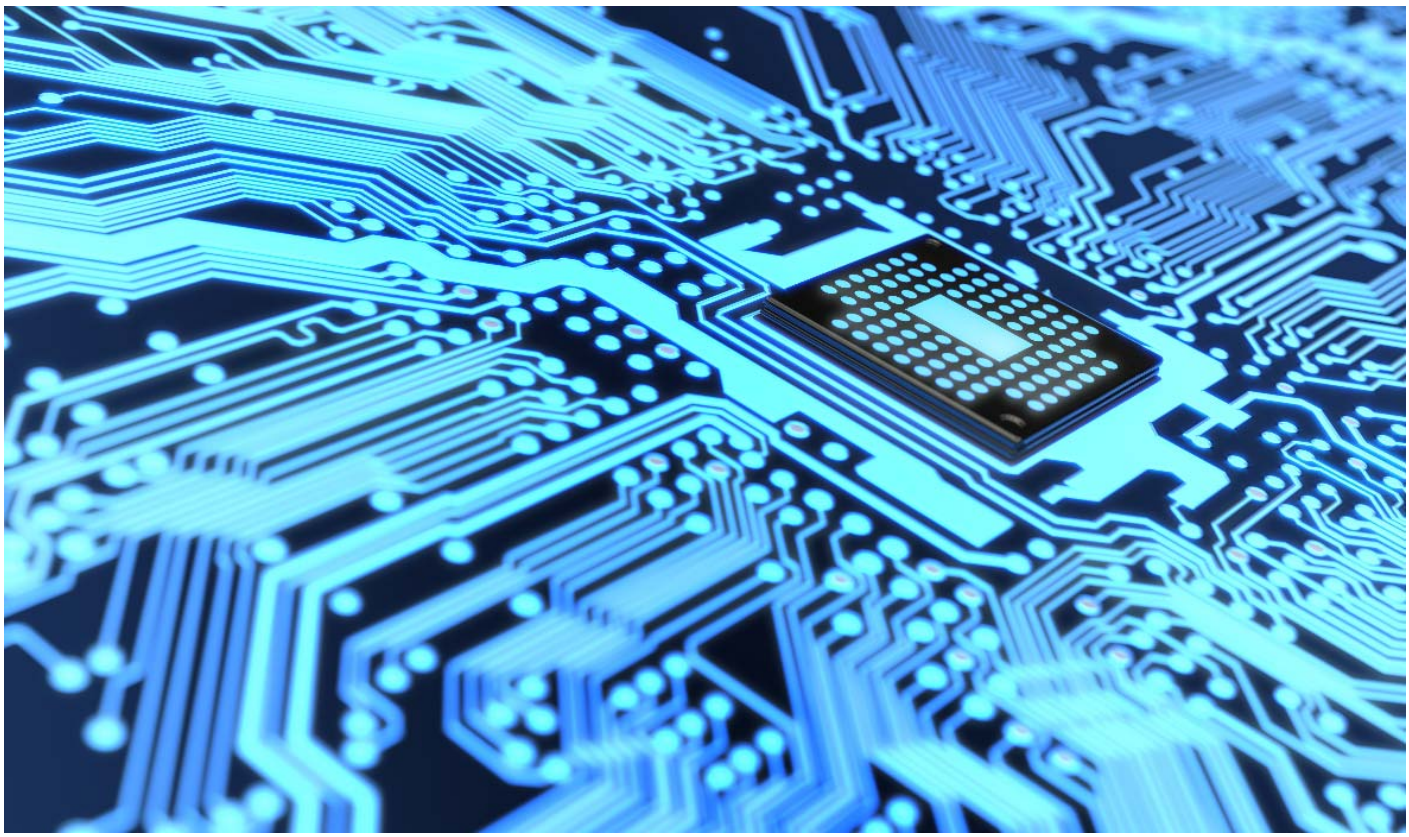


The future of eDiscovery: The vital role of EDRM

Discovery relating to legal or investigation matters can challenge almost any organization's business processes, especially in a world increasingly dominated by digital information and communications technologies. Issues can include how to quantify the data that may be relevant to a discovery matter, how to manage discovery-associated costs, and how to create a holistic view of the data lifecycle of the company. Companies often wrestle to bring clarity to data in all of its forms and manage it across geographical and jurisdictional boundaries, whether it is moving the data virtually or in a physical form.

The complexity of these discovery challenges can grow when data moves around the globe. Special compliance and operational issues arise when data has to be moved physically on hard drives and other storage devices. The data may have to be collected from locations around the world, some in which the discovery environment is less than ideal. Privacy and protection laws in the location where collection will occur may prevent movement of the data. Transferring physical data between jurisdictions within a country can also raise issues.

The physical operation of moving storage devices is also potentially troublesome for technical, custody, and security reasons. Hard drives have been tossed in overhead bins and rental car backseats and ended up damaged. Drives put in checked luggage are at the mercy of baggage handlers, and for the duration of the flight under a broken chain of custody.

Emerging technologies expand the challenges

New technologies further increase the complexity of quantifying and collecting data for discovery. eDiscovery, which started with unstructured data in emails, now encompasses diverse devices, data sources, and technologies. Potentially disruptive future change agents in eDiscovery include:

Artificial intelligence (AI). AI-driven technology-assisted review is already helping identify relevant eDiscovery information. Could AI end up writing the emails rather than people?

Blockchain. Applying this distributed database technology to eDiscovery could be extremely complex. At the same time, blockchain's inherent characteristics could make it a key technology that enhances the discovery process.

Cloud services. Exactly where geographically is cloud data stored? A lack of proper controls and custody of eDiscovery data in the cloud could prove detrimental during a discovery process.

The Internet of Things. Biowear such as smart watches and the growing array of smart appliances all collect data. How long until these devices are routinely swept into eDiscovery collection activities? Creating what privacy considerations?

Crowdsourcing. What are the legal implications for the company, and the crowd, in a discovery order? How could discoverable crowd members be tracked down efficiently?

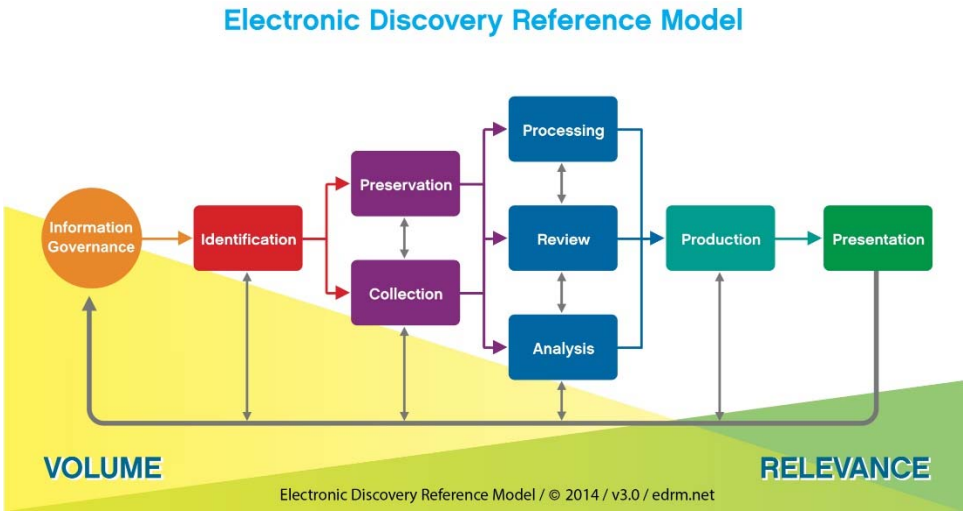
All of these technologies are transforming the world's social fabric. How will they impact discovery, and how can companies prepare now for a future that potentially changes so quickly?

The vital role of EDRM

Organizations typically work with their external counsel and service providers to address the complex, time-consuming, and costly eDiscovery process. Even large-scale projects are often self-contained efforts, with organizational resources, counsel, and service providers coalescing around a specific matter.

Since 2005, the Electronic Discovery Reference Model (EDRM) has helped guide organizations through the discovery process for electronically stored documentation that may be required in an investigation or litigation (Figure 1). Created and maintained by a community of eDiscovery and legal professionals, the EDRM helps organizations select eDiscovery software tools, determine the skillsets needed to operate those tools, and design documentation that maps the process from end-to-end for legal purposes.

Figure 1. Electronic Discovery Reference Model

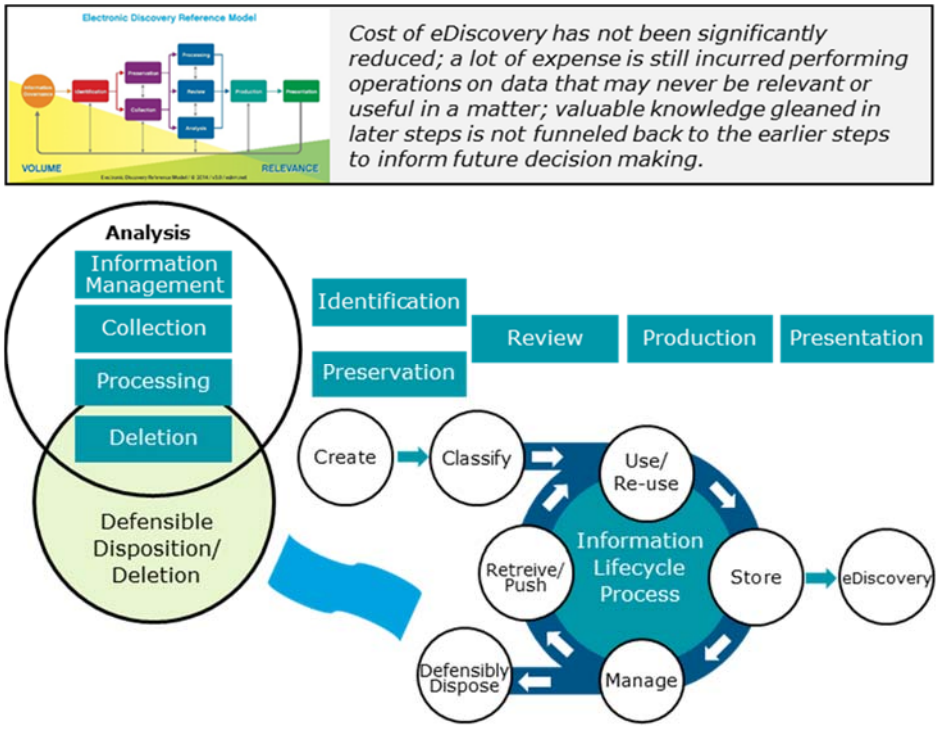


While the EDRM continues to provide a valuable framework for eDiscovery activities occurring *outside* an organization's enterprise architecture, the growing demands, and stakes, of discovery are compelling many companies to take more control *internally*, as well. Expanding data volumes, file types, and storage options are increasing the challenge of identifying, preserving, and collecting data from the breadth of sources that might reasonably be deemed under a company's control. Also to be considered are regulators' and judges' expectations for the quality and type of data presented in response to inquiries and in civil litigation. This is one reason companies are seeing the need to transform eDiscovery from an island of activity into an integrated, end-to-end business process (see *Global eDiscovery: An integrated, end-to-end approach*).

Integrating the EDRM *internally*

Can the EDRM be seamlessly integrated into a company's business architecture, rather than remain a standalone tool? Figure 2 envisions an evolved eDiscovery model in which data collection and processing are brought forward in the EDRM lifecycle to coexist with information management. Collection and processing are defined processes today. However, in the future, advanced analytics and other technologies could enable eDiscovery to reach into an organization like a living organism and undertake collection and processing instantaneously with transparency.

Figure 2. EDRM evolution



The evolved EDRM model frontloads decision-making into the information management process, taking stock of data at its time of creation, cataloging it, and associating it with its metadata. The information is at hand and can be tapped effectively for collection and processing into the discovery business-as-usual model.

Retention of records that are not relevant and should have been destroyed has caused increases in cost and risk profile for many organizations facing a discovery action. The analysis phase of the evolved model addresses the key issue of defensible deletion, or defensible disposition, of data. While defensible deletion was not considered as part of the original EDRM model, it is now at the forefront of information management and a significant factor in the discovery lifecycle.

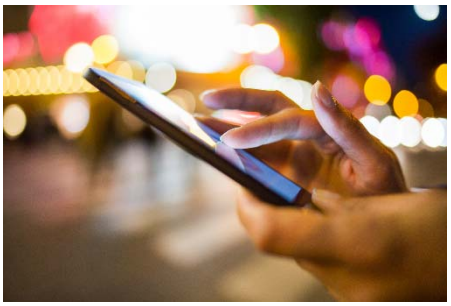
Knowing what can and cannot be deleted across a global company that has litigation hold orders from numerous regulatory or litigation matters creates a maze of complexity with overlapping data sources and timelines. Adding to the complexity, legacy platforms and past employees are among the challenging issues that make the task of mapping and defining litigation holds even more onerous. Before any information can be defensibly deleted or disposed, the data universe relating to the litigation hold needs to be clear and concise.

The process to reach this state follows along the lines of normal discovery in that the process must be defensible. Including defensible deletion in the evolved EDRM makes sense as it is then part of the normal data lifecycle of a company. In such a scenario, data could be tracked through its lifecycle using advanced analytic tools that focus on not only the content of the data, but the

context of the information and the metadata therein. And at the data's end of life, it is deleted with a rigorous, defensible audit trail. No longer is the company overwhelmed with the complexity of litigation hold orders or understanding what, where, how, and when data can be disposed.

eDiscovery adapts to the digital era

The digital era is unfolding, and it is likely to offer many more exciting and beneficial advances in virtually all areas of life. Yet as existing digital technologies mature and emerging technologies go mainstream, they also present challenges – for example, making the job of eDiscovery increasingly complex and demanding. Certainly, technology will play a role in taming the discovery landscape, but technology alone isn't the solution. An integrated, end-to-end discovery operating model is another key element. So is an evolved EDRM that incorporates data collection and processing into an organization's broader data management processes. Such an approach frontloads those activities so data is categorized, stored, and eventually disposed of in a structured, legally defensible way. This approach provides a solid framework for managing an organization's eDiscovery processes even as the world around that organization rapidly changes.



Contact us:

Andy Ruckman
Principal
Deloitte Discovery
Deloitte Transactions and Business Analytics LLP
Tel: +1 202 370 2270
Email: aruckman@deloitte.com