Your Place or Mine? In-House e-Discovery Platform vs. Software as a Service

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Introduction

Is your law firm considering providing e-discovery services to your clients? If so, what do you need to consider when making that decision and what are the options available to you when evaluating the business case?

Getting Started
Start by gathering historical information on how much your firm has been spending with third-party e-discovery service providers. Getting an understanding of your current state spending can help in your organization evaluate the economic model supporting the best path for your business to take. Solicit the help of your accounting department to gather relevant invoicing information from the third-party providers. If you have been providing some level of e-discovery services, gather that information too. Creating a spreadsheet such as the one below will help capture key information that can influence your choices.

<table>
<thead>
<tr>
<th>Matter</th>
<th>Matter Start Date</th>
<th>Monthly Hosting Charges</th>
<th>Cumulative Hosting Charges</th>
<th>Monthly Hosting Volumes</th>
<th>Data Collected</th>
<th>Processing Charges</th>
<th>Production Volume</th>
<th>Production Charges</th>
<th># of Users Per Month</th>
</tr>
</thead>
<tbody>
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</table>

Understanding how much data you are currently hosting and how that hosting has changed over the last few years will help you to understand the scale of your infrastructure that would be needed if you were to provide hosting services. In addition, understanding the monthly average volume of processing services that has been provided will also help in determining the scale of the infrastructure that would be required if you decide you want to also provide processing services. Information is power in being able to properly evaluate your approach. Once you have gathered your historical information it is time to look at three key areas: People, Process and Technology.

### Technology

Let’s start with technology. The simple view of the evaluation of technology breaks down into:

- What applications do I need?
- What hardware does the application need to run on?
Where will they reside, in my internal firm infrastructure or with a third-party cloud provider?
What type of connectivity do I need to have?
How much storage space will I need to provision?

There are many e-discovery application providers in the market that provide a range of capabilities that are necessary to provide e-discovery services. Examples of application types include: data transfer, early case assessment, data processing, hosted review and production. There are best practice methodologies and work plans to follow when doing the selection of an application. A high-level overview of a selection process might look like the following:

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>User Input</td>
<td>Solicit input from the users on what their needs are in the functionality of the tool</td>
</tr>
<tr>
<td>Business Requirements</td>
<td>Based on input from users and desired business goals, develop a set of prioritized requirements that the application must meet</td>
</tr>
<tr>
<td>Market Research</td>
<td>Research the providers in the market. Gartner's Magic Quadrant is a good resource to review.</td>
</tr>
<tr>
<td>Request For Proposal</td>
<td>Develop a request for proposal which includes the stated business requirements, hardware information, provider information, the skill sets, technical certifications held, and experience levels of the IT Staff that will be supporting your applications, etc.</td>
</tr>
<tr>
<td>Application Demos</td>
<td>Develop a script with different scenarios that you want to test the capabilities and performance of the provider. Conduct demos with the chosen providers.</td>
</tr>
<tr>
<td>Provider Evaluation</td>
<td>Based on the response to the RFP and the demos, rank the providers.</td>
</tr>
<tr>
<td>Provider Due Diligence</td>
<td>Conduct reference calls. Review financial stability. Evaluate on-going product development resources and commitment.</td>
</tr>
<tr>
<td>Implementation Planning</td>
<td>Develop with the provider an implementation plan</td>
</tr>
<tr>
<td>Contract Negotiations</td>
<td>Negotiate contract terms</td>
</tr>
</tbody>
</table>

Once the application is selected, the method used to access the application can be evaluated. Many applications today are provided on a Software as a Service (“SaaS”) delivery model in which the applications are hosted and managed in the service provider's datacenter, is paid for on a subscription basis and is accessed by users via a browser over an internet connection. Another model is the Platforms as a Service (“PaaS”) model which provides on-demand delivery of tools and services that allow SaaS applications to be coded and deployed. Furthermore, there is also the Infrastructure as a Service (“IaaS”) model that provides on-demand delivery of virtualized servers, storage, networking and operating systems. The classic model is to license the software and install it in-house within your own environment.
Evaluating which model to adopt has many facets that must be considered. If we focus on having a review tool, one aspect to be evaluated is how much data storage will I need? Use the historical hosted volume information gathered to evaluate what you anticipate would be required. A simple example on how to evaluate and estimate volume is based on the following assumptions:

- # of new cases in the year is 48
- New cases come in evenly over the year
- All data is put into the review tool in month one
- Average life of a case is 18 months
- Each case on average has 500 GB’s of stored data
- In-house storage capacity is purchased in increments of 15TB’s

Based on the above assumptions, by the end of year your infrastructure capacity has to support over 25 TB’s of storage capacity including the required capacity for the actual software application. The graphical view below shows the relationship of storage capacity to hosted data if you install your review tool in-house. The key to note is when viewing the utilization of your capacity only in relationship to the review tool and not storage used by your entire enterprise, is that you are always running with excess capacity that increases your per unit cost to hosted data.

![Graph showing relationship of storage capacity to hosted data](image)

When considering a SaaS model, the following are some pros and cons:

**Pros**

- It avoids the upfront capital expenditure required to purchase hardware and software. Your fees are based on how much you use in a given month for storage. Software is done on a subscription basis.
You can avoid planning challenges as you can scale up and down based on your required need. It allows you to be elastic in your infrastructure.

It saves time and hassles by undergoing a one-time procurement and setup process at the beginning of the contract versus having to go through a procurement process each time that a new chunk of capacity must be purchased.

The model adapts to changing business needs simply and flexibly.

Cons

- Security is often a concern when utilizing a SaaS model. You have to be sure that the provider you are using has the right infrastructure in place to prevent a data breach.
- You are at the mercy of the service provider if an outage occurs. Although your contract will state service levels required to be met by the provider, at the end of the day you are not in control of the physical environment.
- You are probably dealing with sensitive information that is governed by regulated compliance requirements. You have to insure that your provider meets the compliance requirements that are required by the type of data that is processed and stored in the environment.
- Performance is a consideration as a browser-based application hosted in a remote datacenter and accessed via an internet connection is likely to experience potential performance issues more frequently when compared to software running on a local machine or over your company’s local area network.

When evaluating SaaS offerings the-key is to understand that there are different potential technology models that provide access to the application tools required when providing e-discovery services. It is essential that these models be compared and evaluated against the requirements stated in your business case.

People

Once you have chosen your application to use and the type of environment it will reside in, the next step is to focus on the people that will be required to deliver the e-discovery application service to your client and those technical resources required to support and manage the application-running on the selected infrastructure. An evaluation of the required skill sets, the amount of time anticipated that the skill set is going to be required in a given month and what skill sets already might exist within your firm that can be leveraged to support the required infrastructure and application. As an example, common technical skill sets that are required for a hosted review tool might include the following:

- Application Support Specialist – Responsible for knowing the functionality of the tool in order to provide user support and training. Works with IT to resolve user performance issues.
- SQL Database Administrator – Responsible for the setting up and maintenance of the underlying databases for each matter.
- Infrastructure Support Specialist – Responsible for maintaining the infrastructure. Monitors activity on the environment to insure performance for users and through put of data is maximized.

In evaluating the required team, you will find that there will be roles that are the same for both models and roles that are different due to functions that are provided by the SaaS provider.
Processes

To facilitate a meaningful evaluation of the required skill sets, it is also helpful to review required workflows that are necessary to run and manage the selected tool. Understanding these workflows helps in identifying the roles and responsibilities needed to support the chosen environment. From this you can evaluate the required skill sets for your team. An understanding of the workflows and required skill sets can be gained during the application demonstration and evaluation process. In addition during the implementation planning phase with your application provider, further details on workflows specific to your environment and team will be worked out. Examples of potential workflows related to having a hosted review tool include:

- Setting up a new case database
- Setting up user configurations
- Loading data into the review tool database
- Decommissioning completed case databases
- Productions

Business Case

To look at the business case as to what model to adopt, it is a matter of costing the hardware, software, personnel and other costs that are associated with each model. It is important to consider all costs as often the indirect costs on an organization are not recognized and allocation to the business case. An example of an indirect cost on an in-house model is that you potentially are required to have more headcount and therefore more office space for them to reside. To present a full cost view you would provide for an allocation of rent expense. Below is a high-level example of a cost analysis.

<table>
<thead>
<tr>
<th>For Illustration Purposes Only</th>
<th>Option 1 In-house Annual Cost</th>
<th>Option 2 SaaS Annual Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hardware</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>$XXX,XXX</td>
<td>$XX,XXX</td>
</tr>
<tr>
<td>Depreciation Life</td>
<td>3 years</td>
<td>3 years</td>
</tr>
<tr>
<td><strong>Software</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application Software License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Cost Including Maintenance</td>
<td>$XXX,XXX</td>
<td></td>
</tr>
<tr>
<td>SQL License (database)</td>
<td>$XX,XXX</td>
<td></td>
</tr>
<tr>
<td>VM Licenses</td>
<td>$XX,XXX</td>
<td></td>
</tr>
<tr>
<td><strong>Subscription Fee and Other Charges</strong></td>
<td></td>
<td>$YYY,YYY</td>
</tr>
</tbody>
</table>
In addition to the business case cost analysis, a risk analysis should be considered. Each model has different risks associated with them. A risk with the SaaS model is that you are not in control of the environment. If an interruption in service were to occur, what is the impact to your business? How is that potential risk mitigated?

**Conclusion**

The evaluation of an in-house approach, a SaaS model or potentially a combination that provides a e-discovery platform to provide services to your clients requires a thorough analysis. There are many facets to the analysis that must be considered and the final decision will be influenced by the robustness of your internal IT capabilities, the amount of e-discovery business your clients demand, have you been providing e-discovery services and are looking for operational cost improvements, and other considerations.

**About the Author**

Teresa McMahon is a Managing Director in Navigant Consulting’s Legal Technology Solution (“LTS”) Practice. At Navigant she has had management oversight responsibility for the data processing delivery team and infrastructure requirements for delivery of e-discovery services. She advises clients on e-discovery litigation matters, readiness and capabilities.