

Partnering – Legal Service Consultants

Ready To Work Smarter? Improve Compliance, Streamline E-Discovery And Lower Costs? Synergy Makes All The Difference

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ONSITE E-DISCOVERY AND AXS-ONE

Once upon a time, records management and regulatory compliance was the domain of specialist attorneys and back-office IT people. Now, with Sarbanes-Oxley, HIPAA, the Patriot Act and other regulations as an everyday part of doing business at most companies, they have drawn the attention of the board and shareholders. Records management and compliance – and the inability to properly manage them – have become front-page news. Last year, Morgan Stanley was hammered with a \$1.45 billion judgment (and the wrath of the judge on the case) for mishandling emails as part of an e-discovery production demand in *Coleman v. Morgan Stanley*.

For most in-house counsel, conducting litigation discovery and regulatory compliance processes used to be about as much fun as a root canal. But as the scope and expense of discovery has grown with the explosion of electronic documents and regulatory requirements have become increasingly burdensome, the work involved in overseeing those two areas has become even more painful.

When a large, global, highly sophisticated, tightly regulated company keeps stumbling upon boxes of old backup tapes that possibly contain email in out-of-the-way closets, senior executives and boards of directors at other companies start to get nervous. Indeed, the world has changed dramatically when it comes to the amount of data that must be managed and the expense of doing so properly. In today's corporate world, as much as 90 percent of all documents exist in electronic format, and e-discovery mandates demand that all of that content be produced. As the sheer amount of electronic data grows, so have the headaches, cost and time involved in fulfilling an e-discovery demand and staying compliant. According to the 2005 Socha-Gelbmann Electronic Discovery Survey, costs related to e-discovery will continue to grow by more than 50 percent a year.

Although thorough records management and regulatory compliance is expensive, the cost of failing to do so is even higher. Proactive companies are starting to recognize this new reality and asking their law departments, along with their IT staffs, operations, human resources and others to work together to ensure that they don't



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become the next example of a records-management failure on the front page of *The Wall Street Journal*.

For in-house counsel, selecting the proper strategy and vendors to assist in records management, regulatory compliance and litigation readiness have become more important than ever.

Lawsuits are virtually inevitable and discovery is a key component of most cases. The best attorneys want predictable, defensible, instantaneous processes to filter, cull, retrieve and understand on-target work product from internal and remote data warehouses, servers and backup tapes.

Despite the likelihood of lawsuits, even the largest, most technologically advanced companies can't go through the process by themselves – they lack the expertise or the staffing to handle a sudden, large production demand. That's why selecting the proper partners is key. The Sedona Conference has released a guide on "Best Practices for the Selection of Electronic Discovery Vendors: Navigating the Vendor Proposal Process." In it, the nonprofit research and educational institute suggests several steps companies should take when interviewing potential vendors for a particular matter. Here are some recommendations:

- **Background:** Investigate any potential vendor's background, including reputation, integrity and the company's ability to provide the necessary services. A background check should include information on the company's stability, obligations and warranties, physical plants, personnel quality, experience, staffing capacity, project management, quality of work and processes and infrastructure;

- **Security:** Since security is critical when it comes to dealing with potentially irreplaceable trade secrets and the like, expect vendors to have security safeguards in place. That involves examining the security of the company, the data and the project; and

- **Conflicts:** As with any other vendor involved in litigation support, the first step should be a conflicts check. This should also extend to sub-contractors the vendor may employ.

Points Of Failure

For in-house counsel trying to determine the best partners to work with, identifying areas where the compliance and records management system may fall short is crucial. It's the job of in-

house counsel (among many, many others) to determine potential weaknesses, and there are many possibilities. When it comes to records management, there are specific areas of potential disaster to anticipate and plan for – litigation and regulatory problems, storage and security mishaps and natural disasters, to name a few.

For in-house counsel, litigation and regulatory disasters are the most obvious area of responsibility. After all, if lawyers can't see the danger signs, who else can? A well-thought-out, solid policy for document retention and litigation readiness seems like an obvious first step, but that's all it is – companies need everything from training to enforcement to ensure that the policy is being followed. Here's a question: Do even the lowest-level employees with email access understand how important it is to abide by the policy? And do they understand what they need to do?

Then there are the storage and security disasters. Where are records stored once they are backed up? Are the records easily accessible and searchable?

Of course, there are the natural disasters as well: Is the company prepared for a fire, tornado or hurricane? Have valuable records been stored offsite in a secure location if it becomes impossible to get into corporate headquarters for any period of time?

The OnSite/AXS-One Partnership

With the growing demands to address compliance, document retention, e-discovery and litigation support, more and more vendors are calling themselves e-discovery specialists. As the Sedona Conference points out, "The number of vendors in the electronic discovery business has ballooned in recent years, and there are now hundreds of companies offering electronic discovery services in one form or another."

But not every vendor has the ability, the background and the knowledge to provide all the services corporations need, while at the same time helping those companies realize a significant return on investment in compliance-related spending. That is one reason why OnSite E-Discovery and AXS-One have joined forces to provide more complete, integrated services for corporations and in-house counsel.

OnSite E-Discovery and AXS-One, a provider of high-performance records compliance management software, recently announced a strategic partnership that combines compliance technology and litigation support. That partnership allows corporate clients the ability to plan ahead, be proactive and develop a business practice approach that will save time and money.

The long list of advantages begins with the technology itself. While some vendors have only recently added

archiving features and labeled other functions as incorporating e-discovery, AXS-One's signature product, the AXS-One Compliance Platform, was designed and built from the ground up to meet those needs – the underlying architecture enables organizations to ensure the integrity, security, privacy and retention of all electronic records, and our next-generation search technology dramatically improves on-line search performance across massive volumes of archived data in different formats. The real time coupling of this proven technology to the proven expert e-discovery and document review systems of OnSite E-Discovery deliver a truly best of breed and seamless end-to-end solution.

The combined solution of AXS-One and OnSite E-Discovery is a highly flexible, scalable and extensible architecture with a single interface. Its search mechanism covers all electronic records, then reviews, retrieves and reproduces all necessary content quickly to meet any court-mandated turnaround requirements. Its award-winning technology has been named best of class and delivers digital archiving, business process management, electronic document delivery and integrated records disposition and discovery for email, instant messaging, images, SAP and other corporate records. Founded in 1979, AXS-One has offices in the United States, Australia, Singapore, the United Kingdom and South Africa.

OnSite E-Discovery, founded in 1992, is a leading tier-one provider of litigation support services, which include paper and electronic discovery, tape restoration, computer forensics, discovery consulting and online review capabilities. With more than 13 locations nationwide as well as international capabilities, OnSite E-Discovery offers the resources to handle cases accurately and efficiently. Voted #1 in litigation support by the AMLAW 100 in January 2006, OnSite E-Discovery's award winning services include recovering email from backups, redaction, extracting META data and full text, data output in any format required, fully customizable, native document review, backup tape restoration, deleted file recovery, document collection, scanning, and indexing/coding.

As with good dental hygiene, proper planning, prevention and maintenance is key to avoiding complications from e-discovery proceedings and regulatory compliance. Finding the right partners to help in those tasks is critical to keeping the company, its board of directors and senior executives and shareholders out of trouble and out of the media spotlight. With trusted advisors such as AXS-One and OnSite E-Discovery working together, in-house counsel can avoid a compliance issue that resembles a sharp toothache – or even worse.

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