

# The Lure of India

With lawyers earning less than \$10,000 a year, the costs savings for e-discovery are hard to resist.

By Jonathan Hill

While you might expect the production of a button-down shirt to be outsourced to Guadalajara, most lawyers would not expect their caseloads to be shipped overseas. Should lawyers worry about outsourcing? If you answer "yes," you are probably a litigator dealing with electronic data discovery and the 2006 amendments to the Federal Rules of Civil Procedure.

According to the August Socha/Gelbmann survey, 2007 commercial expenditures on EDD topped \$2.7 billion, up 43% in one year. They are expected to hit \$4.6 billion by 2010.

While forensics tools are more sophisticated and can winnow down massive productions, costs have risen both in the literal dollars spent as well as the intellectual capital needed. Envision the next MasterCard commercial:

- Hire computer forensics geek to image 15 employee hard drives: \$100,000.
- Hire EDD specialist to cull relevant documents: \$400,000.
- Hire junior associates to review 30 GB of electronically stored information: \$3 million.
- Pay \$3.5 million for EDD in a case that settles for \$350,000: Priceless.

## STICKER SHOCK

Sticker shock alone is enough to make corporate in-house lawyers pay attention, and boy are they ever. According to a recent Fulbright & Jaworski client study, nearly 90% of U.S. corporations are engaged in some type of litigation, with the average company balancing 37 lawsuits at any given time. For companies with revenues more than \$100 million, corporate counsel cited soaring EDD costs as their number one concern. In fact, some expressed more concern about litigation expenses than whether or not they actually won the case.

About 10% of respondents reported that legal spending accounts for approximately 5% of the company's gross annual revenues. For companies generating more than \$1 billion a year, this translates to more than \$50 million in legal fees. Precise costs are admittedly difficult to quantify, but with EDD taking an increasing bite out of the bottom line, corporate America is looking for

alternatives, and turning increasingly to India. The review part of the process — where companies and their lawyers are often most comfortable with hiring attorneys to scan the documents — is a key area where outsourcing can be an attractive, cost-saving option.

A leader in business process outsourcing, India has positioned itself well to accept the work. India

produces about 80,000 lawyers each year, compared with the 44,000 lawyers churned out of the U.S.'s 195 American Bar Association accredited law programs. Indian law students are trained in common law, a legal tradition that traces its roots to British rule. Indian lawyers speak fluent English and receive their legal education in English. Unlike the U.S., however, a new Indian lawyer can expect to earn under \$10,000 a year, a fraction of the \$160,000-plus salary earned by U.S. counterparts at top New York firms.

Indian legal process outsourcing organizations — known by the acronym LPOs — such as New York-based firms Pangea3 ([www.pangea3.com](http://www.pangea3.com)) and QuisLex ([www.quislex.com](http://www.quislex.com)) — tout their many advantages over U.S.-based service providers:

- "Need EDD reviews at an 80% discount?" Done.
- "Need round-the-clock, 24/7 availability?" Done.
- "Need overnight processing?" Done. (The time zones help.)

Of course, significant cost savings are the most compelling reason to use LPOs, but David Perla, co-founder of Pangea3, argues that his LPO's Indian lawyers actually produce better work than U.S. contract attorneys or staffing agency attorneys who, he claims, "lack motivation . . . have minimal skills and zero motivation" and "couldn't make it as real lawyers."

While the quality of work churned out by Indian LPOs remains a hotly contested debate (as Perla's "fightin' words" have cast down the gauntlet), there is no debate about whether companies and law firms are shipping more of their workload offshore. First, many U.S. corporations and law firms were reticent to use Indian LPOs, citing client comfort. The mysteries associated with offshoring legal work, not to mention the open questions concerning quality control and professional liability, were specters too large to ignore. But cost savings is a strong lure.

E. I. du Pont de Nemours and Co., Cisco Systems Inc., and Morgan Stanley are among the companies that have established in-house legal departments in India. Other *Fortune* 500 companies, including Microsoft Corp., American Express and General Electric Co. — early players in the legal outsourcing game — have helped pave the way for client comfort and confidence.

Three law firms, White & Case; Chadbourne & Parke; and UK-based Ashurst, Morris, Crisp have gone so far as to set up shop in India, challenging a 1961 Advocates Act that bars foreign attorneys from practicing law in India — apparently anticipating that India will soon open up to foreign competition.

Several other large law firms have jumped on the outsourcing bandwagon.

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on, yet ask them if they outsource and you're likely to get only silence. Of the Am Law Top 10 firms I contacted, seven declined to comment.

Notwithstanding the evasiveness on the subject, numbers suggest that most law firms are, or will be in the very near future, outsourcing some portion of their legal workload to India. Between 2006 and 2007, U.S. companies outsourcing legal services to India increased 14% — from 37% to 51%. The most dramatic spike occurred in Europe, where company use of LPOs shot from 8% to a whopping 71%.

The Ernst & Young "European Outsourcing Survey 2008" highlights that 70% of respondents already outsource at least one function of their business, with 20% set to increase their level of outsourcing in the next two years, as they increasingly view it as a means to gaining a competitive edge.

In the past year, Indian LPOs are reporting 200% increases in revenue. In the wake of the U.S. sub-prime insurance meltdown, the dramatic rise in litigation, intellectual property infringement work, and bankruptcies, document drafting continues to provide a veritable jungle of low-hanging fruit from which Indian LPOs can feast. Indian LPOs want to move up the legal services food chain, performing higher-level legal services, such as patent drafting, legal researching or brief writing.

This brave new world of legal outsourcing is not without pitfalls. There are risks associated with the inadvertent production of attorney-client privileged materials, waiver issues, client confidentiality concerns, fees questions, quality control checks, technical breakdowns, security threats, aiding and abetting in the unauthorized practice of the law, trade secret and infringement concerns, cultural differences to overcome, and export control restrictions. In other words, there are many places along the continuum of legal services for the machine to break down. So when the machine does break down, who's left holding the bag?

Although no court has officially ruled on any of the ethical and/or professional liability issues associated with legal outsourcing to a third jurisdiction, the ABA, and the state bars of New York, California, and Florida have issued advisory opinions offering useful guidance.

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quality and consistent results. Frank discussion about delivery procedures, hiring and training will help you choose the best provider for your needs.

Quality and consistency of legal services performance varies, and even more widely among offshore LPOs.

The consensus seems to be that legal outsourcing is permissible, both legally and ethically, but restrictions apply. Importantly, the overseeing U.S. attorney or law firm will remain on the hook for the finished product. Simply put — the buck stops here, not there.

Typically, a U.S.-based legal professional can outsource work to India, but must abide by the following conditions:

1. Provide vigorous supervision to ensure competent representation and to avoid aiding in the unauthorized practice of law.
2. Preserve client confidences and secrets.
3. Inquire into possible conflicts of interest.
4. Bill clients appropriately.
5. Obtain the necessary client advance consent.

Importantly, "an attorney . . . who charges an hourly rate may contract with an out of state company [but] remains ultimately responsible for the final work product filed with the court." See LACBA, Formal Op. 518 (2006); COPRAC, Formal Op. 165 (2004); NYCBA, Op. 3 (2006); NY State Bar Assn. Comm. on Prof'l Ethics, Op. 715 (1999); San Diego County Bar Ass'n Legal Ethics Comm., Op. 1 (2007); Florida Bar Advisory, Op. 2 (2007); ABA, Formal Op. 356 (1988); ABA, Formal Op. 379 (1993); ABA, Formal Op. 420 (2000).

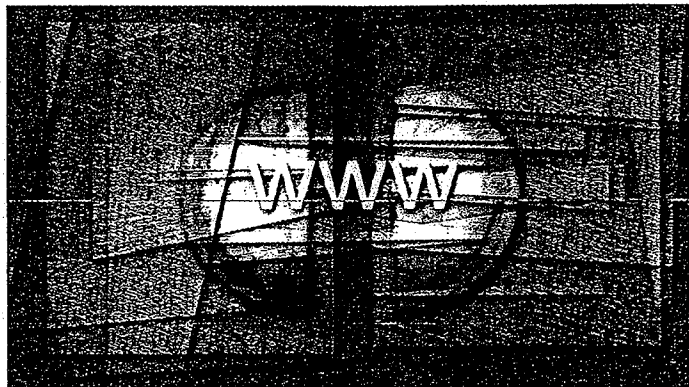
The overarching lessons that can be taken from these advisory opinions echoes the basic tenor of the decision in *Qualcomm Inc. v. Broadcom Corp.*, 2008 U.S. Dist. Lexis 911 (S.D. Cal. Jan. 7, 2008): lawyers and law firms cannot rest on their laurels after a decision is made to outsource — being proactive and "on top of things" is required.

A law firm considering outsourcing may want to physically inspect the overseas facility, audit the IT capabilities of the provider, screen individuals assigned to provide services, have them sign contracts to fill the ethical gaps that may not exist under their rules, or impose certain limitations on where and how data is accessed (i.e., no remote access). Even after the process gets underway, continuous oversight seems to be the mandate of the day. LTN

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Choose providers that invest heavily in delivery processes and in the quality of the attorney and staff teams. LTN

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## Connecting Points

Legal technology websites, blogs and podcasts.

#### LAW TECHNOLOGY NEWS

Law Technology News' website with full content from each month's issue. [www.lawtechnologynews.com](http://www.lawtechnologynews.com)

#### LTN CALENDAR

Law Technology News' online events calendar is compiled by JoAnna Forshee, of Envision Agency. To submit listings, please e-mail press releases to [lawtech@incisivemedia.com](mailto:lawtech@incisivemedia.com) with event information. <http://tinyurl.com/LTNcalendar>

#### LAW TECHNOLOGY NOW

LTN's editor Monica Bay presents a monthly podcast, where she interviews key experts of the legal technology community, about top issues confronting the legal profession. [www.lawtechnologynow.com](http://www.lawtechnologynow.com)

#### EDD UPDATE

A joint project of Law.com and Law Technology News, EDD Update provides e-discovery news and analysis. [www.eddupdate.com](http://www.eddupdate.com)

#### THE COMMON SCOLD

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#### LAW.COM TECH CENTER

The latest news and information on legal technology, this website from editor Sean Doherty includes original content as well as feature articles from LTN and white papers and more. <http://tinyurl.com/Law-comTech>

#### LEGAL TECHNOLOGY BLOG

Law.com's technology editor Sean Doherty offers technology information, news and analysis. <http://legaltechnology.typepad.com>

#### LEGAL TALK NETWORK

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#### EDD WEBINARS

Among the Law.com e-discovery webinars moderated by Monica Bay is this session on Forms of Production. <http://tinyurl.com/EDDWebinar>

#### LEGALTECH NEW YORK & L.A.

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#### LEGAL BLOG WATCH

Legal Blog Watch tracks and analyzes the posts of Law.com bloggers and other members of the legal community. By Robert J. Ambrogi and Carolyn Elefant. <http://legalblogwatch.typepad.com>

#### THE AMERICAN LAWYER DAILY

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