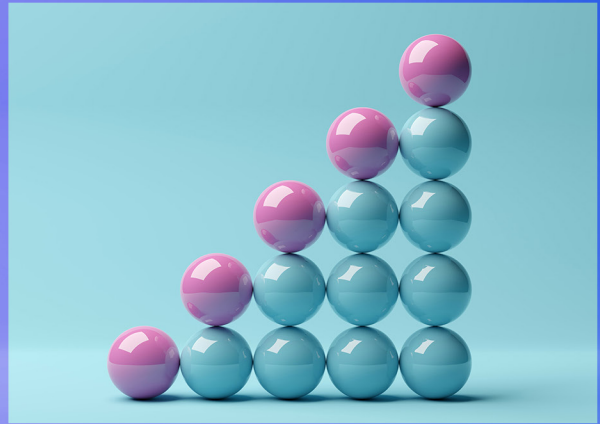




# Maximizing efficiency and cost savings: The benefits of a data-driven eDiscovery program



Before the implementation of technology-assisted review, eDiscovery was a highly manual process that consumed an enormous amount of time and resources. The high volume of data was overwhelming, leading to slower and more challenging eDiscovery processes. The Federal Rules of Civil Procedure amendments of 2006 were a catalyst for the development of technology-assisted review and other innovations, which revolutionized the eDiscovery industry. In the time leading up to the Federal Rules of Civil Procedure amendments implementation and in the years immediately following, many organizations invested time and resources to assess their eDiscovery programs capabilities and compliance with the new requirements.

As a result of those efforts and their resulting innovations, many organizations have recognized the value of eDiscovery program assessments to improve their eDiscovery process, proactively identify areas for improvement, and maintain defensibility in case of legal disputes. eDiscovery program assessments enable organizations to improve the efficiency, reliability, and cost-effectiveness of their eDiscovery process, leading to cost savings and mitigation of legal risks. By using data-driven solutions such as technology assisted review and analytics, organizations can achieve faster and more accurate eDiscovery results while reducing the likelihood of missed documents or inaccurate review decisions. As we get closer to the 20-year anniversary of the 2006 Federal Rules of Civil Procedure amendments, it is a perfect time for organizations to assess the current state of their evolved eDiscovery programs using a data-driven approach.

A “data-driven” eDiscovery program relies on data to make better decisions, optimize workflows, and lower costs. Specifically, it means that organizations collect data on their eDiscovery program to gain insights into how it can be improved, how much it is costing them, and where risks lie. A data-driven eDiscovery program seeks to measure and analyze the data generated throughout the program and then apply that knowledge to continually improve the process over time.

The idea behind a data-driven eDiscovery program is that relying on data, instead of intuition or guesswork, can lead to better decision-making and outcomes. By using data to understand which tools, workflows, and processes have the best results, organizations can create a more efficient, streamlined, and accurate eDiscovery program. Additionally, data can be used to predict costs and risks, allowing organizations to make more informed decisions and plan for future eDiscovery activities.



To create a data-driven eDiscovery program, organizations should focus on several components that encompass policy, procedures, workflows, and technology. Addressing the components of governance, service delivery model, people, technology, functional processes, and performance insights and data, organizations can establish an eDiscovery program that is both efficient and cost-effective.

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## ► Governance

This component encompasses the policies, procedures, and organizational structures established to manage the eDiscovery process. To implement effective governance, consider establishing a discovery management committee, which oversees the entire eDiscovery process, manages compliance with legal requirements, and minimizes risk. The committee should include representatives from Legal, IT, HR, and other key departments. Establishing effective governance helps manage the eDiscovery process efficiently and effectively. This reduces the likelihood of delays, inefficient workflows, and legal disputes that can be costly, leading to significant cost savings.

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## ► Service delivery model

This model outlines the roles, responsibilities, and workflows of each team member involved in the eDiscovery process. An example of a service delivery model is creating a dedicated eDiscovery team, including project managers, paralegals, and attorneys, to manage the eDiscovery process efficiently. The team should have clear workflows, handoffs, and approvals required at each stage of the process, ensuring consistency in service delivery. Creating a clear and efficient service delivery model reduces duplicated effort and workflow overlaps as individual roles and responsibilities are clearly defined. This promotes a streamlined and cost-effective eDiscovery process with a reduction in time and cost associated with rework.

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## ► People

The right team members with the necessary skills and expertise are vital to a successful eDiscovery program. Having the right people includes hiring a dedicated eDiscovery project manager (and possibly numerous project managers depending on the company's litigation portfolio) with experience in managing eDiscovery projects, knowledge of eDiscovery tools and technology, and legal expertise. Additionally, training team members on new technology and eDiscovery

tools to adapt to the evolving demands of the industry is vital. Hiring experienced and knowledgeable eDiscovery team members can help the process run smoothly and efficiently, optimizing performance and reducing costs associated with inefficient workflows, errors, and reductions in productivity.

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## ► Functional processes

Establishing functional processes that promote consistency and defensibility throughout the eDiscovery process is critical. An example of a functional process is the creation of a defensible preservation process to protect data. The process should clearly outline the steps involved in data preservation, including identifying sources of data, preserving data, notifying relevant parties, and tracking all activities. Establishing functional processes drives efficient management of the eDiscovery process. This reduces duplicated effort, wasted time, and reduces the likelihood of legal disputes.

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## ► Technology

Technology plays a crucial role in a data-driven eDiscovery program and includes eDiscovery tools for the identification, preservation, collection, processing, review, and production of data. Utilizing technology such as technology-assisted review reduces the review time and cost associated with manual document review. This can result in significant cost savings by eliminating the need for additional time spent reviewing documents, reducing the number of review hours required, and reducing the time spent on legal fees associated with review processes.

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## ► Performance insights and data

Capturing performance insights and data helps organizations measure and monitor their eDiscovery program's effectiveness and efficiency. An example of capturing performance data is measuring key performance indicators (KPIs) such as responsiveness, timeliness, quality, and cost to evaluate the program's success and identify areas where improvements can be made. Capturing performance insights and data allows for ongoing improvements to the eDiscovery program. By identifying areas for improvement and streamlining existing processes, costs and timelines can be reduced.

## ► Optimizing responsibilities

Organizations should carefully consider which mix of responsibilities for in-house teams, service providers, and reliance on outside counsel is the most suitable for their specific needs. This decision can be based on several factors, including the organization's size, the nature and complexity of legal matters, regulatory requirements, data volumes, and budget.

Having an effective in-house eDiscovery team can provide the organization with greater control, flexibility, and cost savings. However, managing an in-house team can be challenging, as it may be costly to hire and train staff with the necessary legal and technical expertise. Moreover, maintaining an in-house team for low-frequency legal matters may not be cost-effective. On the other hand, relying solely on outside counsel may result in a lack of control over the process and create delays in eDiscovery activities. Outsourcing to service providers can offer organizations access to the latest technology, specialized expertise, and streamline the eDiscovery process. However, organizations should carefully choose the service provider, ensuring that they have sufficient experience and credentials and alignment with the organization's goals and values.

A combination of in-house teams, service providers, and outside counsel can often be the most effective approach, as it leverages the advantages of each option, providing the organization with greater flexibility, control, and cost-effectiveness. For example, in-house teams can manage higher-frequency

and lower-complexity legal matters while service providers can support the organization in handling high-volume legal matters or specialized needs. Additionally, outside counsel can provide strategic advice and representation in more complex legal matters. Selecting the optimal mix of in-house teams, service providers, and outside counsel requires careful consideration of the organization's unique needs and goals, including budget, data volumes, legal matter complexity, and regulatory requirements. By selecting the most appropriate mix of responsibilities, an organization can achieve a more efficient, cost-effective, and comprehensive eDiscovery program.

By focusing on each of these components, organizations can create a streamlined and defensible eDiscovery program. Additionally, optimizing responsibilities, whether by in-house teams, service providers, or outside counsel, can provide flexibility, control, and cost-effectiveness. With the right tools and methodologies in place, organizations can achieve significant cost savings, allowing them to allocate resources to other important areas of their business, contributing to their overall success.

*KPMG helps companies optimize their processes and systems through our eDiscovery program assessment. Our team has extensive experience in conducting eDiscovery program assessments, resulting in the development of a set of tailored recommendations that can provide substantial benefits to our clients. Please reach out to our team for more information.*

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