

A person is sitting on a large rock at night, illuminated by a bright flashlight beam. The background is a dark, starry sky with the Milky Way visible. The person is wearing a dark jacket and pants. The overall mood is contemplative and focused.

# epio clarity

eDiscovery Solutions  
Corporate Buying Guide

Corporate counsel's task of choosing an eDiscovery provider or software is potentially difficult and time-consuming, but critical to the success of the company's legal operations.

eDiscovery can include collecting, preserving, reviewing, and producing millions of documents, as well as recovering data from a recycled laptop or mobile device. While eDiscovery solutions may seem similar for all litigation, individual matters may vary and require a custom solution.

The evaluation also needs to weigh the option of conducting some or all eDiscovery work in-house. Making the comparison with outsourcing will demand a thorough assessment of the organization's past practices, as well as its current and future needs. With that knowledge in hand, the specific features of the available software and services will determine the best fit for the organization's requirements.

## Ten Steps

Technology and services related to eDiscovery evolve frequently, and the best solutions should have the flexibility to accommodate. A methodical approach is key to making the best possible decision.

Here are 10 steps for evaluating and choosing eDiscovery software or services:

### 1. Define your organization's needs

The process of selecting eDiscovery solutions should review the company's past, present, and future requirements and engage a discussion that includes all stakeholders. The company's needs may be defined in terms of a specific project, finding a long-term solution, or forming an ongoing partnership with a provider.

### 2. Evaluate past processes

If eDiscovery in the past has been on an ad hoc basis, a more standardized approach can potentially mean greater efficiency, as well as make the process transparent, repeatable, and defensible.

Consider whether existing processes are adaptable to future needs in terms of increased data volume, changing sources of information (mobile devices, cloud computing, adoption of various applications by the corporation), and potential changes in business operations

Identify what hasn't worked in the past as a means of specifically outlining needs with providers and comparing software features.

### 3. Review internal resources

Reviewing the budget is key. Legal departments increasingly are being asked to do more with less, so current and future legal and corporate budgets should be reviewed to justify requirements in terms of potential consequences.

The staff's ability to handle part or all of the eDiscovery process in-house will depend on a commitment to continued eDiscovery training that encompasses technology, legal changes, the company's business operations, and any potential impact from mergers or acquisitions. Other groups affected by training considerations may include information technology and human resources.

### 4. Evaluate corporate data and information

Determining the extent to which paper discovery is still needed should be considered when assessing potential providers or software solutions. In addition, the volume of electronically stored information is material and should factor into the selection process.

The types of data the company creates and stores may be included in email, applications, PDF and HTML materials, and structured data such as databases, compressed files, and information from mobile devices.

Other formats and sources that may affect eDiscovery capabilities are wearable devices, social media and cloud-based data sources, audio, video, and image files, and any proprietary formats.

## **5. Evaluate the types of matters that have been handled in the past**

The issues the company routinely faces will affect the ultimate decision. Internal investigations, government compliance matters, and litigation may need different processes. Different types of litigation also may drive a particular eDiscovery solution, especially if they involve multidistrict litigation or class actions.

The possible response to a third-party subpoena or second request under the Hart-Scott-Rodino Antitrust Improvements Act, which governs antitrust review for mergers and acquisitions, also may affect the evaluation of eDiscovery solutions.

Any potential international aspects of eDiscovery, such as data privacy and foreign language requirements, also should be factored in.

## **6. Consider technology needs**

Consult appropriate technology and security professionals to help align the available solutions with the company's needs. Factors to consider will include need and advisability of on-site versus cloud-based applications, data backup issues, integration with existing systems, availability of proposed technology, and levels of support.

Potential providers should have appropriate references, offer evidence of personnel experience levels, and be able to address questions about providing support outside normal working hours.

## **7. Consider security needs**

The available security will need to protect sensitive, confidential, proprietary, and privileged information. The protocols related to people, processes, technology, and even physical security at data centers and office locations should be addressed. Protection should extend beyond simple intrusion detection to the security of data and processes.

## **8. Consider defensibility, transparency, and repeatability**

Determine from potential providers whether the tool or process being reviewed is repeatable and whether the provider can demonstrate capability to survive challenges from opposing counsel. The provider should be willing to disclose the support level provided in the event of a challenge.

Ascertain whether the product or service is customizable to the company's needs, but still auditable.

## **9. Consider cost and budget**

Look for any hidden costs in the potential solution and get clarity on billing issues, such as the manner in which the bill is provided, whether costs are on a per-gig, fixed-cost, or managed services basis, and what option is best for the company.

Establish separate decision criteria based on budget constraints for each possible option.

## **10. Stay abreast of the market**

Technology is moving quickly, so it pays to stay abreast of new developments and emerging trends to minimize potential time lost should an unexpected need arise.

An alternative plan should be developed in the event the chosen solution fails to meet the company's needs.

Stay up to date on related platforms and technologies and monitor the company's changing environment against what's evolving in the appropriate tech market segment.

# Conclusion

Technology is dramatically changing the legal environment, and corporate counsel must accommodate the company's unique requirements, particularly in the area of eDiscovery. A methodical stepwise plan can balance the company's needs in selecting outside providers or the best available technology for in-house coverage. Factoring in budget constraints, issues specific to individual departments, and the need for flexibility will offer a sound program for continued success of legal operations.

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