



SPRING 2022 E-NEWSLETTER

At Digital Mountain, we assist our clients with their electronic discovery, digital forensics, cybersecurity, and data analytics needs. For this E-Newsletter, we discuss the business trends and cost explosion in eDiscovery.

The Business of eDiscovery - Top 10 Trends

Digital Mountain is nearing 20 years in the eDiscovery and digital forensics business. So much has changed over the years that we wanted to share the top 10 trends we've seen and the impact on the industry.



- 1. Data Explosion – All Tides Are Rising.** When we started Digital Mountain in 2003, about 93% of digital communication was performed via email, yet only 5% of discovery matters utilized eDiscovery. Through education and evangelism for eDiscovery, we've managed to make eDiscovery a regular part of discovery practice, and with data volumes increasing roughly 40% per year, eDiscovery adoption has been vital. Our industry "rakes dead leaves" in that historically there's approximately a decade between the adoption of a new data type in the workplace to that same data being regularly included by attorneys for discovery purposes. With that said, we expect that window of discovery adoption to shrink as more education becomes available in the market. By working collaboratively with an eDiscovery provider, attorneys can stay abreast of what's ahead in data volume and types.
- 2. GB-Based Pricing Plummetts.** When we started in 2003, the GB-based pricing for processing was somewhere between \$2,000-\$4,000. Presently, the average range is \$25/GB-\$125/GB. This was anticipated given innovations in technology and increased speeds and feeds due to hardware and software acceleration. Storage is cheaper and processing is faster. We anticipate the per GB pricing range to further decrease with time coupled with further data explosion. Therefore, the overall costs of discovery by case may not materially change.
- 3. Private Equity Pours Into the Industry.** Many of the larger private equity funds have made an investment in electronic discovery vendors. As a result, hockey stick revenue growth is expected from various companies in our industry that are positioning for a liquidity event through a merger, acquisition or Initial Public Offering (IPO). To achieve rapid growth, junior

technicians are being recruited into the industry with minimal experience. Inflated titles may be offered as a recruiting incentive in a tight labor market, potentially leading to confusion as to whether the individual providing services has the proper training and expertise. Sales professionals are encouraged to prioritize revenue versus cost minimization with proper strategic planning. By correcting sales targets to account for the client-vendor collaboration necessary for successful eDiscovery, more realistic projections and more satisfactory eDiscovery clients could be realized. For organizations that do not work with multiple vendors but have focused strategically on sole-sourcing with one company, being locked into long-term services contracts may result in service by professionals who may changeover frequently and a diminished quality of service.

4. **ESI Planning Wanes Due to Increased Vendor Competition.** Because of increased competition, clients are being offered pricing without undergoing proper project scoping because the vendor no longer has the leverage to require questions to be answered prior to providing an estimate. While this may feel like a time-saving way to collect bids, it's definitely a buyer beware situation. The days have passed when a solutions provider could insist that the client provide specifications so proper scoping occurred and valid cost estimates could be provided. Now, clients are provided with estimates based on industry averages, but may be taken by surprise when the bill comes in based on their actual case and environment. eDiscovery pricing, like any quote-based industry, is most accurate when the vendor can fully assess to the extent possible all of the factors that will ultimately end up affecting the final cost.
5. **Consolidation – What Company Are We Working with Now?** As a result of the increased funding invested in the eDiscovery market, there has been tremendous consolidation as investors require returns on their investments. As a result, the vendor that serviced you yesterday may change names, personnel, services, and even pricing tomorrow. Our industry is all about collaboration between vendor and client, and when that vendor changeover is not an improvement, the organization may need to look elsewhere. That's why locking into long-term contracts, however appealing on the surface, may be risky given the industry consolidation. Exiting a long-term contract can be difficult and costly.
6. **Forensic Tool Costs Soar – Why Hasn't Hourly Pricing Increased?** When Digital Mountain started almost 20 years ago, very few tools were required to deliver quality digital forensics services. As the variety of data types increases, especially in cloud and mobile devices, we've increased our range of tools accordingly. The overhead cost per tool has multiplied 3 to 4 times over the years. However, while the costs and required number of the tools increases, the pricing for forensics services remains fairly level at \$300-\$550 per hour, the same rates of the past twenty years. Therefore, the solutions provider may be paying much more in costs to automate routines that were historically performed manually causing a break-down in the hourly-based business model. The industry is paying for the surgeon's time and not the expensive laser scalpel needed to perform work. These increased tool costs may cause a shift toward value-based pricing versus hourly-based pricing in the future.
7. **Push Button Digital Forensics – Not All Examiners Are Created Equal.** When we started, there were about 300 certified digital forensics examiners around the country. The demand for digital forensics expertise has outstripped the pool of experienced experts in a field where new apps and data sources appear monthly. As the tools become more automated, the newer examiners tend to understand the user interface of the tools, but not

necessarily what is under the hood in the forensic tool technology and datasets. Experienced, thorough examiners know how to properly evaluate data by manually inspecting results and how to get the most from the tools. There is an enormous gap between exemplary examiners who know what their tools are doing and why, and those examiners who have learned how to push the buttons that make the tool run. As with surgeons, experience counts with digital forensics examiners as well as having specialties.

8. **Messaging Apps Slowly Displacing Email.** As early as 2011, Bill Gates, the co-founder of Microsoft, said that messaging apps would displace email as the main form of business communications. While the displacement is slowly happening, we've seen a surge in various messaging apps on smartphones, such as SMS/MMS/Chat, WeChat, WhatsApp, etc., as well as collaboration messaging such as Teams, Zoom, Slack, etc., and social media such as Twitter, Facebook, Instagram, LinkedIn, etc. The heterogeneous messaging app data designed in unique ways must be put into review tools in an easy to review and standardized fashion. The majority of the market are on eDiscovery platforms that still do not properly process or review multiparty communications.
9. **Shift to Cloud-Based Systems and Smartphones.** When we first started, 99 percent of preservations were performed on laptops, desktops, file shares, and other on-premise devices, even though cloud technologies were already used in some of our client's environments. With more desktops and laptops used solely as thin client computing access points to cloud-based servers, much more data is centrally controlled in O365/M365, Google Workspace, and other cloud-based systems which have the benefit of being accessed by mobile devices. Our work has shifted dramatically to more cloud-based preservations and data collections from smartphones. The pandemic has further accelerated this shift and the remote/hybrid work environment trend.
10. **Law Firms Go Full Circle on Insourcing and Outsourcing.** Over nearly 20 years, we've seen litigation support transform from a legal concierge model with law firms interfacing with vendors to law firms starting up in-house eDiscovery service departments. Recently, this trend started reversing course as law firms realized the significant costs to maintain payroll, servers, storage, software licenses, and provide proper training. Also, as technology has become more complex, the need for eDiscovery specialists is increasing, and more diversified data types outpace the skills of generalists.

Although many changes have occurred, we're excited to see what the next 10 years presents for eDiscovery. With movement towards increased usage of emojis, holographic images for remote communication, drones, IoT innovations, autonomous vehicles and technologies, we will all be raking for digital evidence in the future as an endless amount of data falls from the trees.

Please direct questions and inquiries about electronic discovery, digital forensics, cybersecurity, and data analytics to info@digitalmountain.com.

UPCOMING INDUSTRY EVENTS

ADFSL CONFERENCE ON DIGITAL FORENSICS, SECURITY AND LAW

Virtual: May 23-25, 2022

NETDILIGENCE CYBER RISK SUMMIT

Philadelphia, PA: June 1-3, 2022

INTERNATIONAL CONFERENCE ON DIGITAL FORENSICS AND INVESTIGATION

San Francisco, CA: June 2-3, 2022

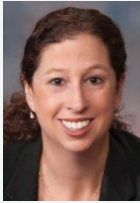
RSA CONFERENCE 2022

San Francisco, CA & Virtual: June 6-9, 2022

BLACK HAT USA 2022

Las Vegas, NV: August 6-11, 2022

[Click here to see more upcoming events and links.](#)



Digital Mountain, Inc. Founder and CEO, Julie Lewis, will be presenting at various upcoming industry events. Please send requests for speaker or panel participation for her to marketing@digitalmountain.com.

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