

SUPPLY CHAIN ISSUES HAVE HIT E-DISCOVERY, BUT NOBODY HAS TOLD CLIENTS

For the first time in 25 years, the “massively decreasing component costs” the e-discovery industry has enjoyed may be stalling, or even reversing, thanks to global supply chain disruptions.

BY FRANK READY

Some e-discovery providers are beginning to feel the pinch of global supply chain disruptions that are pushing the delivery dates of items like hard drives and laptops by months, raising the cost of vital technologies, and delaying the speed at which digital evidence can be recovered from the field. Fortunately, clients and their timetables don't appear to be feeling the brunt of those difficulties—yet.

“I am not yet personally seeing any direct impact resulting from the supply chain issues, but I suspect any impact would not be immediate. A prolonged supply chain disruption is not sustainable, so we may see realized effects some months down



the line, especially given that litigation activity has generally increased,” Anna Mercado Clark, leader of the data security and privacy and e-discovery and digital forensics practice teams at Phillips Lytle, said via email.

Clients may not be feeling the effects, but some e-discovery vendors have certainly

noticed a difference. Take, for instance, shipping times. Mary Mack, CEO and chief legal technologist at EDRM, noted she's heard complaints from providers about how backlogs at the U.S. Post Office, FedEx and other carriers are impacting reviews, with drives containing digital evidence from the field

taking longer to arrive—if they arrive at all.

“In all the years I’ve been doing this, before now, I’ve only heard of one or two lost packages or even misdirected packages. We’re hearing the misdirected and the lost more often now. And that impacts the whole chain, because if you can’t time your incoming data, you can’t time when it’s going to be up for reviewers,” she said.

Given the highly competitive talent market and labor shortages that e-discovery vendors are facing these days, it’s harder than ever to accommodate data arrival delays. “It’s constraining staff at a time when there aren’t a lot of people to cover it. We used to call it ‘peopling over’ problems in the chain, and there aren’t people to people over it,” Mack said.

Further complicating production timelines, ordering new equipment like drives or laptops has also posed something of a logistical challenge

to e-discovery providers as of late. David Greetham, a veteran of the e-discovery service provider space who was most recently at Ricoh, noted that digital forensics still makes use of “a lot of hard drives”—and the average delivery time on those units has shifted from one week to one month.

There are workarounds, of course. For example, providers could start wiping and reusing their existing drives, but clients may be reluctant to part with the data on those units out of an abundance of caution.

“In the industry we’re in, [wiping drives] is pretty hard to do because people want to keep things forever. A forensic image, for example, you could have multiple copies of a forensic image in multiple places for contingency. ... One image could be stored on three different drives and two different cloud environments for 100% contingency,” Greetham said.

Instead of reusing drives, some law firms may be covering their bases by ordering in bulk—or as Greetham put it: “Buying for three months instead of three weeks.” He expects many vendors will choose to retain this approach even once supply chain shortages have eased in an effort to protect themselves against any potential disruptions to client services.

But it’s not just that tech like drives or laptops are taking longer to arrive—it’s that a chip shortage has ensured that they cost more now too. Mack at EDRM argued that for 25 years, the e-discovery industry has benefited from “massively decreasing component costs,” especially since advancements in the cloud have made it easier to store data.

However, the rising price of crucial items such as laptops is negating some of those cost savings. “This is the first time that those decreases [in component costs] have stalled or actually reversed,” Mack said.