COLLECTION STRATEGIES FOR DIGITAL FORENSICS AND E-DISCOVERY

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Acommon pitfall in the electronic data collection process is viewing it as a black and white choice between hiring a third-party provider and handling the collection in-house. In reality, your approach can have many shades of grey. Depending on your budget, timelines, and the capabilities of your internal resources, the amount and the type of support you receive from an outside vendor can be customized in a variety of ways. There are also many opportunities for cost management through partnership.

Too often the decision to self-collect is made strictly on the basis of perceived cost, with little to no consideration given to the risks involved. The collection of electronic data is, in a very real sense, the foundation upon which the entire forensic analysis, e-discovery, or regulatory inquiry is built. Today's organizations have large amounts of data stored across a diverse range of devices and media, and most IT departments are not equipped to support forensics and data collection. As a result, we've seen many instances of poorly executed self-collections that had serious ramifications for the case.

An experienced data collection expert can provide valuable strategic insight into the collection environment, and help the client weigh their various options. If needed, they can offer alternate approaches to save time and money, including self-collection, remote kits, and in-lab collection of online resources. Experts also provide a highly trained, neutral party that can testify as to the soundness and integrity of the collection.

A properly trained and equipped forensic professional can collect an astonishing amount of data from a large number of custodians in a short amount of time, and can quickly respond to the inevitable changes in scope or direction. Engaging a trained expert can significantly increase the cost-effectiveness and decrease the risk involved in a data collection or digital forensics operation.

As digital forensics and e-discovery professionals, we advocate a consultative approach to each engagement, working with the client and counsel to determine an appropriate collection strategy. This is similar to how most people work with the other professionals in their lives, like their doctors, accountants, and attorneys. The client describes their situation and needs, including the type of litigation, number of custodians, data sources and locations, and time frames. The client's IT staff is generally involved to help gain an understanding of the technology environment. A forensic consultant with years of experience in collecting data will analyze the situation, ask questions, and then suggest a work flow. The client is presented with options, costs, risks, and benefits, along with a recommendation. It is up to the client and counsel to weigh those risks and benefits and make an informed decision.

When weighing whether to use self-collection or a forensic professional, there is no right or wrong choice. There are situations in which the client is well positioned for self-collection, and has chosen to accept the inherent risk. What should be avoided is choosing one path or the other without properly evaluating the risks, benefits, and real costs of each option. Taking the time to consider the collection options and make a good decision early in the process can reduce overall costs and help avoid delays, while decreasing the potential for quality or defensibility problems downstream in the e-discovery process.

Andrew Neal is an advisor, strategist and leader in the digital evidence and information security community. With 30 years as a technologist, investigator and digital forensics practitioner he is an enthusiastic participant in the continuous research and learning required by his profession. The execution and management of large digital forensics and e-discovery operations for corporations, law firms and government agencies frequently takes Andrew across the country and around the world. He leads investigations involving intellectual property theft, security breaches, regulatory issues, and other highly confidential matters. Through his university teaching and professional speaking engagements Andrew provides education and training to a large number of students, attorneys and professionals from across the globe. He is a contributing member in several professional organizations and is actively involved in the development of standards for his profession. Andrew is currently a member of the senior leadership team for the Forensic Technology and Consulting team at TransPerfect Legal Solutions, serving the needs of clients while planning and managing the growth of the organization.