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3 Steps Toward Improving Document Review

Law360, New York (April 29, 2009) -- Increasingly large sums of money are spent reviewing, analyzing and managing documents, mostly for litigation. To date, technology has been unable to tame the exponential growth of electronically stored information and soon the cost of reviewing this information will engulf most corporate legal budgets, requiring them to grow exponentially, too.

At a time when corporate revenues, earnings and stock prices are in a free fall, a dangerous confluence of events is emerging that threatens the financial health of many corporations and, more importantly, the usability of our civil justice system. Never has there been a better time for new thinking and change.

In many corporations, the document review portion of e-discovery is the single largest legal operating cost, often exceeding all other legal operating costs combined.

For example, one large U.S. corporation spent almost \$600 million for legal services last year, more than \$400 million of which was for document review, i.e., the actual time lawyers spend reading, analyzing and managing documents. By any measure, this is a breathtaking amount of money for a process that does not get much attention.

It is almost as if the industry standard approach to document review — first level review by contract lawyers, second level review by law firm lawyers, and follow-on work by more experienced law firm lawyers — is a given and cannot be made better or less expensive. This is simply not the case.

By using (1) structured process management to eliminate nonvalue added work, (2) rigorous quality control to reduce work product defects and (3) collaboration technology to organize and accelerate the delivery of information, the corporation cited above could have reduced its overall cost of document review by more than 50 percent, or \$200 million annually!

Structured process management helps eliminate the nonvalue added work, or waste, that accounts for almost one-half of all costs in professional services.

Structured process management is what allows the world's leading automobile maker to profitably produce a better vehicle with 38 percent fewer production workers than its largest competitor, commercial airlines to safely complete millions of flights annually, and doctors to significantly reduce deaths in intensive care and surgical units. Structured process management delivers significant results in other industries and it can in the legal industry too.

Some nonvalue added work in the industry standard document review process includes: doing the same thing more than once, making and then having to correct mistakes, doing work that didn't need to be conducted in the first place and completing work out of sequence and spending time waiting for others to finish their work.

One example of nonvalue added work is second level review, which is redundant and accounts for a significant portion of all document review costs. When a lawyer is properly qualified, trained and empowered, a document needs only to be reviewed and processed once, not multiple times.

The current industry-accepted standard of re-reviewing documents does not create value, takes more time, lowers quality according to independent benchmark analyses and adds cost, thus destroying value in the process.

Overall, structured process management can reduce document review costs 40 percent to 50 percent through a reduction in the nonvalue added work described above.

Rigorous quality control helps reduce the work product defects (errors and mistakes) that require redoing work or worse yet, result in sanctions or other adverse consequences. Rigorous quality control ensures a measurably reliable outcome.

On average, unstructured and unmeasured processes, like the industry standard document review process, are 93 percent to 94 percent accurate.

For example, of 2,000 corporations filing directors' compensation with the U.S. Securities and Exchange Commission in 2007, 126 included math mistakes (a 6.3 percent failure rate). Of the five simple steps required to properly use a catheter, intensive care unit doctors failed to perform one of the five steps one-third of the time (a 6.7 percent failure rate).

Based on independent benchmark analyses, the industry standard document review process is worse than expected, with accuracy rates ranging from 78 percent to 91 percent, which is the equivalent of 90,000 to 220,000 work product defects for every 1 million documents reviewed.

Many work product defects are caused by ambiguous or incomplete review protocols. Most work product defects occur early in a document review.

While this is understandable, because it is difficult to include everything in a review protocol before a review begins, these work product defects are often compounded when a rigorous quality control program is not in place and defects that are made early in a document review are not identified and corrected, so they are repeated thousands of times during the review, which can take weeks or months to complete.

By systematically measuring, analyzing and correcting work product defects early in a review (within the first 10 or 15 days), and modifying the review protocols accordingly, work product defects can be reduced by more than 50 percent and the cost for the associated rework can be saved.

Overall, rigorous quality control can reduce document review costs 20 percent to 40 percent through a reduction of the work product defects that require work to be done more than once.

Collaboration technology helps organize and accelerate the delivery of information, which optimizes communications, reduces search time and readily makes useful information available to those who need it most.

It also facilitates the aggregation and co-creation of knowledge on a real-time basis, which can lead to early settlements or dismissals, thus eliminating the need for most, if not all, of the ongoing costs of pursuing litigation.

For example, collaboration technology eliminates the need for point-to-point communication, e.g., e-mail, which is an inefficient way for groups of people working together to communicate.

Collaboration technology replaces point-to-point communication with an open, many-to-many communication model that provides a workgroup as small as 25 people with more than 50,000 additional ways to communicate (the difference between Metcalfe's and Reed's Law).

This is important since, according to an independent study, lawyers spend about 500 hours annually (or approximately \$300,000 per lawyer, assuming two hours per day and a \$600 per hour billing rate) searching for information, much of which can be eliminated with collaboration technology.

Overall, collaboration technology can reduce document review costs 10 percent to 30 percent by organizing and readily making information available to those who need it most. Because of the inherent overlap in cost saving opportunities, the cost savings described above are not necessarily cumulative.

As the economic floor continues to fall out from underneath so many corporations at a time when electronically stored information and document review costs are growing exponentially, it is time for new thinking and change.

It is time to ask if your (1) document review is conducted pursuant to a structured process that is documented and auditable, (2) quality control programs are rigorous, scientifically based and statistically valid and (3) communication is enhanced with collaboration technology.

If not, you may be spending more than twice as much as necessary for the document review portion of your e-discovery process.

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