Modernizing eDiscovery

Best Practices for In-House Legal Teams

Introduction

In today's transformative digital age, the legal industry is at an interesting crossroads. Many firms, tools and processes remain legacy or "old school" because historically they worked well. But in recent years, these legacy tools and processes are no longer holding up to modern needs. As a result, forward thinking in-house teams are embracing a new era and looking to modernize their tools and processes, especially when it comes to eDiscovery.

Traditional methods of managing eDiscovery are now falling short as the volume and variety of data has increased exponentially. Legal teams struggle to remain in control of their processes while data breaches become more common and compliance with security and privacy regulations get more complicated. As a result, in-house legal teams find themselves grappling with escalating costs, a lack of control, and significant security risks.

Advances in cloud solutions, machine learning, and AI are producing a new generation of software solutions designed to streamline eDiscovery and bring the entire process into a new era of modern efficiency. By optimizing workflows, automating complex tasks, enhancing search capabilities, and leveraging AI advances, these modern tools empower legal teams to regain control of their eDiscovery processes.

In doing so, they offer a promise of high quality, quicker turnarounds, increased data security and substantial cost reductions.

Welcome to a new era of eDiscovery.

Understanding the Challenges of Traditional eDiscovery

Before we can fully appreciate the benefits of modern, in-house eDiscovery solutions, it's important to understand the complexities and challenges presented by the legacy or more traditional approaches.

Traditionally, an in-house team might handle eDiscovery by delegating a large part of the process to outside counsel. For each new matter, the in-house team might, for example, take responsibility for legal holds and data preservation. After that the in-house team would have little to no involvement, leaving the choice and execution of all other aspects to the law firm working on the matter. The law firm would choose the eDiscovery platform to use, the service provider to engage, and workflows to be followed.

Expensive and Time-Consuming: The realities of traditional eDiscovery present a substantial burden to legal teams, especially those operating with limited resources. The initial stages of eDiscovery, such as the identification, preservation, and collection of potentially relevant data, can be highly time-consuming and challenging. Each stage requires meticulous attention to detail to ensure that no important information is overlooked. When dealing with large volumes of data, this process can quickly become overwhelming. Furthermore, the practice of outsourcing eDiscovery to outside counsel or external service providers carries substantial costs.

Complex and Inefficient: The digital age has brought with it a proliferation of data sources and formats. Legal teams must now contend with data from emails, cloud storage vaults, instant messaging platforms like Slack, and a myriad of different file types including videos and audio files. Traditional eDiscovery methods can struggle to keep pace with the sheer variety and volume of data, making the process complex and inefficient. Ensuring accurate extraction and conversion across such a range of formats adds yet another layer of complexity to the eDiscovery process.

Security Risks: As data volumes grow, so does the associated security risks. Legal data often contains sensitive information, including proprietary details or personally identifiable information (PII). The traditional eDiscovery practice of transferring data to third parties for processing and review introduces vulnerabilities at each point of transfer. These vulnerabilities could be exploited, leading to data breaches that not only threaten the organization's reputation but also carry the risk of substantial financial penalties for violations of data protection regulations.

Lack of Control: When eDiscovery is outsourced, direct control over the process is lost. Without the ability to manage eDiscovery in-house, legal teams can struggle to manage timelines, monitor the quality of work, and ensure compliance with legal and regulatory requirements. This lack of control corresponds to increased risk, decreased efficiency, and potential non-compliance with discovery obligations.

The Case for In-House eDiscovery

More than ever, in-house legal teams are taking a more active role in eDiscovery. They are selecting a primary eDiscovery platform to be used across most if not all of their matters and contracting directly with the platform provider. They are designating a pool of acceptable service providers to handle their data, ones that work both with the in-house legal team and outside counsel. They are implementing consistent eDiscovery protocols to be used across matters, regardless of the law firms involved. They are structuring workflows that result in an appropriate and cost-effective distribution of eDiscovery work between in-house and outside teams, taking advantage of the best that each has to offer. These efforts are helping reduce overall eDiscovery costs and data security risks; increase consistent treatment of documents, especially with respect to relevance, privilege, and privacy; and deliver more timely and higher quality results.

Transitioning to in-house eDiscovery alleviates many concerns, though the transition may seem daunting due to a perceived complexity of platforms and the need to manage the full process. However, we're now in a modern-era where user-friendly technology exists and these perceived barriers can be effectively navigated. Some of the eDiscovery solutions that exist today are designed with simplicity and efficiency in mind, making them accessible even for teams without deep technical expertise or a large bench of attorney and support staff to manage the software.

Teams who make the switch realize significant time and cost savings. If they do decide to bring in a new headcount to own the process, they usually offset the investment by the reduction in cost needed to fund outside firms. The true savings, however, come from the increased control, security, and agility your legal team gains — a value that far outweighs the upfront investment.

In the subsequent points, we will delve deeper into the compelling reasons for moving eDiscovery in-house, touching upon aspects of cost efficiency, control, security, technological leverage, and scalability.

Cost Efficiency

Transitioning to in-house eDiscovery can result in substantial cost savings for organizations. By eliminating the need for outsourcing the collection, processing and hosting of data, legal teams can drastically reduce the fees associated with external services. While there may be upfront costs to implement in-house eDiscovery tools, these are offset by the long-term savings. Plus, the ability to better control data volumes — such as by using advanced search and culling tools — can also minimize costs associated with data processing, review, and storage.

Defensibility

The defensibility of eDiscovery procedures is crucial for legal teams as they must be able to demonstrate that their approach is reliable, repeatable, and reasonable to ensure that the process stands up in court. An in-house eDiscovery solution allows teams to maintain meticulous documentation of each step taken, from data collection to processing and review. Audit trail features can be invaluable in demonstrating the defensibility of the process to courts or opposing parties.

Greater Control and Agility

In-house eDiscovery tools offer legal teams direct control over the entire eDiscovery process. This empowers teams to adapt quickly to changes in case strategy, regulatory environment, or data sources. It also enables tighter control over timelines, work quality, and compliance, making it easier to manage eDiscovery obligations.

Enhanced Security

Some in-house eDiscovery tools are designed to provide robust security measures that protect sensitive data. These platforms enable legal teams to minimize the risk of data breaches associated with transferring data to and from third-party providers.

Leveraging AI and Modern Technology

Modern in-house eDiscovery tools utilize AI and other advanced technologies to automate and streamline various stages of the eDiscovery process. For instance, AI can be used to enhance search capabilities, suggest redactions of PII or potentially privileged information and automate document categorization, saving legal teams significant time and effort. These tools also provide the ability to handle diverse data types and sources, making them well-suited to meet the demands of the digital age.

Scalability

Modern in-house eDiscovery tools can scale with you. Teams can start by handling one case in-house and scale up as the business needs require. Teams often will start by using an eDiscovery tool for subpoenas and FOIA responses and add in other areas as they get more comfortable with the process and gain buy-in.

The Role of IT in In-House eDiscovery

In the traditional model of eDiscovery, IT departments have been pivotal in managing the process, from preserving and collecting data for legal holds, to being involved in the initial search and culling process. However, this approach places a substantial burden on IT and creates delays and inefficiencies in the eDiscovery process.

Today, modern eDiscovery platforms reduce this reliance on IT by putting the tools needed directly in the hands of the legal team. This shift not only empowers legal teams to manage their own eDiscovery processes but also frees up IT resources for other critical tasks.

Modern eDiscovery solutions provide legal teams the ability to manage the entire eDiscovery process from issuing legal holds, tracking responses, collecting data, and conducting advanced searches all the way through to redacting privileged information and PII and producing documents. All this gives legal teams the agility to meet the changing demands of discovery timelines, without being dependent on IT's availability.

Another major advantage of these modern platforms is advancements and capabilities in securing and protecting data. IT teams can rest assured knowing that by bringing eDiscovery in-house they are not compromising on data security.

Although the legal team is empowered to handle the majority of the eDiscovery process, the intuitive design and user-friendly interface of these platforms ensure that, when needed, IT can easily step in to provide support. In this way, modern eDiscovery solutions don't merely alleviate the burden on IT departments; they also empower legal teams to manage the process more efficiently and effectively, paving the way for a streamlined, collaborative approach to eDiscovery.

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Best Practices for Implementing In-House eDiscovery

Implementing in-house eDiscovery is not just about purchasing a software solution; it's about changing the way your legal team manages and interacts with data. As with any significant change, change management can be intimidating. However, by following these best practices, your legal team can streamline the process, increase efficiency, and maximize the benefits of your in-house eDiscovery solution.

Understanding eDiscovery Needs and Setting Goals: Before exploring potential solutions, you must first understand your team's unique eDiscovery needs. By setting clear objectives from the onset, you can ensure that your new solution aligns with your needs and goals. Here are some example of goals an in-house team may have when they bring eDiscovery in-house:

- Eliminate manual review of documents with a goal of saving time
- Decrease reliance on outside counsel with a goal of saving money
- Improve confidence in the eDiscovery process being handled correctly by having oversight of the entire process
- Find efficiencies in the process to save the team from burn-out or delay the need to hire additional team members
- Manage FOIA request redactions more efficiently

Choosing the Right eDiscovery Solution: Not all eDiscovery platforms are created equal. Be sure to select a solution that offers the right balance of usability, functionality, and cost-effectiveness for your team. Consider conducting an RFP process to compare different platforms and find the one that best suits your needs. If you need some help in creating an RFP we have crafted a foundational version you can use as a starting point. We will include a link at the end of this white paper.

Involving Cross-Functional Teams in Implementing eDiscovery Solutions:
The implementation of eDiscovery impacts more than just the legal team. It also affects IT, compliance, and other departments. By involving stakeholders from these areas in the decision-making process, you can ensure that all potential challenges and needs are considered.

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Emphasizing Training and Change Management: The success of any new software solution hinges on user adoption. By providing comprehensive training and ongoing support, you can help your team understand the benefits and learn how to use the new eDiscovery platform effectively. Be sure the eDiscovery solution you choose offers the support you need.

Setting Up a Clear eDiscovery Workflow (hint: it's easier than you might think!): Establish a clear, standardized workflow for your eDiscovery process. Start by defining roles, responsibilities, and data management protocols. Identify who handles each eDiscovery stage — issuing legal holds, data collection, review, etc. — to avoid confusion. Define how data is collected and managed for consistency and to ensure crucial information is not missed.

Anticipate potential issues that could arise, such as technical glitches or data gaps, and establish protocols for addressing them quickly. To facilitate this, invest time in understanding your chosen eDiscovery platform thoroughly. Be aware of its strengths and the support services available.

Lastly, robust Customer Success support and product help features can significantly alleviate your team's burden and ensure a smooth process.

Adjust processes as needs arise: One of the reasons why some in-house legal teams enjoy bringing eDiscovery in house is because it allows them to be creative and customized with their processes. As needs arise, teams can adapt processes to support business changes. For example, if there's a change from MS Exchange to Gmail, the process can be adapted. If a department migrates data from one system to another, changes will be needed to the eDiscovery process. Occasional reviews and audits can help you ensure that the system is working as expected and identify opportunities to optimize the processes.

Moving to in-house eDiscovery is not just about adopting new technology; it's about shifting the way your legal team operates to be more efficient, to remain in control of your data and eliminate potential risks to your organization.

Conclusion

The evolving digital landscape presents both challenges and opportunities for eDiscovery. With data volumes increasing exponentially and the complexity of legal and regulatory environments deepening, it can seem like an uphill task for in-house legal teams to stay ahead. However, the advent of modern, cloud-based eDiscovery solutions has transformed these challenges into opportunities for efficiency and strategic insight.

Moving towards an in-house eDiscovery model is more than just adopting a new software solution. It signifies a paradigm shift towards more efficient, secure, and manageable data discovery processes. With enhanced workflows, improved search capabilities, robust security measures, and AI-empowered automation, these modern tools equip legal teams to regain control over their eDiscovery processes.

Today's eDiscovery solutions integrate automation while also valuing the irreplaceable role of human expertise. They encourage the creation of cross-functional teams for comprehensive solution implementation, and they assure in-house legal teams that they need not be overwhelmed by the volume of data or escalating costs. Instead, they can be adequately equipped and empowered to handle eDiscovery with increased efficacy and efficiency.

As we navigate deeper into the digital era, the need to modernize eDiscovery practices becomes imperative for in-house legal teams. The transformation towards efficient, secure, and empowered eDiscovery processes is not just a possibility — it's a necessity.

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