

eDiscovery: What's it all about?



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The puzzle . . .

- megabytes, gigabytes, terabytes . . .
 - ✓ explosive increase in amount of data!
- I thought email was indestructible . . .
 - ✓ how to be guilty of spoliation when edata never dies!?!?
- evolving technologies . . .
 - ✓ remember the Commodore 64!
- discovery rules . . .
 - ✓ FRCP 34 doesn't even mention .tiffs !?!?

A 3D puzzle with glowing blue pieces against a dark blue background. The puzzle is composed of several interlocking pieces, with some pieces being more prominent than others. The lighting creates a strong glow around the pieces, giving them a sense of depth and movement. The overall aesthetic is futuristic and high-tech.

Defining eDiscovery

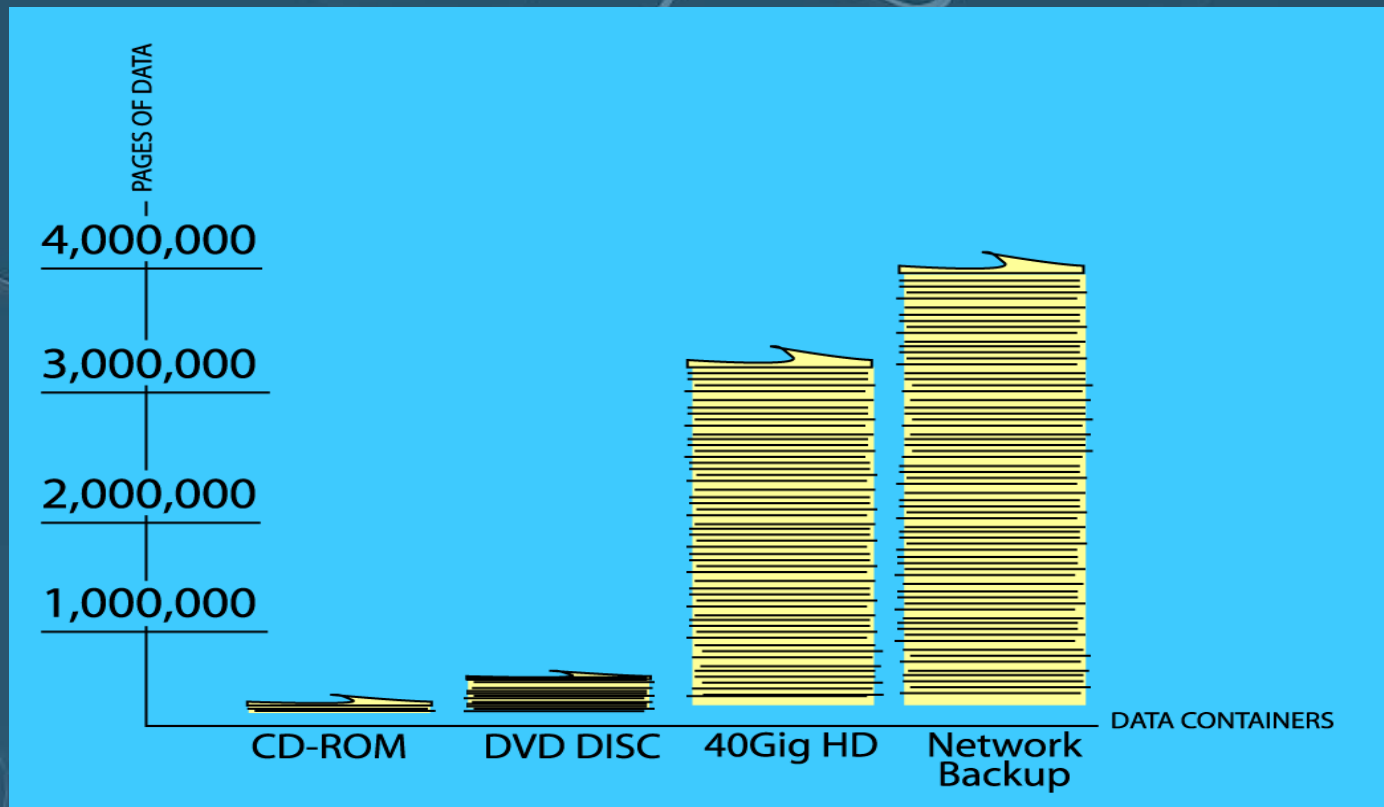


eDiscovery can involve production of electronic files and data compilations of all sorts, including:

- email and attachments
- text files, such as Word, Excel, Powerpoint, Access
- transmissions and data stored on blackberries and PDAs
- backup tapes
- proprietary applications and databases
- internet cache files, cookies, favorites
- instant and text messages
- voicemail
- videotape
- data stored on cellphones



eDiscovery Data Measurements





The eDiscovery problem:

- eDiscovery, *by its very nature*, is easier to get wrong than it is to get right
- Review of this volume of data is beyond human capability and growing exponentially
- Cost and disruption to normal business operations can be enormous
- **BUT Counsel has affirmative obligations beyond issuing a litigation hold**

A 3D puzzle of a globe, with several pieces highlighted in a bright blue glow. The puzzle is set against a dark blue background with abstract, glowing blue shapes. The text "The Current State of the Law" is overlaid on the puzzle.

The Current State of the Law



Recent Cases

- **The *Zubulake* saga:**
 - ✓ failure to preserve backup tapes
 - ✓ adverse inference instruction
 - ✓ \$29M verdict (\$20M in punitives)
- **Morgan Stanley**
 - ✓ failure to preserve and produce from backup tapes
 - ✓ burden of proof shifted
 - ✓ counsel sanctioned and fired
 - ✓ \$1.4 BILLION verdict



Recent Cases

- **Williams v. Sprint**
 - ✓ Form of production
 - ✓ "Ordinary course of business"
 - ✓ Metadata
- **Hopson v. City of Baltimore**
 - ✓ Proposed Amendments to F.R.C.P.
 - ✓ Inadvertant Disclosure
 - ✓ Clawback



Solving the puzzle . . .

- **Look for guidance from:**
 - ✓ Key electronic discovery rulings
 - ✓ Proposed amendments to FRCP
 - ✓ Sedona Principles
 - ✓ Best Practices



Key Pieces to the eDiscovery Puzzle

- Process Engineering
- Record Retention
 - ✓ Ordinary Course Record Retention Policy that *includes electronic data*
- Litigation Hold Notices
- Project Management
- Best Practices



Discovery Management Plan Best Practices

- ↓ Define
- ↓ Identify
- ↓ Preserve
- ↓ Interview
- ↓ Harvest
- ↓ Process
- ↓ Review
- ↓ Produce



Discovery Management Plan Best Practices

- **Define**
 - ✓ scope of requests
- **Identify**
 - ✓ location(s)
 - ✓ custodians



Discovery Management Plan Best Practices

- **Preserve**
 - ✓ litigation hold notice
 - ✓ disable or modify retention practices
- **Interview**
 - ✓ IT Personnel
 - ✓ Key Players



Discovery Management Plan Best Practices

- **Harvest**

- ✓ Emails and attachments, electronic documents, spreadsheets, presentations, databases, blackberries, pdas, home computers, backup tapes, internet cache files, cookies, favorites. . .

- **Process**

- ✓ Deduplication
- ✓ Chronological Limits
- ✓ Linguistic Tools



Discovery Management Plan Best Practices

- **Review**

- ✓ Native v. .tiff et al.
- ✓ Review Platform
- ✓ Review Team
- ✓ Quality Control

- **Produce**

- ✓ Format - paper or plastic?
- ✓ Accessories - produce OCR, coding?

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