

2011 Cost Savings and Challenges in E-Discovery Survey:

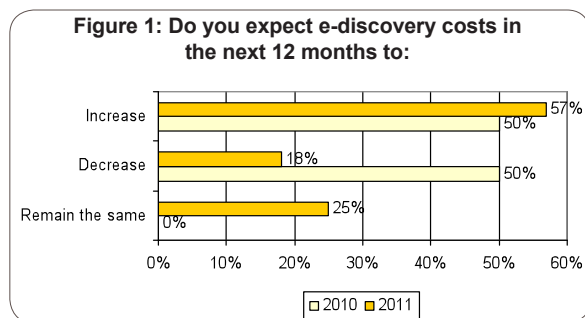
More E-Discovery Matters, Increase in Costs on the Horizon

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Huron Legal's second annual Cost Savings and Challenges in E-Discovery Survey provides important insights and reveals anticipated trends in the costs and challenges of e-discovery over the next 12 months. Building on last year's survey, the 2011 Survey revisits a number of issues addressed in 2010 and also looks at new areas such as cloud computing, predictive coding, and data privacy and protection issues.

Some of the 2011 Survey's key findings include the following:

- An anticipated continued increase in both e-discovery costs and the number of matters involving e-discovery (Figures 1 and 2).
- A resulting focus on cost containment through means such as limiting the scope and volume of e-discovery and increased use of technology.
- Use of new tools and technology such as predictive coding and analytical features such as e-mail threading, data filters and near-duplicate identification.
- Greater use of in-house resources through the deployment of dedicated hardware and software systems like litigation support databases, legal hold systems, e-discovery data conversion and information archive systems (Figure 3).



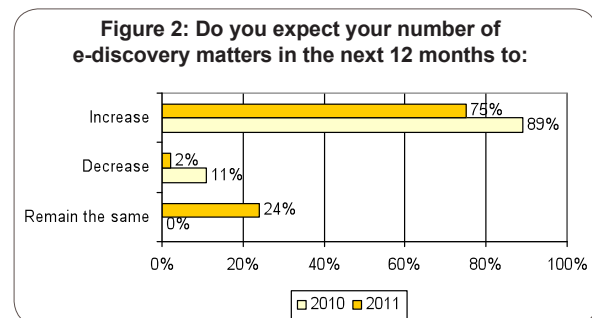
Increased Costs and More Matters

A majority of the respondents to the Survey believe they will have to deal with an increase in the number of e-discovery matters on the magnitude of 6%-20%, and 57% expect e-discovery costs to rise. Over one-third of those expect the rise in e-discovery costs will be in the 6%-10% range and another third anticipate an 11%-20% increase.

The trend of higher spend on e-discovery is also illustrated in respondents' views on e-discovery budgets, with more than half citing budget increases for 2011. This is an 11% increase over the

previous Survey. Respondents have been successful in garnering greater budget allocations, with over 60% citing success in this quest. This is a 14% increase from the '09/10 Survey.

The uncertain economic climate is having less of an effect on e-discovery costs and budgets than evidenced in Huron's previous study. Currently only 8% of respondents cite economic cutbacks as a reason for changes in e-discovery costs, compared to 46% in '09/10.



Cost Control

"We are seeing encouraging progress on steps companies can take to control and reduce costs," said Shahzad Bashir, Vice President, Huron Legal, who noted that respondents report greater use and regular monitoring of budgets and increased usage of internal staff dedicated to managing electronic discovery.

Respondents' favorite cost-saving technique by far is to attempt to limit the scope and volume of data in e-discovery. This is frequently achieved through negotiation with other parties. Most frequently, these companies negotiate with the attorneys for the adverse parties over the number of custodians, keywords or other search approaches, and successful application of "meet and confer" procedures. Respondents are increasingly utilizing contract or staff attorneys and preferred providers to do first level reviews, less so law firm associates (25%).

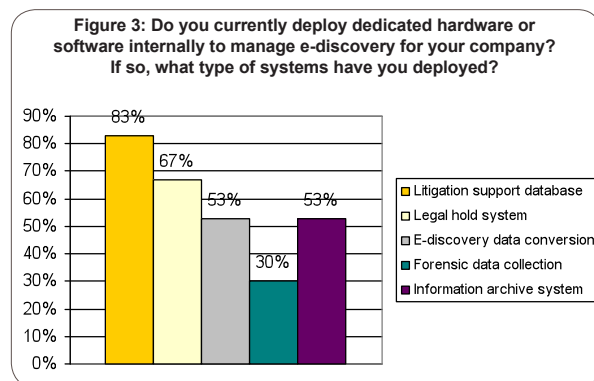
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Process Improvement

50% of respondents are using predictive coding tools to supplement or reduce first and second level review. Approximately 77% are using some form of analytic features to supplement first level review, such as data filters, e-mail threading, and near-duplicate identification. 66% believe the use of analytics-assisted review techniques are better than traditional, linear human-only review, and 68% believe these techniques are defensible.

Emerging Issues

New to this year's survey were questions regarding cloud computing, social media, and cross-border discovery. 35% of corporate respondents say they use cloud-based systems including social media and social network systems. 51% have dealt with European data privacy and protection issues. Nearly one-quarter preserve text messaging, voice mail and audio/video content.



Rule 502 Protections

The survey revealed mixed results regarding Federal Rule of Evidence 502's protections against the inadvertent waiver of privileged information. Non-waiver orders under F.R.E. 502(d) were not commonly used by respondents. Over 70% have not used these orders in their cases, with a third explaining that the issue simply never came up. Clawback agreements were the most popular choice, with 75% of respondents stating they are somewhat or very common. The use of "quick peeks" currently is more limited in use, according to almost 70% of the respondents.

Role of the Judiciary

While judges continue to take on a greater role in dealing with e-discovery, survey respondents believe more can be done. Over 70% believe additional changes are necessary beyond those in the December 2006 amendments to the Federal Rules of Civil Procedure. Almost one-third of respondents highlighted the need for increased judicial management and another third cited preservation as an area of high importance. The costs of e-discovery also remain an important concern. Respondents are looking to the courts for more judicial management, better guidance on preservation and more safe harbors for inadvertent loss of electronic information.

The majority of respondents would like to see the court assist in limiting the preservation, scope, number of custodians selected and also require agreement regarding keywords for searching. While the demands for court oversight and intervention have increased, it appears that respondents are confident that the courts will rise to the occasion; 73% believe that the Seventh Circuit Court of Appeals' October 2009 launch of its guidelines for electronically stored information will spread to other circuits.

Conclusion

The Survey results indicate that respondents remain concerned about increasing e-discovery costs and volume of data and continue to attempt to control costs. Because of this, James G. Mitchell, Managing Director, Head of Discovery Services, Huron Legal predicts, "the drive for efficiency, predictability in costs, and incorporating well-managed solutions that are both reliable in providing technological advancements and saving money will accelerate over the next year."

About the Survey

Huron Legal's Cost Savings and Challenges in E-Discovery Survey, conducted in conjunction with Sandpiper Partners LLC, was sent to attendees at The Huron Legal Institute's E-Discovery Briefings held across the country. About 57% of the respondents were from law firms, 37% from corporate law departments and the remainder from government. Participation among corporate law departments increased this year, perhaps reflecting companies' increasing focus on e-discovery and its associated potential risks. Over 80% of respondents' law firms had 200+ attorneys and 54% of the law departments had more than 26 attorneys.