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# 10 Critical Things to Consider Before You Bring eDiscovery In-House

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*There is little debate that eDiscovery can be a daunting and expensive endeavor.* Even small matters can involve scouring through terabytes of data. For some companies, litigation is one of the many costs of doing business. That cost, and specifically eDiscovery costs, can be one area that companies look to reduce as budgets shrink and companies look to identify cost savings.

Bringing a part or all of the eDiscovery process in-house is the right move for many organizations. There have been incredible advances in eDiscovery technology in the past few years. The industry has also created many talented individuals that can run and manage the process. However, it's not a quick and easy decision. There can be a number of unforeseen and unexpected costs and hassles associated with bringing eDiscovery in-house that can quickly mitigate the savings and streamlining you hoped to achieve.

## Things to Watch Out For

Reducing costs with your own in-house eDiscovery department sounds like a practical approach for a large company that already employs many lawyers, paralegals and litigation support personnel. If the company has its own server farm and a world-class IT department, it should be a simple exercise – in theory. Just assess the software options, pick the right software, buy the software, throw it on some servers, create a process, have the right people run it and then voila: instant savings!

While it might appear to be that easy, there are many obstacles that can derail your project. Most of them fall into the category of hidden costs, additional staffing and training requirements, and the investment of time and energy needed to complete the transition.



## About the Author

Peter Coons is Senior Vice President of Computer Forensics and Collections with D4. Peter has 14 years of experience in the legal technology field. Peter has served as an eDiscovery expert at numerous 26(f) conferences, has testified as a computer forensic expert witness in both state and federal court, and has been appointed by a Federal District Court as a neutral third party forensic examiner. He has personally participated in or overseen the collection and imaging of thousands of computers and performed forensic analysis on hundreds of hard drives and other media. Peter is an EnCase Certified Examiner, an Access Data Certified Examiner, a Certified Computer Examiner (computer forensic certificates) and is a member of the High Technology Crime Investigation Association (HTCIA), the professional organization for persons involved in computer forensics.

Peter holds a Bachelor degree in Economics from the State University of New York at Oneonta and is a graduate degree candidate in Digital Investigations Management at Champlain College.



## Hidden and Unexpected Costs.

### **First, there is the cost of the software itself.**

Do you intend to own the software, or will it be subscription based? Is it a volume based model? Each pricing model has its own hidden costs. There are certainly pros and cons to each model, just as there are pros and cons to leasing versus buying a car. For example, volume based pricing makes it difficult to budget and can certainly dissuade one from using the tool if there is too much data.

**Do you intend to own the software, or will it be subscription based?**

### **Next, there is the investment in robust hardware.**

Many software applications require dedicated, powerful, and expensive servers. They also may require separate storage devices. If your company does not have a server that is adequate to run the new eDiscovery software, then one may need to be purchased. Due to security concerns, it may not be possible to use an existing corporate server. In that case, a separate server may need to be purchased. Many software applications may run just fine on a really powerful desktop, but most software developers will tell you that to run their software properly, it needs to be on a robust machine. Assume a nice server costs \$25,000.

On top of this, additional not-so-little “extras” include the cost of reviewing ESI, data storage, installation and maintenance. These costs can quickly add up to tens of thousands of dollars just to get you up and running



## Staffing and training challenges

### **Do you need to hire more people to run the software?**

If so, how many? In a recent survey, conducted by Litigation Support Today magazine (source: Litigation Support Today May/July 2011 “2nd Annual Salary Survey”), the average salary for a litigation support professional is around \$70,000 per year. If your company is on the East Coast or in a major city, expect to spend more money. In many organizations there will be a need for at least two people in the litigation support role.

### **Don't forget about the IT department.**

Consideration must be given to the number of FTE's needed to support not only the software, but the hardware as well. Most eDiscovery software applications are beefy and require serious hardware to run properly. Additionally, most applications use SQL or Oracle database architecture on the back-end. Both of these facts necessitate having at least half of an IT FTE equivalent available for proper support. Realistically, it's a full time job for someone. Assume the average salary for a person in this role is \$75,000 a year.

### **What about training costs?**

Some software providers offer free installation and training, but others may charge a fee. Training, if it is included, is usually very basic. Many vendors offer training, but it is used as another means for the software company to make money. 'Buy my product and then you can get certified in the application for \$4,000.' Add that cost to the cost of travel and consider the fact that you will be out of the office for five straight days. While the training sessions with the software makers are very helpful and informative, it is another cost to consider.

## Ease of Implementation and Time Investment

Bringing eDiscovery in-house can take months (or years) to fully implement. A common mistake is to buy a piece of software and then try to build a process around the software. That recipe is doomed to fail and you will find yourself in a worse position than when you began the journey. It takes a lot of time, money, and energy to come up with the right process, find the right software, purchase the right hardware, and train the right people. There is no one piece of software that can do everything you want it to do, and it will take a great deal of planning to make all the pieces fit together to meet your particular needs and wants.



# 10 Critical Considerations

## 1) What is the Total Cost of Ownership (TCO)?

As we have already seen, there are plenty of hidden costs and unexpected expenses associated with a project of this magnitude. Do not fall into the line of thinking that software that costs \$50,000 a year actually costs only \$50,000/yr. To illustrate, take a look at the “Estimated 3-Year Cost Model” (Fig. 1). In this example, an organization would spend close to one million dollars over three years to bring part of all of its eDiscovery in-house. This assumes that Big Company, Inc. outsources one million dollars a year in eDiscovery services. If all things remain constant, Big Company, Inc. would have spent 3 million dollars over three years.

Consider a more conservative approach, in which Big Company continued to vend out only half of its work. Then over a three year period, the company would realize a savings of \$500,000, or 17%. Is it worth it? Maybe. The point is that the TCO must be determined prior to any decision.

## 2) Who will be in charge of creating the process?

Is it the lawyers? The paralegals? Or, do you hire an outside consulting firm to assist with creating a process? Vendors have been doing this for years and there are many that can assist with creating an internal workflow. The process is the most important piece of the puzzle. Get the process down before you decide on the software to use.

## 3) Who will be in charge of running the software?

Once your process is mapped out, you can begin thinking about building your team. Should IT be involved with running the software? Do they have the time or requisite skill sets? Do they understand the importance of the process? Do additional FTE’s need to be hired? The cost of hiring, training, and compensating these professionals need to be factored into the equation.

## 4) Can you bring in the most expensive component & outsource the rest?

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Estimated 3-Year Cost Model (Fig.1)

<b>Software:</b>	
3 Year Subscription	\$50,000 /yr
<b>Salaries:</b>	
Two Litigation Support Professionals	\$140,000 /yr
FTE / IT Support Professional	\$75,000 /yr
+15% for benefits, etc.	\$32,250 /yr
<b>Hardware:</b>	
Server	\$25,000 /yr
OS and SQL	\$3,000 /yr
Storage (10TB)	\$12,000 /yr
<b>Training:</b>	
Send 3 people at \$4,000 each (plus travel)	\$12,000 /yr
<b>TOTAL 3-YEAR COST MODEL (TCO)</b>	
Year One Total	\$349,250 /yr
Year Two Total	\$297,250 /yr
Year Three Total	\$297.250 /yr
<b>GRAND TOTAL</b>	<b>\$943,750</b>
3 year cost model	

### **5) Who will testify to the process employed during discovery?**

Yes, it is likely that you will have to put someone on the stand to testify about how the data was collected, processed, reviewed and produced. Who is that person? Is it someone internal? Is it a lawyer or your newly hired litigation support guru? Using an outside vendor may alleviate this need as they often have professionals that can testify about the process. The right ones will bring expertise and clout to the stand.

### **6) Can your software company keep you current?**

What if you spend a million dollars to implement a new system, only to then discover that the technology is not the latest and greatest? It can take months or years to fully implement a fully functional eDiscovery process. Meanwhile, a lot can change in terms of process and technology. Pick carefully. Look at software companies that have a proven track record and one that includes innovation or implementing/integrating other cutting-edge technologies. You do not want to find yourself saddled with out-of-date software and methodologies.

### **7) Will you be nimble enough to easily incorporate new technologies?**

For example: Concept Searching wasn't even a buzz word a decade ago. Now it is a part of all the eDiscovery seminar talk tracks. In another year there may be some new technology that makes the eDiscovery process quicker, cheaper, and more effective. Your solution needs to be flexible and scalable.

### **8) How will IT support the new system?**

IT departments have their hands full already. Don't underestimate the time and effort involved with bringing an entirely new system onboard. You wouldn't expect to implement a new HR, ERP, or CRM system without involving IT. So involve them early on in the selection process. They can assist with the vetting process and help you avoid serious blunders.

### **9) What about a hybrid approach?**

Perhaps you could save costs by just bringing part of your eDiscovery operation in-house. You might handle the "small" jobs yourself and outsource the larger projects. Find a vendor that has a solid and proven process. If you don't have one, ask your Outside Counsel. What do they use? Can you replicate their infrastructure and process? If so, it will be easy to hand off the larger projects. But you will need to define the difference between a "small" and a "large" project.

### **10) What resources does Outside Counsel possess?**

If you don't have vendors, but you rely instead on your Outside Counsel to handle your ESI, then ask them how they do it. Do they rely on vendors and just provide a level of project management, or do they favor the do-it-yourself model? Many law firms today have their own internal eDiscovery capabilities. They went through the same process that you are going through right now. Ask a lot of questions. Do your homework!





## NEXT STEPS:

# How to get the help you need

As we have seen, the decision to bring your eDiscovery in-house involves a great deal of consideration, time, effort, and investment. Don't do it alone! Seek the advice of a qualified service provider, one that is experienced in all the latest technologies and best practices. They can help you think through the process, give specific recommendations, and help you avoid the unnecessary hassle and expense of tackling this process by yourself.

D4 is the nationally-recognized leader in litigation support and eDiscovery services to law firms and corporate law departments. D4 is listed on Inc. magazine's fifth annual Inc. 500|5000 list as one of the nation's fastest growing private companies.



**Call D4 today for immediate help or information: (800) 410-7066**

Visit the D4 website for additional resources, white papers and case studies: <http://www.d4discovery.com>

Connect with D4 online and a team member will get back to you within 24 hours: <http://www.d4discovery.com/contact/>

Founded in 1997, and through its combination and rebranding with Doculegal, D4 covers the full spectrum of the Electronic Discovery Reference Model (EDRM) and provides accurate, reliable, defensible data extraction on a wide range of ESI. D4 resells, supports, and provides training for all the leading eDiscovery applications. And with over 100 staff, D4 offers full-service locations in Rochester, Buffalo, Tampa, Lincoln, Omaha, New York City, Grand Rapids, and San Jose. In addition, D4 fields consultants and project managers from Los Angeles, Colorado, Rhode Island, Michigan, and Washington DC. State-of-the-art data center operations in Rochester are complemented by electronic discovery and litigation support paper document services throughout the United States.

With its broad range of flexible, scalable solutions backed by the most experienced eDiscovery team in the industry, D4 is uniquely qualified to be your strategic eDiscovery partner.

**"D4 is an integral part of our litigation support team. They helped us optimize our discovery process which has resulted in significant reduction in costs and shortened review timelines."**

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