

Justifying E-Discovery Systems

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It is a long, drawn-out process to justify, evaluate, select, implement, and maintain an enterprise search system. A decade ago, an enterprise search project I managed took nearly 2 years, from initial project concept through actually implementing the solution (including the unexpected need to champion the solution to the business community). Quite honestly, by the time management eventually gave me the green light to proceed beyond step one, it was anticlimactic, and I'd shifted my attention to other projects.

I doubt things are any easier today especially as the legal landscape grows more challenging. We all recognize the twin trends of exponentially growing electronic content and more litigiousness. The landmark 2006 Federal Rules of Civil Procedures Rule 26 and its updates make all electronic stored information (ESI) subject to legal discovery, and ESI continues its unbridled growth. Yet cost controls are tighter these days than they were a decade ago, so we increasingly react to problems rather than nip them in the bud. If you already have an enterprise search system (or, more likely, several targeted search systems), do you really need anything else to respond to a civil suit requesting information stored anywhere in the enterprise? Wouldn't an e-discovery solution just drain resources from electronic records management and enterprise search programs already in place?

A recent study of e-discovery practices found that "Few technology and strategy decision-makers report having a holistic approach to eDiscovery. In fact, only 23% claimed to have an end-to-end approach to gather and filter information. And a full two-thirds consider their eDiscovery strategy reactive rather than proactive." (Source: Forrester Research, Inc.) How do you make the case that another search system will be any better than the ones you already have? I challenged two vendors to explain the case for e-discovery systems: StoredIQ and EMC. StoredIQ of Austin, Texas, provides patent-pending ESI governance solutions. EMC's SourceOne information governance solutions build on StoredIQ products.

Ursula Talley, VP of marketing at StoredIQ, concedes that enterprise search is indispensable for knowledge workers, but that e-discovery solves a different problem. "E-discovery search is designed to support a workflow that can be legally defended in court" and results in a set of data files that are preserved in a new, target location without any changes to the metadata. Unlike typical enterprise search systems that emphasize recall-giving you everything you might ever want to find-e-discovery systems deliver precisely specified results. Moreover, says Talley, the quarantining process may require copying thousands of gigabytes, without disrupting user productivity.

Lori McKellar, EMC's senior product marketing manager, also emphasizes the special nature of e-discovery as "the need to take action on the content in very specific ways-collect, process, analyze, review, etc.-while ensuring chain of custody and auditing all action taken." She also points out that when e-discovery lawsuits occur, they can cost more than \$1.5 million to defend. Although those costs can be high, there is still the tendency to hope they'll be somebody else's problem. Another tack might be to see if you can get ahead of the curve, perhaps by leveraging some technology you already support, such as taxonomies or managed search system thesauri. McKellar agrees and says that "at its root, e-discovery is fundamentally an information management problem. Information management and the e-discovery process are intertwined."

Your work today to organize and classify information will make a future e-discovery process easier, and establishing good electronic records management programs will complement e-discovery. The continuous struggle to implement an electronic records management program, encouraging everyone to keep only what's needed and delete the rest, is critical. The ERM program will pay not only green

benefits (reducing storage and backup costs) but will also lower e-discovery costs because there will be fewer incriminating documents to search through. However, tools alone, even e-discovery tools, build on information management best practices. Anyone can Bing or Google, so they expect they can simply transfer those skills to in-house search systems to satisfy an e-discovery request. These acquired search skills are unlikely to suffice under deadlines to find everything needed. Firms will need to leverage their in-house librarian or taxonomy resources even with the best of e-discovery tools.

I once heard a records management instructor say, "Lawsuits are your friend." By that he meant that it sometimes takes a lawsuit to get management backing for a records management program. However, if you are unprepared for it, an e-discovery request may not be the kind of friend you need.