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BNA INSIGHTS

To Build Managed Review, or Not to Build Managed Review . . . That is the Question



BY JARED MICHAEL COSEGLIA

The year 2011 was characterized by trends that deeply affected the climate of the Litigation Support and eDiscovery job market: a drought of managerial opportunities in AmLaw and corporate, the emergence of dominate technology players in the predictive coding battle, and the continued acquisition of eDiscovery providers into larger global technology institutions. These stem from, and are a culmination of, the greatest trend in the provider world in 2011: the effort (or contemplation) to add a “managed review” arm to their existing eDiscovery service offering.

This trend is not exclusive to the large players whose gross revenues exceed \$50 million annually. Midsize and even small local vendors are considering the impact

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and profitability of being a “one-stop-shop” from collection to review for litigation support services.

Why Now? This trend toward “managed review” integration is largely the result of three years of decline in the price of eDiscovery processing. Like so many other industries, the economy collapse of 2008/09 serves as a timestamp for dynamic change in the eDiscovery space. It was then that vendors in eDiscovery suddenly found themselves making one-fifth the profit, or less, on the former industry standard for eDiscovery processing.

This occurred for several reasons:

First, the “economy.” 2008 was not a joke and everyone wanted everything for a cheaper price.

Second, technology, and thus pricing models, were completely reinvented.

The credible establishment of Early Case Assessment as a legitimate strategy and means of pre-processing culling dynamically changed the volume of eDiscovery processing needed. Some technology companies have created Enterprise “blackbox” technology that is institutionalized behind corporate firewalls. These tools host, cull, and index data locally so as to require as little duplicate eDiscovery processing as possible. (The success of these technology companies is astounding. Clearwell, acquired by Symantec for \$390 million in May 2011, is considered a leader in Early Case Assessment technology.)

New Pricing Models. The pricing used to be simple: per GB, per hour. The eDiscovery business model after 2008 was no longer just about how many GBs you could process and how fast you could process them. Pricing models and technology became creative.

However, as the volume and price of eDiscovery ebbed and flowed, one constant remained. Document Review, now smartly rebranded “Managed Review,” was unequivocally the most expensive part of any litigation.

When examining any litigation from a pure cost perspective, the pricing on review attorneys time, effort, and energy is still the most expensive part of the process. One provider that was recently acquired by another for \$65 million, touts on its website, “Privilege and responsiveness review is the most expensive phase of most litigations. On average, review eats up 75% to 90% of the overall case budget, dwarfing even electronic discovery costs.”

While vendors have developed numerous creative pricing models for Managed Review (flat fee, per hour, bundled processing/review), it is still the highest profit margin for services in this space. This has motivated many eDiscovery providers to focus back to the right in the EDRM, and consider the value of incorporating review into their existing portfolio of services.

Another company announced a recent \$68 million acquisition with the statement that their acquisition target “has particular prominence in *managed review* services.”

Show Them the Money. The corporate clients greatest legal spend is on review. Technology companies ask themselves, “How can we make the review cheaper for our clients!?” One way is to have less to review.

Contract attorney staffing companies are asking the same question, “How can we make the review cheaper for our clients!?” Another way is to lower the hourly rate of attorneys or create new pricing models.

Somewhere in the middle are the eDiscovery providers. Not every vendor has \$70 million to buy a managed review company. So what exactly does building managed review mean if you are an eDiscovery provider looking to grow organically, and not through acquisition?

Own the Talent. Bringing the contract attorney staffing component in-house to an eDiscovery provider can be perhaps the most challenging solution.

Owning the talent has tremendous value. The talent bills by the hour.

Most eDiscovery vendors are more likely to outsource the staffing and take greater control of the process and client expectation management. In other words, “Bring us the capable attorneys (and sometimes the physical review space), and we will manage the people and the payroll.” Strategic partnerships such as this allow for minimized overhead and little attorney-sourcing for the eDiscovery provider and significantly increased business development opportunities for the contract review attorney providers. After all, eDiscovery is a very relationship-driven industry from a sales perspective, and the art of recruiting contract attorneys is not a discipline that most eDiscovery providers want to take on.

Most eDiscovery providers already have deep strategic relationships with technologies companies. Products like Relativity, Clearwell, LAW, iPro, and more are

all licensed by third party eDiscovery providers and directly to law firms. Why not also develop relationships with contract attorney providers and marry the process?

To most eDiscovery providers, building managed review means taking ownership of the actual review management and leveraging analytic tools embedded in review technology to benefit the client by running a smarter, more targeted, articulate, and affordable review.

This has created tremendous opportunity for attorneys who find themselves on contract, managing review teams and wanting to reinvent themselves into something more than contract review team managers. By being part of an eDiscovery provider, these attorneys are participating in the litigation as early as collections, legal hold order, or even when the claim or subpoena is initially filed.

From a career perspective, this allows these attorneys to get exposure and experience in all aspects of the EDRM technically and strategically, reciprocally allowing the clients to receive guidance and consultation throughout the lifecycle of a case in anticipation of review – which, as we noted, is almost always the biggest price pain point. It has the potential to be a very mutually beneficially model for professionals, employers, and the industry as a whole. It is cultivating a new breed of eDiscovery professional who has a J.D., ideally is bar licensed, and understands the complexities of large scale corporate document review.

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Facing the Competition. So how can a boutique eDiscovery provider compete with a massive global managed review organization? Simple: different needs, different deeds. Not every review will require 150 attorneys working 24/7 in three geographic locations over the course of three months. Some reviews will require only 12 attorneys.

- Perhaps these attorneys will need to speak and read Japanese, be located in Los Angeles, and stay available for eight months. The cost of those attorneys will be above average.

- Perhaps the review is an internal investigation that could last six months, but will require a security clearance or extensive background checks for the elite eight on the review. The cost of those attorneys will be above average too.

- What if a review had only four attorneys, and the partner on the case wanted everything processed and reviewed, cost was not an obstacle, human eyeballs on everything, and that meant the review would potentially last years. The cost of that review will be above average as well.

There is so much niche review opportunity with profit margins sufficiently significant to enable an eDiscovery provider to double its annual revenue on billable

attorney hours. For most eDiscovery providers, this is a new stream of top line revenue. This additional review offering deepens business relationships with existing clients and increases revenue, rather than relying solely on new clients to increase profit. Why eat the crust if you can have the whole pie?

Enter the Law Firms. eDiscovery providers, large and small, are not the only ones getting into the game. Major law firms are now building their own internal document review centers. As noted earlier, some firms are also bringing in eDiscovery processing, hosting, and production at such completeness that they no longer outsource work. There is no doubt that some law firms have internal business units that are highly profitable competing directly with providers in the space. This model is not for every law firm, but some are convinced by the pitch that the firm can reduce the entire legal spend by incorporating managed review into the flat fee arrangement, or by drastically reducing the billable hours for contract attorneys, or by drastically reducing cost and increasing quality control.

Geography. In order to do this, law firms are frequently building their review centers in remote locations geographically (i.e. Not New York, Washington D.C., San Francisco, or Los Angeles where the bulk of the talent lives).

This creates a paradoxical staffing dilemma: Contract attorneys are harder to find in more remote locations, so supply can be an issue. However, they are more affordable. . . at first.

It's a complicated retention policy. Once you source and hire good reviewers in a less populous location, you have to retain them. Replacing them can be challenging.

For the reviewer, there are fewer growth opportunities outside their current employer to make moves professionally due to location. This frequently leads to retention for the employer, but over time, the best reviewers become review managers and then what? Often, they either require higher pay to remain, or relocate to a major city in pursuit of growth. It is now more possible than ever for a professional such as this to enter the eDiscovery world.

Self-Appraisal. Is building in-house managed review right for you? Is moving your career for document review to eDiscovery right for you? It is a question that many are asking on both sides of the employee/ employer paradigm.

The companies willing to make investments in people and technology will likely have greater success creating this additional stream of revenue. Managed review, unlike traditional eDiscovery processing, categorically requires the involvement of attorneys doing the work, looking at documents. This is a tremendous career opportunity for attorneys whose destiny is not to become a partnered track associate.

For an attorney with ambition, technical aptitude, and a customer service driven attitude, a new career awaits.

Expect Evolution. Managed review, whether at an eDiscovery provider, law firm or corporation, is a new buzz-word. What we define as "managed review" will likely continue to evolve just as the ever-changing landscape of eDiscovery and legal technology continues to evolve. There is no doubt that there will be professional opportunity as these services marry.