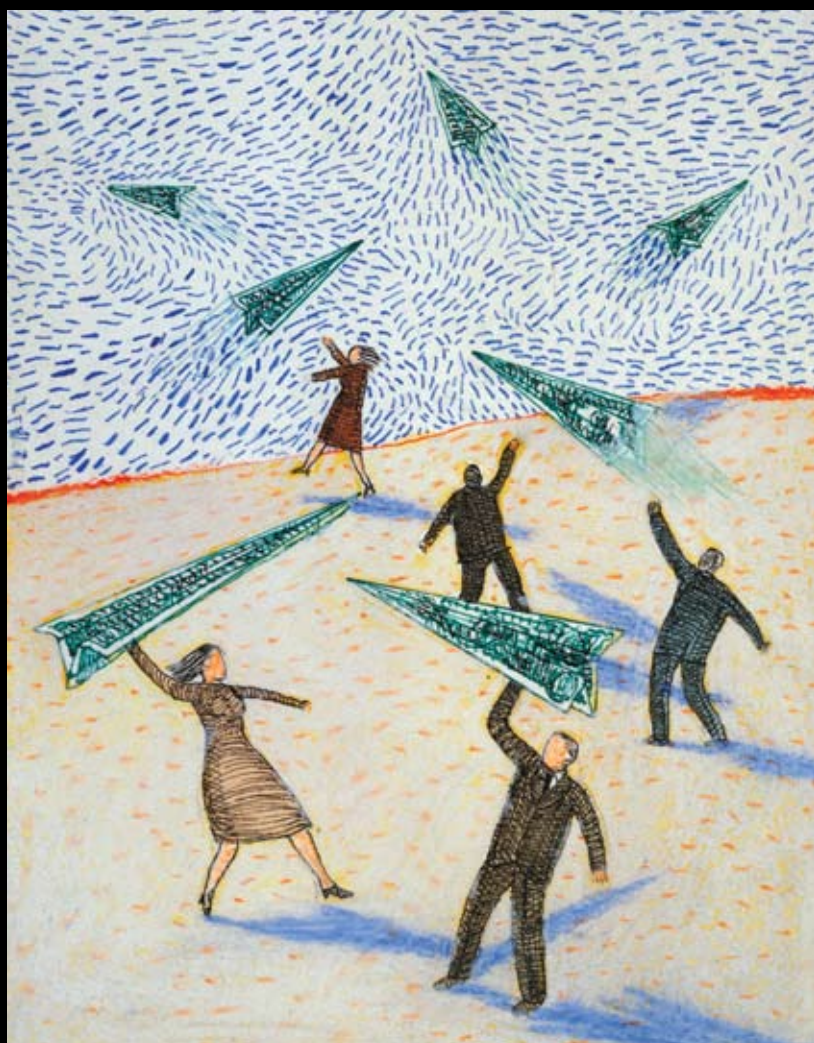


The OFFSHORE OPTION



As companies reel from the recession, legal departments consider outsourcing to cut costs.

By Keith Ecker

The economy has taken a beating.

Its impact on the corporate world has been catastrophic. Wall Street giants have toppled while American industry mainstays, including Detroit's Big Three automakers, are so far in the red that they had to beg for government dollars.

As a consequence of the dismal market, many CEOs and CFOs are putting unprecedented amounts of pressure on their employees to slash spending. And because corporate executives have historically viewed legal departments as major money pits, in-house counsel are feeling the squeeze more than most.

"Companies are in freeze mode," says Abhi Shah, CEO of ClutchGroup, a legal process outsourcing provider. "People are panicked by the tsunami that has hit them, and corporations, particularly large financial institutions, are trying to figure out their strategy."

That strategy may very well include outsourcing. In today's global market, there is little work that can't be outsourced on the cheap. And with costs of outside counsel

escalating, general counsel are realizing the benefits of sending work to independent outsourcing firms, many of which are located in regions with cost-effective labor, including India and the Philippines.

“In the last month alone, we have seen a significant peak in lawyers reaching out to us—as opposed to us reaching out to them,” says Jennifer Brewer, executive vice president of American Discovery, a document review outsourcing firm. “A

lot of companies are dabbling in it.”

Whether it is minimizing the document review monster or sending contract drafting, legal research or intellectual property work to outside vendors, outsourcing likely will become a crucial component of every legal department’s practice, at least as long as the economy remains tumultuous. For legal departments weighing the outsourcing option, the following guide can help general counsel build out a foundation for an effective strategy.

1. DOCUMENT REVIEW



In recent years, the exponential growth of electronically stored information has sent litigation costs skyrocketing. The e-discovery process has in-house counsel scrambling to find alternative models for producing digital data. Because document review represents the overwhelming bulk of e-discovery expenses, outsourcing the work has become a booming industry.

“The need to produce electronically stored information is a reality now,” says Eric Bartko, resource manager for BZResources, a provider of e-discovery services. “You have to come to grips with this, and that it is a new expense category. A lot of companies have been resistant, but this is something you will be regularly required to respond to.”

Initially companies left document review up to their outside counsel. These firms would bring on contract attorneys to review thousands of documents for relevance and privilege. But even with the use of contract attorneys, who are significantly cheaper than associates, the cost became too much. That’s why many companies, especially those that experience high volumes of litigation, began looking for cheaper alternatives.

Business technologies provider Trilogy Enterprises Inc., for example, initially tried to build out its own document review center in India.

“That didn’t work because you have

to have some very strict processes in place and well-defined specifications,” says Lance Jones, vice president, general counsel and corporate secretary of Trilogy. “Instead we contracted an outsourcing provider who does business in India and did a pilot project to gauge the quality of their work.”

Jones was satisfied with the result and has been outsourcing document review ever since. His service provider, Tusker Group, estimates that by using Indian attorneys, who charge around \$25 an hour, legal departments can slash document review expenses by as much as 80 to 90 percent.

But it’s not just cost that in-house counsel should consider when deciding whether to outsource document review. Quality is also a major factor. Erring during the review process can sink a case, if not an entire company. Inadvertently producing privileged documents is a major concern, while courts are increasingly doling out hefty sanctions to parties that fail to take reasonable efforts to produce all relevant documents in a case.

This is why it is crucial for in-house counsel to vet their document review outsourcing providers.

Brian Shrader, president of e-discovery provider Business Intelligence Associates Inc., which outsources document review to Israel, says in-house counsel should ask the people actually

working on documents about the training they’ve received and whether the outsourcing provider hired them at random. “These questions go to the merit of the work product itself,” Shrader adds.

In addition to quality, security is a major issue. Because document review service providers handle sensitive materials, including privileged documents and proprietary information, it’s important to ensure the company maintains top-level security standards.

“I think you’ll find that with all offshore providers, there are incredible security measures taken to make sure there is no possible breach,” says Jennifer Brewer, executive vice president of American Discovery, a document review outsourcing firm with operations domestically and in the Philippines. “We have biometric lock access for every single room in our facility. And at the front desk, all employees must turn in their cell phones and all other electronic devices, which are kept in a locked container.”

As internal clients continue to demand that in-house counsel stick to a budget, outsourcing the document review process may become a necessity.

“Today, companies can’t afford to spend \$500 million on legal fees,” says Abhi Shah, CEO of ClutchGroup, a legal process outsourcing provider. “It is no longer a question of whether this is a fad. It is inevitable.”

2. CONTRACTS

Contract work has become another hot area for legal outsourcing. The work can vary from a simple review of existing contracts to the creation of contract templates, a more highly specialized service.

The most popular form of contract outsourcing is review. This is when a company hires an outside vendor, often located overseas, to review the terms of a set of contracts and flag any abnormalities.

For example, a company will engage its various vendors via a standard contract. The vendor will then make modifications to the contract, which then are sent to the outsourcing provider for review. Based on the training the company provided the outsourcing provider, the outsourcing team will flag any changes to the contract. If the change is within the scope of what the company normally allows, it will be flagged as green and the negotiated modification will go through. If it does not fall within the parameters, it will be flagged as red and sent back to the company for further review.

"I'd say we do about 80 percent of the work so that our clients can go back and negotiate the more important elements of the contracts," says Abhi Shah, CEO of ClutchGroup. These types of contract outsourcing providers handle a wide range of contracts, including vendor and employee contracts. Companies that have a high volume of contracts and spend significant time and money on managing them are most likely to benefit from such a service.

On the other end of the contract outsourcing spectrum is contract drafting. Traditionally outside counsel assist in the creation of contracts and contract templates. But a small number of independent contract language experts, such as Ken Adams, can do this work as well.

"I'm not sure the benefits of using a law firm to do this work warrant the costs," says Adams, who runs AdamsDrafting, a contract consulting business. "Also, law firms are more geared toward getting the deal done, rather than producing an optimal piece of work that is going to withstand the test of time and offer the greatest efficiencies."

Offshore vs. Onshore

One of the most critical decisions in-house counsel need to make when outsourcing legal services is whether to send work overseas.

The key benefits of offshoring are well known. Labor tends to be significantly cheaper, often a fraction of the cost of equivalent labor in the U.S. The varying time zones create greater efficiencies: When the workday ends in the U.S., it's just beginning in places such as India, allowing some work to be done on a 24-hour cycle.

But there are other benefits to offshoring that aren't as obvious. For instance, the workers that offshoring companies employ in places such as India and the Philippines tend to be better educated and more dedicated than temporary employees in the U.S.

"Offshore companies use permanent employees, not temporary workers," says Jennifer Brewer, executive vice president at American Discovery. "They're not looking for something in between jobs, which is often why you see a lot of turnover in onshore services."

Despite the advantages of foreign labor, there is an argument for keeping work within U.S. borders. As the value of the dollar has dipped, the cost-benefit of offshoring has shrunk as well.

"Hourly rates in India are going up, while hourly rates in the U.S. are going down," says Steve Harber, co-founder of DiscoverReady, a document review provider. "These days, if you hire contract attorneys in a secondary market within the U.S., you might be able to get pretty close to the wages of an Indian attorney."

Harber also argues there is a quality control issue with offshoring legal work, because it's hard to fly someone out to check in on the facilities if they're on the other side of the world.

Brewer, on the other hand, believes offshoring can deliver the same quality, if not higher quality, than outsourcing work domestically.

"In theory there is more control over contract attorneys domestically," she says. "However, in reality there is not a lot of interaction between contract attorneys and the team. Also, every offshore company has highly technical data and staff security, whereas onshore facilities do not necessarily."

3. LEGAL RESEARCH



Imagine paying a law firm to compile a 50-state survey on a particular area of law. The work, although fairly basic, could take hours and end up costing thousands of dollars. That is why legal research is a prime target for offshoring to a legal process outsourcing vendor.

“Performing legal research offshore can be dramatically cheaper than using a law firm associate and can free up internal legal resources to do more sophisticated legal work,” says Abhi Shah, CEO of ClutchGroup.

For example, a retail bank with operations throughout the U.S., Europe and Asia contracted ClutchGroup to develop a Web-based portal of banking-related legal issues to assist with retail transactions. The client had a number of employees dealing with government orders, specifically garnishment orders. In most cases, these employees would need to consult the legal department with how to pro-

ceed with the orders.

“It created a huge bottleneck within the legal department because attorneys had to spend so much time dealing with these inquiries,” says Paul Mandell, president of ClutchGroup. “In many cases, there were similarities with the orders, so the company thought they could handle things more efficiently.”

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For three months, ClutchGroup’s offshore team digested the law in each state from which the company

received the orders and created a database of answers to frequently asked questions. This way company employees could find the answers to their own questions without having to use in-house counsel’s time.

“The client was very pleased, and the impact was a significant increase in efficiency and a reduction in the burden on the legal department,” Mandell says.

Besides cost, there is another major benefit to offshoring legal research. Because most legal research offshoring is done in India, offshore teams can vastly accelerate the turnaround time for a project.

“If an issue arises in the evening for an in-house lawyer, it would be too much of a burden to have someone spend eight hours at night working on this,” Shah says. “But their night is our day, so they can offshore it and have the work in their hands in the morning.”

Overseas Opportunities

If you do decide to offshore your legal work, you have several venue choices. The following countries handle the bulk of overseas legal process outsourcing work.

India: India has nearly 600,000 English-speaking lawyers, all of whom are trained in the common law legal system. Working on U.S. matters, even if only in the capacity of document review, is seen as a worthy career track for Indian lawyers because it allows them to build their knowledge of U.S. law.

The Philippines: The Philippines’ legal system is based on the American system. The country requires a four-year undergrad degree prior to attending law school. English is the predominant language used in law schools, the government and the courts. As in India, the workforce views U.S. legal work as prestigious and well paying.

Israel: Although Israel is certainly not the cheapest country for offshoring legal work, it does offer some advantages. Often Israeli outsourcing firms hire American-trained attorneys who are licensed in the U.S. Because of this, they can handle more sophisticated work, such as IP and antitrust-related projects.



4. INTELLECTUAL PROPERTY

Outsourcing intellectual property work such as patent applications can provide substantial cost savings while freeing up internal IP resources to focus on more sophisticated work.

Some legal process outsourcing providers offer patent application services, such as prior art searches and application drafting. Much of this work is offshored to reap the benefits of cheap labor. Assignments may be staffed by recent law school graduates or patent engineers who have worked in local law firms. Smaller boutique IP law firms that don't have the internal resources to serve as patent agents often use these services.

"We do everything a patent agent would do all the way up to the final draft of a patent application," says Gregory Aube, director of legal process outsourcing services at iBridge, a legal support provider. "We aren't practicing law, but we are practicing patent work. We do the ground work for our clients."

Each prior art search takes roughly two to three days to turn around and costs about \$500. iBridge does not actually submit the application to the patent office, but does work with clients throughout the course of a project so that they feel com-

fortable submitting it to the patent office themselves.

Work related to the early stages of patent clearance, like the kind iBridge provides, makes up the bulk of outsourced IP projects because it is considered a commodity and does not require the expertise of U.S. attorneys.

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"This kind of work is often repeatable tasks that don't require any sort of specialized skill sets, at least not until you get to the latter stages of the patent process," says Jim Paine, counsel at Kilpatrick Stockton and a member of the firm's outsourcing team.

Of course, security is a major concern when outsourcing IP work, especially because so much of the information flowing between the client and the outsourcing provider is proprietary. That's why companies including iBridge rely on multiple forms of security that cover physical facilities, IT systems and personnel.

"We use secure FTP file transfers and encryption," says Mark

Porter, director of product development and consulting services at iBridge. "We meet all international security standards for content security. It's our bread and butter. We have to have that in place."

Management Model

Deciding on an outsourcing model is a critical step in legal process outsourcing. Whether you contract your third-party vendor directly or go through your outside counsel is an important consideration.

For companies that don't have the internal resources to manage their outsourcing providers, going through a law firm can be ideal.

"A lot of U.S. companies conduct their legal outsourcing through their law firms so they have someone who is experienced with managing offshore providers and can ensure they have quality results," says Jim Paine, counsel at Kilpatrick Stockton.

However, for companies that do have the resources to manage outsourcing, the benefits can include greater control over the selection process and over the outsourcing provider itself.

"We work mostly with corporations," says Brian Shrader, president of Business Intelligence Associates Inc. "The reason is because corporations, at the end of the day, have to fit the bill and be responsible for the end product."