

ASSERTING COMMAND OVER EDISCOVERY PRICING MODELS & PROJECT OUTSOURCING

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WHITE PAPER

"It is imperative to weigh carefully the various pricing models, based on the information known to the buyer, and choose the model that best leverages that information."

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EXECUTIVE SUMMARY

Does your organization have the expertise to properly vet ediscovery vendors? Has your organization developed the appropriate methodology to evaluate vendors' pricing models? Do you know the right questions to ask to identify the nuances between different vendors' offerings? Have you established a process that analyzes various inputs (like when to end a legal hold, how much data should be reviewed, how much relevant data will be left after culling) so that you can determine the optimum pricing model for each case?

In short, how will your organization return rationality to the value proposition of ediscovery?

This white paper discusses how organizations should approach the vendor selection process when outsourcing their ediscovery projects to a third party. Key in this process is choosing the right pricing model, as they vary widely from vendor to vendor and can substantially affect overall ediscovery costs.

KEY TAKEAWAYS

- Decision makers should routinely question ediscovery vendors about their technology, pricing models, scalability, and company performance. Sometimes a vendor's pricing model lacks clarity at the onset, so it is essential that decision makers fully understand every aspect of these services before entertaining vendors.
- There are four basic pricing models currently available in the market for ediscovery:
 1. Traditional, line-item pricing
 2. Fixed fee per matter or per custodian
 3. Flat price for ingestion
 4. Fixed fee only for reviewable content

The last model is preferable in most situations by offering lower costs, greater control, simplicity, and predictability.



PROPERLY MANAGING EDISCOVERY PROJECTS

CUT THROUGH THE CONFUSION

This paper addresses organizations that will not insource ediscovery project management due to limitations on technical expertise, infrastructure, or dedicated personnel. For these parties, outsourcing ediscovery to a vendor is the only viable option, so choosing the right vendor and implementing the right process is critical.

Parties that outsource their ediscovery must take control of the ediscovery management process early. However, doing so presents some interesting and unique challenges for companies that do not have experience or expertise in dealing with the variety of ediscovery vendors. Managing ediscovery comes with a number of challenges:

- Some vendors have muddied the conversation about ediscovery project and scoping by presenting cost structures that lack clarity, transparency, and predictability – qualities that behoove early ediscovery decision-making.
- Once the various options have been deciphered, different models may prove advantageous under different variables. Each pricing model has pros and cons, so decision makers must choose the model that best fits the amount and complexity of the data to be managed, the expected length of the case, and the technical expertise of the vendor and the in-house staff.
- Decision makers should rationalize their costs for ediscovery proportional to the most valuable interactions.

In short, good ediscovery project management attempts to find the best approach to ediscovery while keeping costs at a minimum.

KNOW THE RIGHT QUESTIONS TO ASK

Finding the right approach that is also cost-effective requires organizations to assess their own needs and capabilities, and ascertain key attributes of potential vendors. Below is a series of questions designed to guide an organization through the vetting process:

- Does your organization have the expertise in place, using either in-house staff members or external counsel that will enable proper evaluation of ediscovery project management vendors, including the efficacy and cost efficiency of their pricing models?
- Is there a mechanism in place to evaluate these pricing models in the context of past in-house or outside counsel experience?
- What are all of the tasks your organization will be paying an ediscovery vendor to execute? Which tasks will you execute yourself, either with your own internal solutions or with the vendor's software?
- Will your vendor host data securely? What processes and controls do they have in place to ensure that your confidential data will not be breached? What industry standards do they meet? Are the vendor's security standards and protocols at least as secure as those in your organization? Does the vendor host data using their own infrastructure or do they use a cloud provider like Amazon® Web Services (AWS) or Microsoft® Azure?
- Can the vendor certify their processes in furtherance of Rule 26(f) meet-and-confer conferences?
- Will the vendor's processes be demonstrably defensible, complete with audit reporting and chain of custody records?
- Will the vendor be available on a 24/7 basis to address any issues that may arise, such as outages in their hosted infrastructure?
- What technologies do the vendors employ to cull data, reducing the burden of review and the volume of data to be hosted?

- How sound is the vendor's business? How long have they been in business? What is the growth history of the company? Are they profitable?
- Will the vendor allocate a sufficient number of staff, including a dedicated project manager, to your project?
- Does the vendor offer references in your industry and with organizations similar to yours?
- Does the vendor's pricing model provide predictability in the handling of data expansion/explosion during processing?

KNOW THE MOST PREVALENT PRICING MODELS

Choosing a vendor with the pricing model that delivers cost certainty and control for your situation is also a critical part of the vetting process when outsourcing ediscovery projects.

There are four basic ediscovery pricing models prevalent in the market today:

1. TRADITIONAL, LINE-ITEM PRICING

This is the traditional model – and the one that continues to dominate – consisting primarily of line-item pricing for each activity provided by an ediscovery vendor: collection, processing, predictive coding, hosting for review, and production. Vendors will charge an ingestion fee for potentially discoverable content, a processing fee for the various operations performed on this data, such as optical character recognition (OCR), image conversion, deduplication, filtering on search terms, culling, and hosting fees. OCR has been framed as a major cost element because of the CPU-heavy nature of the process and the length of time that it requires.

Using the traditional model, vendors will charge a hosting fee for each month an ediscovery “job” is being hosted on the vendor's servers, and often a per seat fee for each individual that must have access to the processed data. Most traditional models include a production fee, while others charge a premium for predictive coding, although this process is more commonplace and is becoming a standardized offering from many vendors.

The advantage of this approach is that each part has been directly connected to a stage in the process, which can be useful for cost recovery purposes and justifying the costs to a court. The costs, however, will tend to be higher and extremely front-loaded, making this a bad model for smaller matters or matters that are shorter in duration.

2. FIXED FEE PER MATTER OR PER CUSTODIAN

This model charges a fixed fee per matter and/or per data custodian. In a typical case, each custodian requires varying levels of data volume and process complexity, so this model may not provide good value. If there are few custodians, each with a substantial amount of data to process, this model provides reasonable value. If there are a larger number of custodians, each with a small amount of data, this model is worse off.

This model's primary benefit is cost predictability, since there is a fixed fee that is negotiated up-front and the number of custodians is often well-known, but there is a good chance that a customer will be paying too much, including for some data that will not be used in a case. Costs can be reduced in this approach by carefully monitoring the number of custodians targeted.

3. FIXED FEE UPON INGESTION

In this model, an organization gives a vendor all of its data for a case and the vendor provides a flat cost per gigabyte ingested to manage the data through to the end of the case. Although offering high predictability, this model assesses charges before much of the data may be culled. If a customer will be handing off a substantial amount of “noise” that has not been culled from the data, the customer will be paying for data that will never make it past the initial stage of processing. Moreover, potential buyers have to investigate what “all inclusive” pricing really includes, because there may still be additional charges for production or user fees, introducing new variables – namely, the volume of productions (which can add up in a multi-party case) and the number of users (which can add up based on the scale and size of the review team).

The advantage of this model is some of its predictability: customers know up front how much the case will cost them with respect to overall volume. In-house counsel often prefers predictability over cost savings, and so this model might appeal to that segment of the market.

4. FIXED FEE FOR REVIEWABLE CONTENT

The last pricing model charges a fixed fee per document or gigabyte of content, for the duration that the data is actively used in the case. We believe this model offers a number of important advantages over the three pricing models discussed above:

- The pricing is proportional to only the data in review and only when it is being reviewed. Customers pay only for what will be useful in ediscovery and they are not required to pay for data that will never be relevant.
- All of the ediscovery services provided by the vendor are included in a single fee, not charged piecemeal as in some other pricing models, thus introducing more simplicity.
- Unlike the fixed per custodian or per matter pricing models, this fixed fee approach bundles easily with the purchase of review, as a price per document is also a unit by which managed document review services is purchased. When technology and review is priced at the same basic unit – the document reviewed – it enables easier end-to-end aggregation and estimation of total cost.
- Because this model asserts costs proportional to data post-culling, there is a little less predictability in the early stages. As soon as culling operations are completed and the data in review is known, then the cost is much more predictable.

While offering several advantages, there are some potential downsides to this model. The per document pricing inherent in this model is typically priced by vendors to include the risk of large and complex documents, and so pricing could be high for cases in which documents are fairly simple and/or small. Also, since this model charges a fixed monthly fee per document or gigabyte, long-running cases (e.g., those longer than 24-36 months) will be subject to higher costs than with other models, although risk can be mitigated by eliminating some data from the system. Most of these risks are mitigated by a highly competitive price point.

SUMMARY

Ediscovery pricing remains apples to oranges. Some potential buyers have reported exponential differences in project cost estimates, making procuring these services a confusing and highly burdensome task, with no real measure for success. It is imperative to weigh carefully the various models, based on the information known to the buyer, and choose the model that best leverages that information.

From a strictly value-based perspective, the best approach to ediscovery project management and scoping – and the approach that should be selected when choosing a vendor that offers the optimum pricing model – will most frequently be one that focuses on content in review during a case. Customers should seek to minimize the amount spent on data that is irrelevant and allocate most of their costs towards the information of highest value. In most cases, this will mean that only relevant documents should be reviewed, and managed only for the length of time they are in review.

ABOUT THE AUTHOR



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