

## LPO adds wings to Document Review

### Summary

- ◆ Need Analysis
- ◆ Document Review – What is it?
- ◆ Current Scenario & Problems involved
- ◆ India as the destination for legal outsourcing
- ◆ Pre-requisites of LPO
- ◆ Joining hands with LPO

### Need Analysis

The management of digital evidence (eDiscovery) and the preservation of electronically stored information (ESI) in civil litigation is becoming increasingly complex due to the massive volume of emails, documents, databases and backup tapes that must be preserved, recovered, authenticated, filtered, analyzed and reviewed. Even relatively small cases can involve millions of files and email messages. Most of the data may ultimately be irrelevant, but all of it must be properly preserved at the outset in its original form in order to ensure its evidentiary integrity, in case the same is required in courts later. Courts are increasingly requiring strict adherence to accepted procedures to ensure evidentiary integrity for court submission.

Given the substantial number of projects and activities a big company handles and the number of internal and external resources involved, one can imagine the colossal number of documents that are being exchanged on a daily basis. Often time, technology and resources are not available to address the vital task of reviewing the documents. This situation compels a company to rethink its entire document review process to improve the way a huge amount of data is handled in documents and drawings and the same is shared, reviewed and responded.

A company may be involved in a major litigation or investigation or can be subjected to patent disputes, employment issues, governmental investigations and more; the General Counsel would surely be concerned about the company's ability to respond. The legal team may be unsure about how the amendments to the Federal Rules of Civil Procedure (FRCP) would impact the company, what knowledge it should have internally to address any gaps in the effectiveness of its internal protocols. It is then that the corporations look for the assistance from the experts.

### Document review: What is it?

The concept of the review is simple, but it can be time-consuming and error-prone. Generally attorneys prefer the first level of review to be done by others and the prefer to start from that point in their contract review. This makes their task a lot less cumbersome and frees up a lot of their time. In most cases, multiple lawyers from the same team

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review the document and convey the errors, corrections, and suggestions they want in the document to the attorneys.

The *document review* process is defined by a workflow. The review is a series of processes or steps that are performed in a sequential order. A typical scenario often includes one or more attorneys creating a document that is then reviewed by a number of subordinates and ultimately approved by the final authority.

In general parlance, the term *document review* includes the analysis, organizing, compiling and summarizing of documents, e-mails, correspondences, contracts, spreadsheets, reports, invoices, memos and attachments and make them court ready. These are mostly the tailor-made services.

The foremost objective of document review (initial discovery phase) is to analyze the documents in litigation and establish the fact that they are workable or not in any specific case in the court of law. In the first review phase, the attorneys try to synchronize the document set to a responsive data set for a later, more senior review. The aspects of first level *document review* are also need to be routinely performed in matters of regulatory compliance and corporate due diligence.

These important documents (and others) set the parameters of the case and establish the joint expectations of the parties involved. It is important that the appropriate documents be produced and it is critical that they be clear and concise. However, if the documents are of poor quality attorneys would not get the benefits that they would ideally expect.

### **Current Scenario & Problems involved**

The companies have tried to adopt to various degrees a number of alternatives including:

- Hiring the services of attorneys on contractual basis
- Non-lawyers assistance
- LPO vendors in India

Still, there are certain concerns involved in the process of outsourcing the complex task of *document review* to outside experts:

### **Cost Management**

The costing is too high in the process of *reviewing the documents*. It has been estimated that first level *document review* encompasses anywhere between 50% and 90% of total litigation costs. *A recent survey conducted in US reveals that the lack of cost management is one of the top reasons for firing a law firm, by corporations. Whether it is sending work overseas or looking to regions of the country with lower billing rates, one has to appreciate cost management efforts.*

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### **Losing Control**

It is usually felt by many in the legal industry that corporations that outsource their document review work lose control over the process and quality of the assignment. The risk is significantly higher for the buyers involved in litigation management.

### **Lack of time, infrastructure and technology**

The corporations and counsel do not like to invest time and money in creating the infrastructure and technology to *review* the documents. They rather prefer to focus on their core-competencies to earn higher margins.

### **Lack of Focus over depth in Review**

There is a big challenge in getting vendors who single-mindedly focus on depth rather than width. Vendors don't do more in-depth and value-added work; rather they offer a single service to many clients. They can't avoid the temptation of spreading themselves too wide and thin rather than focus on depth in the contract review process.

### **Lack of trained staff**

In a heavy volume document review project which may require a hundred plus reviewers, not having the trained staff limit a law firm's capacity.

### **Attrition**

In most of the cases, to review the documents – the teams include paralegals, experienced attorneys and interns who themselves are in the learning phase. It is common to start the work of document review comprising of millions of pages but attrition in the original team – due to one or the other reason – ends up in the project being shelved. This is converted into a greater financial burden for the legal department.

### **Scalability**

The attorneys need service to help reviewing millions of documents and make lifecycle documentation clear, concise and accurate. They need to get their cases on the right track and put the expertise of third party to work for them. Small vendors in US suffer the pangs of scalability and smaller ones can't scale up quickly due to infrastructure limitations because it may end up costing them significant amounts of time and money.

### **India as the destination for legal outsourcing**

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An important point which makes India score over any other nation is that it has experience of over a decade in the field of IT and BPO services. India produces the highest number of talented lawyers, inviting firms to outsource to leverage India's knowledge base. Moreover, India's relationship with US has matured to the level, where they find India to be the best place to provide outsourced services.

Some of the specific reasons making India attractive for high end LPO services are :

- Attorneys fluent in written and spoken English
- Similar legal system ( Common Law)
- 50- 70 % savings in cost
- Best in technology
- Established processes and systems
- High quality
- Scalability
- Favorable time zone differences

### **Pre-requisites of LPO**

In US the companies and attorneys are bound to discover novel ways to reduce the costs to the maximum possible extent. This has indeed developed an on-going quest amongst them to search for opportunities not only in the local context but also in the domain of outsourced services.

The primary factors for success in first level *document review* in India rest on detailed and measurable processes and metrics. To be competitive, the LPO service provider must have the following:

- Team versed with the legal procedure in United States
- Lawyers with robust exposure in the legal environment.
- E-discovery – technology
- Evolved systems, people and processes
- Knowledge and approach to execute the first level *document review* projects
- Cost management strategies
- Speed and turnaround time offerings
- Operational efficiencies leading to high level of accuracy
- Requisite infrastructure including equipment, softwares, computers, etc.
- Adequately trained manpower
- Quality control procedures and processes
- Security and privacy tools
- Client coordination methods
- Inclination towards continuous improvements

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## **Joining hands with LPO**

This research drives home the advantages in financial savings that various US corporations could make through outsourcing the processes of *document reviewing*, management and retrieval – freeing up working capital that would otherwise be tied up in equipment, manpower, buildings or other facilities.

There are different models to collaborate with the vendors in India. Prior to outsourcing, firms prepare an apple-to-apple comparison by doing a cost-benefit analysis of the various available business models in the industry. There are different models prevalent in the industry with each having its own pros and cons.

With respect to the off shoring of legal services, the following models are emerging in the US legal market:

- Captive Centers formed: self controlled, financed and managed house
- Joint Venture: acquiring stakes and control
- Third Party LPO: seeking help from independent third party vendors
- Multi-Sourcing: taking services from different vendors at a time

The LPO vendors in India provide document review services (e-discovery) to help corporations and their counsel reduce the escalating costs of litigation while ensuring the quality of these services. These services are provided by highly educated professionals – well trained with US legal system and technology and are well versed with the nuances of U.S. legal system. They also provide the tools to manage, archive, retrieve, and distribute content before, during, and post-litigation. For the sake of determining responsiveness and relevancy during discovery, they use high-level technology and exceptional people to conduct these reviews.

### **Manthan's Service offering in the document review process includes :**

- Contract Abstraction
- Simple contract Drafting
- Template/ Checklist based Contract review
- Analysis of rights and obligations

### **About Manthan**

Manthan is the largest legal outsourcing firm based in India, which partners counsels and attorneys of global firms in cutting costs and bringing efficiency to deliver more to the organization. Manthan extends support in *Litigation Management, Contract review and Management, Due Diligence and Compliance*. With over 5 years of experience in this nascent industry, a team of over 300 professionals and over 92 clients to vouchsafe for Manthan is strategically placed to deliver offshore legal services to clients in US and Canada.

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