Mining for Gold

By George Socha & Tom Gelbmann

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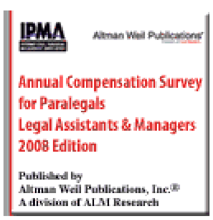
The results of the Sixth Annual Socha-Gelbmann Electronic Discovery Survey are in — and the winners are … mixed. There is something for everyone to like, and hate, about where this market is headed.

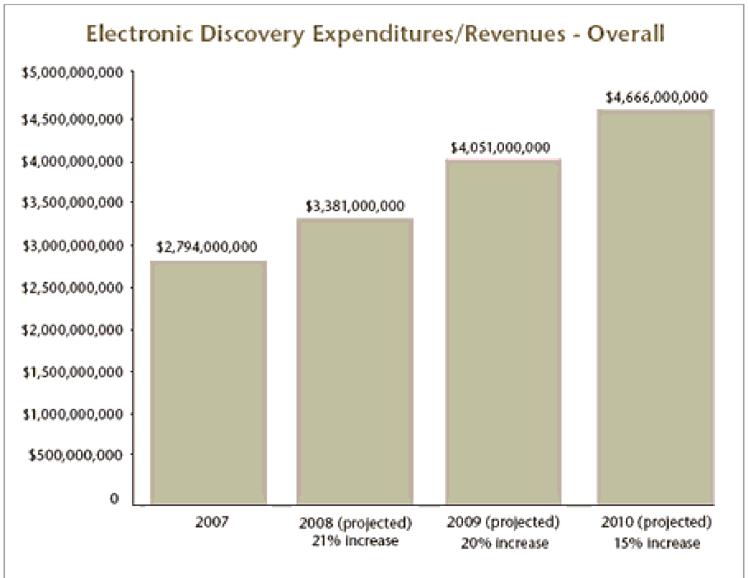
Consumers — mainly the corporations that bear the greatest brunt of the electronic data discovery burden — should be encouraged by the growth in information management services and software. This ups their chances of getting their electronic houses in order before the onset of litigation, investigations, regulatory actions, and the like.

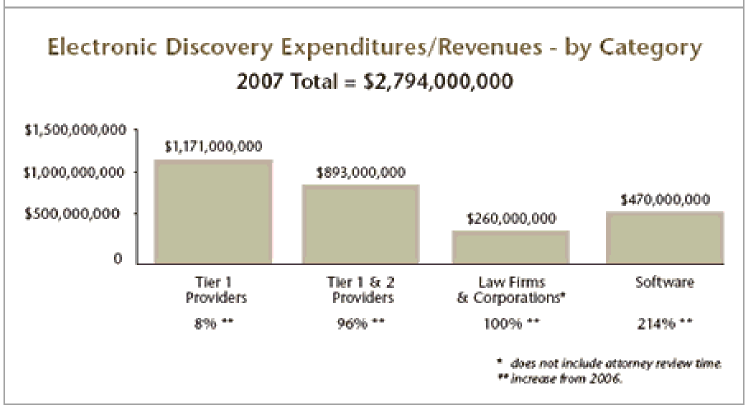
Consumers also should take heart in the increasing emphasis on the analytical steps of the EDD process. Better and earlier analysis of electronically stored information means a greater ability to successfully navigate the EDD whitewater, from the initial turmoil of early case assessment through the class 5 rapids of review and over the falls of production and presentation.

We see a shift in the market from a primarily services-based approach to one where software plays a substantially larger role, which also bodes well for consumers. Some software is aimed directly at consumers, for example, helping them identify, preserve and collect ESI themselves, or giving them enhanced tools for managing the overall litigation hold process. Other software is aimed primarily at EDD service providers, consulting groups and law firms, promising greater reliability and improved efficiencies, both of which should benefit consumers.

But the other shoe must drop. Consumer and provider expectations suggest continued growth in a market that has expanded greatly over the past few years. Based on our research, we estimate that in 2007 commercial expenditures on EDD topped $2.7 billion, up 43% from 2006, and that they will grow by 21%, 20% and 15% in 2008, 2009, and 2010.







That is a lot of money for consumers to pay, especially for what is only one piece of the discovery process. Consumers still need to cover the costs for someone to plow through paper, get information out of people's heads, and examine tangible objects. And they still need to spend money for all the other parts of the litigation, regulatory or similar processes.

Ultimately, lawyers need to follow the story —find the truths — that is what electronic data discovery really is all about.

And 2007 generated a lot of story-following. Law firms aggressively sought to expand the breadth and depth of EDD-related services they offer. They, along with services and software providers, have been promoting litigation readiness and early case assessment. When and how corporations will respond remains to be seen.

A certain cadre of law firms spent the year beefing up their EDD capabilities. They added, or tried to add, e-discovery staff at all levels. They strove to buy or build attorneys who can focus on EDD, and have sent those attorneys into the market to educate current clients and draw in new ones.

They sought better EDD directors, EDD project managers, EDD anything. As reported last year, however, the major barrier to growth in this area is the ability to find, train, and retain competent and qualified staff. Turnover and talent migration from organization to organization continues at a high rate.

COST CONTAINMENT
During 2007, law firms faced searing pressure from two fronts to cut — or at least control — EDD costs, most notably review costs. Clients who have borne the bulk of e-discovery costs in the past have ramped up efforts to:
• Reduce the amount of ESI flowing to law firms.
• Bring EDD capabilities in-house.
• Focus EDD activities in a small group of vendors (and yes, from the corporate point of view, law firms are vendors).

At the same time, a growing number of services providers, consulting firms and specialized law firms have offered review services at a price that law firms are hard-pressed to match.

MIXED YEAR
E-discovery software and services providers saw a mixed year. While the EDD services market continued to grow, a large share of the services growth was in Tier 3 organizations — small, niche or boutique players who often are best positioned to take on the medium to small projects that most likely will represent the greatest EDD growth in years to come.

Software grew substantially last year, as the tools began to mature and adoption rates increased among all constituencies — users, law firms, and services and software providers.

Among key trends:
• Consolidation, especially on the software side, has accelerated in 2008. Expect to see yet more through the rest of the year.
• Acquisitions grew as well, and will continue as providers try to buy up competitors, and as large, well-funded organizations arrive.
• Downward price pressures continue to plague providers, with no end in sight. Consumers continue to demand commodity pricing while expecting custom services.

The big question, as it has been for several years, is whether there will be a seismic "game changer." Likely candidates are those organizations that can have a major impact on the volume of ESI available for discovery, as well as those who can find a way to deliver massively more efficient means of handling the ESI once it enters the EDD stream.

MARKET SIZE & GROWTH
Based on our research, we estimate that 2007 commercial EDD revenues were about $2.794 billion, up 43% from 2006.

We estimate that:
• The top 30 providers collected about $1.17 billion.
• An additional 570 providers accounted for another $893 million.
• "Do-it-yourself" firms (law firms and companies doing EDD work they otherwise would have sent to a provider) represented $260 million.
• Software revenues account for about $470 million.

PREDICTIONS
Judging from consumer and provider expectations, we anticipate that the market will grow approximately 21% from 2007 to 2008; 20% from 2008 to 2009; and 15% from 2009 to 2010. If these growth estimates are realized, the e-discovery market will exceed $4.6 billion by 2010.

MARKET LEADERS

Once again, we offer lists of leading EDD services and software providers. We stress, however, that anyone who makes buying decisions primarily on these rankings is a fool.

We have taken every effort to assess the information available to us as thoroughly and carefully as we can. Nonetheless, general sets of rankings such as the ones set forth below should never be used as more than a starting point, if that, in determining what services provider one ought to use.

The goal of consumers should be to find the provider or providers that best fits their needs. That goal is best achieved by a careful consideration of needs and the potential providers' capabilities.

This year, we gathered information from 107 services and software providers, and law firms, and 19 corporations, as well as from various other sources. To rank providers, we evaluated more than 350 qualitative and quantitative factors. Details about the process we used are posted at www.sochaconsulting.com/2008survey.php.

It is important to note that our evaluation model relies heavily on information provided through interviews or spreadsheets. We recognize that there may be other providers in this space with the qualifications to rank within the top five, 10 or 25, however, the data on them was not available to us.

Of necessity, our approach is limited by the extent to which we could get information.

We accepted information from every organization that was willing to provide it to us. However, some organizations declined to provide any information, others provided only selected information, and yet others who said they would send information but never did.

SCOPE AND METHODOLOGY
The 2008 Socha-Gelbmann Electronic Discovery Survey examines the demands for and consumption of commercial EDD services and software. By "electronic discovery" we mean the activities surrounding the identification, preservation, collection, processing, review, analysis, production and presentation of information both "born" and "borne" electronically — ESI that started its life in electronic form and remained in electronic form until it and the discovery process collided.

For the 2008 survey, we gathered information from 155 organizations — 107 services and software providers and 48 law firms and corporate legal departments. We also gathered information from secondary sources.

We do not pay participants. Participants will receive a participants' report. For those organizations that provided meaningful data and who also subscribe to the report, we provide information about how they ranked. All participants were promised anonymity.

The cost to subscribe to the survey is $5,000. Details are posted at www.sochaconsulting.com/2008survey.php.

ONLINE RESOURCES
The executive summary also is available online at three Incisive Media sites: on August 1, at Law Technology News' website, and on August 4th, the EDD Update blog (www.EDDUpdate.com); and The Common Scold blog (www.thecommonscold.com).

George Socha and Thomas Gelbmann are interviewed on Monica Bay's August podcast, Law Technology Now, which can be found at www.lawtechnologynow.com, the Legal Talk Network (www.legaltalknetwork.com) and iTunes (www.itunes.com).

DISCLOSURES

Since 2003, Socha Consulting has provided paid consulting services to (or has been reimbursed for travel expenses by) a number of the services providers named in this report, and has provided paid consulting services to (or has received software at no charge from) a number of the software providers named.

Socha Consulting also has provided consulting services to a number of services and software providers not mentioned in this report, including potential electronic discovery providers, electronic discovery consumers, venture capital groups, private equity firms, and others.

Gelbmann & Associates, an independent management consulting firm focused on the legal sector, has not provided any paid consulting services to any of the providers named in this report.

Since 2005, approximately 125 electronic discovery services and software providers, law firms and corporations have participated in the EDRM Projects. Among those organizations are ones mentioned in the 2008 Survey report.

Participating organizations pay a fee to be active in the projects. Used to defray the costs of managing the EDRM Projects, that fee is paid to Socha Consulting and Gelbmann & Associates.

Full lists of the participating organizations are available at: http://edrm.net.

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Law Technology News August 2008