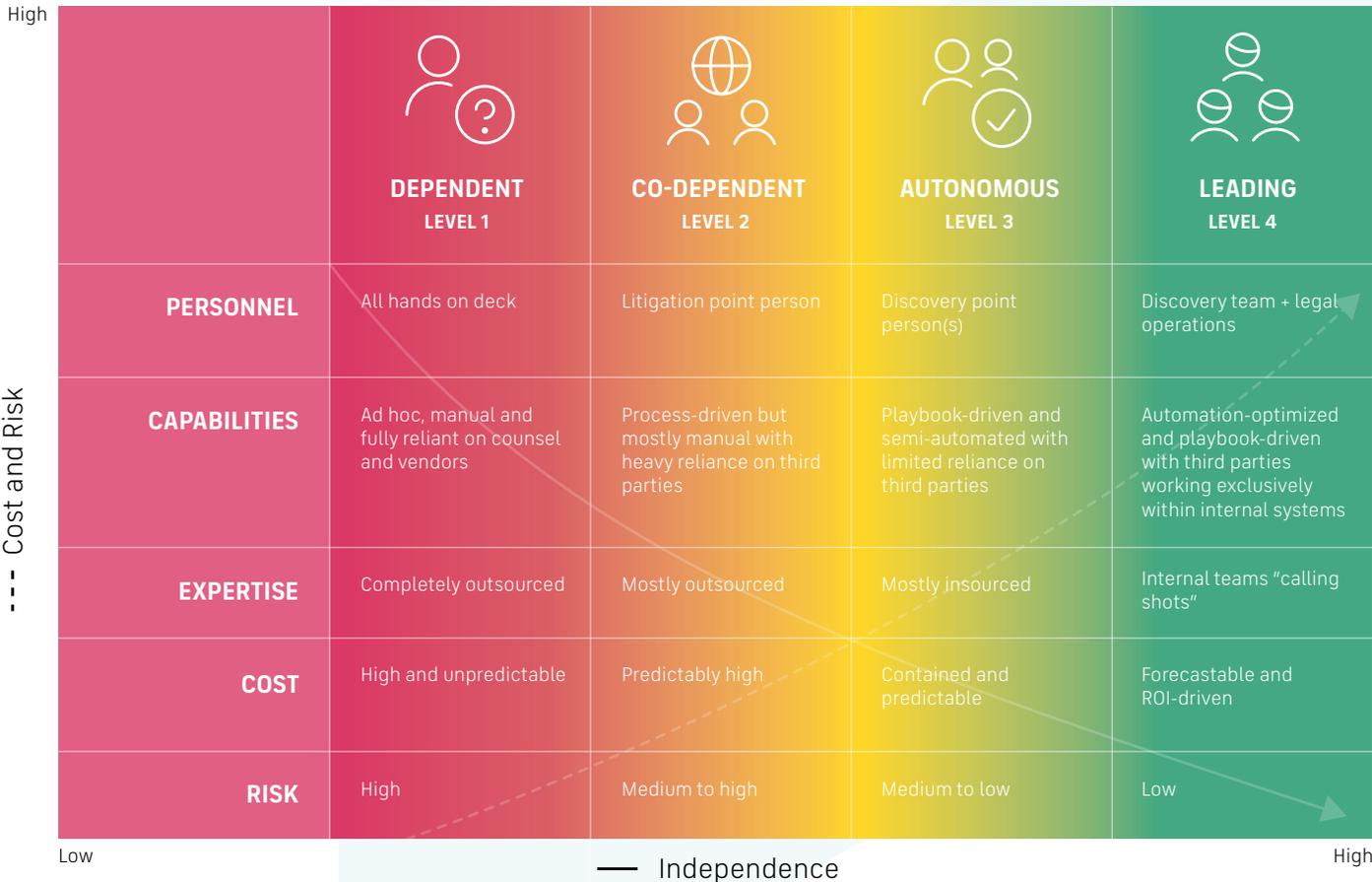


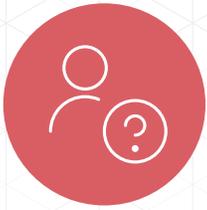
Discovery In-Housing Index

As cost-constrained organizations increasingly task their internal legal teams with bringing discovery in house and "doing more with less," the below index provides criteria for assessing internal systems, technology and capabilities; benchmarking against other organizations; and taking cost-effective steps to minimize risk and third-party dependencies.

At a Glance



As organizations mature, independence increases and cost and risk decline.



Level 1: Dependent



SUMMARY: Most organizations that do not routinely face disputes and investigations, such as those with fewer than 1000 employees, that are privately held or that are not in regulated industries, fall into the “dependent” level. When litigation or records requests arise, legal and IT personnel collaborate on an ad hoc basis to identify and collect responsive documents. Organizations that are especially risk averse may hire a forensics vendor or law firm to perform the collection on-site. From here, the organization almost always enlists an outside vendor and/or law firm to handle the full spectrum of search, review and production responsibilities.

Costs, though often incurred episodically, are often unexpectedly high due to the dependence on third-parties, the inefficiency with which they are engaged, and the inability for the organization to perform basic data culling measures internally.



PERSONNEL INVOLVED: Usually a small SWAT team comprised of one or more individuals from IT, legal and/or human resources.



CAPABILITIES: No standard process for issuing or tracking legal hold or preserving information, which are performed manually (e.g. tracking holds via spreadsheet; manually suspending email deletion). Identifying and collecting data is manual, ad hoc, and often performed by either an IT or security administrator, in-house attorney, HR associate, or the custodians themselves. Search, review and production is outsourced to third parties, with the exception of some high-level privilege review which may involve in-house attorneys. No ability to reduce data volume prior to sharing with outside parties.

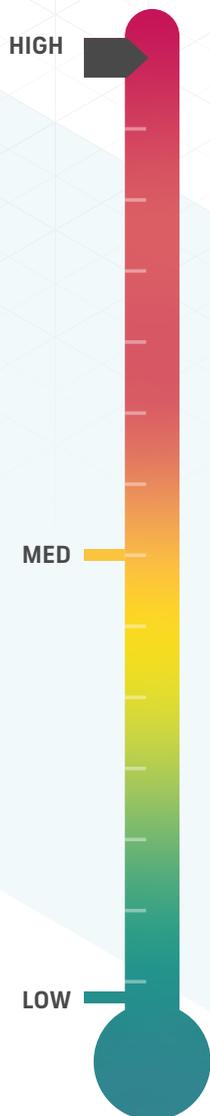


INTERNAL EXPERTISE: Usually none, though the organization may have a litigation-focused in-house attorney.



COST: High. For dependent, Level 1 organizations, costs are unpredictable and generally unexpectedly high due to ad hoc approaches, reliance on third-parties, and inability to cull data prior to involving service providers and law firms.

Companies at the mercy of outside vendors and law firms generally suffer higher costs relative to their more independent peers due to the ad hoc nature of their third-party engagements, lack of pricing leverage, and inability to cull data in house, which often leads to excessive document review costs.



RISK PROFILE: High

- Sharing sensitive, unprocessed data in bulk with outside law firms and vendors raises security concerns and prompts the “where is my data?” question.
- Inability to cull data prior to engagement of third parties often results in unnecessary sharing of sensitive data such as trade secrets, confidential and privileged information, and PII.
- Self-collection may raise “fox guarding the henhouse” conflict, where custodians who may be of interest in the dispute are also responsible for the identification and collection of materials.

POTENTIAL NEXT STEPS:

1. Consider identifying “hub” technology to centralize all collected data to securely share with outside parties (e.g. Box).
2. Document legal hold process, even if it is manual, and assign technically-adept point person to administer collections.
3. Identify sources of data from which to be collected if disputes typically involve information beyond usual repositories (e.g. Slack, Salesforce).

Slack and other enterprise messaging apps are becoming the default mode of communication in organizations of all sizes -- [an increasingly attracting attention from federal courts](#). Struggling to get your hands around Slack’s discovery consequences? Check out Logikcull’s [Guide to Discovery and Investigations in Slack](#).



Level 2: Co-Dependent



SUMMARY: Organizations that face a low, if steady, volume of disputes and investigations and have an undersized legal department relative to the size of the company (fewer than one attorney per \$100 million in revenue) typically fall into this level. Litigation response does not follow a documented workflow, but involved personnel are well-versed enough to take actions appropriate to the matter at hand. Legal hold process is documented, but still executed manually. Collections are handled by IT according to a data map and at the guidance of legal. As in Level 1, the organization is still heavily dependent on outside vendors and law firms, though engagement is frequent enough to breed familiarity of process and, potentially, better rates. Costs are generally high, if expectedly so, but the organization is in a position to reduce outside fees by taking simple data culling measures.



PERSONNEL INVOLVED: Typically a litigation-focused attorney or small team of attorneys runs point on data collection and the issuance and tracking of preservation measures in conjunction with IT. Larger organizations may have a paralegal or team of paralegals involved as well, though usually not a dedicated discovery admin.



CAPABILITIES: The issuance and tracking of legal holds follows a standard process, though is still executed and reported on manually. Identification and collection of data is performed systematically following a data map and defensible workflow, but generally does not leverage integrations connecting data sources to the discovery repository. Search, review and production is outsourced to third parties, though simple data culling measures may be performed to reduce downstream review costs and risk of inadvertent data exposure.



INTERNAL EXPERTISE: Organization likely has a litigation-focused in-house attorney or team of attorneys well-versed in discovery. Other personnel, such as paralegals or litigation managers, may support or manage processes related to discovery and also assist in discovery-like matters such as employee investigations and subpoena response. However, roles are still generally ill-defined and triggering events prompt an "all-hands-on-deck" response.



COST: High. In these organizations, costs are generally high relative to insourced alternatives, but not unexpectedly so due to the recurring nature of relationships with trusted vendors and firms. Organization is likely overspending on third-party review due to inability or unwillingness to assess and cull collected data prior to outsourcing, though may be taking some basic steps to remove unresponsive data.

RISK PROFILE: Medium to High

- Sharing large amounts of sensitive data with multiple outside law firms and vendors without strict controls or vetting raises questions related to insecure handling and disposition of data.
- Lack of centralized discovery repository increases potential for data to be inadvertently or inappropriately distributed.
- Reliance on multiple outside firms, each with different discovery tools and approaches, can compromise visibility into quality of work due to lack of workflow standardization.

POTENTIAL NEXT STEPS:

1. Consider implementing lightweight culling tools that have outsized impact in reducing downstream review costs incurred from third-parties (e.g. deduplication).
2. Where discovery collections must be shared with outside parties, share data through a secure repository where all documents are encrypted in transit and confirmation of receipt is automated. Avoid sharing via "off-the-shelf" methods like email or Dropbox.
3. Draft a "discovery playbook" with input from key stakeholders across legal, IT, HR and other appropriate departments, and make sure roles are clearly defined.

Sharing high volumes of discovery information with outside law firms? What's the worse that can happen? [Privilege waiver](#), [sanctions](#), and [state-sponsored hacking](#), for starters. Learn to reduce these risks by leveraging safe sharing in our webinar, "[Eliminate the #1 Risk in Modern Litigation.](#)"



Level 3: Autonomous



SUMMARY: Clearly-defined and documented discovery processes and roles are the hallmarks of Level 3 organizations. Typically, these companies tend to be either frequent litigants or highly regulated (or both), and, in addition to having operating guidelines in place for outside counsel and external vendors, also use internal tools to perform targeted collections and early case assessment prior to involving outside firms. Legal departments here generally leverage automation tools to streamline the sending and tracking of hold notices. Small non-litigation matters, such as subpoena response and employee investigations, are handled almost exclusively internally. In addition, the organization is both aware of and capable of addressing atypical data sources should data responsive to disputes reside there. Costs are minimized both by the ability to handle small matters in house and to significantly reduce data collections prior to sharing with outside counsel for review.



PERSONNEL INVOLVED: In addition to litigation-focused attorneys and support personnel, the organization has a go-to discovery expert in legal or IT and may also employ legal operations professionals involved in process optimization.



CAPABILITIES: From legal hold and collections to early case assessment and data culling, processes are executed according to a documented plan of attack and by personnel with clearly defined roles. In addition to basic culling, such as deduplication, further data reduction steps, such as date range filtering and keyword searches, are taken to narrowly define the scope of documents to be shared with outside partners for review.



INTERNAL EXPERTISE: An expert well-versed in the minutia of discovery manages internal and external resources, potentially with the assistance of a small team. IT has an intimate knowledge of the organization's document repositories, is familiar with the materials that are typically responsive to recurring disputes, and, when it comes to potentially esoteric data sources, knows where the "bodies may be buried."

Did you know that some of the most popular eDiscovery tools can't find the term "e-discovery?" Learn to search with confidence -- and capture the data you didn't know you were missing -- in attorney [Craig Ball's presentation on search accuracy](#).



COST: Medium to low. Here, discovery and litigation costs are largely contained due to aggressive data targeting and culling prior to engaging outside firms and service providers. Organization may also benefit from volume discounts (e.g. subscription pricing on internal tools) and by awarding commoditized, transactional work to the lowest bidders. Streamlined processes, often aided by automation tools, also drive costs down by allowing teams to realize efficiencies and “do more with less.”

RISK PROFILE: Medium to Low

- Aggressively culling data in house makes handling of materials to be reviewed by outside firms more manageable.
- Centralizing discovery materials in a single repository with strict access controls minimizes chances for improper distribution and/or inadvertent exposure.
- Familiarity with data and ability to automatically flag potentially privileged or otherwise sensitive materials prior to sharing lessens chances of inadvertent production.
- Ability to assess cases in early stages optimizes legal positioning and minimizes exposure.
- Guidelines for outside counsel and vendors standardize workflows, reducing risk of data exposure and increasing visibility into work performed by outside teams.

POTENTIAL NEXT STEPS:

1. Implement outside counsel and vendor guidelines mandating use of preferred technology such that all discovery is conducted within a single “hub” and under the auspices of an in-house administrator; mandate regular training on selected tools to maximize speed and performance of outside counsel review.
2. To improve data culling rate during ECA, consider implementing tools that automatically apply quality control tags and, if possible, flag potentially privileged materials according to criteria developed from similar types of cases.
3. Work with outside counsel to develop a standard ESI protocol that accommodates the data and abilities of the organization and can be used to govern discovery in court proceedings.

Whoever wins the meet-and-confer usually wins discovery -- and has a leg up in the case. If you don't have a proposed ESI protocol, you're missing an opportunity to gain a competitive edge. Learn how other companies are stacking the deck in their favor with our white paper, [“How to Craft an Effective ESI Agreement.”](#)



Level 4: Leading



SUMMARY: In addition to maintaining clearly defined and documented discovery processes, Level 4 organizations execute on their playbooks with an operational rigor that distinguishes them from less mature companies. Generally frequent litigants (e.g. Fortune 1000 and/or operating in highly-regulated areas), they've developed customized playbooks and templates for different types of frequently encountered disputes where the custodians and data repositories are generally the same. "Leading" organizations have implemented strict rules that govern the activity of outside counsel and vendors and mandate the tools they use. All data repositories housing potentially relevant data have been mapped and policies that govern devices and prohibit so-called "shadow IT" are diligently enforced. Moreover, these legal departments have developed leverage over outside firms and providers that manifests in pricing power and, in general, an ability to "call the shots" -- where, traditionally, the inverse relationship has been common. Here, in-house teams often own all discovery phases up to review, utilizing internal automation tools that limit manual, human processes to reduce risk.

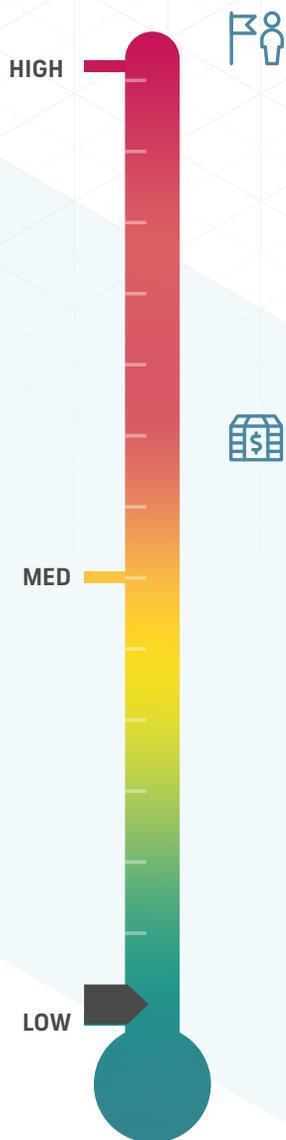


PERSONNEL INVOLVED: Whereas Level 3 legal departments may have a go-to discovery expert, Level 4 organizations typically employ a team of discovery personnel across legal and IT, or teams of teams in larger companies. Legal operations departments, either housed within legal or operating in parallel, are also a staple. Where legal is focused primarily on risk reduction and defensibility, legal operations is single-minded in their mission to drive down cost and realize performance efficiency. While these legal departments are mature, they aren't necessarily bigger relative to the size of their companies, but instead embody the maxim "do more with less."



CAPABILITIES: As with Level 3 organizations, all discovery phases up to review are executed according to playbooks and by personnel with clearly defined roles. In addition to aggressive data culling and early case assessment, in-house legal may also review documents for relevance prior to introducing outside counsel for privilege review, especially in small and/or low-exposure cases. As a rule, in-house teams are also responsible for executing subpoena response and employee investigations, only involving outside counsel for air cover when perceived exposure is high.

Organizations getting the most out of their law firm spend standardize discovery across outside counsel with clearly articulated guidelines. Don't have those in place? There's no need to start from scratch. [Check out our case study](#) on how one of the largest companies in the world brings powerful predictability to discovery with its law firm "spa rules."



INTERNAL EXPERTISE: For all intents and purposes, the legal department operates as an internal law firm, having developed a deep intimacy with the custodians, data and issues that are typically involved in recurring litigation and investigations, and largely directing outside counsel and vendors with respect to discovery. In some cases, collections are executed via integrations that directly connect data repositories with discovery tools so as to minimize human touch points. Most if not all discovery is conducted using internal tools, where outside counsel is invited in to the platform and working according to the criteria provided by an in-house administrator.



COST: Low. These organizations are actively optimizing for cost reduction, achieving success through a) use of automation tools b) enforcement of QC protocols imposed on outside counsel and vendors c) volume discounts for transactional/routine work d) tracking performance metrics to benchmark against and e) enforcement of aggressive data disposition policies that shrink the scope of discoverable data. Aggressive data culling and ability to perform the majority of discovery in-house keeps outside counsel review costs to a minimum. Streamlined processes and efficient use of technology to automate typically manual tasks reduces personnel costs and lessens need to add headcount as the department scales.

RISK PROFILE: Low

- Strictly enforced guidelines for outside counsel, including step-by-step playbooks to be executed against, reduce the risk of errors arising from ad hoc processes and human-dependent tasks.
- Close collaboration with outside counsel paired with training of outside firms on internal tools fosters predictable, defensible processes.
- Aggressive culling and early case assessment keeps handling of data by outside firms and vendors to a minimum.
- Centralizing discovery in a single repository that internal teams administer increases control and visibility.
- Guidelines for outside counsel and vendors standardize workflows, reducing risk of data exposure and increasing visibility into work performed by outside teams.

POTENTIAL NEXT STEPS:

1. Begin measuring speed and accuracy of outside document reviewers for performance benchmarking.
2. Conduct regular ROI analysis to identify and scale successful approaches while further optimizing those not yet performing to capacity.
3. For recurring litigation, document key metrics (e.g. number of custodians, volume of data, length of dispute, total cost) that can be used for budgeting and forecasting purposes.
4. Templatize workflows and, if possible, coding decisions for reuse in disputes that are frequent and common to each other.
5. Procure tools that allow the copy of data across matters for document sets that are subject to repeat litigation.



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