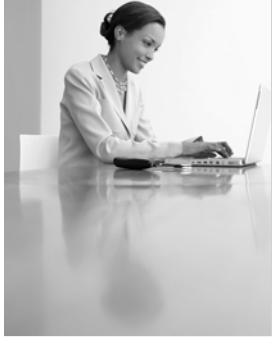


INFORMATION MANAGEMENT

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## How Automated Records Archives Reduce Litigation Costs and Risks: #W15

June 2, 2010  
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### Why You Should Care about Effective Litigation Preparedness?

*“Receiving a discovery request is like being pulled over for a broken headlight and having a full body cavity search performed on you.”*

*Fortune 500 CEO*



## What's Driving Increased eDiscovery Attention

Increased Corporate Civil Litigation

More Complex eDiscovery Responsibilities

Early Case Assessment

Preparation for the "Meet and Confer" Meeting

Corporate Litigation Costs: The need to bring more of the eDiscovery process in-house

## Some eDiscovery Market Indicators

- In a recent pole, ESG found 78 percent of respondents say the number of lawsuits they experienced increased in 2009 compared to 2008 -- and more than two-thirds of them expect the number to continue to rise in 2010 by at least 20 percent.
- 87 percent of those surveyed said they plan to budget for technology specifically supporting the e-discovery process next year.
- 69 percent plan to bring processing/analysis in-house, with identification/collection a close second 66 percent.

## Challenges for ESI Discovery

### Managing Legal Risk

- Litigation Hold – Destruction of evidence
- Turning over too much data – Privilege
- Turning over too little data – Adverse Inference

### Managing Legal Costs

- Stopping deletions is costly to ensure
- Slow eDiscovery response results in severe penalties and fines
- Disruptive data capture decreases employee productivity
- Restoration of backup tapes for searching is extremely costly

## eDiscovery Costs

## Basic E-Discovery Math

**Collection/Preservation** - Acquire desktop/laptop, file shares and e-mail in defensible manner.

- \$1,000 per custodian

**Culling** –Eliminate irrelevant data based on keyword, NIST files, duplicates, system files, etc.)

- \$500 per custodian

**Processing** – Extract text, “un-hide” cells in Excel, prepare data for loading into review platform (on-premise or hosted)

- \$400-\$1,000 per GB, 3-5 GB per custodian after culling
- \$1200 – \$5000 per custodian total
- Hosting\_- \$85 per GB per month

## Basic E-Discovery Math

Total Collection/Culling/Processing costs per custodian

- \$2,700 - \$6,500 per custodian

Review – Attorney/Paralegal

- 1 GB of data equals approximately 7,000 docs per GB
- Reviewer can accurately review 60 docs per hour
- 120 hours to review one custodian
- \$150/hr (blended) for 120 hours = \$18,000 per custodian review

Total cost per custodian - \$20,700 - \$24,500

## What is Effective Litigation Preparedness?

Knowing ahead of time where all the data is (Data Map)

- In control of IT
- In control of end-user

Data retention policies - that are enforced

Fast Litigation Hold ability

Effective Early Case Assessment capability

Content and metadata search across all/most data repositories

Culling/filtering and review of responsive or privileged data

The ability to export requested data in a readable format – including metadata

## The Ontario Rules of Civil Procedure

In the U.S., a litigant could (and will) be asked to find and turn over anything that could be relevant to the case (minus privilege)

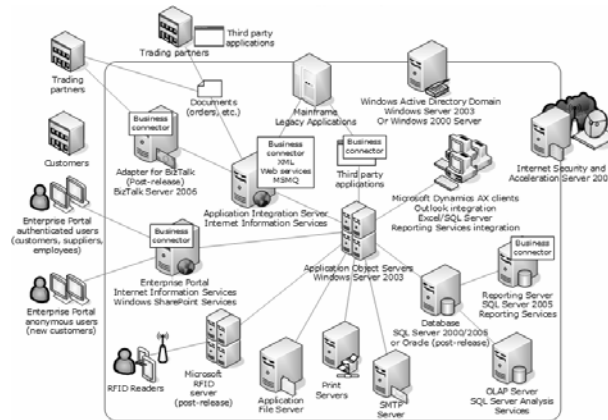
In Canadian law, the scope is much narrower. The litigant is expected to turn over just those records/files they deem responsive to the case, without being asked.

The Discoveree still needs to know where the data is to make the decision as to what to turn over. The Collection and Review process is the same...



## Unmanaged, Unstructured ESI

Problem: Not knowing where all your data is before litigation starts



## Mistakes Organizations Make #1

- No records retention policy
- No records retention policy which specifically addresses ESI
- An unenforced records retention policy
- An unreasonable records retention policy

## Possible Retention policies

“We save everything until our mail server gets full – then we delete everything and start anew.”

“We save everything for 30 (60 or 90) days and then delete it...and we’ve never had a problem.”  
(usually to be rid of smoking guns)

“We gave up trying to figure out individual retention rules and now keep everything for 10 (15 or 20) years.”



## Email/ESI Classification Options

### Universal – One Size Fits All

- All mail is classified and retained equally

### Role-Based - High Water Mark

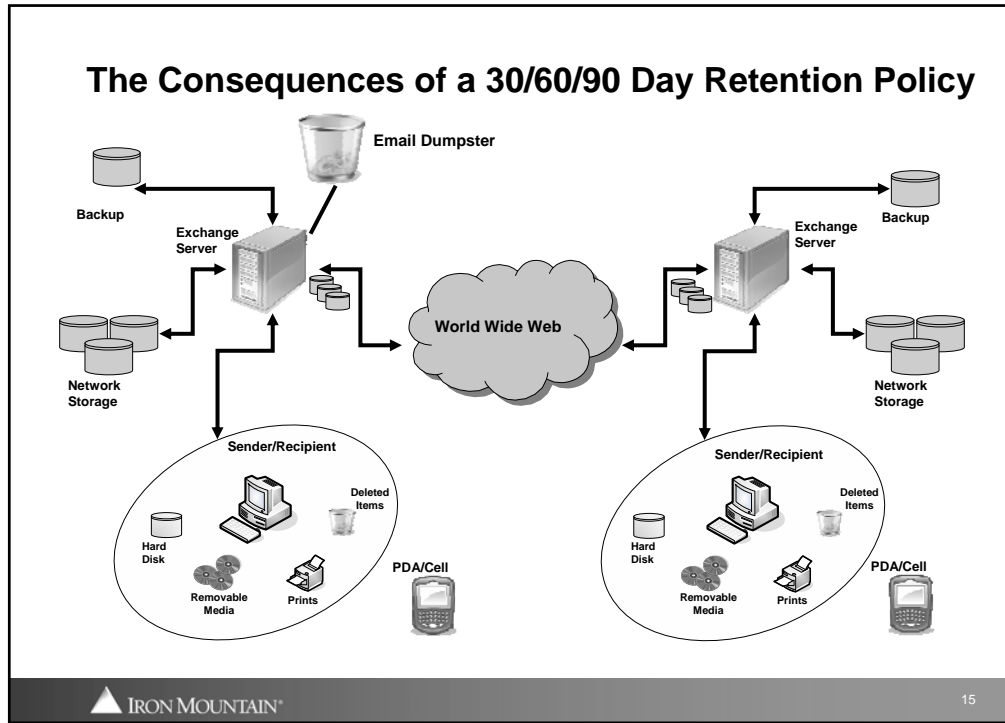
- By Department, Geography, Accounting Code

### Manual/User-Based

- Users classify messages within the email system
  - Managed Folders
  - Drag and Drop

### Automatic/Content-Based

- The message content itself can be used as a source of metadata
  - Subject, content, attachments, Custodian



## Retention Policies

Why a 30/60/90- day retention / destruction policy won't suffice

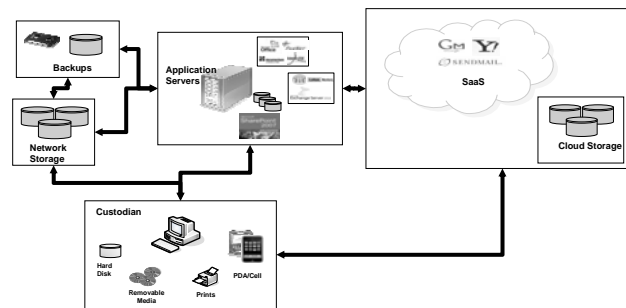
- Government & Industry Regulatory Requirements & Enforcement Actions
- Criminal Liability
- Litigation Obligations



## Mistakes Organizations Make #1 (cont)

No policy or an unenforced records retention policy - adds a huge level of complexity and cost to your collection process...

To decide if ESI is responsive to a case, you must find it first



## Mistakes Organizations Make #2

No litigation hold policy...

Litigation hold is simply the process of protecting ESI that is responsive to a case.

To protect specific ESI, you must find it first.

Even inadvertent deletion of ESI is "destruction of evidence"



### Mistakes Organizations Make #3

No ESI data map...

Or

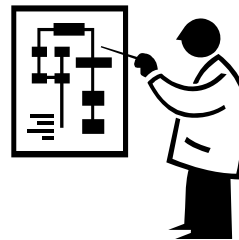
The data map is not updated regularly

2003



### Mistakes Organizations Make #4

No tested legal hold and eDiscovery process...



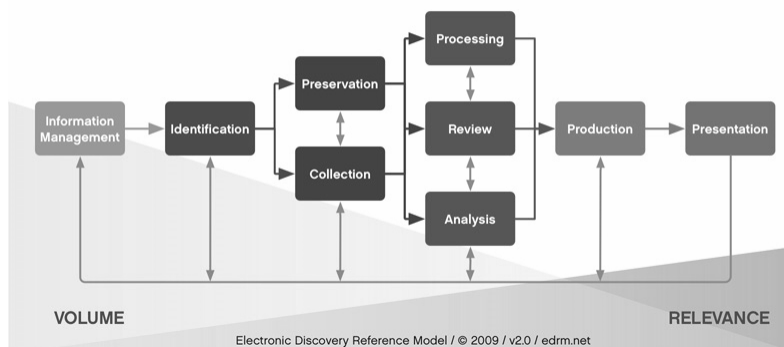
## Mistakes Organizations Make #5

Employees not regularly trained on retention policies, litigation hold policies or eDiscovery responsibilities...



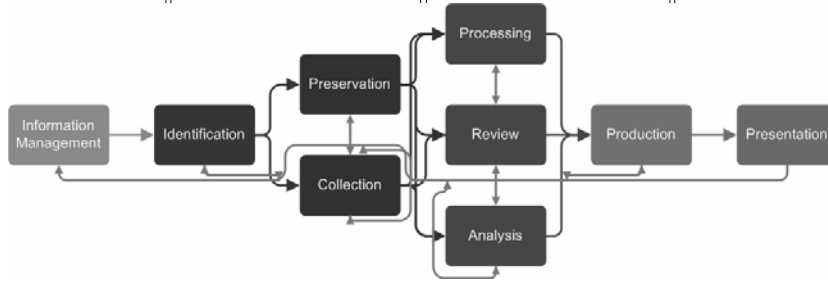
## What is the Generally Accepted eDiscovery Process?

Electronic Discovery Reference Model

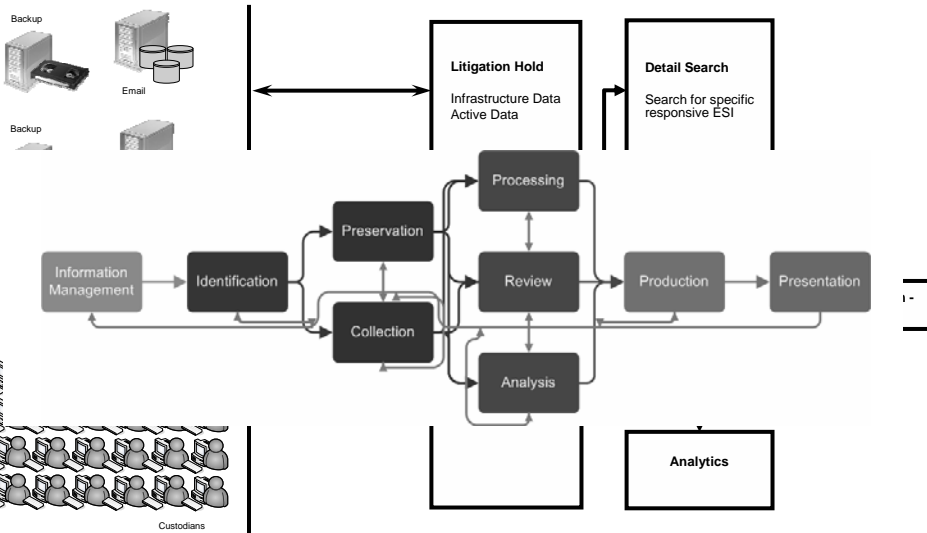


### The eDiscovery Process (EDRM)

Step 1	Step 2	Step 3	Step 4
<b>ESI Archive</b> <ul style="list-style-type: none"> <li>•Centralized</li> <li>•Retention Policy Driven</li> <li>•Secure</li> </ul>	<b>Collect &amp; Preserve</b> <ul style="list-style-type: none"> <li>•Target Custodians /Content</li> <li>•Search</li> <li>•Apply Legal Hold Centrally</li> <li>•Responsive Content Gathered</li> </ul>	<b>Review</b> <ul style="list-style-type: none"> <li>•Automated Culling</li> <li>•Analytical Review</li> <li>•Report &amp; Audits</li> <li>•Redaction</li> </ul>	<b>Export</b> <ul style="list-style-type: none"> <li>•Native Format</li> <li>•Final Attorney Review</li> <li>•Court Ready</li> </ul>

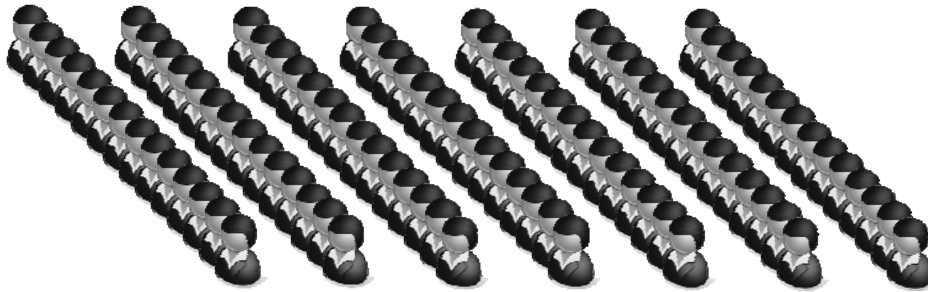


### A Different Look at the EDRM



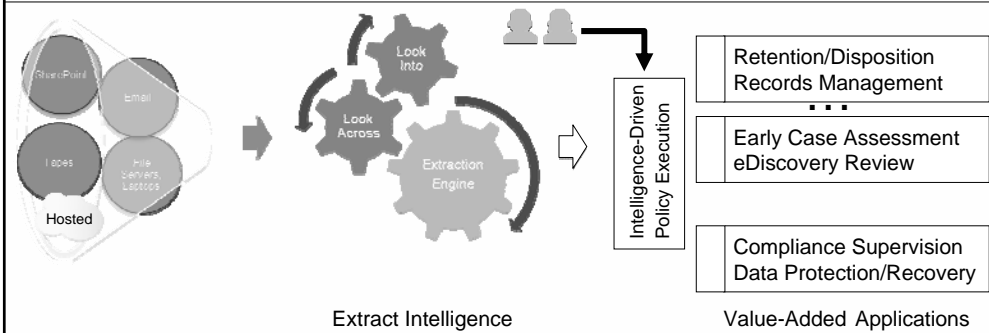
## Reducing Litigation Costs and Risks

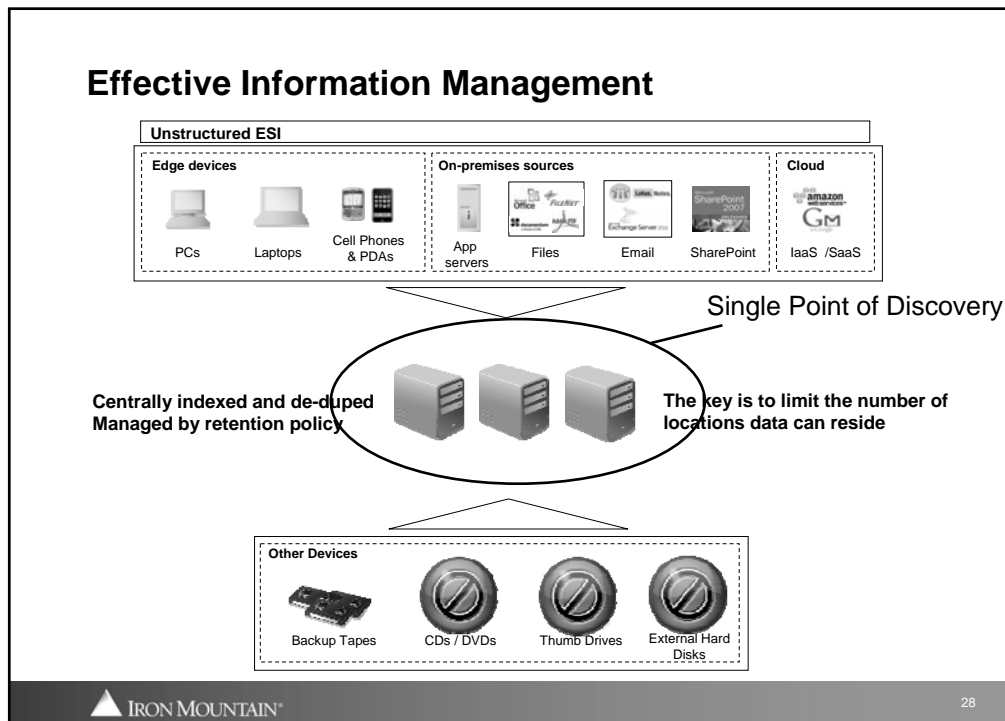
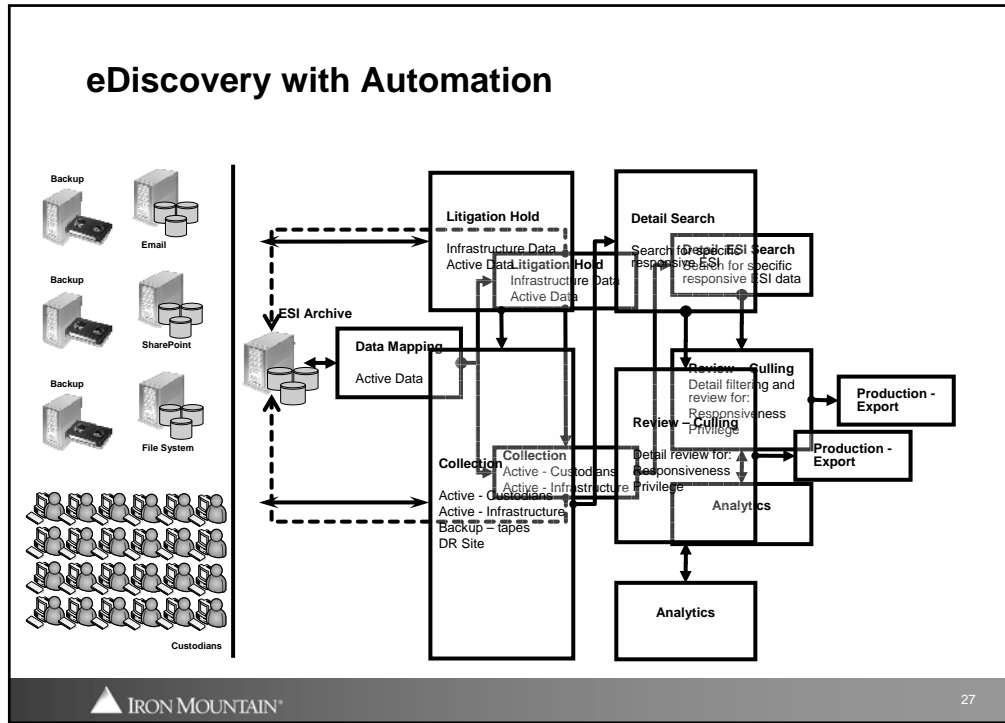
A big part of the eDiscovery process is the collection phase  
Wherever ESI might be stored, should be checked for responsive ESI



## Effective Information Management A Pipe Dream? Maybe Not

Reduce Costs and Risks of Information Ownership and Management





## Summary

Knowing ahead of time where all the data is (Data Map)

- In control of IT
- In control of end-user

Data retention policies - that are enforced

Fast Litigation Hold ability

Effective Early Case Assessment capability

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## Summary

Automated records management solutions which take some or all of the variability away and manage it under central control will greatly reduce your risk in litigation and cost overall.

## Questions?

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