

Bringing E-Discovery Processing Back In-house

By Brian Ingram

According to the 2011 *Chief Legal Officer Survey* by management consulting firm Altman Weil, chief legal officers said that cost control is their number one priority. According to the survey, 56 percent of CLOs had increased their law department budgets from the previous year.

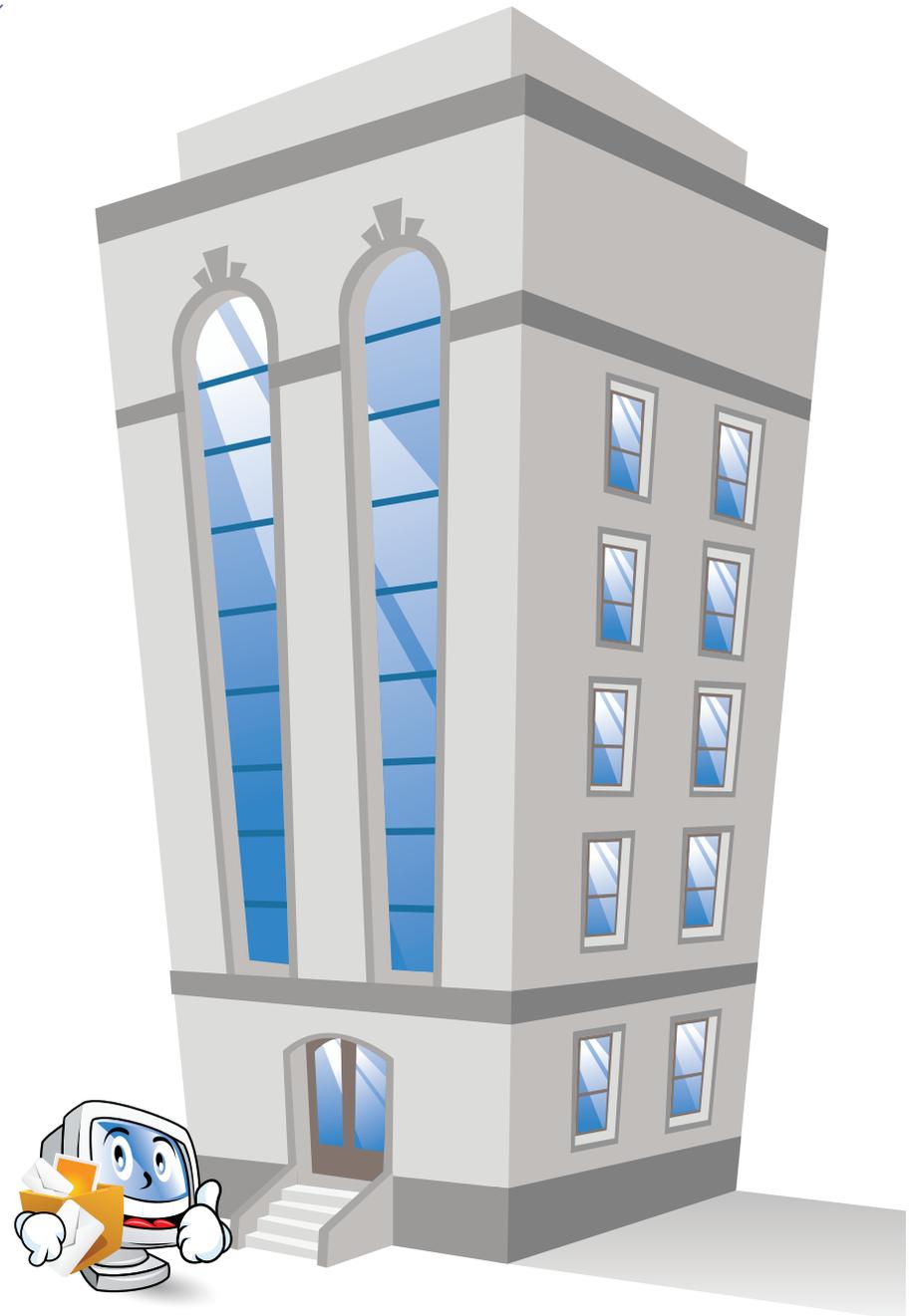
One of the most costly areas for companies and organizations has long been their litigation budgets, and more recently the explosion of data volumes has made data management and e-discovery a primary focus for cost-savings.

Another study, a 2012 Rand Corporation survey titled “Where the Money Goes,” finds that expenditures for outside counsel consumed about 70 percent of total e-discovery production costs.

With the amount of ESI itself growing exponentially and driving up those e-discovery costs, organizations are now starting to bring more of their e-discovery processing tasks in-house. This is being done as a way to regain control over e-discovery, mitigate the inherent risks associated with outsourcing data processing and as a cost-savings measure.

Most industry standards indicate that document review, specifically, is the costliest step in the pre-trial discovery process. If organizations can control the amount of data that needs to be reviewed during the initial stages of e-discovery, such as the ESI processing stage, they will be better positioned to realize substantial cost savings.

How do you know if bringing e-discovery in-house is the right move for your company or organization? Favorably priced data analysis and processing solutions now on the market can help organizations assess their data and make the determination. Not all organizations should opt for an in-house solution. It’s important to



determine if this approach will actually result in cost savings and make overall business sense.

Determine the approximate number, size and types of cases your organization is involved with annually. If the number – or size – of cases is substantial, it makes

sense to at least explore the in-house ESI processing option. Even what seems like a relatively small matter can sometimes require sifting through hundreds of gigabytes of data. According to “Bring E-discovery In-house,” by Deb Logan of Gartner Research, most companies

with as few as ten cases a year, or one or two big cases a year with multiple custodians, should give serious thought to bringing the process in-house.

The explosion of data often makes the decision to bring processing in-house seem like a no-brainer, even if only a few cases are litigated each year. Indeed, any significant reduction in the amount of document review hours by outside counsel will more than pay for

review is best handled by the organization itself, rather than outside counsel. When you're processing your own data, outside counsel will be less likely to revert to "casting a wide net" when requesting data, so you reduce the risk of over-collecting and processing non-responsive data.

Other significant investment returns include the enhanced ability to mount a cogent defense of the procedures

take will alleviate some of the stress.

Most potential problems can be headed off before they arise by understanding the software's capabilities and delegating management of the systems to appropriate personnel. Make sure the technology fits into the organization's IT infrastructure and works smoothly with other existing systems, and that there is buy-in from the entire organization. Involving

If the decision is to go in-house, don't wait for a major litigation to initiate the purchases or activate installations.

investing in an in-house ESI processing capability. But regardless of the ultimate decision, the organization will benefit from the review and analysis exercise, which should involve personnel from several departments other than legal (notably IT and Records).

If you decide to go in-house, don't wait for a major litigation to initiate the purchases or activate installations. The time to buy is once the decision is made. Set up protocols and procedures *before* a massive litigation. The processing software and accompanying technology are usually secondary issues compared to the people, the processes and the adoption of a new business culture.

What kind of return on investment can you expect?

The first and most sought after benefit is cost savings. Because document review continues to be the most expensive part of discovery, by controlling your own data and determining what must be processed and reviewed by the attorneys, you will be able to reduce billable hours immediately.

Simply put, the fewer unnecessary documents and custodians reviewed, the lower your costs. It's your data, and you're more familiar with the custodians and their document management practices than anyone; deciding what gets processed for

used, and a consequent reduction of exposure to e-discovery-related risk and possible sanctions. When a third party controls the process, it's much more difficult to enforce your e-discovery policies. By "owning" the process, so it becomes consistent, repeatable and transparent, you control the risk.

Like any technology initiative, implementation of an in-house ESI processing capability comes with challenges. It's not just a matter of installing some software and pushing a button. Skilled personnel are needed.

Even so, there are many opportunities for making mistakes along the way. Understanding that e-discovery is a constantly evolving process, as opposed to simply a piece of software, is a key to successful implementation.

Proper training and guidance from the software manufacturer are needed to ensure proper integration with existing workflow, and that best practices are documented and followed. Partner with your chosen software provider and make sure you can be confident they will be there for assistance in the future.

Be aware that the sheer volume of data involved in litigation can make internal processing burdensome. Laying the groundwork and realistically managing expectations regarding the time it will

personnel from IT and Records will help maintain the integrity and capability of the system.

The question of whether or not to bring ESI processing in-house is being considered by organizations in several industries. Creating your own processing capability with the appropriate tools and personnel will definitely enable you to take better control of your e-discovery challenges and costs. The prospect for enormous cost savings can't be ignored, but whether this is the right approach for your organization can only be answered after thorough review, analysis and discussion. ■



Brian Ingram is head of the Litigation Technology Consulting division at LexisNexis. During more

than 20 years in the profession, he has worked in e-discovery at CSX corporation and has managed litigation support departments at a number of law firms, including King & Spalding, Alston & Bird, and Paul Hastings & Troutman Sanders. He is a frequent speaker at industry trade shows and conferences.
brian.ingram@lexisnexis.com

Reprinted with permission from Executive Counsel, August/September 2012. On the Web at www.executivecounsel.info.
© EXECUTIVE COUNSEL. All Rights Reserved. Foster Printing Service: 866-879-9144, www.marketingreprints.com.