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Extract Maximum Value from eDiscovery Service Providers

By Tom Seymour

The unfortunate reality is that companies regularly involved in litigation can expect to pay service providers (a.k.a., "vendors") a substantial sum of money for eDiscovery services. Estimates indicate that companies will spend nearly $10 billion annually on eDiscovery in the coming years. Are companies getting their money's worth for these services? What can companies do to extract maximum value from their eDiscovery service providers?

These questions should not go unanswered. To this end I have identified four steps that companies can follow to help extract maximum value from eDiscovery service providers. I believe it is more likely than not that following these steps will result in a net reduction in eDiscovery spending. The steps as detailed below are: (1) Gather and normalize eDiscovery spending data; (2) Analyze the results and define system to identify what is valued most; (3) Establish new expectations; and (4) Take action to increase value and likely reduce overall spending.

Gather and normalize eDiscovery spending data

Information must be gathered and normalized before it can be analyzed to understand how and where money is being spent on eDiscovery services. Ideally, all of this information will exist in an accounting system, and it will be perfectly normalized for easy retrieval and analysis. Unfortunately, nothing eDiscovery related is usually that easy.

- Spending data likely exists in multiple locations and formats. Invoices from e-discovery service providers need to be gathered, and conversations with those service providers may necessary to help understand the invoice line-items and how they should be categorized.

- For in-house counsel, this process should include reaching out to outside counsel who contract with eDiscovery service providers on the client's behalf. This is necessary to understand the full picture of how much money is actually being spent, and how and where that money is being spent.

After a sufficient amount of spending data has been gathered, it needs to be normalized to help develop an "apples-to-apples" comparison between service providers.

- Review spending data and group different line-items into a consistent set of spending categories (e.g., collection, filtering, processing, hosting, review, and production).

- This may be difficult to do if certain service providers or projects include line-items for bundled services, which package multiple services into one price-point (e.g., per-document pricing that includes processing, review, and production).
- Despite the challenges associated with normalizing this data, it is necessary in order to perform a deep analysis and understand the relative cost differences between service providers and their pricing models.

Analyze the results and define a system to identify what is valued most

Before making material improvements, certain questions must be answered by analyzing normalized historical spending data.

- How much money is being spent? How much is spent by the company itself and how much is spent through its law firms who contract with various eDiscovery service providers on behalf of their clients?
- How is money being spent? Is more spent on processing than review? How much is spent every month on data hosting?
- How much money will be spent in the next four quarters? How are projects budgeted and projections made?

As this information is compiled, companies can start to think about what they really value. They can begin to define their value system to understand the importance, worth or usefulness of the services delivered by eDiscovery service providers:

- Is a rigid systematic process most important or is flexibility and creativity valued to address unique and complicated scenarios?
- Is the bottom line cost most important, or is the quality of the service more important?
- Should outside law firms drive the process for selecting and managing eDiscovery service providers, and what level of outside counsel oversight is desired?

  There are no correct answers to these questions, but a company must define value in their own context before they can develop and implement a strategy to extract maximum value from their eDiscovery service providers.

Set New Expectations

Rethink the way eDiscovery service providers are engaged. Do not purchase eDiscovery services from a mere "vendor" trapped in an endless race to the pricing bottom. Demand a strategic partnership. eDiscovery services are too expensive and the stakes are too high to approach this like buying widgets out of the lowest cost vendor's inventory. Companies should expect service providers to act like partners, and:

- Regularly reach out to assess the overall health of the partnership;
- Introduce ideas and plans to improve the value proposition they offer;
- Help demonstrate value improvements to corporate leadership (including cost savings);
- Review positive events and the plan to replicate future successes;
- Review negative events and the plan to mitigate future occurrences; and
- Play well with other partners by always keeping the client's best interest in mind.

Take action to increase value and likely reduce overall spending

With real information, new expectations, and a better understanding of what it values, a company can undergo practical efforts to increase value and reduce spending.

Leverage data analysis to act on low-hanging-fruit

Conducting an "apples-to-apples" comparison between vendors and services will make outliers obvious. This information can be used to make reasonable arguments for cost reductions on future projects with outlier providers.

Leverage data analysis to help evaluate and understand value

This analysis can help evaluate the value of services that are being provided. If Provider A is charging $20/GB for online data hosting and Provider B is charging $10/GB, do experiences justify the 50% premium being paid to Provider A? The answer could be yes: the review platform is more secure because of investments made by the provider and it operates substantially faster, reducing the overall billable hours spent on document review. If the answer is no, then why pay the 50% premium?

Consolidate providers but don't put all your eggs in one basket

Companies should take steps to consolidate the number of providers they engage (directly or indirectly) for eDiscovery services. This will help drive consistency, reduce costs through volume discounts, streamline efficiencies, and allow the company more command and control of their electronically stored information. However, proceed with caution regarding any plans to acquire all services from one provider and one provider only. This can, over time, result in a situation where a company finds itself in more of a hostage situation as opposed to a partnership. This can also result in a situation where one service provider is overwhelmed by multiple large projects with competing timelines. Maintaining relationships with more than one service provider will help ensure sufficient capacity is available to address these periods of peak demand.

Don't be afraid to mix and match vendors based on core competencies

Explore creative arrangements between providers, matching companies whose core competencies can be combined to deliver exceptional services. If one service provider offers exceptionally valuable data processing and hosting capabilities and another provider offers exceptionally valuable document review services, why not put them together? Establish a relationship where one provider processes and hosts data for review and production, and another provider accesses that data in an online review tool to deliver document review services. Expect providers to work together and form partnerships that will result exceptional service and a sustainable framework.

Conclusion

Are companies getting their money's worth for the billions they are spending on eDiscovery services? To answer yes, they must understand their spending realities, define what they value most, and ensure they are working with partners who share a common value assessment. Following the simple steps outlined above can help companies answer these questions that have significant bottom line implications for corporate budgets and risk mitigation.

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