



2019 eDiscovery Billing & Cost Recovery Survey

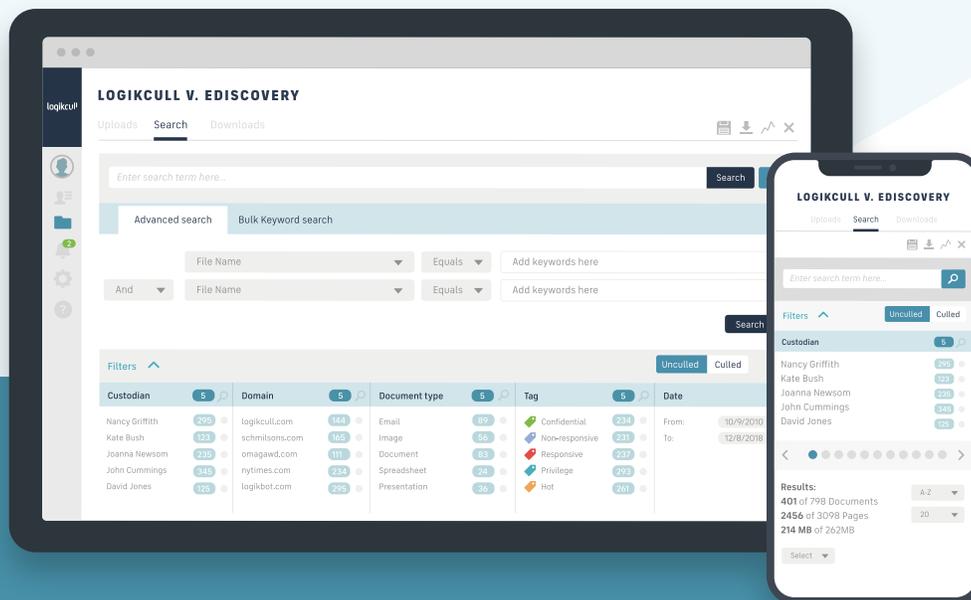
BENCHMARKING LAW FIRM APPROACHES FOR
CAPTURING BILLABLE WORK, LIMITING WRITE-OFFS,
AND HANDLING CLIENT PUSHBACK

About Logikcull

Logikcull.com is instant discovery for modern legal teams. Its secure, cloud-based solution helps law firms and organizations of all sizes solve the expensive, complex, and risky challenges associated with eDiscovery, internal investigations, and open records response.

With Logikcull, you can start a discovery project in five seconds, from anywhere at any time on any device. Reviewing data is as easy as performing a Google search. And in Logikcull, your data is always secure. That's why it's trusted by the Fortune 500, Am Law 200, and governments of the biggest cities in the world.

Founded in 2004 by CEO Andy Wilson and CTO Sheng Yang, Logikcull builds powerfully simple software that democratizes discovery.



Predict discovery costs with confidence.
 Find what matters in your data.
 Empower your attorneys with simplicity.

[LOGIKCULL.COM/GET-STARTED](https://logikcull.com/get-started)

Executive Summary

Too many firms still struggle to recover discovery costs

Too often, eDiscovery can be risky, tedious, and expensive. Defined by black-box technologies, exorbitant per-GB hosting costs, and opaque processes, it's no wonder that clients push back against eDiscovery costs—leading to discovery cost write-offs and reduced revenue. For the many firms that struggle in this area, confusion over how to address discovery costs in a client-friendly, firm-friendly manner, combined with limited visibility into best practices, has contributed to loss of business and strained client relationships.

Logikcull's survey of more than 100 law firms from across the Logikcull customer base and the profession at large highlights these challenges in stark black and white. From cost recovery models, to pricing challenges, to the reasons behind write-offs, this report intends to shine light on an area that is chronically under-examined, yet increasingly consequential.

Key Takeaways

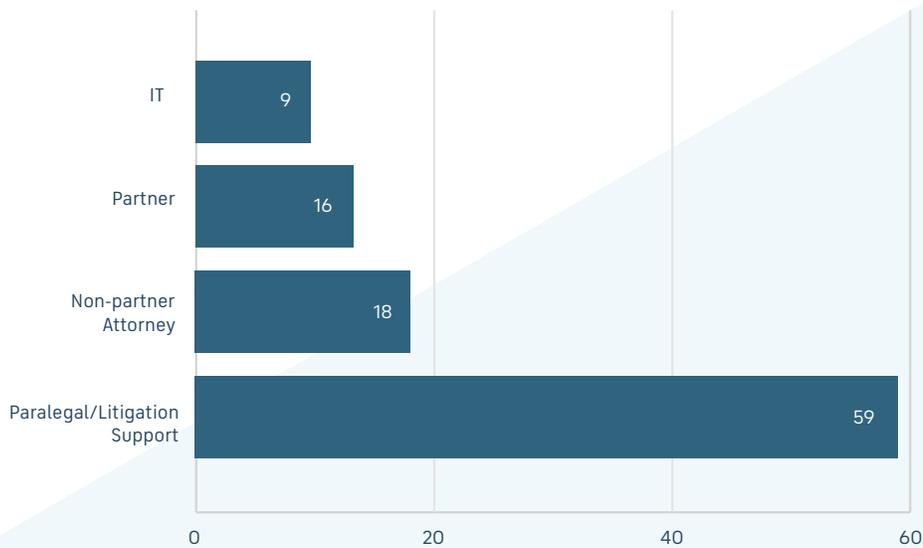
- 1. Firms have taken discovery in house.** With discovery taking on an increasingly central role in dispute resolution and legal practice more generally, law firms have collectively moved to take on more of the associated work, displacing the vendor-dominant regime in an effort to control costs and provide superior client value. In fact, firms surveyed here perform 79 percent of the discovery process in house, on average. (See figure 3.)
- 2. The direct pass-through of costs is the dominant approach to discovery cost recovery.** This model, in which a law firm passes on discovery costs to the client on a one-to-one basis, is used by 86 percent of respondent firms. (See figure 2.) However, a profit-center model, in which a firm turns a profit off discovery services, was rated as the most effective model by respondents, despite being the least-used approach. (See figure 6.)
- 3. Unpredictable discovery volume and recurring hosting fees are the two biggest cost-recovery challenges facing law firms.** (See figure 7.) As the volume of data involved in discovery continues to increase, it's not surprising that hosting fees, often charged on a monthly, per-gigabyte basis, lead to both client and law firm frustration. Indeed, client pushback on discovery costs remains common across the board. (See figure 8.) More than 70 percent of firms experience pushback on discovery costs sometimes, usually, or always.
- 4. Clients are most likely to push back on total discovery costs and hosting costs, leading to write-offs.** Associated costs, such as review costs that can make up the bulk of discovery spend, receive less resistance than might be expected, perhaps in part due to clients' greater willingness to pay for tasks perceived as "legal work." (See figure 9.) That pushback leads directly to lost revenue, as pushback was cited as the number one cause of write-offs. (See figure 11).

Survey Demographics

102 Respondent Law Firms

Figure 1

Respondent Roles:



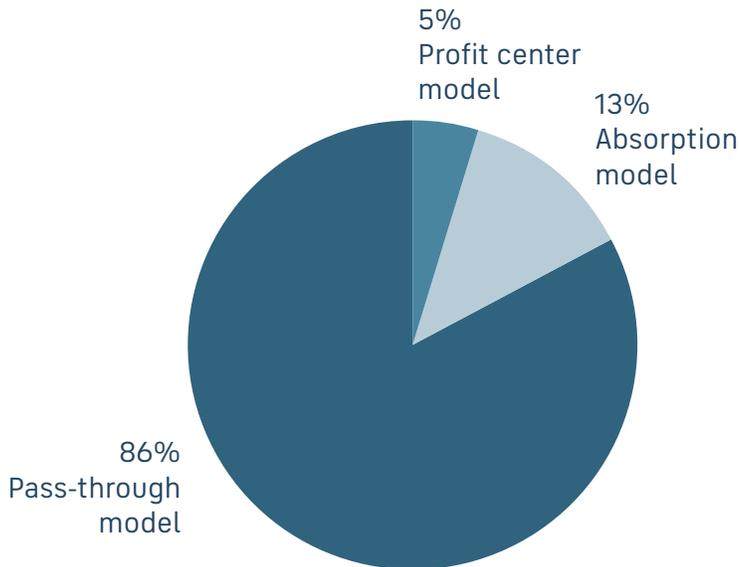
Most common practice areas:

1. Commercial litigation
2. General litigation
3. Employment
4. Construction
5. Real estate

Cost Recovery Approaches

Figure 2

Your organization’s approach to discovery costs could best be described as a:



Total percentages exceed 100 due to rounding.

Pass-through model: Our firm passes costs related to discovery directly through to the client, with no markups.

Absorption model: Our firm absorbs all or most costs of litigation, including discovery, and recovers those primarily through our hourly rates.

Profit center model: Our firm turns a profit off discovery services, by charging for services performed in house, marking up third-party discovery costs, or both.

INSIGHTS:

Pass-through models have become the standard approach to cost recovery. But firms may also choose to use a hybrid approach, adapting their cost recovery model to both the needs of the client and the particularities of a matter.

“All of our projects begin with in-depth scoping. The project managers on our team will talk to the legal team in house as well as the client to figure out the size and complexity of the matter and the size and complexity of the client themselves. All those factors impact how we structure our services and who actually provides those services.”



Jennifer Williams
Director of Practice Support
Vinson & Elkins LLP

Figure 3

How much of your discovery process is performed in house?

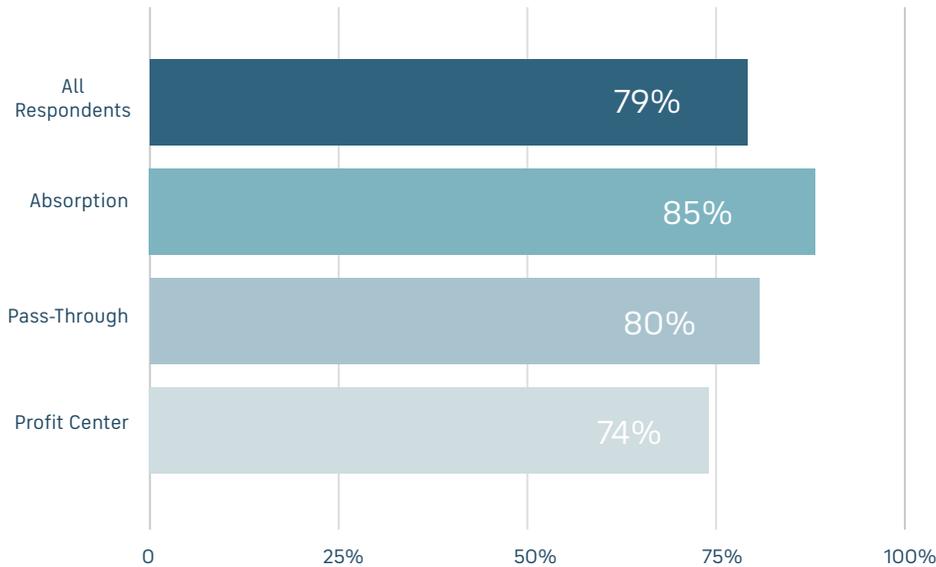
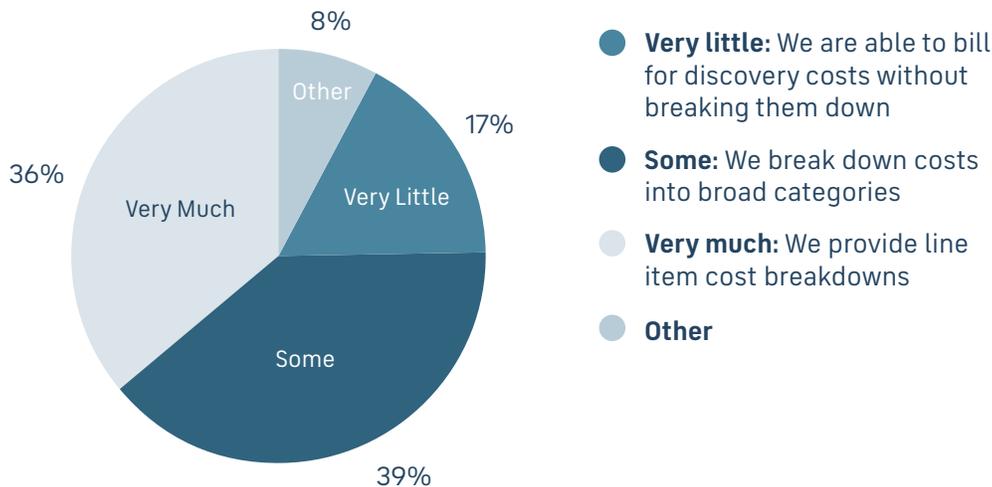


Figure 4

How much information regarding your discovery costs do you provide clients?



INSIGHTS:

Keep in mind, the level of detail firms provide their clients is highly influenced by the billing model of their discovery software or providers.

Tools that combine processing, hosting, customer service, production, and other fees into a single charge, for example, mean there are fewer line item costs to pass along to clients.

Cost Recovery Outcomes

How much of your eDiscovery costs are you able to recover through bill-back?

(Pass-through and profit center respondents only)

77%

Mean

84%

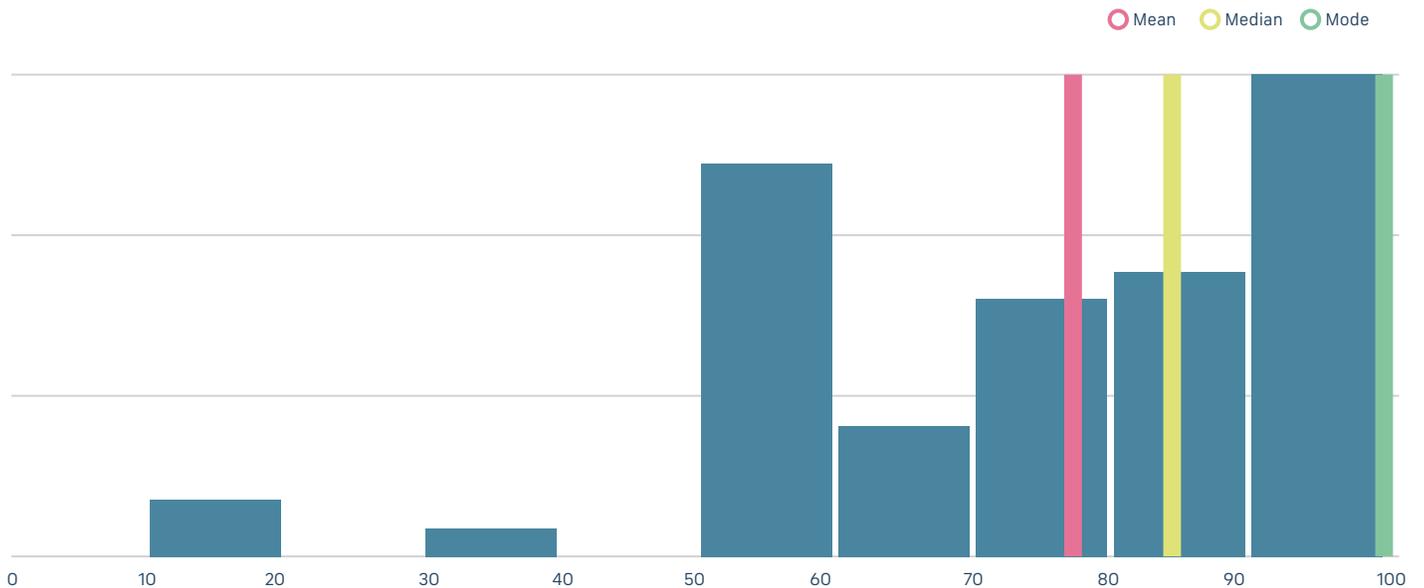
Median

100%

Mode

Figure 5

Percentage of discovery costs recovered through bill-back:



The mean, or "average," indicates the total of all data points divided by the number of data points. The median represents the middle of all data points and is less susceptible to influence by outlier data. The mode indicates the most common data point, which is 100% here, the response given more than any other.

"Setting clear expectations upfront is powerful. It makes it so that you're showing the client what you anticipate the bills to be and that you can put in place a budget."



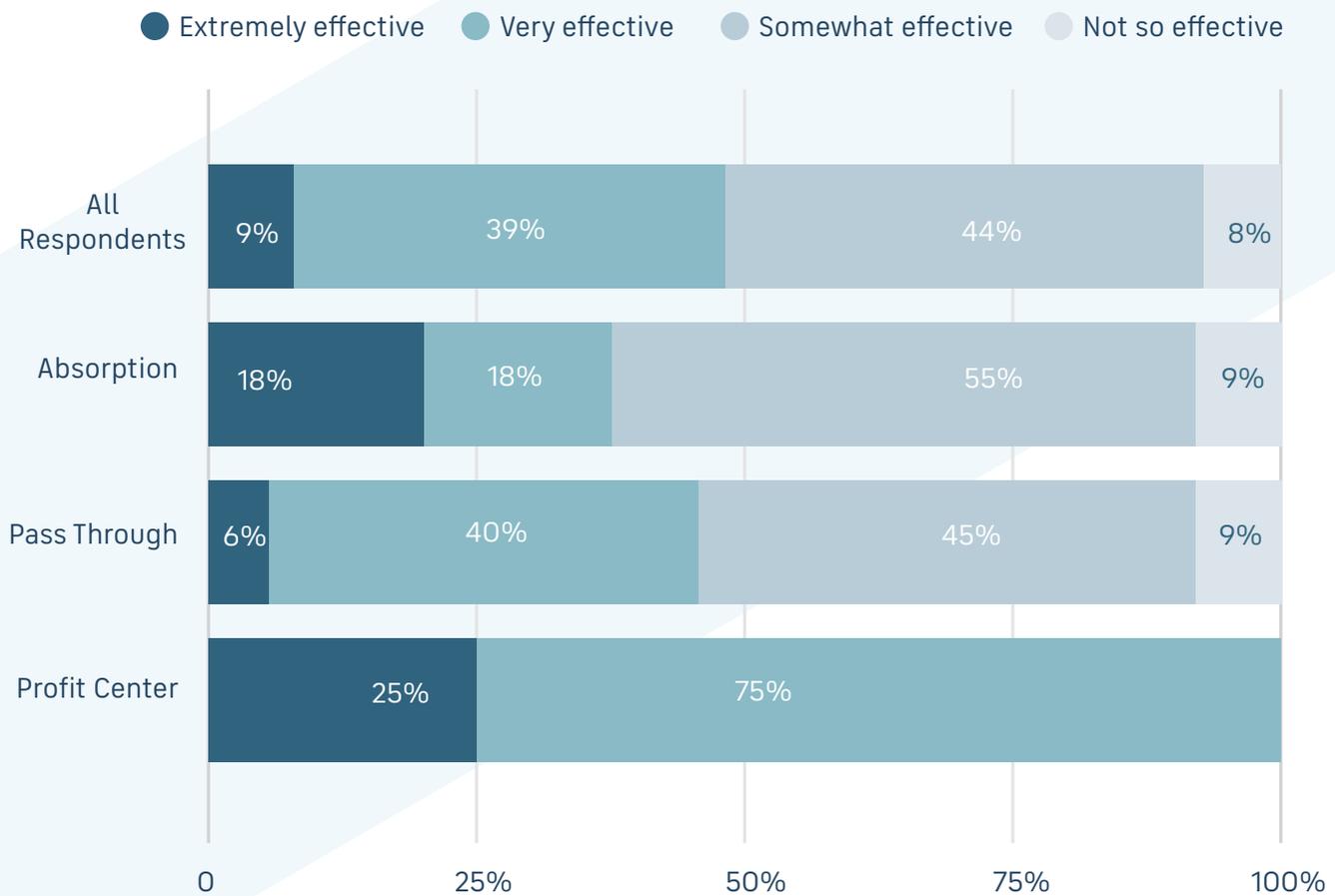
Ricky Brooman

Litigation Support Project Manager
Saul Ewing Arnstein & Lehr LLP

Perceived Efficacy of Bill-Back Approaches

Figure 6

How effective is your discovery billing approach?



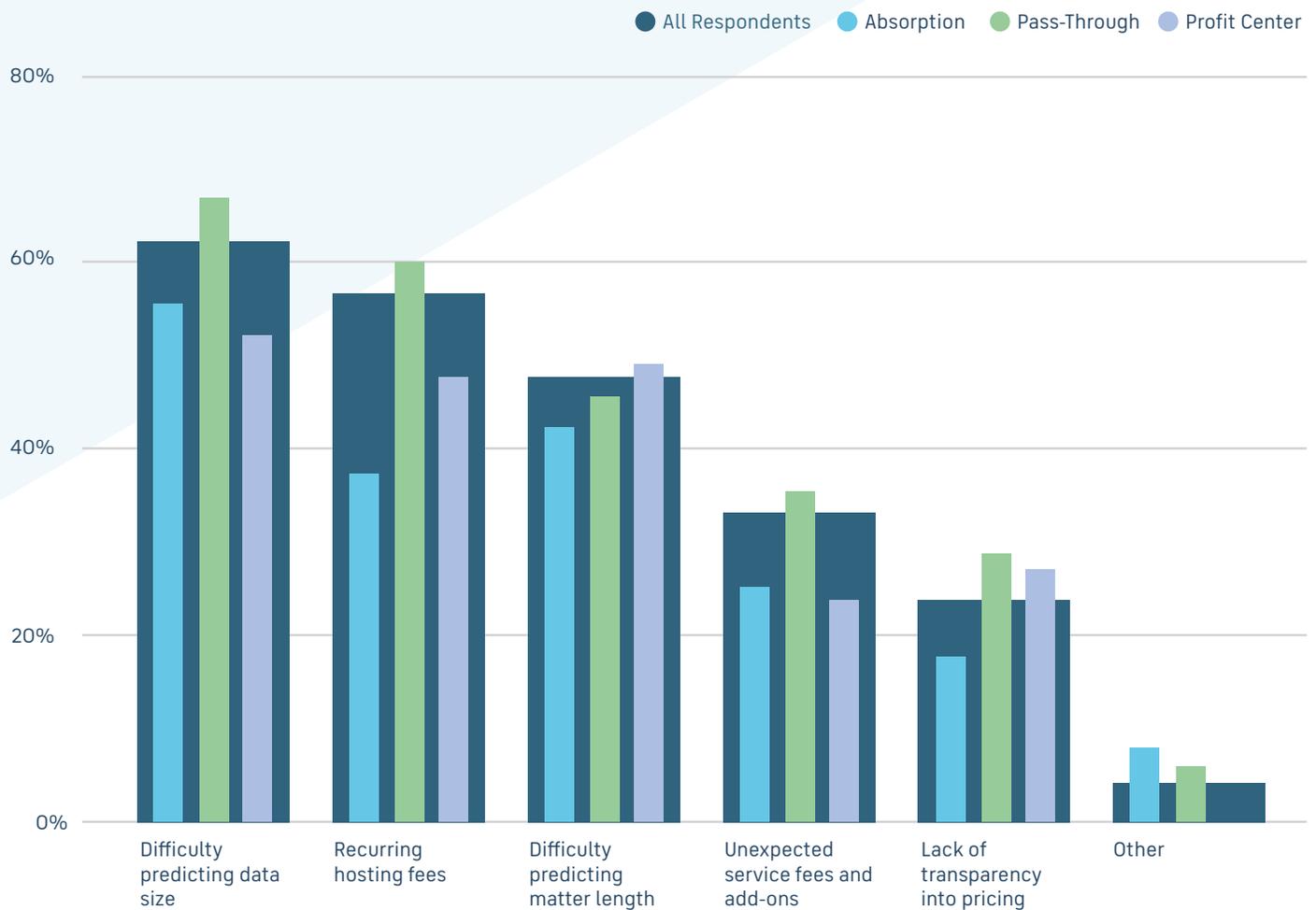
INSIGHTS:

Over 50 percent of respondents using the most common approach to cost recovery, the pass-through model, said their billing approach was only "somewhat effective" or "not so effective." This is likely because even a small write-off rate can quickly add up to six figures or more in lost revenue for firms with a significant number of matters involving discovery. Only 20 percent of respondents said they recovered a full 100 percent of their costs through this approach.

Cost-Recovery Challenges

Figure 7

What are your biggest discovery cost challenges?



INSIGHTS:

Challenges around data size and hosting fees go hand-in-hand. In a world of ever-expanding data, per-GB hosting fees pose a significant barrier to affordability and price predictability—as these results show.

"Many clients still view eDiscovery fees as 'other'—generally outside the scope of legal representation for which they are paying—and thus may view them with a level of suspicion and scrutiny to which other litigation costs are not subject."

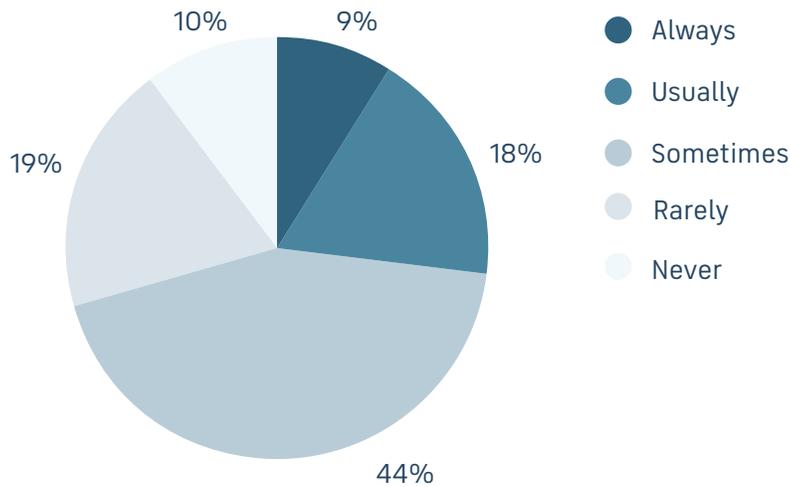


Robert Hilson
Senior Director
Logikcull

Client Pushback

Figure 8

How often do you receive client pushback on eDiscovery costs?

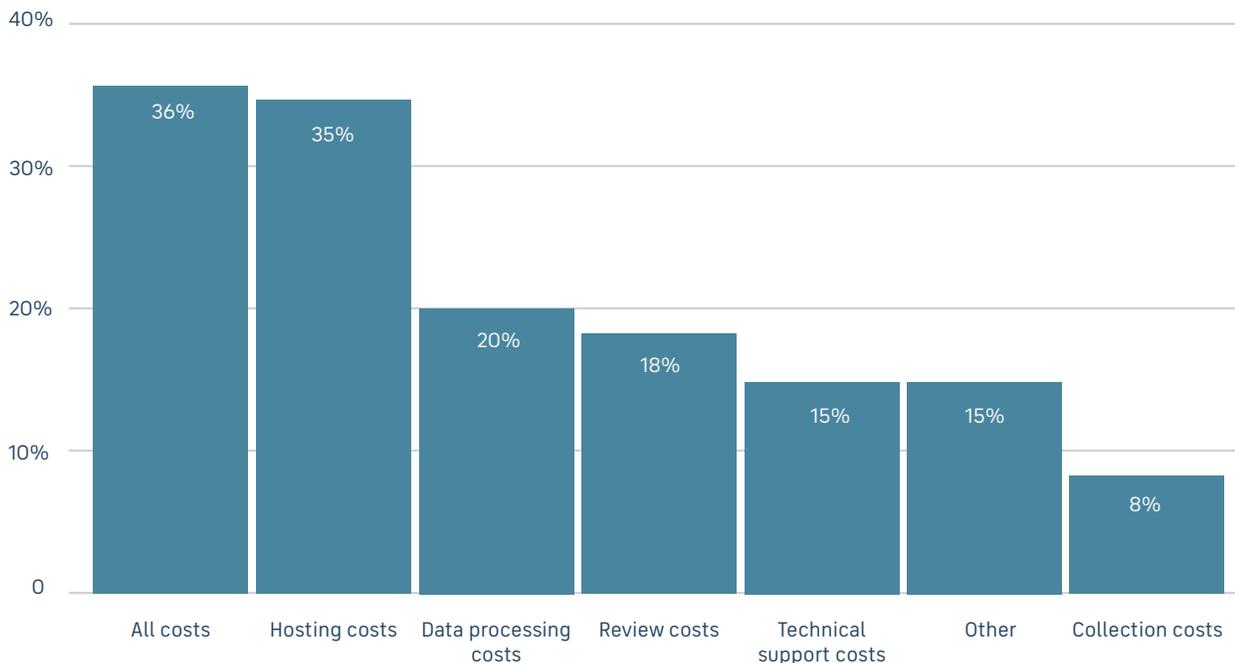


INSIGHTS:

There's no question that client education and understanding can play a major role in pushback. Clients without a significant litigation docket or regular discovery matters may not realize that some spend, such as on review tools, can dramatically reduce overall discovery costs. Often, handling these objections takes proactive efforts on the law firm's part.

Figure 9

Where do you receive the most client pushback on eDiscovery costs?



"It is critically important to find tools that are easy enough for you and your staff to use effectively, so that you can bring as much of the discovery process as possible in house and your people have the expertise that comes with it."



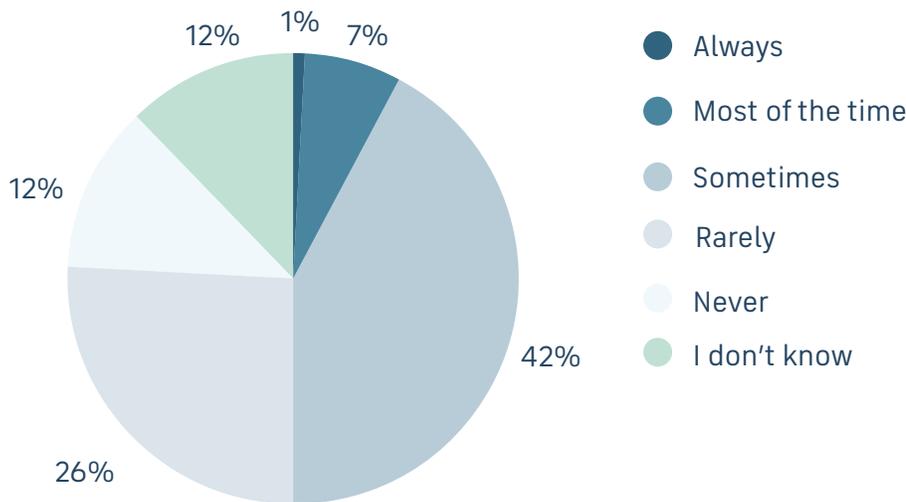
Aaron Crockett

eDiscovery Counsel
Harrang Long Gary Rudnick PC

Discovery Write-Offs

Figure 10

How often do you discount or write off discovery costs?

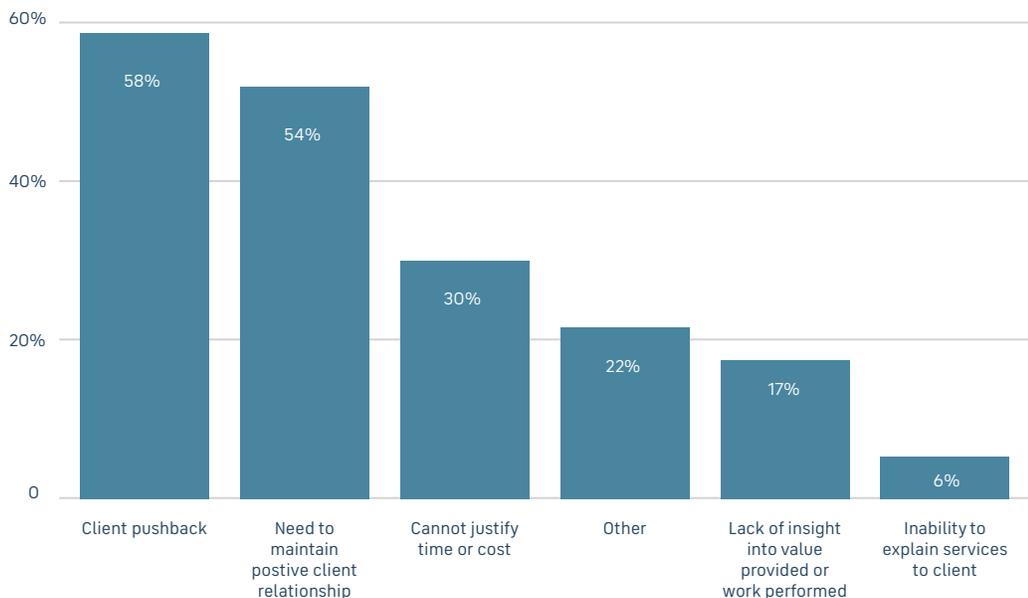


INSIGHTS:

The two most common catalysts for write-offs are essentially two sides of the same coin: write-offs reactively caused by pushback from clients and those proactively taken to preserve relationships. Both speak to a perceived lack of value of—or perhaps lack of education around the value provided by—discovery services.

Figure 11

What typically prompts write-offs?



Commentary: Why Clients Resist Discovery Services and What Can Be Done About It

ROBERT HILSON, SR. DIRECTOR, LOGIKCULL.COM

As law firms increasingly take ownership of the discovery process, they appear to be encountering at turns heavy resistance and persistent confusion—not just from clients, but often their own attorneys, who are either uncomfortable billing for work that clients perceive to be outside the scope of legal practice, or who do not possess the knowledge or vocabulary to articulate the value of the discovery services they offer. Neither case is surprising.

For uninitiated clients, it is often hard to comprehend the importance, scope, and cost of discovery. With regard to the latter, the fact that the technology cost curve that has reshaped almost every facet of life and commerce has managed to elude the legal realm is justifiably baffling—as evidenced in this survey by an extreme distaste for data hosting fees. After all, most mature cloud discovery providers spend mere fractions of a penny per gigabyte to host their data with the likes of Amazon Web Services and Microsoft Azure, a detail not lost on anyone refined enough to shop on the internet.

On the opposite end of the spectrum are the extremely initiated: those clients who not only grasp the significance of discovery, but do much of it in house and, often, they maintain, better and at a lower cost. While a discussion of the shifting dynamics between law firms

and their sophisticated corporate clients is outside the scope of this report, it is worth noting that there is a groundswell among corporate legal teams to wrestle both discovery work and decisions as to how it should be conducted from outside counsel. This is a powerful source of pushback particularly among the larger law firms surveyed here.

Client-specific and case-specific factors can also lead to pushback. When, for instance, a discovery vendor bill is presented to the client amid an otherwise quiet period of substantive legal work, it can stick out like a sore thumb. Other clients, meanwhile, will reject fees out of hand for not passing muster with their billing guidelines. And, in any event, many clients still view eDiscovery fees as “other”—generally outside the scope of legal representation for which they are paying—and thus may view them with a level of suspicion and scrutiny to which other litigation costs are not subject.

Attorneys have increasingly become attuned to these client attitudes and, yet, are often handcuffed by needlessly complex internal workflows, policies and jargon; the complexity of the tools available to them; or the cost structures to which they're beholden. It is not uncommon, for instance, for an attorney to bill a paralegal's time but resist passing through the time billed by a litigation support colleague—either because the

attorney isn't sure what the support work involves or because she doesn't see its value. This goes doubly for the services of eDiscovery vendors, whose proprietary algorithms, line-item-heavy invoices and technical jibber jabber can confound the most savvy attorney, and lead to hesitation in billing for work they can't articulate. And then there is the way in which these providers charge for their services, which can run the gamut from many bespoke service fees (e.g. mailbox extraction, predictive coding, data hibernation) to all-inclusive per-gigabyte pricing, which can be difficult to break out in a way clients understand and can pose difficulty for pass through.

Finally, whether it manifests in client pushback or an attorney's reticence to bill, the enduring confusion that surrounds discovery is largely to be pinned on the vendors themselves, having dispensed with none of the marketing-driven buzzword-speak that describes what they actually do (essentially, sort information)—even as some of their tools have become more user friendly. Firms who experience a disconnect explaining discovery and its associated costs to their clients should pressure their vendors and software makers to provide them with the language and materials to clearly explain the often significant value proposition of the services offered.

Conclusion

As this survey shows, there are numerous challenges that can arise when law firms seek to recover their discovery costs. Whether in their billing models, vendor arrangements or efforts to educate both attorney and client, there appears to be much room for improvement. For firms pursuing such improvement, we hope this survey offers a valuable benchmark.

But while challenges persist, there are significant bright spots as well. The trend towards in-housing discovery services shows that firms are embracing discovery as an essential part of providing superior client value and comprehensive, competent legal services. By bringing discovery in house, these firms aren't just attempting to exact more control of their litigation process, they are building valuable institutional knowledge that can significantly improve their delivery of client services. But with great power comes great exposure to the bottom line. In seeking to thread the needle between "more and better" and "at a lower cost," it is incumbent upon modern firms to embrace the emerging technology, cost structures, and educational resources that will help them strengthen client ties and win new business.



Instant Discovery for Modern Legal Teams

“Logikcull is a simplicity revolution for our teams and our outside counsel. It allows us to conduct internal investigations, subpoena response, and litigated matters in house at dramatically lower cost.”



Amy Sellars, Associate General Counsel, Walmart

Logikcull is an easy-to-use, browser-based solution used by top law firms and corporate legal departments to automate eDiscovery and reduce its associated risks and costs. Whether you're dealing with an internal investigation, subpoena response or plain old eDiscovery, Logikcull helps you search and review data fast, affordably and with ease.

With Logikcull, you can:

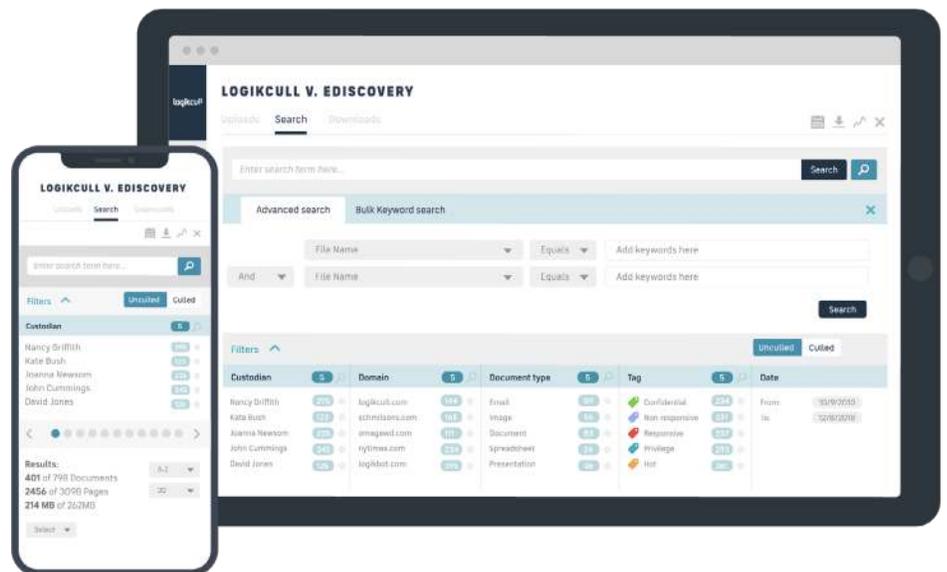
Eliminate one of the biggest obstacles to cost recovery. Recurring, per-GB hosting fees are one of the main sources of eDiscovery cost write offs. So we got rid of them. With Logikcull, there are no hosting fees, just a simple, per-matter charge.

Control costs. Predictable pricing and powerful technology let you radically reduce cost and avoid the runaway expenses of outside counsel and third-party vendors.

Lock down sensitive information. Control access to your most important documents in Logikcull's closed-loop system.

Get support, 24/7/365. Logikcull's expert support staff is available around the clock, so that when a crushing deadline is on the horizon, they're there to help. Get support in-app at any time, with average response times under two minutes.

Keep it simple. Empower your reviewers, don't befuddle them. Intuitive design, simple interfaces, and unparalleled accessibility mean there's no need for time-consuming training or expert certification—and less risk of human error.



"Unlike virtually all other discovery platforms, Logikcull is extremely intuitive, has a beautiful UI, and is powerful. Importing, reviewing and producing documents is truly a breeze."



Sean Flaherty,

Partner,
Gordon Rees Scully Mansukhani LLP

GORDON & REES
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