

By Daniel Garrie

## **INTRODUCTION: WHERE THE EDISCOVERY COSTS ORIGINATE**

Litigators have an interest in making sure that, despite all the obstacles presented by the American system of justice, the value provided their clients by litigating a dispute exceeds the costs. One daunting obstacle of recent vintage is e-discovery. Federal and state codes now require the preservation and production of electronic data in all its various forms. The costs of identifying, collecting, preserving, and reviewing such information is often immense. If one is not careful, the costs of electronic discovery alone may well ensure that any victory obtained in the courtroom will be entirely pyrrhic to your client. Yet, failure to reasonably abide by one's e-discovery obligations may lead to more costs later, in the form of motion practice, additional required discovery, and even possible sanctions.

Several organizations, such as the ACTL and The Sedona Conference are working on developing codes and standards that will bring some order and direction to the e-discovery process. Likewise, the Judicial Conference Committee on Rules of Practice and Procedure are considering changes to the rules of e-discovery that may lighten the litigator's burden. These proposed fixes, however welcome, address symptoms, not the underlying problem.

## **INFORMATION MANAGEMENT AND DOCUMENT RETENTION STRATEGY**

Wherever there is information that may be relevant to a dispute, the principles of an adversary system of justice require that information be captured, reviewed and produced to the other side. This is not new. What is new is the rate of technological change in this information age, and the simple fact that companies are generating more information than ever before. Viewed in this way, it seems that the problem of electronic discovery might actually be a symptom of a larger problem of digital information management. Accordingly, the most effective solution is one that addresses the information overload at its source, through a company's adoption of responsible and effective enterprise information management principles.

Companies adopting technologies that allow them to effectively manage their information so that less is retained, and that which is retained can be seamlessly collected, preserved, and reviewed, are companies that will obtain both a competitive and litigation advantage that could save the company millions in legal and technological costs. Here, the old saying "less is more" holds true, because companies that keep less information have less information to identify, collect, preserve, review, and analyze.

Of course, selecting the right solution and synchronizing the solution with a company's policies is critical. It requires crossing the gap between the technical jungle and the legal morass to deliver a real solution. Today, organizations

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Law and Forensics solves the complex legal issues at the convergence of technology and the law. Our team includes some of the foremost thought leaders in eDiscovery and electronic forensics as well as the pioneers in the latest techniques in cyber security. It is this expertise which allows us to solve information governance problems efficiently and cost effectively.

We work with our clients, whether law firms, corporate organizations or government agencies, to resolve eDiscovery issues, perform electronic forensic examinations and investigations, and help bridge information and communication gaps between technologists and legal professionals.

Law and Forensics is based in Seattle with additional offices in Atlanta, Delaware, Los Angeles, and New York.

6506 3rd Ave. NW, Suite C  
Seattle, WA 98117

T: 425.395.4092

F: 866.893.4785

E: [info@lawandforensics.com](mailto:info@lawandforensics.com)

W: <http://lawandforensics.com>

seemingly keep information that has no legal, economic or competitive benefit, because the policies they have are not effectuated by the technologies they have acquired. Where the synchronization is done, companies that face persistent litigation issues show a fast return on investment in selecting the right technology tools.

## CONCLUSION

Companies should consider addressing e-discovery from a company-wide perspective, rather than a component cost for each litigation. Large companies have achieved economies of scale by hiring “discovery counsel,” be it an individual dedicated to helping manage the discovery portion of all litigations or outside counsel appointed to serve as National Discovery Counsel. A benefit of retaining such counsel is the company develops a deeper knowledge of the company’s information systems, and that synchronicity between the technology and the law helps lower the company’s legal bill. Such knowledge is crucial in assisting counsel in determining whether the costs of extracting certain data exceed the value of the information sought, and in being able to cogently and persuasively argue that point to your adversary and, if necessary, the Court.