epiq reliability

Getting ahead of the
game in a rapidly
changing environment

People. Partnership. Performance.

digital disruption—getting on the front foot

If we take a look at the way we interact with technology at present, whether business or personal, we see it weaving its way into almost everything we do: driving to work, ordering food, connecting with loved ones. The list is endless. But with each interaction, a data footprint is preserved and stored. The volume, scope, and range of data being produced is re-shaping the way we interact with data.

This shouldn't be viewed as doom and gloom for the legal industry. Instead, a unique opportunity to transform the way we operate. Innovative firms are striving to manage the "big data" generation with increased throughput, and are therefore becoming more appealing to corporate clients. Our experience is showing that as discovery becomes more commoditised, corporate clients who regularly consume discovery services are demanding more cost effective solutions from the market. This is presenting a threat to the flow of new business to law firms that haven't learn to develop a more efficient approach to discovery. As innovative technology slowly injects its way into the market, firms who get on the front foot and adapt, will be the ones to dictate the market, rather than being forced to react to the market.

While many firms will be satisfied to deal with the challenge only when it becomes a problem, we know that it takes time to build a reliable eDiscovery process. It's extremely difficult for a firm to become mature in eDiscovery overnight. To be successful, eDiscovery involves cultural transformation, new project management processes, the training of new roles, and an understanding of how to measure and optimise outcomes. This is a process of maturity.

For the firms who recognise the changing dynamics in the marketplace and the inevitable demand for improved efficiency, having more experience in eDiscovery will see them gain a significant advantage in winning corporate business. The opportunity is up for grabs right now.

importance of eDiscovery

Firms are continuing to underestimate the resources needed to deal with the explosion of data volumes

From 2013 to 2020 the digital universe is predicted to grow from 4.4 trillion gigabytes to 44 trillion

Corporates are demanding a discovery process that delivers faster, more accurate results

Improving the efficiency of eDiscovery practices is the key to attracting corporate clients

There is a small window of opportunity for firms to set themselves apart from the rest

Clients are now seeking firms with more efficient, innovative, and cost effective eDiscovery alternatives

epiq efficiency

Market pressures are starting to mount on firms. Whether you have been exposed to the downward price pressure from clients, or the overwhelming levels of content requiring review, these pressures will continue to climb.

introducing the eDiscovery capability maturity model

Identifying the maturity of your eDiscovery capability is the first step in moving towards more efficient practices. That's why we developed the eDiscovery Capability Maturity Model, a tool to identify where a firm's capabilities sit and guide lawyers towards more efficient and profitable eDiscovery.

Level 1

This level of maturity is heavily reliant on typical paper based methods of discovery. Lawyers will generally only undertake eDiscovery if the majority of files are already in electronic format. In a modern context, this group find it difficult to take on larger projects due to the extensive resources required to perform conventional discovery. When eDiscovery is undertaken, there is a lack of planning and the process is managed in the same way as a traditional paper based review.

Level 2

Lawyers begin to incorporate eDiscovery procedures irrespective of whether the majority of files are sourced in electronic format. Lawyers see the benefit of digitizing all files and placing them onto one platform for an organized and methodical review, but still occasionally revert back to paper based methods. More efficient file review processes are adopted such as keyword searching, email threading, and near reduplication to reduce review time.

Level 3

Lawyers begin to seek mechanisms that will improve the eDiscovery process and begin to use predictive coding technology to identify relevant files. Lawyers will also begin to interpret performance analytics in order to actively measure and identify areas of the review in which greater efficiencies can be achieved. File reviewers develop a real-time collaborative process with other reviewers in order to work towards developing a common chronology and narrative.

Level 4

In this level, lawyers have completely adopted eDiscovery automation and have a thorough understanding of interpreting performance analytics, which allows the firm to evolve their process and develop a system that is evolving on a case by case basis. Lawyers have incorporated predictive coding to guide their workflow. Highest efficiency and workflow gains are achieved. The entire process has been executed according to a plan.

level 1 minimal eDiscovery maturity

Firms at this level have minimal engagement with eDiscovery processes. Firms will only participate if most of the documents associated with the matter are already electronic. Generally those within this level have had little exposure in using eDiscovery platforms and therefore have a reluctance to incorporate it into their workflow.

Key characteristics

- Unless documents are easily accessible in electronic format, eDiscovery is not considered as a workflow option
- When eDiscovery is undertaken, the process is managed in the same linear way as the traditional paper based approach

- eDiscovery processes are implemented to help automate some manual tasks, but there is a lack of understanding of the benefits
- There may be multiple discovery environments (paper and electronic). Lawyers have few processes in place to ensure reviewers are not duplicating review efforts

problems in level 1

Operating in multiple review modes

Lawyers will be operating in multiple review modes. Some documents are reviewed electronically and some in paper. Nobody is completely sure which is the right version and what has been reviewed. Accountability is reduced with the two modes of review operating at the same time.

Document review platform is not used efficiently

Lawyers have a minimal understanding of how the review platform is designed to be used causing duplicate user reviews, ineffective searches and slow identification of relevant documents. Quite often lawyers in this level will not see the benefits of using the review platform due to a lack of understanding as to its functions.

Planning of the eDiscovery process is basic

The process of discovery has not been planned or strategised. Parties have not established a protocol as to how data will be sourced, gathered, and delivered. This results in problems down the track due to the absence of a procedural plan. In order to create a scalable system, it is essential to determine the volume and complexity of the data and how things will operate.

Conventional mindset still remains

Lawyers see no reason to adapt to a technologically driven environment. There may be single champions of change with resistance from other members of the legal team. Advocating for full adoption is challenging, and lawyers commitment to traditional discovery methods inhibits efficiency.

epiq teamwork

Planning is key to the success of any project, and that should be no different for discovery. Develop a core eDiscovery team, guided by an internal or external consultant who can champion the process and guide lawyers as to the best way forward.

moving to level 2

Stage 1

Identify the volume, range, and scope of the data that needs to be collected. In order to plan effectively, you must have an in-depth knowledge of the data and understand:

- Where the data is stored
- Where and how it needs to be delivered

Stage 2

As soon as litigation is anticipated, consider if it's necessary to preserve potentially relevant data from routine deletion or removal. Litigation can run for years and system upgrades, employee attrition, old hardware, and/or purging of back up tapes may result in lost data.

Stage 3

Determine how the data will be collected. By understanding the format and scope of the data, you can best prepare the most convenient way to have the data collected. Correct data extraction procedures must be followed to keep metadata in tact.

Stage 4

Text and metadata need to be extracted from the documents to assist with searching and filtering. Duplicate documents may also be removed from the review. Determine if your eDiscovery software can perform these processing tasks, or if a third party provider needs to be engaged.

Stage 5

Decide how the review process will be structured. Does your team have the capacity to meet the time frames or can an LPO be engaged to assist? Assign reviewers with the most appropriate skills to the type of review to be performed. Have a clear plan of what information is to be extracted and design predictive coding models based on the specific issues or facts in the case. This process can be optimised by monitoring the teams' analytics and refining the process as required.

Stage 6

Ensure that the format in which the data is to be exchanged is agreed upon from the start. Not being on the same page as to how documents are exchanged can cause problems down the track e.g. you may be provided with 10 boxes of hardcopy discovery from the other side which will negatively impact the efficiencies gained from an electronic process.

moving to level 2 continued

Incorporate a fully electronic process, on one review platform

At the core of effective eDiscovery is having the capacity to operate electronically. Creating an entirely digitised environment is key to improving efficiency. When files are supplied in hard copy, digitising and adding them into the platform is essential.

Follow these tips to get non-electronic data into the tool quickly and cost effectively:

- Engage a third party to scan and create a unique document ID for each document
- Reliable optical character recognition (OCR) and the extraction of metadata is pivotal to achieving a thorough review
- Ensure all documents are accounted for and have a unique document ID

Use the search tools available within the software platform

There is no need to eye ball every single document. By developing a direction or idea of what you are looking for, you can design keyword searches that lead you deeper into your data set, quicker. Effective keyword searches are core to understanding how to design an effective predictive coding model and a fundamental step to progressing through the levels of maturity.

Understand predictive coding and technology assisted review 2.0

With the sheer volume of data requiring review, automation is becoming an increasingly important integration into litigation workflow. Predictive coding, also known as technology-assisted review (TAR) uses algorithms to find files that are likely to be relevant, based on how you rate them initially. Harnessing this tool effectively will cut down your workload by as much as 80%. Developing effective keyword searches is also at the core of integrating predictive coding down the track. TAR 2.0 is the new generation of technology-assisted review.

Ensure a thorough documentation identification system is in place

Flexibility and document accessibility is at the core of a mature eDiscovery process. Having the ability to identify, assess, and gather information on all of your documents quickly and efficiently not only makes life easier for the reviewer, but it minimises the chances of review error. Having an integrated eDiscovery tool that stores, sources, and organises your documents efficiently is a key step in organising and accessing documents.

Ensure all duplicate documents have been eliminated

Up to 65% of emails submitted for review can be duplicates. By incorporating a reduplication process into your workflow, you can experience immediate efficiency gains.

Use a document review platform that has inbuilt email threading software. This can allow review speeds to increase significantly, in some cases from approximately 40 documents per hour to 120 documents per hour.

- **The team falling back into their comfort zone, resorting back to conventional and parallel review systems**
- **A lack of understanding as to the need to evolve can cause resistance to change**
- **Delaying the adoption of eDiscovery until it becomes a necessity to change will put you behind the market**

level 2 increased eDiscovery application

Firms will begin to incorporate eDiscovery to cases irrespective of whether there is a large volume of electronic data. The efficiency gains that can be achieved through a long term eDiscovery investment are beginning to be understood.

Key characteristics

- eDiscovery is undertaken even when the majority of documents are not in an electronic format
- The legal team is growing more comfortable with the process of searching to help structure document review at the outset
- Whilst not yet fully incorporating it into workflow, the team is beginning to explore predictive coding as a resource and its place in eDiscovery
- Reviewers can see how jointly building a chronology and narrative in a shared environment has benefits in the holistic understanding of the case

problems in level 2

Reviewers don't commit to the electronic review system

Efficiencies are eroded when some lawyers choose to revert back to conventional methods of discovery. Putting mechanisms in place to incorporate eDiscovery practices but not bringing the entire legal team along has reduced efficiency gains.

Planning process has initiated, but lacks depth to deal with unexpected changes

A lack of thorough planning may lead to inadequate preparation and unexpected problems in the eDiscovery workflow. For example, if the volume and range of data is not accounted for in the beginning, not enough resources may be allocated to the review.

Lawyers continue to examine every single file, eroding efficiency

Lawyers undermine the capabilities of the document review platform and seek to eye ball every document in a linear process. This results in a slower, inefficient review that may fail to adequately identify the facts in time to settle or resolve the matter in dispute as quickly as possible.

epiq focus

Moving to level 3 can be hard and it's important to maintain a measured and methodical approach. Planning and execution must be thorough in order to improve.

moving to level 3

Evolve the design of your eDiscovery process

The eDiscovery process shouldn't stay the same for every single project. As the legal team develops experience, learn from this experience and adapt the process. Understand the case parameters and review progress as you go. Optimise the legal team's efforts through performance analytics, i.e. tools that are built in to the eDiscovery platform, and provide insight and analysis of the document review.

Stay strong and keep it in the database

Don't let the desire to delete documents from the database or print them take control. Accessing and sharing documents quickly if circumstances change is important in a constantly evolving matter. With the sheer complexity and volume of documents making their way into the arena, you will complicate your process by doing it any other way.

Eliminate unnecessary documents

Document review rates can increase significantly (for example, from 40 documents per hour to 120 per hour) when successful email threading and near duplication procedures are introduced into the workflow. Seek guidance from your consultant on the best way to manage the review of duplicates and near duplicates.

Tackle opposition to change

For users who remain committed to conventional methods of discovery, provide them with information demonstrating how important change is at an industry level. Adoption of eDiscovery is snowballing for a reason. Demonstrate the industry shift of corporate clients, who are demanding higher rates of productivity due to the exponential amounts of data that are requiring review. Our data driven world is only going to increase—lawyers need to recognise that and embrace the change.

things that will work against you

- **Don't cut corners in the administration side of eDiscovery. Your plan is what will make the process run on time and without problems**

- **The learning curve will be steep as you progress through the levels, complacency can hinder teams who don't see reaching the next level as essential**

- **Occasional rogue reviewers will revert back to hard copy review. Identify and guide them back into the eDiscovery mindset**

level 3 incorporation of predictive coding

As lawyers gain experience, they begin to actively seek out mechanisms that will improve the review process. For example, law firms within this maturity level begin to use predictive coding technology to strengthen, automate and focus the review process. Lawyers will also begin to interpret performance analytics in order to measure and identify areas in which greater efficiencies can be achieved.

Key characteristics

- There's a growing confidence in the use of the tools beyond the basics. Email threading and near duplicate detection have been incorporated to remove non essential documents

- The planning is more considered, and less mistakes occur as a result of procedural issues

- Predictive coding procedures have been incorporated into the workflow

- Lawyers are beginning to use analytics to guide and improve the process

- Reviewers are now collaborating with other reviewers by sharing documents, building chronologies, and developing narratives all within the eDiscovery platform

problems in level 3

Data is being jockeyed between external applications

Documents are identified as relevant, but reviewers share data with other reviewers outside of the review platform. By removing the documents from the review platform, reviewers compromise the traceability of data.

Efficiency gains are reduced due to an apprehension about using predictive coding

There remains an apprehension and fear that predictive coding algorithms will skip over documents of interest. Lawyers review documents that predictive coding deems non essential, rather than relying on quality control processes.

Too much dependency on consultants

Consultants are a key factor in achieving successful eDiscovery implementation. Whilst confidence is growing in the eDiscovery tool, standard day to day tasks are not yet fully completed by the eDiscovery team and a significant reliance is still placed on the consultant.

epiq speed

Your consultant will highlight where greater efficiencies can be made or problems can be fixed. By looking at individual reviewer metrics, you can interpret and deal with problems as they arise.

moving to level 4

Adopt the performance analytics

By tracking review throughput, you have a mechanism to help you determine if you are going to reach deadlines. It will also help you track and manage performance across matters, determine who on your team is helping you achieve objectives and highlight where improvements can be made.

Learn to design an effective predictive coding process

By thoroughly understanding the process of predictive coding, you can determine how best to utilise its power. You can for example, incorporate user-created prediction models that are tied to specific codes and categories. Give predictive coding the best possible chance by designing a model that reflects what you are trying to achieve. Base your review on some very simple questions that will target the information you require, for example: What is the story I want to tell? Who are the characters in this story? What facts must I present to succeed? Training a predictive coding system to answer the questions you need answers to requires careful review design with foresight into the desired outcome.

Review with the cloud

In a fast paced and constantly changing industry, cloud based eDiscovery provides the tools to make a quicker, more informed decision from anywhere—all you need is an internet connection. The elasticity in computing power also reduces the volatility associated with litigation by allowing you to match resources based on demand.

Share and create a joint chronology

Document reviewers working collaboratively will deliver the best results. Having the ability to share documents instantaneously, jointly develop a chronology and curate key documents by event, witness, issue, or custom label is a powerful asset to your matter.

Map out arguments into a central reference

Map out your arguments and build a winning narrative. By using your eDiscovery tool correctly, you will enable collaboration, align your team, reduce risk, and save time.

things that will work against you

- Not taking the time to understand what the performance analytics represent

- Failing to understand the eDiscovery platform will keep you in the status quo and prevent progression through the levels of maturity

- Building a chronology and narrative outside of the eDiscovery platform

- A lack of understanding that cloud security is more advanced than most inhouse IT systems

epiq process

Ask your consultant to guide you through interpreting analytics. They will allow you to improve efficiency by tracking metrics about where you are in the review, individual user efficiency and accuracy.

understanding the performance analytic metrics

Review throughput

By measuring review throughput, you have a mechanism to help you determine if you are going to reach deadlines. It will help you track and manage performance across matters, determine who on your team is helping you achieve objectives and highlight where improvements can be made.

Reviewer performance

Having the ability to review the performance of individual reviewers is an internal KPI that you can use to build, shape, and guide your team towards more productive processes. It is a powerful asset in evolving your eDiscovery process.

Documents per hour, repeat reviews, and reviewer accuracy are just a few of the metrics that will help your team develop.

Timeline projection

By using the analytics to monitor, gauge, and interpret review, you can develop greater insights into timeline projections. This means you can present your clients with more specific information on when their projects will likely be completed.

Matter profiling

Collecting metrics across projects, clients, and users, will enable firms to better understand projects and give certainty to clients on costs and values. Analysing this information over time provides insight into the true price of litigation for your client. Trends are a powerful metric in litigation, as matter profiling provides decision makers valuable insight into possible outcomes that may arise based on what has been measured in the past.

level 4 analytics are guiding the eDiscovery process

Achieving a complete adoption of automation and thorough understanding of analytics has allowed the firm to improve their process based on performance and develop a system that is not reliant on linear document review. Reviewers have incorporated all aspects of a predictive coding system that is based on continuous active learning to guide their workflow and maximise the time spent on reviewing the most relevant documents.

Key characteristics

- The entire project is executed according to an exhaustive plan developed before initiating data collection
- Communication with all parties is thorough and methodical
- Predictive coding models have been determined at the outset and are informing and optimising the eDiscovery process

- Lawyers interpret performance analytics and evolve their processes based on these insights, constantly adapting and optimising how the legal team operates
- Collaboration is occurring on an ongoing basis between all reviewers with all functions being performed within the review platform

advantages of level 4

The true value of the eDiscovery process is realised, key documents are found earlier and more quickly

Legal team is able to find, understand and present the facts more quickly leading to faster case resolutions

Volume of files that need to be reviewed is greatly reduced saving the client time and money

Ongoing alliance between the legal team enables them to build cases more quickly and efficiently

The file review process is more exact leading to a higher proportion of relevant files being found

The firm is able to differentiate itself from its competitors by demonstrating efficiency

epiq results

Experience is the biggest asset a firm can have in moving towards a mature eDiscovery process. With experience comes greater insights into how the eDiscovery process can be improved over time.

the innovation
advantage

It is important to look objectively at your own process and identify how you can evolve. There is no one size fits all solution in the world of eDiscovery. Each firm must look in depth at their own processes and adapt in an incremental way.

Getting on the front foot is one of the most important steps a firm can take. A firm that can foresee the necessity to change will have an advantage over a firm who is forced into change by the market. Seek assistance in how to design your procedure with an experienced eDiscovery consultant—they are key to initiating your transition and eliminating the risk of creating bad habits from the start.

Taking the first step will always be the hardest, but in a time when data volumes are exploding, initiating these changes will put your firm in an enviable position. As corporate clients seek out innovative firms with the capacity to deal with their data driven needs, adapting will only make you more appealing.

eDiscovery Accelerator Roadmap

A 4-hour engagement with an eDiscovery consultant to:

- Establish where your firm currently sits in the capability maturity model

- Provide you with a game plan framework for undertaking eDiscovery on every matter

- Show advanced eDiscovery tool capabilities and discuss risks to be aware of when implementing eDiscovery in different matters

- 30-day subscription to a sandboxed eDiscovery software platform you can experiment with: predictive coding 2.0, online document review, analysing performance metrics, review workflows, performance metrics, email threading, collaborative chronologies, and more

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