Data Storage: 12 Important E-Discovery Trends for 2011 and Beyond

By **Chris Preimesberger** | Posted 2010-12-23

12 Important E-Discovery Trends for 2011 and Beyond

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New Sources of Data Will Become Routinely Sought in Discovery

There once was a time that e-mail was not requested in discovery requests. Then there was a time when nobody asked for voicemail, IMs, text messages or social media posts. But now, each of these are routinely sought in all lawsuits—even car crashes and slip and falls. This will not slow down in 2011. So if you arent aware of Foursquare, Ubiquitous Sensor Networks or the fact that refrigerators contain ESI [electronically stored information], get ready.

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Growth of Standards and Research Bodies

In e-discovery, there are a growing number of organizations that are contributing to the standardization of both technology and knowledge areas. These comprise established organizations such as The Sedona Conference, Electronic Discovery Reference Model (EDRM), and Text REtrieval Conference (TREC) Legal Track, Organization for the Advancement of Structured Information Standards (OASIS) as well as newer certification organizations that have started to publish educational standards, including the Association for Certified Electronic Discovery Specialists (ACEDS) and the Organization of Legal Professionals (OLP).

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Moving Technology from Research to Practice

The TREC Legal Track project has been on the forefront of legal technology research since its inception in 2006 and its findings are used to make technology decisions. In 2010, TREC Legal Track moved its research to the EDRM Enron Data Set 2.0. By focusing the research on a publically available, unencumbered data set with published relevancy rankings, the knowledge gained in the research projects can now be used by organizations to test their own review technology with the same rigor as used in the TREC research. Of particular note is the machine learning track, which covers technologies such as auto-classification and predictive-coding.

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Interoperability Standardization

As organizations seek to leverage their investment in software tools, communications between solutions becomes more important. There are several standards that have been established and are being worked on including EDRM XML, EDRM Search XSD, and OASIS Content Management Interoperability Services (CMIS). While development of some of these standards is still early, interest and adoption will drive the industry forward as organizations look to make longer term use of their investments.

Functionality Standardization

Archiving and e-discovery capabilities have been tested by organizations; however, the capabilities between products often differ in implementation and use. Standardized data sets and standardized tests allow organizations to leverage past and third-party experiences when conducting their own evaluations. The EDRM project is now hosting a Testing Project to "create and publish peer reviewed testing protocols and create overall testing principals for the unique requirements of the discovery lifecycle."

Performance Measurement Standardization

Some initial efforts toward e-discovery performance standards have been established and published; however, to date they are private efforts that cannot be independently verified or transferred to other organizations.. The EDRM Testing Project is also focusing on covering performance standardization of various aspects of the EDRM. This project will leverage the EDRM Data Set, Metrics, and Search working groups.

Knowledge Standardization

E-discovery covers a variety of technologies that are related to, but not fully addressed, in traditional education and certification bodies in areas such as forensics, information security or system administration. Association for Certified Electronic Discovery Specialists (ACEDS) and the Organization of Legal Professionals (OLP) are offering initial certification programs to provide a common body of knowledge for industry professionals. Organizations such as these will help provide a common baseline of knowledge for industry practitioners to complement to field experience.

Global E-Discovery Grows Up

United States-based companies are well aware of the horrendous potential legal and business costs for prematurely destroying ESI and are quickly deploying technology to help them preserve ESI. But now, plaintiffs are realizing that foreign-based companies do a spotty (or non-existent) job at preservation. Expect the flood gates to open in 2011.

Automated Review Will Mature

It's true that fully automated review is still years away. But with every company in the world trying to lower spending on legal research and fees, ESI review (the largest of the e-discovery budgetary line items) will become more automated. In 2011, we predict that many more companies will embrace predictive coding or some other form of automated review.

Discovery of Databases and Other Structured Data Will Increase

Since nearly all corporate transaction data is contained in structured databases, there can be little doubt that discovery of structured ESI will grow in importance.

E-Discovery Software Will Gain Traction In-House

In 2010, in-house lawyers bought multiple discovery software packages to serve multiple needs and to use up budget allocations. But now the lawyers need to do more with less and cannot rely upon mere point "solutions." Instead, the best practice of the in-house lawyer is to find a comprehensive solution that can manage the ESI from creation, preservation, collection and review. And the corresponding ability to proactively handle discovery will separate the prepared companies from unprepared competitors since discovery costs are no longer trivial.

Certification Will Help Establish E-Discovery Standards

There are organizations focused on standardizing e-discovery. The Association of Certified E-discovery Specialists (ACEDS) created standardized tests for e-discovery specialists. The ACEDS test, for example, tests a candidate's knowledge of cost controls, preservation holds, budgeting, ethics, project management, e-discovery technology, data culling, document reviews and cross-border discovery, among others.

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