A Critical Evaluation of Ediscovery Vendors

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Executive Summary

After years with a dearth of choices, those seeking to procure an ediscovery solution now have a wide variety of options. Although many solutions now exist in the market, evaluating them is a challenge. The dramatic increase in new vendors and a surge in new feature development makes it difficult to compare the relative strengths and weaknesses. Asking the right questions helps not only differentiate between vendors but can also help tailor the overall approach to vendor evaluation. In this whitepaper, we share the five hard questions everyone should ask ediscovery software vendors, looking beyond a comparison of individual features and diving deeper into the value and importance of how the products are actually developed. Finally, we introduce key development principles at Everlaw and explore how each influences the approach to building ediscovery software.

Introduction

Law firms and corporate legal operations departments frequently leverage ediscovery technology to effectively and efficiently respond to litigation, investigations, due diligence, or regulatory requests. With the big data boom, a rush of ediscovery software solutions have flooded the market to address the need for handling enormous volumes of electronically stored information (ESI). At the beginning of 2019 alone, over 100 solutions were listed in the ediscovery category on G2 Crowd's review site!

Not only has the number of software vendors grown significantly but so has the list of capabilities provided by each vendor. And while tempting to assume that the software with the most features will be the best solution, ediscovery is much more complex than a features numbers game. Simply adding more features into a product does not mean users will be able to get the most of it nor does it mean that it will lead to more efficient reviews. In many cases, in fact, added complexity can lead to more inefficient outcomes.

Given the plethora of ediscovery solutions on the market, organizations are now experimenting more than ever, test driving new technologies in the hopes of finding a solution that will address their needs today and, perhaps, well into the future. As ediscovery technology continues to evolve to meet the changing needs of the market— whether that be migrating to the cloud or supporting the growing array of data sources—buyers of the technology now often find themselves at a disadvantage, trying to evaluate a wide selection of vendors, navigate an ever-growing list of capabilities/features, and understand how to apply them to different use cases.

Unfortunately, some organizations treat the selection of an ediscovery solution as a transaction—just a means to an end. But since ediscovery is becoming such an increasingly critical component of business operations, selecting the solution should be viewed less as a one-time transaction and more as the entering of a long-term relationship with a trusted business partner. And to maximize the return on investment in that partnership, it's critical to ensure not only that the technology checks all of the boxes, but that the technology vendor does too.

When evaluating ediscovery software vendors, here are the **five most important questions** that should be asked:

1. Is security the top priority?
2. Is the organization transparent?
3. What is the pace of innovation?
4. Is there an affinity for speed?
5. Are users respected?

1. Is security the top priority?

In ediscovery, security is a serious concern, particularly since legal cases involve sensitive information that must be reviewed by various third parties. Organizations and their customers must be confident that there are robust security measures in place to ensure appropriate access of data.

> The 2018 Cost of a Data Breach study, independently conducted by Ponemon Institute, reports the global average cost of a data breach is up **6.4 percent** over the previous year to **$3.86 million**.

Lack of proper security measures and certifications exposes client data to security vulnerabilities such as hacking or breaches of highly valuable information. One in five law firms faced a cyber attack or data breach in 2017 alone. The 2018 Cost of a Data Breach study, independently conducted by Ponemon Institute, reports the global average cost of a data breach is up 6.4 percent over the previous year to $3.86 million. The average cost for each lost or stolen record containing sensitive and confidential information also increased by 4.8 percent year over year to $148. Therefore it should be obvious that all ediscovery providers should have a security-first mentality and take a proactive approach to security.

Security is more than just a checkbox and having a security-first mentality goes well beyond just using a secure cloud infrastructure provider. It means baking security into the DNA of the organization. The scope should span the entire security posture of the ediscovery vendor, including everything from managing the physical access of their building to employee training to technical safeguards, like intrusion detection and penetration testing.

When evaluating vendors, asking questions about their broader philosophy and overall approach with respect to security will help assess whether or not they take security as importantly as you do. But the closest thing to "proof" that a vendor can produce is third-party validation of their approach. An ediscovery solution should have its own security certifications, rather than simply pointing to those of its vendors. Appropriate examples of credentials may include: SOC 2 Type II, HIPAA, GDPR, or FedRAMP.

To unearth how deeply ingrained security is into the vendor's DNA, here are some additional questions to ask when assessing the security posture of a vendor:

1. Do they have a security and compliance program that includes written policies, procedures, regular training, and an employee code of conduct prioritizing security?
2. Does accountability for the security and compliance program rest with a senior leader?
3. How does the organization perform risk assessments, security monitoring, and third-party audits? What technical and organizational measures are in place (e.g. vulnerability scanning, penetration testing, encryption of data, cloud security controls, data inventories and mapping)?

2. Is the organization transparent?

With ediscovery accounting for up to 70% of litigation fees, transparency in pricing is of paramount importance in any ediscovery solution. Unfortunately, thanks to a few bad actors, the pricing murkiness in the ediscovery industry makes it really difficult to compare the costs of any given set of ediscovery solutions across different providers, platforms, and services.

Hidden lines in contracts, masking additional fees, can lead to dramatic unexpected costs. One ediscovery solution provider may charge extra for time-saving analytics features, like predictive coding or email threading. Another vendor may charge for additional user licenses. Another may provide you with hard-to-use software, then charge additional fees in the guise of project management services. It is also quite common to see a vendor charge for processing fees, including OCRing per page, imaging per page, or endorsing production images per page.

A transparent ediscovery vendor should commit to an avoidance of mysterious calculations at invoice time. Redoing client and vendor bills as you scale a case up or down is a poor experience. Not only is it difficult to guess how many reviewers or how much training you might need, it also makes it difficult to budget for projects. Vendor pricing should be easy both to understand and predict. It should be free of setup fees, processing fees, user fees, training fees, technical support fees, exporting fees, predictive coding fees, production fees, foreign language translation fees, printing fees, etc.

Some additional questions to guide your assessment of a vendor's level of transparency include:

1. Will I get charged every time I contact the support organization? What about training?
2. Do the sales people understand all the complexities of the product and provide straightforward, honest assessments of the capabilities?

3. What is the pace of innovation?

Technology is constantly changing and advancing, so ediscovery software vendors must always be innovating in order to stay ahead of the curve. This means regularly developing new product features or enhancements to address the growing amount of data volumes, variety of data sources, evolving technologies, and bugs. The rate of innovation should be a differentiator that influences your evaluation of them. But not all ediscovery vendors innovate at the same rate.

The ones that do have the ability to improve their offerings at a rapid rate should be regarded more highly since they will continuously reward customers with incremental benefits for months and years to come. A frequent release cycle coupled with insights into the product roadmap for the months (and maybe years) ahead will indicate that a vendor is committed to both your short-term and long-term success. As an added bonus, this also typically means that pesky bugs get addressed quicker.

New data sources and file types emerge regularly, which is another reason that ediscovery software vendors must

innovate rapidly. At a minimum, it's expected that ediscovery solutions seamlessly integrate with popular data sources and handle modern file formats like chat, audio, or video. Ediscovery vendors can take rapid innovation one step further by handling esoteric formats that fit hyper-specific needs, such as Primavera files for construction litigation or DICOM imaging files for medical litigation.

Lastly, it is important to assess whether an ediscovery vendor's solution is largely dependent on third-party tools for core functionality, such as advanced analytics visualizations. Reliance on third-party tools can expose an organization to additional risk. When an ediscovery vendor builds its own proprietary tools, that may be an indicator for rapid innovation as they are less reliant on the industry to innovate on their behalf.

> **To further evaluate whether a vendor rapidly innovates, here are some further questions to ask:**
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> 1. When software updates are issued, do all users get them at once?
> 2. What is the development release cycle?
> 3. What proprietary technology is available for users to leverage?

4. Is there an affinity for speed?

An organization's commitment to rapid product innovation may translate into a high frequency of new features rolling off the software factory floor, but the pace of software development is not the only area where speed matters. Unique to the world of ediscovery, where a single case can present terabytes of information that must be quickly processed, searched, analyzed, and organized, the speed of the platform itself is paramount.

Infrastructure setup and implementation can take a significant portion of time, especially if on-premise solutions are utilized. There can be more waiting for data to finish processing, which includes error-handling, deduping, deNISTing, OCR, and imaging all documents. Complex searches that involve more operators may take longer to run. Inability for teams to collaborate on matters can have long-lasting consequences, such as additional time and cost, duplicative efforts, and failure to communicate critical facts. All the little delays can add up to big delays and even bigger costs.

Infrastructure chosen by the vendor can be a big determining factor when it comes to speed. Cloud computing can accelerate the ediscovery process by removing time-intensive and costly infrastructure setup and maintenance, allowing teams to quickly scale up or down to meet fluctuating demands.

Beyond the vendor's selection of infrastructure, solutions that are architected to work quickly and automate redundant tasks—even in the face of very large data volumes—should help ensure that the ediscovery process goes quickly as it progresses from data ingestion to production. An exploration into a few key areas of an ediscovery solutions's capabilities will help indicate the vendor's overall commitment to speed.

And while speed of doc-to-doc page load time and ability to automate manual document review with artificial intelligence are critically important, another often overlooked element of speed is the efficiency that stems from coordination across the entire review team. Collaboration is integral to the process of discovery and litigation

because it involves communicating with many people cross-functionally, whether it is within your team, managing a review team, or working with in-house or outside counsel. In-platform collaboration capabilities enables more efficient and faster reviews since teams are able to communicate in real-time while cutting down on email, phone conversations, and physical document transfers.

When asking about a vendor's affinity for speed, it is also beneficial to ask the following:

1. How long will it take to get the new system up and running?
2. Are there any AI capabilities? Is predictive coding available?
3. What collaborative tools currently exist in the platform?

5. Are users respected?

Clunky, complicated enterprise software features should be a thing of the past. It's not uncommon for modern SaaS vendors to believe that superior user experience (UX) design actually leads to better business outcomes. Conversely, it's believed that inefficiencies, ineffectiveness, or low satisfaction with software are frustrations born out of poor UX design.

The more obvious impact on an organization that results from poor design is unhappy users. And while even the most mercenary of organizations may not think that addressing user satisfaction is a top priority, the broader downstream effects on the business are worth noting, especially when those user issues start to hit the bottom line in the form of more delays, more support tickets, more endless user training modules, and overall longer time to value.

It's uncontroversial to suggest that ediscovery vendors should constantly strive to delight users with how easy their solutions are to use—taking care of the thorny, technical processes and details in an elegant way, so that lawyers can focus on practicing law and improve their odds of winning the case. Being easy to use translates to users being able to ramp-up quickly and get work done faster, or higher review efficiency.

The assessment of UX alone, however, is subjective and several vendors may receive compliments from customers, solid product reviews, and high NPS scores. Determining whether or not the organization is committed to the long-term respect for users on its software requires a bit more investigation. In particular, it's worth making sure that vendors pursue feature development that prioritizes solving real-world problems (i.e. substance) over gimmicks. It's worth understanding whether or not the sales organization acts as a trusted advisor during the selection process or is just trying to close the deal. It's worth understanding whether or not support teams are focused on customer success or on generating support fees.

Here are some more questions to ask when evaluating a vendor's position towards usability and user experience:

1. Is the product a legitimate substitute for the solution currently in use?
2. Is the solution a good fit for all types of users?
3. Are advanced features, like predictive coding, straightforward to use, flexible, and defensible?
4. Does your company conduct usability testing? If so, how often?
5. What processes exist for customer input or other feedback channels?

The Everlaw Approach

Security First

Everlaw prioritizes keeping important data safe with enterprise-class security protocols and privacy standards. Like Everlaw, many cloud-based solutions are securely hosted on AWS, but sole reliance on AWS security is insufficient. Everlaw has a comprehensive approach that spans architecture, software design, people and process that has been validated by our SOC 2 Type II certification in addition to being FedRAMP In Process. The company has also completed voluntary independent audits for both HIPAA and GDPR compliance.

SOC 2 TYPE II
In Security, Availability,
Confidentiality and Privacy

FEDRAMP
In Process

HIPAA

GDPR

Transparency

The Everlaw commitment to transparency manifests most obviously in the product itself. Matter management in Everlaw, for example, offers reporting at the case and organizational level, allowing our partners to closely manage their projects and the associated costs. The product provides audit trails and reporting on data uploads, early case assessment (ECA), and review decisions for accountability and transparency purposes. Beyond product, the Everlaw goal in pricing is that it be easy to understand and predictable. It's based on the amount of data hosted, with unlimited user licenses, and unlimited processing and productions.

Rapid Innovation

A commitment to rapid innovation ensures that Everlaw is always moving forward. We release new product roughly every four weeks, and our frequent release cycle keeps us "close to the code" so that bugs don't linger. As a cloud solution, we have the advantage of instantly deploying our innovations and enhancements to all customers. All cases are up-to-date with the latest technology, all the time. No waiting months for bug fixes or for your license renewal to get costly version upgrades. Releasing new product frequently, in real time, to all our customers ensures that they stay in front of the curve and get the latest version, regardless of when they started using Everlaw. Finally, Everlaw demonstrates its commitment to rapid innovation with its ability to keep up with emerging data sources, handle modern file types, and develop proprietary tools in-house.

Affinity for Speed

Everlaw automates or streamlines every step of the ediscovery process, for uploading, ingesting, searching, reviewing, and producing documents. First, Everlaw accelerates the document review process by enabling reviewers to upload their own documents, plugging in seamlessly with third-party cloud hosting platforms and ingesting documents quickly. Our ingestion engine achieves processing and production speeds of 400,000 documents per hour while simultaneously imaging all documents. Blink-speed search provides instant results with even the most complex search strings. Everlaw's proprietary PDF viewer saves our users thousands of hours of review time, rendering docs in 1/8th of a second. Everlaw realizes further efficiency gains with its in-platform tools that enable collaboration across users.

Respect for Users

The Everlaw approach to building software is to deliver elegant solutions with thoughtful design that makes for happy software users who can not only get their job done, but even find enjoyment in the process. We are focused on long term success with our partners, so we aren't interested in making quick changes to the platform that don't provide utility or align with our long term strategies. Flashy add-ons to address this quarter's buzz are not our thing. We strongly believe that immediate gratification doesn't always translate well to long term strategies for building an amazing product. Our team routinely collects feedback from our current customers across multiple channels to help improve Everlaw's user experience.

Moving Forward

When forming a long-term partnership with an ediscovery software vendor, legal professionals can maximize the chance of a successful outcome by focusing on five key principles: security, transparency, pace of product innovation, speed, and respect for users. Vendors that focus on these areas are the ones most likely to put client interests above all else. Asking the hard questions will help ensure that there's great alignment between parties.

About Everlaw

Everlaw is a collaborative, cloud-based litigation platform for corporate counsels, litigators and government attorneys that enables teams to discover, reveal, and act on information to better drive internal investigations and positively impact the outcome of litigation. Unlike slow, unwieldy, client-server software and expensive third-party service providers, only Everlaw combines speed, security, and ease-of-use into a unified, comprehensive solution that unlocks the collaborative power of teams and enables them to investigate issues more thoroughly, uncover truth more quickly, and present their findings more clearly.