



“ONE SIZE FITS ALL” SOFTWARE DOES NOT FIT IN THE LEGAL SECTOR

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Abstract

It is estimated that by 2011, the amount of electronic data created and stored will grow to 10 times the 180 exabytes that existed in 2006, reflecting a compound annual growth rate of almost 60%*. As the amount of electronically stored data increases and the cost of Electronic Discovery escalate, many companies are rushing to find a “magic pill” that can help them manage records and lower E-Discovery costs in the future. In response to this concern, several software firms have added records management programs to their current software, even Microsoft’s SharePoint is purported to have records management functionality. Unfortunately, discoverable information is taking different forms and our experience suggests that our tried and true methods of identifying responsive data are not effective. These companies claim that with the addition of Records Management they can also help lower the cost of Electronic Discovery required during litigation. Can these “one size fits all” programs actually meet the compliance standards set by the courts? Or, is this “add on” technology making promises that it just cannot deliver on? Can we afford to approach ESI in the context of Electronic Discovery as we have in the past? Is the convergence of Record Management, Compliance, Knowledge Management and Electronic Discovery going to meet in the correct position to meet the legal requirements of ESI? These questions need review.

The Problem

The legal sector currently faces the challenges of the exponential growth of Electronically Stored Information, a corresponding increase in the cost of electronic discovery, and technology is challenging the judiciary that is struggling to define the parameters around electronic discovery.

The electronic discovery market is projected, by the 2006 Socha-Gelbmann Survey, to top \$3B in 2008 which has caught the attention of a number of major technology organizations. For example, Microsoft is including records management and electronic discovery processes in its SharePoint platform. While collaborative systems like this offer great advantages they also add the challenges of identifying exactly who viewed or participated in the modification of documents. Without a full vetting of the capabilities and limitations of these systems



companies could be putting themselves in jeopardy if they depend on them as a source of electronic discovery. In addition, electronic discovery can also include text messaging, voice mail, copier memory, PDA / Blackberry storage, memory sticks, and any historical enterprise data. The “one size fits all” records management system does not encompass these records and well could prove inadequate to meet the demands of the court.

The Position

The entry of major technology providers in the electronic discovery market may be very good for the industry. However, that will not be true if the primary vehicle is an add-on to a records management program. The industry needs to take a hard look beyond “one-size-fits-all” solutions to those that can truly keep pace with the challenges to be faced.

- * *The Diverse and Exploding Digital Universe – An IDC White Paper March 2008*