Standing Out from the Crowd for E-Discovery Newcomers

Consolidation is on the rise, and the e-discovery market is changing. How are newcomers claiming their places?

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There is no greater success story in legal tech than e-discovery. Yet, while the practice is now the norm, enforced through legislation and all but required for today's monstrous review sets, the market for solutions has become saturated. It's defined by a spate of mergers and acquisitions, buzzwords employed by vendors masquerading their solutions as innovative and industry giants whose tools have become synonymous with the processes they undertake.

Despite these challenges, new players continue to arise, looking to establish their space amid countless vendors all claiming to hold the answers to the discovery challenges facing lawyers today. Thus, the question looms: How does one stand out in e-discovery?

Finding Your Place

When it comes to building an e-discovery vendor in today's market, "it's a bit out with the old, in with the new," says Andy Wilson, CEO of Logickull, a platform for automating discovery. "There's this whole transition going on right now where everything is moving to the cloud," and CIOs, rather than "go out and buy software to maintain" infrastructure, would rather "outsource it and focus on core business."

"E-discovery and workflows like it" are at the core of this, he adds, and "it doesn't make a lot of sense to continue to invest in the heavy artillery and experience to do that."

In its beginnings, the company was a service provider, providing a "very niche" service by processing large amounts of data for things like complex litigation, Wilson says. And they were "really good at it." However, the company took a step back to consider the changes going on around them, fueled by technology, and Wilson and his colleagues began to ask themselves: Can "the things we're doing today with people" be automated?

"If the answer is yes, you should take a hard look at, 'Okay, maybe I should automate that myself or look to solutions to help me.' Because it's going to happen. It's not a matter of 'if,' it's a matter of 'when,'" he adds.

In 2009, Logikcull's analysis revealed that someone was bound to automate "a pretty good chunk" of what the company was doing, Wilson says. And instead of "being automated out of the ecosystem, we set out to do it."

"E-discovery is a reactive thing. It's not a welcoming type of workflow," he says. "The vendors out there are really just data brokers, almost like insurance brokers, and so they're a middle man, and middle men are always at risk of getting cut out of the supply chain. Because if you can do it yourself, then why in the hell do you need a middle man?"

Given legal tech's potential to change the hourly billing model, it's easy to understand the appeal of automation. A 2015 study titled "Can Robots Be Lawyers? Computer, Lawyers, the Practice of Law" predicted that when it comes to e-discovery, automated document review "replaces 85 percent of all lawyer hours currently assigned to that task." Still, data continues to proliferate at unprecedented rates, and by 2020, the size of the "digital universe" is predicted to reach 44 trillion gigabytes, according to a 2014 study by EMC corporation. While this growth calls for organizations to have greater storage capacity, the drive to cut costs has led many providers to look to the cloud as a solution.

"There's this whole new push out there for true e-discovery SaaS, do it yourselves," says Aaron Vick, chief strategy officer at startup Cicayda. "As platforms shifted from your traditional software to your online [platforms] … there's definitely a change in the marketplace over the years in terms of single source—there's no such thing as single source software anymore. It used to be you had to spend $300,000 to install software at your office, and you had to suck it up and deal with it, and that's not really the case anymore."

The Face of the Industry Today

In addition to a collective desire for leaner e-discovery processes, the industry is also undergoing change as a result of a recent uptick of M&As and partnerships. The results of the International Legal Technology Association (ILTA) and ZL Technologies' joint "2016 Information Governance Survey" suggest that these changes may be fueled by client demands. The average number of software providers used by those with in-house e-discovery processes was 2.1, while 70 percent of respondents preferred products with "multi-purpose EDRM functionality" over those with "best-in-breed EDRM functionality."

This is a major change from the e-discovery industry of 15 years ago, a time that Consilio CEO Andy MacDonald describes as "the Wild West." At that time, "if someone had a couple computers, a couple of relationships, they could almost become an e-discovery company."

"What's happened in the past 15 years has been an increased focus on data security and information security, an increased focus on the capital required to sort of meet those types of obligations," MacDonald says. "There's been a significant sort of transition from companies asking law firms to do this work for them to companies becoming involved primarily on the procurement side."

Consilio, an e-discovery and managed review company, is among the major acquiring companies in e-discovery today. This past December, the company announced its acquisitions of both Huron Legal and Proven Legal Technologies. MacDonald explains that companies want to "have all of their security audits met" and "understand the long-term viability of their partners to make sure they're not dealing with under-capitalized companies who might leave them hanging."

In the past, "the e-discovery landscape was made up of a lot of folks … that were just small businesses," MacDonald says. Now, "more and more larger organizations are requiring significant capital allocation to have security audits, to have data centers that are compliant. They want global footprints."

Thus, the viewpoint is "consolidation was the right way to sort of approach from a business standpoint, not necessarily the e-discovery standpoint," he adds. "But certainly there is an opportunity."

The potential for e-discovery's growth in the coming years makes a compelling case for companies to establish "global footprints." Valued at about $10 billion in 2015, the worldwide e-discovery services and software market is predicted to grow at a compound annual growth rate (CAGR) of 9.8 percent, reported the International Data Corporation (IDC) in its "Worldwide eDiscovery Services Forecast 2014–2019."

"Operating efficiency does come through consolidation because it allows us to do more with the same capital base," MacDonald says. "By having that, we can fuel growth by maybe dropping prices a little bit, and being more competitive."

Getting Off the Ground

Yet while companies come together to meet the financial demands for reaching a global audience, startups may face tough times in getting the ball moving.

Now, it's "tougher for the smaller service providers to get off the ground in the e-discovery space," says Kris Wasserman, VP of client solutions at eQ, an e-discovery services provider launched in 2014. "It's about $2 million in software before you start looking at people, processes and infrastructure" unless "targeting a sub-niche," in which a specific concern is "top of list." However, "that window has been closing ever so slowly over the past few years."

"[A venture capitalist] wants one thing: get in, get their money, and get out," he says. "Very few are in it because they like the service."

Nevertheless, funding is a reality in modern discovery. To gain the attention of investors, Wilson says it's essential to "have the traction in accommodation of the product," show "good growth" in the market, and "to have a much bigger vision than e-discovery" as it's a "pretty small, niche industry."

"The kind of investors that we go after are the kinds of ones that are going to fund a Google," Logickull's Wilson says. "These are guys that are looking at big company potential, and e-discovery is just not very interesting to a lot of these guys."

Meanwhile, Cicayda CEO Bill Hyatt says, "I've heard a lot of two things" over the past two years, the first of which was, "wasn't this market saturated?"

"You had to find the investor that could see we've already done this in this industry," Hyatt explains, as he has had other businesses in the legal tech vertical as well. "We've grown a global product base; we've sold that product and it was successful."

"What I've been hearing lately is, 'There's so much consolidation, why do you stand on your own? Go ahead and consolidate.' And that may happen one day, but one of the things we for sure don't want to do is consolidate too early if at all."

This, he notes, is because Cicayda owns all of its intellectual property, "so we're not beholden to any other entity out there."

Innovating in the Big Leagues

While the e-discovery market keeps growing, startups continue to arise, finding themselves amid an industry rife with M&As, major partnerships, and companies like kCura all but a household name for those utilizing legal tech today. Thus, the question is raised: What about the desire to innovate?

According to Hyatt, there is a particular sort of pricing model that "stifles innovation."

"There's one pricing model out there that locks people up for several years. I've had a vendor say to me, 'It doesn't matter how good your software is and what cool things are in it, I've got these [clients] locked up for three years. They can't come to you. So make all the cool stuff you want, I'm still the king,'" he explains.

However, when it comes to innovation, Hyatt says the biggest threat is "the legal vertical does not embrace change."

"No one likes change, but I think Legal dislikes it more than anyone else," he says. "A lot of other industries are looking for change to be ahead of someone else. Law is all backward focused, looking at case-law, etc. That, probably more than anything else, keeps innovators out."

In Wasserman's view, the influence of M&As and goliath companies over the ability for newcomers to innovate is "a double-edged sword."

"At the end of the day, the buying decisions in this realm are largely being made by attorneys at law firms that are given the final go ahead," he says. "Very few of them truly understand the full capabilities of what the tech can do."

In terms of the effects of the emerging acquisition culture on new companies, he says, "There's always that big elephant in the room: Microsoft and Google. All they have to do is 'time and focus.' They haven't really spent much time focusing on e-discovery, but now that it's getting into that multi-billion dollar mark, in terms of a market share, I wouldn't be shocked if they started paying a lot more attention."

However, some believe that consolidation could actually promote innovation. Consultant Phil Favro of Driven says, for some companies, one "definition of success could be, 'We are going to get acquired at some point because our definition of success is to get a boatload of money for us.' And so with that model in mind, let's think about what they're going to do—they're going to be as innovative as possible with their technology and trying to either keep up with or get ahead of the curve."
