

E-filing in a multi-vendor environment

Identifying roadblocks to success

The judicial community and court technology providers share a common vision for utilizing open platform technology and a multi-vendor approach for e-filing solutions.

To achieve this vision requires far more than just the automation of the delivery mechanism. It calls for the full two-way exchange of information between attorneys and the court (filing), and between plaintiff and defense counsel (service). Such a multi-vendor model requires e-filing service providers (EFSPs), and an integration module often called an e-filing manager (EFM) that is developed by the court or an external vendor.

To achieve success with a multi-vendor model however, there are roadblocks that must be overcome. Success is defined by two criteria—the level of use of the e-filing system, and the impact of the resulting benefit. A system that is fully implemented but rarely used is not the best investment of public resources. And a system that is highly used but no more efficient than the paper-based process it replaces is of little value. After all, a court can make e-filing mandatory but if the e-filing system delivers very little functionality, case file management will not improve. At the present time most multi-vendor models have 3 inherent flaws compared to single-source solutions. Multi-vendor projects are:

- Complexity:** more complex to manage
- Capability:** less sophisticated to use
- Cost:** more costly to build and maintain

Complexity

Managing multiple vendors is by nature **more complex** than managing a project with one provider. Each vendor has their own business needs and technological competence. The court or its designee is forced to arbitrate between the wants and needs of those multiple vendors. Business standards such as those promulgated by COSCA and NACM,¹ and technical standards from Oasis,² provide an important framework. But while each vendor must adhere to the general technical and business standards, those standards alone do not define specific solutions. Each vendor will have their own approach to managing data and organizing case and party information. The court must work with the vendors to arrive at a consistent approach.

Court-driven system changes are impacted as well. Every time the court integration module is upgraded, each vendor must simultaneously make changes to their systems to stay current. Not only does the effort to manage this multi-vendor integration increase with every new vendor, but the time it takes to achieve an agreeable solution grows as well—the more vendors there are, the longer it takes to implement a change.

¹ “Standards for Electronic Filing Processes,” *Conference of State Court Administrators and National Association for Court Management*, (February 26, 2003), www.ncsconline.org/d_tech/standards/Documents/pdfdocs/Recommended_%20Process_%20standards_02_26_03.pdf.

² “LegalXML Court Filing,” Organization for the Advancement of Structured Information Standards; http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=legalxml-court-filing

In a Contra Costa County California project for example, the court was required on multiple occasions to resolve issues between the CMS vendor providing the integration and the various e-filing service providers. Much to the displeasure of the court, the launch of the e-filing project was delayed for several months beyond the announced live date, and well after attorneys had been trained.³

A court can of course simply order that certain changes are incorporated and disqualify vendors who do not perform. The difficulty comes when there are no longer enough participating providers to sustain the initiative.

Summary Points:

- Multiple vendors means multiple integration partners to manage
- The more vendors there are, the longer it takes to implement changes

Capability

Multi-vendor projects tend to have **less sophisticated** capabilities. To truly fulfill the vision of interoperability, each e-filing system must have some common level of functionality. For example, a process for managing sealed documents must be universal or unauthorized access would result. But because not all e-filing providers have the same level of resources or skills, system functionality will naturally gravitate to the least common denominator. System functionality—and therefore value to court and law firm users—will be compromised for the sake of interoperability. Though competitive pressures may foster the desire to add new features, technological advances must be compatible with the court EFM and ultimately the other vendor solutions to function properly.

Service is another important function that is difficult to support in the multi-vendor model. In order to electronically serve documents, attorneys representing the serving party and those representing the party who is being served, must both use the same system or the served documents must flow through the court's EFM integration module and then be distributed to opposing counsel. This also applies to documents that are intended to be served but not filed with the court. It is not likely that all attorneys would be using the same system so the burden falls to the court system to manage this exchange. The court essentially takes on responsibility for effectuating service—something many courts are less than comfortable with. There are few multi-vendor projects that currently provide for integrated electronic service. In contrast, thousands of attorneys serve millions of documents to each other electronically using LexisNexis File & Serve in the one million cases online in that system.

Further, a multi-vendor model requires the court to build an online document repository in order for users of the various e-filing solutions to access the complete electronic case file. This is required because no single vendor has the entire case file. E-filing Service Providers must be able to send documents to the court, and access the documents and related case information sent through other systems.

As example of the challenge, multi-vendor projects in California, Illinois, Michigan, and Texas, are not capable of providing a functioning online case file to the attorneys participating in e-filing projects. File & Serve in contrast, builds an online case file that includes all documents electronically filed or served.

³ Project knowledge based on LexisNexis File & Serve participation.

Depending on access rights (i.e. sealed or confidential information), documents and case file information are available to all case participants.

In Washington D.C. some attorneys involved in the multi-vendor Superior Court e-filing project have complained that they no longer have access to the level of functionality they once had with the previous single-source LexisNexis File & Serve solution.⁴ Features such as real-time alerts to new case activity are not currently possible because that activity is spread across multiple vendors.

Summary Points:

- Functionality and value are compromised by interoperability
- Limited if any support for electronic service
- Lack of a complete and accessible online case file

Cost

Not surprisingly, adding a middle-layer of technology to integrate multiple vendors also introduces a **layer of cost**. And in addition to the integration software, operational functionality for the clerks and judges must be developed as well. Features are required for filing intake, rejection/approval, reviewing and issuing orders, sealing cases/documents, and support for redaction.

If an integration module is developed by the court, there are direct costs in IT expenditures—and the consumption of taxpayer funding. That initial development cost can be significant, potentially hundreds of thousands of dollars. And once built, the system must be maintained and upgraded over time, adding further cost.

If on the other hand, that integration module is built and managed by yet another vendor, the vendor must recoup their costs. That is either done by charging the court, or more commonly by adding a surcharge on top of statutory filing fees and the e-filing service provider fees. And of course these additional fees are frequently passed along to the litigants—actually increasing the cost of litigation.

In a Texas multi-vendor project for example, in addition to the statutory fee, an e-filing service provider charges \$5.00 to send a 50-page document to the court. And then the filer is charged an additional \$6.00 in related processing costs by the court.⁵ A similar filing transaction in a single-source LexisNexis File & Serve project also in Texas costs only \$5.00.⁶

Summary Points:

- A multi-vendor model adds a new layer of cost
- Court functionality must be developed to manage the intake and processing of filings
- Multi-vendor integration costs are passed along to litigants

⁴ *Source:* Information based on one-on-one interviews with former File & Serve users involved in the D.C. Superior Court project.

⁵ *Source:* Pricing based on interpretation of EFSP pricing sheets provided through link on the TexasOnline E-filing for Courts website at www.texasonline.com. (April 4, 2006).

⁶ *Source:* Pricing for LexisNexis File & Serve transaction fee in Jefferson County District Court cases.

Course of Action

Courts are faced with four basic courses of action: 1) do nothing and wait for the technology and business models to mature, 2) move ahead with a flawed model and set lower expectations for results, 3) build their own systems, or 4) launch a pilot with a single-source solution and migrate to the multi-vendor model at a later date.

Play the Waiting Game

This alternative is the least appealing but frequently selected. Paralyzed by politics and inertia, some courts have chosen to maintain the status quo until the appropriate solution is developed. Unfortunately, that appropriate solution is never developed. Delaying e-filing for years only results in further continuation of inefficiencies at the court. For example, nearly a decade ago the State of Missouri amended rules to address electronic access to documents that contemplated e-filing, but has yet to implement such an initiative.⁷

Set Lower Expectations

A court can certainly choose to move forward with a multi-vendor model that may have serious flaws. At least there would be some forward momentum. The drawback is that the likelihood of success is low and the cost is high for all the reasons mentioned above. For example, the statewide voluntary e-filing project in Texas struggled in the first two years (generating only 785 filings).⁸ In 2005, the agency administering the program even contemplated waiving fees in order to encourage greater adoption.⁹ No online case file is available to law firms. By comparison, a single-source LexisNexis File & Serve project in Colorado which is also primarily voluntary, has achieved greater than 90 percent adoption statewide with 900,000 documents filed in 2005.

Become a Software Developer

The court may choose to develop a complete e-filing solution and not involve other vendors or e-filing service providers at all. This is by far the most costly and complex solution. The court effectively becomes a software developer and is responsible not only for development costs but also supporting law firm users. In Massachusetts, millions of dollars were spent on consultants and developers with little results.¹⁰ And in Washington State, a King County project with limited scope, experienced system failures that reinforced fears in the legal community about the reliability of e-filing.¹¹

Launch Single-Source Pilot

This alternative provides the court and law firms with the opportunity to benefits from e-filing while keeping the door open for a migration to a multi-vendor model when the time is right. A single-source pilot enables the court and law firms to make improvements in workflow efficiency and document access, while integration technology and business processes mature—and at little or no cost to the court. In State jurisdictions, LexisNexis File & Serve has accumulated more cases online and generated higher transactions volumes than EFSPs in multi-vendor projects.¹²

⁷ Court Operating Rule 2 references the statement: “Electronic records, computerized records, whether created by data entry, electronic filing, or digital imaging.” *Public Access to Records of the Judicial Department* (August 24, 1998).

⁸ 2004 TexasOnline Status Report (September 1, 2004).

⁹ TexasOnline Authority Meeting Minutes (February 11, 2005).

¹⁰ “Long-awaited tech upgrades seen coming to courts by '06,” *The Boston Business Journal* (June 11, 2004).

¹¹ “King County court-records system still down” *Seattle Times* (June 28, 2005).

¹² Source: Based on current internal LexisNexis File & Serve data of one million cases online and the equivalent of nineteen million documents filed and/or served in the previous twelve months, and market estimates. (April 2006).