including:

- What kind of file formats are you dealing with?
- How many different formats are there?
- Are there uncommon file types that may require decryption or special software for viewing?
- How many pages are estimated to be contained in the native files?
- How many of your client's electronic files need to be reviewed by the attorneys and paralegals for a particular production set?

How these questions are answered will impact the final project cost. A recent advertisement asks - "Will it make sense to convert all files to TIFF images immediately if costs are reasonable or should a native review be conducted first?" It almost always makes sense to review in native mode before spending money on conversion to TIFF or PDF.

Taking time to step back and see what you have, then making a plan for de-duping and searching out what you really need and setting it all up in-house for review will give you the knowledge you need to make timely and cost-conscious decisions for your client and the review team.

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