Measuring the True Costs of E-Discovery

INFORMATION GOVERNANCE INSIGHTS

By David White

Taming budgets has long been a primary goal of all corporate legal departments. To this end, many companies have begun taking cost-cutting measures such as reducing the number of law firms they work with, developing alternative fee arrangements and putting pressure on firms to reduce their hourly rates for the more commoditized work. However, since discovery often eats up the majority of litigation budgets, it is no surprise that curbing e-discovery costs is often highest on the list of priorities. Yet, even though every legal department manager will tell you they want to cut costs, very few can actually tell you the true costs of e-discovery.

This is because true costs are often confused with price tags or overall spend. Yet, these are two very distinct concepts. The same conflation of ideas is often seen with automobiles. People treat the sticker price of a car with its true cost of ownership. They assume that a car with a higher sticker price costs more to own. But the true cost of ownership for any automobile has little to do with the sticker price. True cost is actually a function of depreciation of value over time, maintenance costs, gas mileage, and insurance, taxes and loan or lease interest. As a result, a car with a much higher sticker price can often turn out to cost a lot less to own for five years than one with a lower price tag. The same holds true for e-discovery costs, especially when they are simply reduced to per unit pricing or some other arbitrary flat fee figure, as is most often the case. Sure, it may be costing the company X dollars per gigabyte to process or host electronic documents for review. But does that number really communicate anything meaningful, and will reducing it actually reduce your overall costs?

True cost reduction is not just a matter of demanding lower rates from your service provider. Unfortunately, the difficulties of bringing collection, processing and hosting in-house, combined with fiscal pressure to control costs, has led to the commoditization of e-discovery services. This, in turn, has led to a race to the bottom on per unit pricing. Yet, even with rock bottom prices, many companies have failed to realize any actual savings in their budgets year over year. Many like to point to increasing data volumes in response, which certainly have had an impact. However, the real issue is that the lower prices have begun to squeeze profit margins to a point where quality of service and thoughtfulness of service is suffering significantly. Without thoughtfulness and planning, over-collection and over-processing can significantly increase costs even where the per-unit price is extraordinarily low. Like automobile sticker prices, per-unit pricing is important, but it is not the primary metric of success. This is why many companies that have negotiated master service agreements with exceptionally low per-unit costs are not as happy as they thought they would be.

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Instead, companies should work more to identify partners who can add the most value to their overall process, and who are willing to work with them on constant improvements in efficiency and risk reduction. This is a far more important measure over time than simply cutting the costs on each service offering ever could be. And only then will the company start to see true reductions in per custodian spend, in overall risk exposure, and their overall legal budgets.

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