

# Planning for E-Discovery

*with the Microsoft Connected E-Discovery Framework*

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## **Introduction**

Private organizations and government agencies worldwide are faced with a challenge when it comes to finding, capturing, and producing data and content that may be relevant to a judicial or regulatory request. In the United States, the amendments to the Federal Rules of Civil Procedure (FRCP) in December 2006 and the update in December 2007 have many organizations scrambling to come up with a comprehensive way to perform a process known as electronic discovery (e-discovery). Most organizations that are faced with litigation handle the event reactively, which results in high costs, lost revenue, decreased productivity, and in some cases legal sanctions.

This white paper provides insight into the challenges associated with discovery requests, and shows organizations how to make use of existing technology solutions to provide visibility, access, and efficient management of all of their electronically stored assets. With early readiness and proper planning, organizations can better handle their electronically stored information so that when litigation does occur, they have better insight and make better decisions about how to proceed. When coupled with more effective use of resources, this results in reduced costs of litigation overall.

## The E-Discovery Challenge

On February 15, 2002, Laura Zubulake filed a lawsuit in New York City against her former employer, UBS Warburg LLC, alleging sex discrimination and retaliation. During discovery, Zubulake requested that UBS produce "all documents concerning any communication by or between UBS employees relating to [Zubulake]," which included e-mail messages that had been stored on backup tapes. However, certain backup tapes at UBS were missing, and e-mail had apparently been deleted at UBS. As a result, the federal court imposed sanctions against UBS for its failure to preserve and produce the missing tapes and e-mail. In April 2005, Zubulake was awarded U.S.\$20.1 million in punitive damages and \$9.1 million in compensatory damages, in part because UBS was unable to produce the e-mail messages in question.

*Zubulake* is a landmark case in the world of e-discovery, and there have been countless articles written, opinions pontificated, and policies modified based on its result. However, while few cases may rise to the level of *Zubulake* in terms of financial liability, there are numerous other cases that involve a party's inability to properly produce requested documents. In the context of e-discovery readiness, *Zubulake* is one of many cases that demonstrate the need to proactively prepare for, and be prepared to conduct, e-discovery in response to a lawsuit, audit, or governmental investigation.

So what is e-discovery, and why has it become such a significant area of focus for organizations?

E-discovery refers to the discovery of electronically stored information (ESI). ESI includes e-mail, Web pages, word processing files, audio and video images, computer databases, and virtually anything else that is stored on a computing device—including servers, desktops, laptops, hard drives, flash drives, personal digital assistants (PDAs), and MP3 players. Electronic discovery is often distinguished from conventional discovery, which refers to the discovery of information recorded on paper, film, or other tangible media.

In the past, litigators rarely used e-discovery. In fact, it was commonly avoided due to potential backlash and reciprocation from opposing counsel. However, with the ever-increasing amount of ESI that now exists across most enterprises, and, as Forrester estimates, growing at nearly 36 percent per year, the lack of understanding about what is truly stored within the enterprise can put organizations at extreme risk for both excessive (and largely avoidable) litigation expenses and sanctions by the courts.

Additionally, given the amendments to the U.S. Federal Rules of Civil Procedure (FRCP), e-discovery is no longer an optional process. Instead, it is one that is required of both parties during litigation. The amendments to the FRCP address six principal areas:

- Meetings between adversaries and the court to discuss scope and timing of e-discovery.
- What is reasonably accessible for e-discovery.
- Procedures for handling inadvertent waiver of privilege.
- Definition of ESI.
- Production formats.
- Limited "safe harbor" for accidental loss of ESI.

The December 1, 2008 version of the FRCP can be found on the U.S. House of Representatives Web site, at [judiciary.house.gov/hearings/printers/110th/civil2008.pdf](http://judiciary.house.gov/hearings/printers/110th/civil2008.pdf).

The need for an organization to have a well-planned, robust records management program and corresponding e-discovery response plan has never been greater, from a liability perspective as well as from a purely economic standpoint. Courts fully expect enterprises to make use of available technologies to help them respond to discovery requests in a timely, efficient, and complete fashion. As e-discovery solutions continue to enter the market, organizations can assume that courts will continue to raise their expectations and increase scrutiny of a party's approach to e-discovery.

## The Traditional Approach

In the past, an organization often encountered substantial difficulty in the simple act of pre-trial assessment, or early case assessment (ECA), because it did not know the full scope of the potentially responsive information it possessed at the onset of the dispute, or where that information was located. As a result, the organization often incurred significant expenses related to the gathering of *all* ESI that might be relevant to the particular case or dispute. Costs that were associated with the identification and collection of this content from across the enterprise (sometimes done manually at the desktop or laptop level), the export of the content to outside counsel for review, and the operational work stoppages that occurred due to this process, often ended up in the multiple millions of dollars. In the face of litigation, inside counsel considered this an unavoidable cost of doing business.

Not only did litigation cause this direct expense, but it was often an agent to potential spoliation, which is the intentional or negligent withholding or destruction of evidence that is relevant to a legal proceeding. Spoliation has been a very common issue for organizations that are faced with litigation. In fact, when organizations were confronted with requests for ESI in the absence of strong policies and auditable processes, it was highly probable that some content that had been destroyed should have been retained.

Recent changes to the FRCP have caused governmental and commercial organizations to scramble to prepare for impending e-discovery requests. Analysts, industry experts, records management counsel, litigation services organizations, and vendors in this market are communicating to these organizations that the best place to start is by ensuring the usefulness of their records management programs. Records management is an essential first step—it is pivotal in establishing and enforcing retention, disposition, and archiving policies for the proactive management of an organization's ESI.

Unfortunately, organizations are at significant risk if they operate without a true records management response plan, or a program that is incomplete, inaccurate, or inadequately implemented. Such an organization exposes itself on many levels. First, the result of poor policy management is that an organization is likely to be retaining many records that it is not legally required to retain. This practice alone involves a large commitment of IT personnel resources, physical storage burden, and operational expense, and a potentially much larger cost of reviewing such information to respond to a discovery request. In addition, the organization may face litigation risks due to the simple fact that content that should have otherwise been lawfully disposed of still exists. And if such content is discovered, court orders may dictate that the existence of such data could infer that other potentially relevant data could still exist somewhere in the organization, thus either influencing the decision of the court or requiring an even more extensive search. This type of outcome could have lawfully been avoided if the organization had implemented and followed its records management plan.

The e-discovery process is far more complex than simply managing the content in an organization. The best way to characterize the steps necessary to accomplish e-discovery and determine any high-level gaps in an organization's e-discovery plan is to refer to the Electronic Discovery Reference Model (EDRM), available at [www.edrm.net](http://www.edrm.net) (see Figure 1). The EDRM is an industry-standard resource that was created in May 2005 to help address the lack of standards and guidelines that can assist organizations through the e-discovery process. Although the specific steps and timing of e-discovery may vary from case to case, all e-discovery generally follows the process that is identified in the EDRM. As a result, the EDRM has gained widespread acceptance, and customers, vendors, and analysts alike most commonly refer to the EDRM as the fundamental definition of the process. Additionally, most software technologies and service offerings identify themselves with specific segments of the EDRM to explain where in the model they fit and what solution they provide. To date, there is no single software product or service offering that seamlessly encompasses the entire EDRM framework. Gartner predicts that such a solution may emerge in 2011. However, to be successful, such a solution will need to function with the underlying content and without the need for involved conversions of data. This is likely to increase costs, reducing the benefits to the organization. And yet today, few organizations have realized that they can engage in proper process management and retention practices through the simple use of their existing Microsoft technologies. In fact, the majority of organizations today have the foundational tools to begin implementing a set of information

management procedures that will significantly reduce the cost of litigation while enhancing the quality of information management throughout the organization.

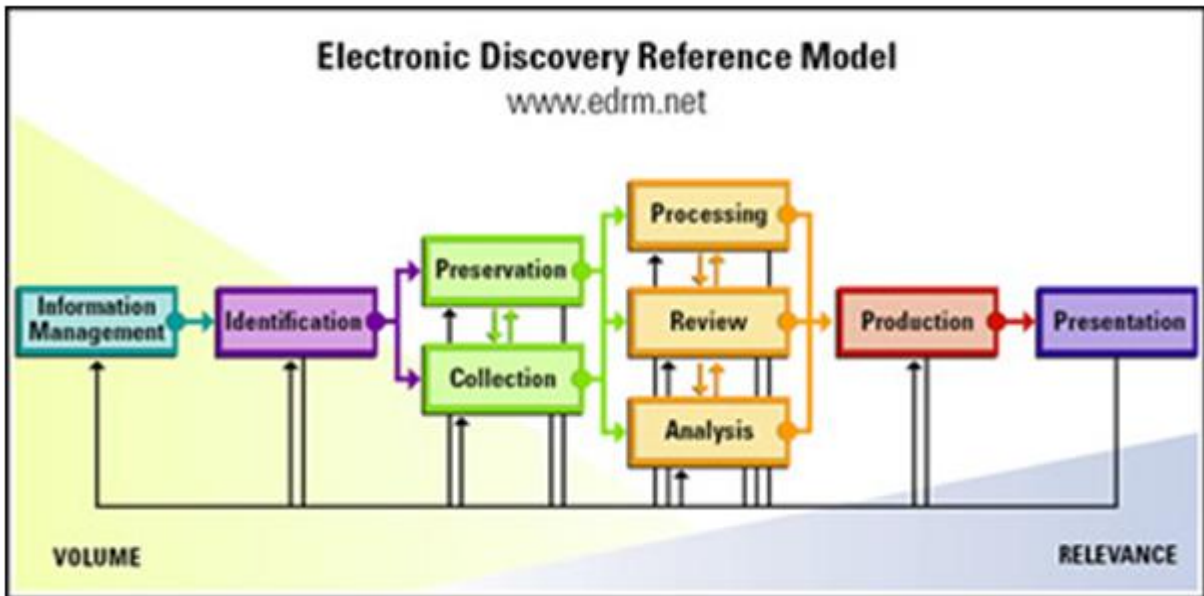


Figure 1. The EDRM reduces the cost, time, and manual work associated with e-discovery.

In fact, not having a planned approach inhibits the organization’s ability to perform a limited review of salient records to assess the value of the case—that is, to perform an early case assessment. The net effect of having no records management program, or one that is not implemented and maintained enterprise wide, is the potential existence of ESI that prevents good litigation decision-making in early case assessment and throughout a trial. This situation can easily increase the expense of litigation to an organization, in part because the organization will likely bear the costs of discovery, which can in some cases reach millions of dollars.

Traditional discovery approaches were often inefficient and expensive. The need to know what electronic information is present in the enterprise, where it resides, and whether it is harmful to the organization, will always be paramount. Fortunately, an organization can now implement a well-planned application framework approach that addresses the various phases of e-discovery. This approach provides the organization with the opportunity to gain visibility and control over all content that resides within it. The new era of e-discovery solutions provides the necessary tools to begin the management of ESI from the point of origin.

## The Industry Approach

There are many products and services on the market today that claim to meet an organization's e-discovery needs. These offerings range from a simple document management solution that allows an organization to store ESI in a content management repository, to a hosted legal hold management application that allows an organization to take advantage of a cloud-based (Internet) interface for cataloging all the custodians of an organization's information and issuing preservation notices to those custodians. Some solutions offer "consumable appliances" that simply drop in to a customer's network at the time a case is encountered, to collect and preserve all the data they can find on the network and make it available to an external process-and-review team. There are also services-heavy implementations that not only provide the software and hardware tools necessary to identify, preserve, collect, and process an organization's discoverable data, but conduct the task of processing all the data via a time-and-materials costing model.

Each of these products and services has merit, on varying levels, and relates in some way to the EDRM. Many vendors use the EDRM as a guiding tenet in the creation of their solutions, claiming that each step in the EDRM framework is accommodated perfectly by their solution, whereas some of the providers claim specialization on a subset of the model. When categorizing e-discovery solutions, a few trends emerge regarding the software that is being provided by vendors, and the functional areas of the EDRM that the vendors are targeting.

The first step in the EDRM— Information Management—is one of the most important and challenging, because it encompasses everything that happens before an organization becomes involved in litigation. The Information Management step (on the far left in Figure 1) involves the creation, storage, and disposal of information and records throughout their life cycle and across the enterprise before a lawsuit has been filed. Accordingly, it is a proactive step that includes records management, e-mail archiving, disposing of business records in accordance with established retention schedules, auditing compliance, and preserving and protecting the privacy of confidential and personal information within those records. Clearly, good records management can significantly reduce the volume and improve the organization of ESI that must be addressed in the remaining steps of the EDRM—which will reduce e-discovery costs and litigation risks. Every piece of content in an organization that is created or viewed has a place in the Information Management step of the EDRM, and therefore any application that creates, manages, or archives content is thus automatically part of the EDRM.

Organizations undertake the Identification, Preservation, and Collection steps of the EDRM framework in response to a specific lawsuit, audit, or governmental investigation. Taken together with the Information Management step, these four steps are often referred to as "the left side of the EDRM." A variety of vendors focus on this side of the model. Within this phase of the e-discovery process, IT departments typically have a difficult time trying to procure the necessary software for managing enterprise content, enforcing organizational policy, automating e-discovery business processes, and archiving or disposing of data. This is primarily due to budget restrictions and the fact that IT departments are usually cost centers. For an IT department to procure an e-discovery solution in advance of a clear need would be considered a capital expense, and doing so when there is no pressing need has traditionally been difficult. Fortunately, there has been a growing shift toward a more proactive approach. In the past, when faced with significant e-discovery costs, organizations would simply settle lawsuits, even when organizations felt that they had no fault in the cases, simply to avoid those costs. Today, this shift toward a more proactive approach enables IT organizations to properly plan for a well-implemented, easily adopted, and robust solution.

Specific products or "cobbled-together" solutions are not yet at a mature stage for handling the left side of the EDRM, and market leaders have not yet emerged in this area of the e-discovery market. Historically, organizations usually delegated these tasks by hiring outside providers. Lately there is a trend toward bringing many of the tasks on the left side of the model in house. However, most organizations' information management practices are not strong enough to support e-discovery readiness, and therefore when those organizations confront e-discovery, they are at a loss when they try to gather potential evidence and determine their legal strategy. Poor information management practices allow users to unknowingly amass monstrous volumes of data. Such practices not only cost the organization exorbitant legal fees to review, but in many cases they also introduce legal liability for

content that should have been disposed of well before the litigation, in accordance with the organization's retention policy. When an organization reaches a state of near-panic about this situation, the appliance vendor is an appealing option, offering to come into the organization and provide a consumable service: to drop in new technology; search, index, collect, and preserve all the data; and hand off the relevant data to the next EDRM steps (the "right side" of the model), where it is processed, analyzed, and reviewed. In most instances, these vendors place their own teams inside the firewall of the organization and start the process of searching for and collecting potential evidence. This scenario typically results in costly solutions. Usually these vendors charge per gigabyte of data, so expenses can rise quickly. In this setting, overcollection is common and can result in significant legal liability for inexperienced organizations that are simply looking for the least expensive way to respond to an e-discovery request.

The next phase of the model, the right side of the EDRM, is typically handled outside the corporate firewall. After data is collected and preserved on the left side of the model, it is sent to a process-and-review vendor for the next steps of the e-discovery process: Processing, Review, and Analysis (again see Figure 1). External legal teams review and analyze the potential evidence for relevance to the case and privileged attorney/client communications (at large hourly fees). The external legal teams perform this work in a variety of ways, but the key point is that external counsel often performs the work because most organizations do not have the luxury of carrying teams of attorneys on staff just for performing this type of litigation support activity. Highly litigious industries may have a different approach on this, but many governmental and commercial organizations use external counsel and external vendors to accomplish the right side of EDRM.

In the final steps of the EDRM process, ESI is produced and presented to opposing counsel. The Production step involves the delivery of ESI to the opposing party or governmental agency during civil litigation or regulatory investigations, in the appropriate form and using the appropriate delivery mechanisms. In the United States, the method and format of ESI delivery is governed by the FRCP. ESI can be produced in various formats, including litigation support load files and native format file production. The Presentation step involves displaying ESI before audiences, such as at a deposition, hearing, or trial.

The more data that is collected in the first four steps of the EDRM process, the more work that must be done on the right side of the model—and this work has a substantial cost associated with it. Accordingly, effective deduplication culling, and honing the large volumes of content during the Identification, Collection, and Preservation steps, are essential in advance of the Processing, Review, and Analysis steps. If an organization can effectively eliminate irrelevant content before processing and reviewing, it can save a great deal of money.

Most notably, one of the major issues for organizations is the "lost" return on investment in the software and services that they procure during e-discovery cases. When organizations are forced to reactively procure software tools and consultants to conduct the e-discovery process, in many cases those tools and resource dollars are used only during that single pending e-discovery case. Although the investment may be sound given the amount of money saved by making an effective early case assessment, after the case is closed then either the e-discovery tools become "shelfware" or the organization essentially returns them to the vendor, because the utility of this specialized software is limited to e-discovery matters only. When organizations pay for the software based on each case, and the software's functionality is applicable only during cases, there is no thought of making further use of those tools for everyday operations. An organization may incur this expense—an expense that cannot be recouped—frequently if it does not implement a comprehensive solution. This result can and should be avoided with a strategic assessment of existing IT environments.

So, why can't organizations use existing software for these e-discovery needs? Why shouldn't e-discovery solutions also have wider applicability throughout the enterprise? Why not use an enterprise search product for the Identification and Collection steps? Why not use the organization's standard business process workflow solution to manage legal holds and process flow through the EDRM? Is it possible to use a set of software for successfully navigating the e-discovery process, and at the same time use the software in a day-to-day operational context that provides value to the business? Microsoft can provide the answers.



## The Microsoft Approach

As was stated earlier, *most organizations' information management procedures are not strong enough*. In fact, introducing strong information management procedures and appropriately eliminating content from an organization's repositories are two of the key recommendations made by attorneys, records management services, and e-discovery advisory services. These two actions have an enormous impact on reducing potential legal liability, reducing certain avoidable costs of e-discovery (by not having to deal with content that has no business reason for being active any longer), and reducing overall IT operational budget requirements for data that's no longer relevant. Clearly, an information management program is imperative for an organization that is grappling with both present and future litigation.

There is a shift underway in the e-discovery industry. Software solutions are maturing. Organizations are starting to realize that *not* being prepared for e-discovery carries with it a great cost, causing negative outcomes during e-discovery cases, such as overcollection, poor "try vs. settle" decisions, and overspending in the Processing and Review steps of e-discovery. Organizations are starting to become proactive in their information management efforts, preparing for less expensive, smoother e-discovery operations when such cases arise. Microsoft has a different concept of how organizations can be better prepared for e-discovery and make better-informed, faster, and more accurate "try vs. settle" decisions—and how they can save substantial money in the process.

One thing is critical to keep in mind when discussing e-discovery:

**E-discovery is not a discrete problem that software alone can solve; it is instead a highly involved process that can be managed more efficiently with the right software solution—one that uses, to the greatest extent possible, the existing IT infrastructures within an organization.**

Microsoft has a special place in the market when it comes to helping organizations with their e-discovery challenges, by virtue of its strength and history on the desktop with operating systems, desktop productivity software, search technologies, and more. Microsoft has been deploying products that cater to information management problems for many years.

## The Microsoft E-Discovery Framework

Microsoft products are mature, established, and pervasive across the market. They hold market-leading positions and are held in high regard by analysts and technology advisors worldwide. Microsoft applications are commonly found in Gartner "leaders quadrants" in their respective functional fields; for example, Microsoft® Exchange Server 2007 for e-mail management and unified messaging, Microsoft Office SharePoint® Server 2007 for collaboration and records management, and the Microsoft FAST™ ESP® visual simulation platform for enterprise search. In isolation, these products serve their purpose well and have been shown to successfully help organizations in their respective capabilities. In combination with one another, the components of the Microsoft product portfolio are seamlessly integrated, providing a comprehensive solution that is easy to use and administer, and the functionality necessary to help with an organization's e-discovery readiness.

Users who are creating uncategorized or unmanaged content with Microsoft products are able to efficiently establish controls on their ESI. In fact, the 2007 Microsoft Office system, Office SharePoint Server 2007, Exchange Server 2007, Microsoft Office Communications Server 2007, and more can all be brought to bear on the information management, search, collaboration, and process-based challenges that organizations encounter when they work on solutions for their e-discovery needs.

Each Microsoft product can bring its own set of strengths to the solution:

- The 2007 Office system as a whole helps information workers create smarter content.
- Microsoft Office and Office SharePoint Server together help users create metadata-rich categorized content.

- Office SharePoint Server helps manage documents, records, and business processes, and integrates them with archiving products.
- The powerful collaboration capabilities of Office SharePoint Server create an exceptional environment for legal teams to work together on e-discovery.
- Microsoft FAST Search provides a robust enterprise search technology that can be used in nearly every one of the EDRM steps.
- FAST Search includes integrated analytics that apply structure to unstructured content and dramatically increase the ability to find relevant content (true positives) while greatly reducing search noise (false positives).
- Exchange Server offers the ability for users to categorize and retain e-mail based on the retention policies of the organization.
- Exchange Server supplies transport rules for intelligent e-mail processing and routing, based on the policies of the organization.
- Office Communications Server provides secure instant messaging for users that is fully auditable for discovery purposes.
- Office Communications Server provides unified communications, so employees can effectively manage calls, e-mail, faxes, and voice mail, and these communications can be declared as records when appropriate in support of the policies of the organization.

Together, as the Microsoft Connected E-Discovery Framework, this set of applications helps organizations achieve enterprise-wide information management procedures that drive compliance. The Microsoft server products provide the IT foundation, and the Microsoft desktop applications allow content creators to design and direct proper ESI creation, categorization, and retention. With these applications, information workers build content that is readily available and quickly assessed to determine relevance. Office SharePoint Server, along with the end-user applications, creates a solid and comprehensive e-discovery foundation. With these commonly used Microsoft applications, organizations can define, manage, and grow litigation preparedness.

The following summary outlines how each Microsoft product can be part of a strong and comprehensive e-discovery plan, and how their functionality ties into the EDRM framework:

## **Office SharePoint Server 2007**

- **Information management** (EDRM: Information Management step)
  - Document management: Versioning, check-in, check-out, workflow processing, document repositories
  - Records management: Large records repositories, records retention, disposition, record routing, legal holds
  - Full-featured granular auditing
  - Rich metadata capture and support
- **Collaboration** (EDRM: all steps)
  - Core strengths: Facilitating teamwork, communication, case management, and process management
  - Critical for overall e-discovery case management requirements
  - Useful throughout the entire life cycle of e-discovery
- **Business process management** (EDRM: Information Management, Preservation, Collection steps)
  - Windows® Workflow Foundation

## FAST ESP

- **Interactive user experience** (EDRM: Information Management, Collection, Preservation, Process, Review, Analysis steps)
  - Useful for early case assessment and development case strategy
  - Visual navigation supports rapid concept recognition and search refinement
  - Sliding scales, zero-term search, and tag clouds capture user intent quickly and effectively
  - Rapid scanning of results with document previews and thumbnails
- **Tunable search engine** (EDRM: Collection, Preservation, Process, Review, Analysis steps)
  - Granular controls allow you to tailor relevance
  - Rich user context improves findability
  - Multiple search profiles support tuning for user groups with different needs
  - Individual search experiences can be personalized for superior relevance
- **Content and user-aware search processing** (EDRM: Collection, Preservation, Process, Review, Analysis steps)
  - User: Improve understanding of user intent
    - What is the user asking? Get rid of noise
    - Where are they asking from? Understand user context
    - How to translate? For best system processing
  - Content: Make content findable and usable
    - Extend the reach of your content
    - Use entity extraction to create metadata to:
      - Provide better structure for optimal findability
      - Enhance user experience through richer navigation
      - Take advantage of structure where there is structure
- **Industry-leading search platform** (EDRM: all steps)
  - Meet special requirements for search
  - Support industry-specific or business-specific applications built on search
  - Tailor for specific needs using a configurable search platform
  - Deploy enterprise-wide search that covers diverse usage scenarios, both within and outside a firewall
  - Word counts
  - Duplicate detection

## Exchange Server 2007

- **Active e-mail management** (EDRM: Identification, Collection, Preservation steps)
- **E-mail compliance archiving controls** (EDRM: Preservation step)
  - E-mail retention management through managed folders
  - Transport rules and journaling for integration with e-mail archiving products
  - Policy enforcement per user or group
- **Categorization and classification of e-mail** (EDRM: Identification step)

## Evaluating Costs

Relative to risk probability and impact, the cost of implementing a new e-discovery solution must be reasonable. All costs must be considered; acquisition of the software, implementation, conversion of data, training, and interoperability all have substantial price tags. Additionally, if the solution is not easily accepted by the organization's employees, the solution cannot be deemed a success.

The ability to reuse existing IT tools provides even greater return on investment to an organization, because it lessens the costs that can be attributed to many of these factors. The Microsoft Connected E-Discovery Framework helps organizations to manage costs by maximizing existing technologies. The reuse of existing Microsoft technologies that are normally pervasive in every organization keeps costs down, IT resources well utilized, and adoption of e-discovery requirements far more successful.

Because it is likely that most ESI content is already created using Microsoft applications, this should be a primary consideration when evaluating how an organization can implement a strong information management solution. The Microsoft Connected E-Discovery Framework is founded on the concepts of proper information creation and management. By relying on Microsoft server technologies and end-user applications, an organization's IT department can build an information management solution that maximizes existing investments, provides easily adopted information management policies and practices, secures the disposition of ESI according to established policies, enables greater awareness and visibility into an organization's enterprise content, and dovetails with a responsive, efficient e-discovery solution. It is with the Microsoft Connected E-Discovery Framework that organizations can begin—today—to build excellence into their discovery practices.

## Completing the Model

Although a market leader in many areas, Microsoft can meet most but not all needs regarding the e-discovery process. To provide a turnkey e-discovery solution for each stage of the EDRM, Microsoft works with a select group of valued partners that provide technical components and detailed litigation support for the e-discovery process. These processes are primarily legal in nature, such as early case assessment, preservation notice management, and process and review. These partners make use of the strengths, flexibility, and widespread utility of the Microsoft product portfolio, so organizations can take advantage of the investments they've already made in Microsoft technologies. For example:

- Many Microsoft Partner products are built directly into Office SharePoint Server, which provides continuity and intuitiveness to the user experience, maximizes Office SharePoint Server functionality, avoids interoperability issues that plague many other e-discovery solutions, and seamlessly integrates into the workflow processing capabilities of Office SharePoint Server.
- Partner products can build on the information management strengths of Office SharePoint Server document and records management, Exchange Server e-mail management, the unified communications of Office Communications Server, and the rich content creation capability of the 2007 Microsoft Office system. With the Microsoft Connected E-Discovery Framework, an organization can create, categorize, and manage content, both structured and unstructured, to minimize legal liability and maximize the value of information. Many partners recognize the widespread use of these products by organizations today, capitalize on the strengths that these products provide, and provide component solutions that easily interoperate to complete the EDRM process.
- Microsoft FAST ESP provides an extensible platform that can be used as the foundation for the complex needs of the e-discovery process. Partner products that use FAST ESP as the core search engine for all EDRM processing deliver the ability to quickly and comprehensively search and capture necessary content across the enterprise. With FAST ESP, many partners deliver solution components that provide both the granularity and the extensiveness that are required for successful e-discovery.

## Summary

E-discovery is a burden that nearly every organization will eventually bear. What is often not clear is just how much of a burden it may be. From discovery expenses to operational impacts to court rulings, litigation is a costly event. A simple request for copies of files or e-mail messages can quickly identify an organization's lack of knowledge regarding what or where electronically stored information may exist. This alone is exposure, and therefore risk. And yet, when you find out what you do not know, that is already too late. Having proactive information management and records policies is the key to reducing an organization's risk of litigation, with the added benefit of reducing an organization's overall technology investments.

Beyond the financial burden of litigation, the lack of a well-designed records management program and effective retention practices will put any organization at risk. In fact, the process for identifying and discovering electronically stored information within an organization can be a well-defined, well-managed, and well-controlled activity. Proper tools, policies, and procedures can significantly reduce the fear of litigation. What might be discovered within an organization's content may just be the defense's crucial evidence of guilt, but that doesn't need to be the case. Through the use of the Microsoft Connected E-Discovery Framework, every organization can gain visibility into the quantity and types of information that are being maintained within the organization. This visibility enables the implementation of key policies and practices that can proactively reduce risk, manage content, and enhance visibility across the organization. The Microsoft Connected E-Discovery Framework utilizes the technology tools that exist in many organizations today, thus maximizing the original investment and reducing additional acquisition costs. E-discovery readiness requires strong information management procedures. The Microsoft Connected E-Discovery Framework equips organizations with the knowledge and the tools that enable them to be litigation-ready.

Portions of this white paper were written by Bruce Radke and Jeff Davis of Vedder Price P.C. This white paper is intended to keep interested parties generally informed on e-discovery issues and developments. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this newsletter may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome. Reproduction of these sections is permissible with credit to Vedder Price P.C.

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