



Hot Topic: e-Discovery Costs

Why Are E-Discovery Costs Going Down? And What Does It Mean For You?

By Yoeli Barag, Esq. & Salim Elkhou

Over the past several years, electronic discovery costs have declined significantly. The decline in price is the result of decreased costs in computer hardware, electronic discovery software, data storage and connectivity. In addition, many small electronic discovery firms have appeared on the scene with the promise to clients of lower cost and greater efficiency. Such boutique vendors have, in large part, forced the larger electronic discovery firms to question their pricing models in favor of streamlined approaches to reducing costs for clients.

The result? Clients may now take advantage of the once cost-prohibitive discovery services that they previously avoided for want of a sufficient budget. Not only have larger cases benefitted from decreased costs; even the smallest cases have become worthy candidates for using electronic discovery in lieu of paper discovery. Cost management is, more so than ever before, the key component in determining which electronic discovery provider to hire.

Why Are Costs Going Down?

Costs are going down for a number of reasons. Hardware computing power has increased exponentially in the past decade, while hardware costs have diminished dramatically over the same period. If properly managed, it is now possible to utilize a very limited number of processing, production and hosting machines while maintaining heightened speeds and output power. Whereas it is now possible to process 1 TB of data with 20 processing machines in 18 hours, the same amount of data would require at least 50 machines only 2-3 years ago. And the cost of such machines is approximately 50% of what it was only 2-3 years ago. The math is simple.

Electronic discovery processing applications have become less expensive to acquire or develop. Indeed, the degree of standardization across processing applications has led to the increased desire for unique offerings within a processing tool: Early Case Assessment capabilities, multiple culling techniques, analytical capabilities, enhanced speeds (ingestion and export) and compatibility with other applications on the market. Absent some defining characteristic, the benefits of a single application are all but apparent. The result? The price of native file processing is now between \$250 and \$450 per GB. In the past, such costs exceeded \$1,200 per GB. Again, the math is simple.

What Does All This Mean For You?

Clearly law firms and corporations stand to benefit from decreased costs. Utilizing electronic discovery is now a reality in cases where the dollar value of the claim did not justify the high electronic discovery costs of the past. Utilizing electronic discovery in larger cases is now a time and cost saver. But is price the only element to consider? What about project management? What about experience in the field? What about finding unique ways to tackle complex issues with convoluted data? What about finding a reliable vendor? Is standardization really the end of road? Is electronic discovery really a commodity service?

We believe not. It is true that cost is important, perhaps even a threshold issue in selecting a discovery vendor. But looking only at price may prove to be a fatal mistake for a law firm or corporation.

Project management, the glue that keeps a case together, is of paramount importance too. A Project Manager (PM) who helps a client to manage deadlines and timeframes can help keep a project on track. A good PM can make recommendations to maximize defensibility and prevent spoliation of evidence. Suggestions and recommendations on culling techniques, provided by good PM, can help to reduce review costs and shorten a review. A PM who suggests to a client that only email files be processed instead of an entire forensic image may help a client to

identify relevant data faster and more cost effectively. Finally, a good PM can make the lives of in-house lit support professionals much easier by reducing their work load on a demanding case.

What about experience? An experienced electronic discovery company will utilize its past cases as a blueprint for future cases. Nobody wants to be a guinea pig.

Providing unique approaches to convoluted data can simplify the process and reduce costs dramatically. Take, for example, a case where counsel is provided 15 TB of TIFFs from the opposing party. Should all 15 TB be stored in an online platform and reviewed page by page? What if counsel is under a tight deadline? Will search terms suffice? What about the fact that loading such data to an ECA platform is cost prohibitive? One solution would be to process only the fulltext metadata field in an ECA tool and load only the responsive dataset to a review platform. Such a unique approach to a difficult situation, only found among honest vendors, is worth more than a low per-GB price. Such intangibles make a vendor's price per-GB all the less relevant. While the math is simple, the ultimate approach is not.

Additional solutions, such as flat pricing per custodian, monthly project pricing, and charging on data output rather than the input can all help to keep costs low. But it is the intangibles that will ultimately prevail. Experience, trustworthiness, good project management, and good pricing all add up. The math is simple.