

The eDJ Group Report: 2013 Trend Predictions

By: Greg Buckles, Babs Deacon, Barry Murphy, Mikki Tomlinson & Jason Velasco

■ Introduction

In 2013, expect to see the eDiscovery market at a crossroads. eDiscovery is no longer in its infancy, but it is not yet mature either. That will not stop those that look ahead to aggressive information governance (IG) projects as the solution to corporate eDiscovery problems. Rather, 2013 will see eDiscovery as an awkward, gangly teenager – starting to find its way and gaining some confidence, but perhaps trying too hard to be an adult.

IG projects will begin to take hold in 2013, especially in corporations. Most projects will be tactical in nature (e.g. shared drive cleanup and remediation) as companies first crawl and walk before learning to run. Think of 2013 as a bridge year between eDiscovery and IG. A small percentage of companies may even try to apply predictive coding methodologies to information classification, but do not expect that to become the norm.

We believe that technology-assisted review (TAR), specifically predictive coding, will continue to be a hot topic. What will not happen in 2013 is adoption, en masse, of predictive coding, but rather more experimentation at corporations and law firms alike. Before 2013 is out, expect that the comfort level with predictive coding in the legal community will have grown significantly. Look for the bulk of the noise around TAR and predictive coding to come from solution providers, who will jockey for having the best and most defensible approach.

The other thing to watch for with TAR and predictive coding is the race to build up the most human resources expertise. This will be especially important for managed services providers, who will differentiate on the level of human experience with predictive coding as well as the portfolio of technologies used.

The need to collection and preserve diverse information types will increase significantly in 2013. Most companies are used to collecting email and file share content; it may not yet be easy, but preserving these information types is much more straightforward now. Hopefully, no one will get complacent and rest on the laurels of experience with email and file share content. Instead, eDiscovery will remain challenging as more social media, web content, mobile device content, and structured data become part of eDiscovery.

■ A rapid increase in corporate migration of unstructured ESI to SharePoint and cloud repositories.

One company gave us a case study on using SharePoint as the foundation for an IG infrastructure, with add-ons for collection, email management, and ECA. We expect these types of IG projects to grow in 2013 as companies get more serious about risk mitigation. In addition, a desire to control information management costs will force companies to consider Cloud-based repositories as cloud storage gets cheaper and cheaper.

■ More focus on IG activities like defensible deletion.

In our IG survey earlier this year, more than half of respondents indicated a desire to clean up network file shares. There will be interest in using new techniques like predictive coding to more proactively govern information, but actual usage of such techniques will remain experimental versus mainstream. Data from our recent defensible deletion survey indicates that many organizations claim to be proactively deleting data, but few are actually doing it on any content other than email. Look for that to change in 2013.

■ While IG initiatives will seize on opportunities to clean up expired and/or redundant information, Legal departments will struggle with application of selective preservation.

The Holy Grail of Legal Hold is the ability to preserve only that which is necessary and get rid of other information in accordance with company retention policies. Cleaning up network file shares is a step in the right direction for IG professionals, but not necessarily a sign of maturity. Look for Legal Departments to cautiously experiment with more complex Legal Hold processes, but still encounter issues when trying to preserve only some information on active systems. This is part of the theme of 2013 as a bridge year for eDiscovery and IG; the efforts Legal departments make in executing selective preservation combined with information cleanup projects should yield some movement up the IG maturity curve.

■ A steady increase of all in SaaS offerings from processing through production.

Last year, we predicted that interest in Cloud-based eDiscovery would grow, but at a slow burn. We expect the interest levels to continue to grow and for adoption to steadily increase. More and more companies and law firms understand that SaaS offerings have withstood security challenges for years in the eDiscovery market and offer compelling cost savings. While on-premise deployments will continue, SaaS deployments will increase at a faster pace.

■ The competitive battle around predictive coding will focus in on which technology is superior: artificial intelligence or language-based.

While 2012 was a year for predictive coding to get on the mainstream eDiscovery radar, 2013 will be a year of differentiating the actual technology behind the scenes. This does not mean a deep evaluation of algorithms, but rather a marketing push on the part of solution providers to tout why their technology approach is the best.

■ With predictive coding, there will be a race to claim the lowest “seed population.”

The name of the game with predictive coding is reviewing few documents. Thus, the system that needs the fewest documents to train the system can claim the lowest review cost, in theory. Despite concerns that training sets are red herrings because of the diversity of case data, we expect that vendors will market aggressively just how few documents need to be reviewed in order to have defensible results. This should make for some fun debates at industry events throughout the year.

■ Continued consolidation in the service provider market, but less M&A in the software market.

2012 saw some high-profile software acquisitions that did not necessarily live up to expectations, e.g. HP's purchase of Autonomy and Symantec's purchase of Clearwell. As a result, we expect that larger software companies will give market players some room to grow and establish more stable businesses before making significant acquisitions. Given the amount of regional players in the service provider space, however, we expect to see continued and increased consolidation in this market. Companies like DTI, with its several recent acquisitions including Fios, provide a model for how acquisitions can lead to more national and global scale.

■ Requests for social media in eDiscovery will steadily rise.

More and more cases include social media and case law is getting very clear – social media is discoverable. Our survey data shows that social media is of great concern to a majority of eDiscovery professionals. The rise in social media information requests will be important in 2013 because the ability of organizations to preserve, collect, and review social media still lags. There are good tools for social media collection and preservation, but most eDiscovery professionals are just learning of these tools and few have experience with them. In 2013, we expect a few leaders to emerge from the field of about thirty vendors that offer social media collection and preservation.

■ Requests for mobile device content will slowly rise.

While mobile device content is discoverable and companies realize the need to account for it, the complexity of actual discovery will artificially suppress actual evidentiary value of mobile ESI. By the end of 2013, we do expect there to be some level of best practice for mobile device content, but not real maturity in the practice.

■ More Lawyers (JDs) in eDiscovery jobs.

Increasingly, there is a comfort level associated with hiring someone with a JD for an eDiscovery job. Many of the industry recruiters we have talked to agreed that organizations were including a JD as an important job description component. We heard more than once, “They wanted a JD even if they didn’t know why they wanted a JD.” For a younger generation of lawyers that have grown up tech-savvy, this means new career opportunity.

■ Law firms will replace a large portion of internal litigation support services (e.g., processing, hosting, support) with managed services partners.

Implementing and maintaining an infrastructure for litigation support within a law firm can be an expensive proposition. We expect more and more law firms to focus their businesses on the practice of law and use managed service partners for the bulk of litigation support activities.

■ Managed service providers and, to a lesser extent, law firm, will race to build up predictive coding expertise.

Some law firms believe that they will need to maintain significant litigation support talent in-house. However, others recognized that there is a need for law firms to be flexible; which may mean having a certain amount of in-house expertise along with relationships with managed service providers that can be leveraged to meet client expectations. The general belief is that smart law firms will keep high-margin, low-volume work in-house and rely on managed services for high-volume, lower-margin work. For the first time ever, law firms are competing with 3rd party service providers of market share and a limited pool of talent. Because managed service providers can arbitrage the high cost of these in-demand workers across multiple clients and matters, law firms may find they do not have the resources to compete. Given the critical role that human resources play in predictive coding, we expect that managed services providers will race to have the most experienced teams of consultants possible in order to gain a competitive leg up.

© 2012, eDJ Group Inc. All rights reserved. eDJ Platinum Plus clients may make one attributed copy or slide of each figure contained herein. Additional reproduction is strictly prohibited. For additional reproduction rights and usage information, go to www.ediscoverymatrix.com. Information is based on best available resources. Opinions reflect judgment at the time and are subject to change. To purchase reprints of this document, please email sales@edjgroupinc.com.

About the eDJ Group:

eDJ Group offers unbiased information and pragmatic advice, based on years of experience and proven industry best practices. Whether researching a technology or service solution, conducting an eDiscovery Bootcamp or finding the right expertise to answer your specific questions, eDJ Group is the source for all eDiscovery professionals.

We are committed to helping eDiscovery professionals get the information necessary to excel in their professions, rather than offering legal advice or counsel. We operate with the utmost integrity and commitment to our clients on these guiding principles:

- Independence – All research, reports, advice and services are agnostic and conducted independently without influence by sponsors.
- Highest Ethical standards – All content is honest perspective based on real experience and interactions with thousands of practitioners; detailing both successes and failures without favoritism.
- Pragmatic, Experienced Expertise – All services are conducted by industry experts with decades of experience in eDiscovery and strictly vetted by the eDJ Group founders.

For further information about the eDJ Group and their research, please contact Barry Murphy (barry@edjgroupinc.com) or Jason Velasco (jason@edjgroupinc.com).