

eDISCOVERY & DIGITAL FORENSICS



GUIDE FOR LITIGATION

LEGAL EAGLE PROVIDES PRACTICAL GUIDANCE TO ATTORNEYS AND PARALEGALS IN eDISCOVERY TECHNOLOGY AND LITIGATION SUPPORT.

Legal Eagle equips you with a plan to identify, preserve, collect, process, and ultimately review and produce requested documents in discovery or an investigation. We have strong relationships with software companies Cicayda Reprise, iConect, CloudNine and ESI Analyst, which provide cutting edge litigation review platforms.

If you are looking for answers to commonly asked questions about eDiscovery and computer forensics, or just wondering how they are used during litigation, check out the Table of Contents to find the answers.

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1. AREN'T COMPUTER FORENSICS AND eDISCOVERY THE SAME THING?

eDiscovery is the process of identifying, collecting, analyzing, and producing electronically stored information, or ESI, in the event of litigation.

To put it simply, eDiscovery involves locating electronically stored information that may be relevant during criminal or civil litigation proceedings, collecting and preserving it, and reviewing and analyzing to ensure all related data is made available for the parties involved as required by law. eDiscovery review platforms like CloudNine and Relativity can help consolidate this process and cut down on time and costs.

During litigation, every piece of data counts, and so does every minute. eDiscovery software can help you make the most of that time to ensure your data is reviewed efficiently. Unfortunately, there are many misconceptions around eDiscovery, leading many organizations to be unprepared, scrambling to produce essential information when faced with litigation.

Computer forensics can work alongside eDiscovery to help build your case during litigation. In a world where an internet connection has rapidly become a necessity for doing business, record-keeping, and documentation are likely done through Word docs, email, text messages, and other means of digital storage and information-sharing.

Legal Eagle is licensed by the State of South Carolina for the collection and analysis of electronically stored information, collected from mobile devices, social media posts, laptops, and other devices.

2. WHAT IS THE ELECTRONIC DISCOVERY REFERENCE MODEL, OR EDRM?

The EDRM is considered the definitive guide to the recovery and discovery of electronically-stored information, or ESI.

Initially developed by Tom Gelbmann and George Socha in 2005, EDRM is used as the standard for ethical and efficient discovery and recovery of digital data. You can find a complete, detailed guide to utilizing the EDRM [here on the Duke Law's EDRM site](#). eDiscovery providers like Legal Eagle use the nine stages of the EDRM to ensure electronic data is handled in an ethical and efficient manner.

Whether you already have an eDiscovery process in place, or you're learning about eDiscovery for the first time, the nine stages of the EDRM can help you to see whether or not your current information governance policies will allow you to react quickly and produce relevant data in the event of litigation.

THE NINE STAGES OF EDRM

Stage 1: Information Governance

Stage 2: Identification

Stage 3: Preservation

Stage 4: Collection

Stage 5: Processing

Stage 6: Early Case Assessment

Stage 7: Review

Stage 8: Production

Stage 9: Presentation

2.1. EDRM, STAGE ONE: INFORMATION GOVERNANCE

Prevent eDiscovery Problems Before They Occur

Have you ever heard that the best way to solve a problem is by taking steps to prevent it from ever happening? That idea is at the root of the Information Governance stage of the EDRM.

Information governance balances the use and security of information. Information governance helps with legal compliance, operational transparency, and reducing expenditures associated with legal discovery. An organization can establish a consistent and logical framework for employees to handle data through their information governance policies and procedures. These policies guide proper behavior regarding how organizations and their employees handle electronically stored information

Even accidental deletion or damage to ESI or parent devices could lead to loss of evidence and consequences or punitive measures associated with the spoliation, or loss/destruction of evidence.

The best way to ensure that your electronically stored information is protected against alteration or even destruction is by putting together a strategy for information governance. While we generally recommend partnering with a business that specializes in secure data management, there is one step you can take internally right away — implementing a records retention policy.

2.2. EDRM, STAGE TWO: IDENTIFICATION

Identify sources of ESI and what part they may play within potential litigation.

The second stage of the EDRM is called Identification, and it mostly amounts to putting together answers to a series of questions on where your electronically stored information is located, and how that information could become relevant to a potential case or investigation. A few questions you might need to answer during the Identification stage include:

- Which individuals could have relevant information stored on their business or personal devices?
- Does the matter involve text messages sent or received via mobile phone?
- How many of those messages are relevant to the investigation?
- Are there photos located on a laptop or sent via email that are relevant to the investigation?
- Over what length of time were these messages or photos sent between devices?
- How strongly do these messages or photos support your side of the story?
- Will utilizing these messages during mediation or trial presentation provide enough support to your case to be worth preparing their context or dealing with technical details when presenting before a judge or jury?
- Is relevant information located on local servers or stored in the cloud?
- What is the state of your corporate data storage?
- Can you quickly locate and produce electronic data if necessary?

With these answers in-hand, you'll be able to develop a stronger eDiscovery strategy, and your eDiscovery specialist will be better able to work quickly and efficiently. Legal Eagle, can consult with your law firm, client or in-house counsel to ensure the project is within compliance of standard workflow for managing eDiscovery.

2.3. EDRM, STAGE THREE: PRESERVATION

Proper preservation of data is the best way to ensure you will not face potential problems with deletion or data loss.

One unfortunate problem with modern-day life is that electronic information is all too often treated as disposable or unimportant when a digitally-connected world makes it more essential to preserve electronic information than ever.

Purposeful or accidental deletion or even physical damage to the device ESI is located on, could make it difficult or even impossible to recover necessary documentation and evidence in the event of litigation.

Careful, purposeful preservation of all electronically stored information, no matter where it is physically located, is an essential duty for any organization when litigation is reasonably anticipated. At Legal Eagle, we use Cellebrite and PinPoint Labs to preserve and collect ESI. Contact us for more information.

The EDRM's Preservation stage is all about making a plan for careful preservation of electronic evidence. Whether that looks like internal storage, secure data archiving offsite, or partnering with a business that specializes in data/document archiving, timely preparation now can make all the difference in the event of litigation.

2.4. EDRM, STAGE FOUR: COLLECTION

The Collection stage involves gathering together your ESI for further review and contextual analysis.

The fourth stage of EDRM, Collection, is precisely what it sounds like – collecting all the electronically-stored information that has been located and preserved for a more in-depth review.

Once your data has been identified and securely preserved, it needs to be collected quickly, efficiently, and in a legally defensible manner. In most cases, this includes not only the content of data but also its metadata.

Digital Forensics plays a vital part in litigation. Our personal and professional daily-lives are conducted utilizing many electronic devices. If a client has data on a mobile device, it is imperative to preserve the data as quickly as possible. While the information may not play-out as important evidence in litigation – consider the alternatives including, spoliation of the evidence. Legal Eagle provides resources to collect and analyze digital devices in a forensically sound manner.

Keys to the successful collection of electronically stored information include:

- Establish a steering committee to lead the project.
- Develop a strategy.
- Determine a collection method and execute the plan.
- Document the process and results.
- Emphasize quality control & validate all data.

Proper collection and organization of data are essential, and no data is more often overlooked than metadata. Often referred to as “data about data,” metadata is information not always directly visible, such as date created, date modified, original file path, and more.

2.5. EDRM, STAGE FIVE: PROCESS

What information does your ESI contain, and is it relevant?

When processing ESI, your eDiscovery service provider will likely ask you a question that seems simple, but could have a very complicated answer: “What exactly does your electronically-stored information contain, and is it relevant to this specific potential litigation?”

In an organization that has effectively practiced responsible information governance, has a clear records retention policy in place, and has acted to organize the collection of ESI, you likely already know the answer.

The Process stage is focused heavily on discernment. You’ll want to record item-level metadata as it existed before processing, segment the information necessary for review, and cull and filter irrelevant data using data reduction best practices.

There are risks involved in taking this task on yourself, including culling or filtering data that turns out to be relevant later on. We recommend working with an experienced eDiscovery provider who can help you to discern which information needs to be processed and which information is unnecessary or needlessly duplicated.

While processing ESI can involve significant investment in both time and financial resources, there are ways to reduce eDiscovery costs.

2.6. EDRM, STAGE SIX: EARLY CASE ASSESSMENT

While processing ESI can involve significant investment in both time and financial resources, there are ways to reduce eDiscovery costs.

Early Case Assessment (ECA) allow legal teams to review data earlier to help determine the estimated cost and risk of the case. This early evaluation is a competitive advantage for legal teams because it will allow for the development of a litigation strategy and discovery plan sooner in the litigation process.

Additionally, legal teams are provided with up to a 90-day window to analyze their data in ECA tools. This provides ample time to dissect data without the pressure of monthly hosting charges. Ultimately, less data goes to review which reduces the long-term hosting charges.

This is where a reputable, experienced eDiscovery services provider utilizing quality eDiscovery software comes in. Legal Eagle works with CloudNine, iConect, and Relativity. Each tool has its own advantages and Legal Eagle's staff is there to guide toward the right tool for the size of data in your case, ultimately saving you money and time.



2.7. EDRM, STAGE SEVEN: REVIEW & TAR

What information is relevant and what may be privileged?

For many organizations, such as law firms, corporations, or even government departments, certain documents are considered “privileged,” and therefore may be safely withheld during litigation.

The Review stage of the EDRM is the perfect time for your organization and legal team to work together to understand the exact facts of your specific case, develop a review strategy moving forward, and map out which information falls under a “privileged” category and which does not. During the Review phase, the following steps will take place:

- Your organization and associated legal team will come to an understanding as to the scope of the review
- Supervision will ensure that best practices are followed
- Your team will develop procedures to guide reviewers
- You’ll need to choose the appropriate eDiscovery platform or eDiscovery service provider for review

Another advantage of using an eDiscovery platform for review of ESI is **Technology Assisted Review (TAR)**. TAR is the process of having eDiscovery software classify documents based on input from subject matter expert reviewers to speed up the organization and prioritization of the document collection. The software will tag the total documents based on what it learned from the samples produced by the expert.

The newest version of TAR is an active learning process known as TAR 2.0. This process is a form of supervised machine learning that uses search engine and relevance rankings to select documents for review and tagging to predict tags for other documents in the database. The more documents you review, the more accurate the results. This process will continue until relevant documents are no longer found.

Following these steps will help all privileged information to be correctly identified and secured, as well as giving everyone involved a better understanding of which relevant data needs further review.

2.8. EDRM, STAGE EIGHT: PRODUCTION

Increase efficiency and cut costs by utilizing the most appropriate format.

The Production stage of the EDRM involves some of the most common inconsistencies in our industry.

- Is image format always required, or can other formats be used to reduce time and financial costs?
- Is a “meet and confer” session worthwhile, or can it be safely skipped?

Individuals or businesses often utilize different methods of data preservation, and this can be problematic when you enter the Production stage of the EDRM. While much of your ESI may be located in its original, or native, format, you may have other documents (such as emails) that have been printed onto physical paper, then scanned back into your computer as a PDF.

Historically, attorneys have relied heavily on physical paper copies or these Adobe PDF files for production, but this isn't always necessary. Native or near-native production (i.e., producing the information in its original format, or in one that is reasonably usable by the courts) can be far more efficient, and less costly, than traditional image format production.

Simply put, the reality of changing technology has provided new challenges for attorneys and other organizations when it comes to data production. Courts have responded with decisions that suggest multiple file-formats are acceptable and commonly used during litigation.

2.9. EDRM, STAGE NINE: PRESENTATION

Effective trial presentation could make all the difference for your case.

We've all heard of times when the production of certain electronic information, such as crucial emails or text messages, have led to breathtaking turns in the trajectory of a case. What we hear about less often is something that occurs more commonly — mishandling of electronic information harming an organization's ability to defend themselves and ensure their side of the story is heard.

EDRM's trial presentation guidelines include the following recommendations:

- Develop a trial presentation strategy focused on proof of credibility.
- Visit the courtroom you will be presenting in beforehand, if at all possible, to get a closer look at the organization of the courtroom and what types of electronic equipment they have on hand.
- Prepare and test exhibits before trial.
- Present exhibits utilizing your own equipment (or equipment shared with the other party's counsel) if needed.
- Have a plan for storing and maintaining these exhibits after the initial trial concludes, in case they are needed again.

The EDRM's guidelines on trial presentation are considered more helpful and informative than set in stone, as every criminal or civil case will be unique and present its own challenges.

3. IS eDISCOVERY REALLY THAT IMPORTANT FOR LITIGATION?

Not only is it essential to meet legal data production requirements, but eDiscovery can also help you connect with the judge or jury.

The truth is, modern life is very visually oriented. Research has shown that about 65% of people are “visual learners,” which means that nearly two-thirds of any given jury pool will respond more favorably to a visual trial presentation strategy than one that relies heavily on text or speech.

With an experienced eDiscovery provider who helps your legal team with the trial presentation, you can not only have the relevant data available to bolster your case but also present that information in a visually engaging format that helps the jury to understand what you’re trying to say.

4. WHERE CAN I FIND eDISCOVERY SERVICES IN SOUTH CAROLINA?

Legal Eagle provides practical guidance to attorneys and paralegals in eDiscovery technology and litigation support.

We equip you with a plan to identify, preserve, collect, process, and ultimately review and produce responsive documents in discovery or an investigation. We have strong relationships with software companies Relativity and CloudNine, which provide cutting edge litigation review platforms

Legal Eagle is a multi-faceted legal service provider that has been serving South Carolina, Western North Carolina and the surrounding areas for over 25 years. As a legal service provider we provide eDiscovery, computer forensics, trial presentations, court reporting and much more. Through our growth we have remained dedicated to relationships by being an extension of our clients’ teams.



LET'S TALK

UPSTATE

Greenville - Spartanburg -
Anderson - Asheville

107 LeGrand Blvd.
Greenville, SC 29607
(864) 467-1373
greenville@legaleagleinc.com

MIDLANDS

Columbia - Lexington -
Sumter - Orangeburg

3710 Landmark Drive
Columbia, SC 29204
(803) 205-0237
columbia@legaleagleinc.com

LOW COUNTRY

Charleston - Beaufort -
Summerville - Savannah

212 Huger Street
Charleston, SC 29403
(843) 853-2888
charleston@legaleagleinc.com