ANALYZING THE TRUE COST OF EDISCOVERY

Evaluate the factors that shape ediscovery budgets

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If you're trying to bring more of your ediscovery in house to save money, you're not alone. [HBR Consulting's 2018 Law Department Survey](#) reports that total legal spending is on the rise after years of stagnation, with spend up 5 percent last year. Many legal departments are investing in bringing discovery technology in house, including document preservation tools and technology-assisted review, according to [Norton Rose Fulbright's 2018 Litigation Trends Annual Survey](#).

Still, lawyers struggle to establish and stick to their ediscovery budgets, given the difficulties in predicting case volumes or needs. The good news is that this is a solvable problem. What legal departments lack is insight into their ediscovery processes, which leads them to engage in repetitive, unnecessary rework, wasting time and money. And because many in-house counsel don't proactively and consistently study metrics dissecting how they're spending money on ediscovery, they aren't learning how to control their costs going forward.

Here's what you need to know to do better.

Controlling the Costs of Ediscovery

Ediscovery isn't cheap — it accounts for [20 to 50 percent of all litigation expenses](#) — but the alternative is even costlier. Keep these three things in mind when accounting for ediscovery costs.

First, metrics are critical to understanding where your money is going so you can better predict and control costs.

Second, while bringing ediscovery in house is an excellent way to save money, you must carefully plan your processes and build in time and budget for staff training. Processes that are not clearly defined and repeatable lead to wasteful roadblocks and inhibit legal defensibility.

And third, when you manage more of your ediscovery yourself, you'll need to increase your budget for in-house spending so you can develop your own capabilities. The good news is that ediscovery investments are almost always worth it. According to [Altman Weil's 2018 Chief Legal Officer Survey](#), ediscovery investments met or exceeded expectations for a remarkable 94.2 percent of respondents.

Ediscovery costs fall into several categories, from organizational characteristics to process-specific factors.

Ediscovery Cost Drivers: Organization-Wide Factors

Matter volume and type

It's an unavoidable truth that the volume of legal matters your company must face, as well as the complexity and duration of those cases, determines how much you'll spend on ediscovery.

According to the [RAND Institute for Civil Justice](#), it costs $18,000 to manage one gigabyte of data through review.

Collect information about your average caseloads for the last few years, tracking the types of cases you've defended or initiated, the length of time to resolution, and how much data is involved in each. You may think that case volumes aren't in your control, but by managing ediscovery in house and growing intimately familiar with your organization's data, risks, and practices, you can actually build up the institutional knowledge you need to avoid cases altogether. Focusing on worker safety [turned around Alcoa's financial fortunes](#): similarly, improving training and workplace policies can help avoid many legal claims and save on overall legal spend beyond just ediscovery.

Data volume and type

The less data you maintain, the less you'll spend on ediscovery. According to the [RAND Institute for Civil Justice](#), it costs $18,000 to manage one gigabyte of data through review. In other words, every gigabyte of data that you delete through a well-designed and well-implemented records retention policy saves you, on average, $18,000.

The more complex and dispersed your data, the more expensive it will be to collect and process. If you don't already have a comprehensive data map, create one. Determine how much it's costing you to collect from dispersed data locations like individual hard drives, servers, online accounts, and mobile devices and what data you could preserve in place to minimize costly over-collection. Having a single, secure, cloud-based data repository can save you on collection while enhancing your data security.

Staffing considerations

Avoid the problems associated with poorly defined or executed ediscovery processes by engaging a competent team leader. An ediscovery project manager is an invaluable asset, and a bargain at an [average annual salary of about $80,000](#). Alternatively, train your own ediscovery team leader; certification through the Association of Certified Ediscovery Specialists [costs less than $2,000](#).

Of course, there's more to staff than hiring. You should also track how much time your team spends on the various stages of ediscovery. For instance, automating legal holds [significantly cuts the time](#) it takes to issue holds and reduces the time needed to track and manage holds by a tremendous 80 percent, from five hours — the better part of a day each week — to just one hour. Be sure to include these time savings and increased staff availability when arguing for new technology.

Other ediscovery costs are associated with specific stages of the process. For these, the key consideration is whether to handle those stages in house or to outsource them to vendors, alternative legal service providers, or law firms.

Ediscovery Cost Drivers: Process Factors
Preservation and collection of data

Preservation can be an enormous cost, adding [over $2.5 million per year](#) to the ediscovery budgets of larger companies. Take advantage of the amended Federal Rules of Civil Procedure and their new emphasis on proportionality when choosing what data to preserve. And preserve in place wherever possible so that you can minimize collections, phasing them in as necessary.

Automating your legal hold process is a critical component of cost-effective preservation. Defensible legal holds do more than just save your employees' time: they can help companies avoid spoliation sanctions, which can easily hit the five- to six-figure

What does a cybersecurity breach cost?

According to the 2018 Cost of a Data Breach Study by IBM Security and Ponemon Institute, the average cost of a data breach in the U.S. was $7.91 million, with over half of that cost related to lost business. For "mega breaches" involving 1 million to 50 million records, costs ranged from $40 million to $350 million. Data breach costs are heavily affected by the amount of time spent identifying and containing a data breach, which averaged 266 days for smaller breaches and 365 days for mega breaches.Equifax still holds the dubious title for the largest data breach ever, compromising the data of nearly 150 million customers at an estimated cost of "well over $600 million."

range. Our research has shown that automating legal holds can help companies avoid one potential spoliation sanction per year, representing a massive potential savings.

Data processing and culling

Generally speaking, each gigabyte of ediscovery costs approximately $125 to $6,700 to collect, $600 to $6,000 to process, and, for the most expensive stage, another $1,800 to $210,000 to review. Spending money up front to thoroughly cull and process your data — through deNISTing, deduping and near-deduping, concept clustering, and email threading — limits the amount of data for review. In-house processing and culling is faster than outsourcing and is enormously effective, reducing data volume by 50 to 95 percent.

Data review and hosting

Starting with the limited and organized data sets generated by in-house culling and processing, today's ediscovery solutions make in-house review entirely achievable. Even companies that shy away from managing major review can readily handle investigations and smaller or frequently occurring case types. This eliminates the cost of law firm review as well as the associated bottlenecks.

One thing you don't have to budget for with modern in-house ediscovery software is infrastructure. With true cloud-based software-as-a-service (SaaS), you won't need to purchase or maintain costly servers, saving both money and your IT department's time. Plus, cloud-based services are entirely elastic and scalable: you'll always have the capability to manage large matters, but you won't have to pay for volume you don't use.

Data hosting is a deceptively large cost. In one case, FedEx estimated that it would spend $28,907 searching 193 gigabytes of email data along with $2,891 for monthly hosting fees. In just 10 months, then, the hosting cost would match, and thereafter exceed, the one-time search costs. Our customers reported saving as much as 95 percent by toggling dormant matters from active to inactive status through an in-house data management system versus external data hosting.

There's another underappreciated advantage to in-house processing, review, and hosting: companies that manage their own data through a secure cloud provider estimate that they experience one fewer data breach per year, potentially saving millions of dollars.

Costs associated with outsourcing

Watch out for unexpected fees if you choose to outsource portions of your ediscovery process. Some companies impose one-time fees for data ingestion; others use ongoing fees such as overage fees or user fees for access to data for review. As Kelly Twigger has

noted, user fees can exceed $100 per user per month; while individually minor, these fees "can add up quickly."

Watch out in particular for hidden costs or indecipherable invoices. Insist on transparent pricing and don't hesitate to negotiate: effective rate negotiation with service providers is one of the key methods of ediscovery cost control for those that continue to outsource ediscovery.

Costs associated with slow decisions

Finally, consider the costs of late, inefficient settlements or early, unnecessary settlements. According to our research, customers reported that "in some cases, legal action could have been avoided altogether if key emails had been found earlier in the process." That equated to a savings of $10,000 to $50,000 for faster, better-informed decisions. With in-house processing and review capabilities, you can practice effective early case assessment (ECA), minimizing the costs of defending fruitless cases.

In-house ediscovery offers terrific cost savings while improving data security, institutional knowledge, and time to results. To get the most from it, design clear processes, measure your spending and other key metrics, and be sure to evaluate all the costs — and benefits — of any solution you're considering.

10 Money-Saving Tips

1. Streamline and codify your ediscovery processes and train your designated ediscovery team to ensure compliance.

2. Always be measuring: track metrics relentlessly to identify and correct money-wasting practices.

3. Embrace proportionality and design comprehensive, aggressive records retention policies that you can implement across your entire organization.

4. Use in-house tools to improve your ECA: the faster you can resolve matters based on solid information, the less they'll cost.

5. Automate your legal holds to save time and reduce the risk of expensive spoliation sanctions.

6. Preserve data in place to save on collection and storage costs.

7. Further minimize data volume using in-house culling and processing tools.

8. Target and gradually phase collections and downstream actions so you don't overspend on individual cases.

9. Keep track of hosted data and switch matters to inactive status where possible; in-house data hosting improves security and simplifies status management.

10. Build institutional knowledge by maintaining data in a central repository that allows you to manage previous review codes and reuse common documents without repeatedly paying to collect, process, and review them.

About ZDiscovery

Designed specifically for corporate legal teams, ZDiscovery is an intuitive and powerful ediscovery platform for managing litigation response from legal holds through processing and review.

ZDiscovery is backed by ironclad security and unrivaled customer support, giving your in-house team confidence and control to operate defensibly and efficiently while reducing legal costs.

Preservations & Legal Holds

Legal Hold Pro® provides a complete system to effortlessly initiate legal holds, manage custodian communications and compliance, and confidently oversee a defensible preservation process.

- Quickly send, track, and report on legal holds
- Defensibly preserve and collect data
- Streamline litigation response

Processing & Document Review

Digital Discovery Pro® gives corporate legal teams the power to significantly reduce ediscovery costs and resolve matters faster.

- Process and cull data in-house
- Gain rapid insights into matters
- Easily review documents with intuitive filters and search tools

What Sets Us Apart

- Software that puts customers first
- SOC 2 Type 2 certification provides third-party validation of our data security protection
- Gold-standard customer support, hands-on training, and educational resources
- Annual events for ediscovery's best and brightest
- Community of 350+ corporate customers

About Zapproved – Founded in 2008, Zapproved builds ediscovery software designed to help corporate legal and compliance teams reduce costs and mitigate risk. Our software empowers teams to manage legal holds and collect, process, and review data with ease. We have more than 350 corporate customers, a 99% retention rate, and an unwavering commitment to keeping our customers ridiculously happy.