WATCHING THE TIDE COME IN – UPGRADE TO YOUR OCEAN VIEW ROOM

E-Discovery:
THE KMK APPROACH

INFORMATION GOVERNANCE & E-DISCOVERY WORKFLOWS BEFORE AND AFTER MS OFFICE 365

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Current Environment – Cause & Effect

- **Cause**: Exponential growth of Electronically Stored Information (ESI), doubling-tripling every two years, with estimates of 1.8 Zettabytes (1.8 trillion Gigabytes) of data, where 85% lives in private business domains subject to litigation

- **Effect**: Savvy companies are taking proactive steps to:
  - Reduce volume of ESI flowing to outside counsel and third party technology vendors via
    - Bringing select e-discovery technology capabilities in-house
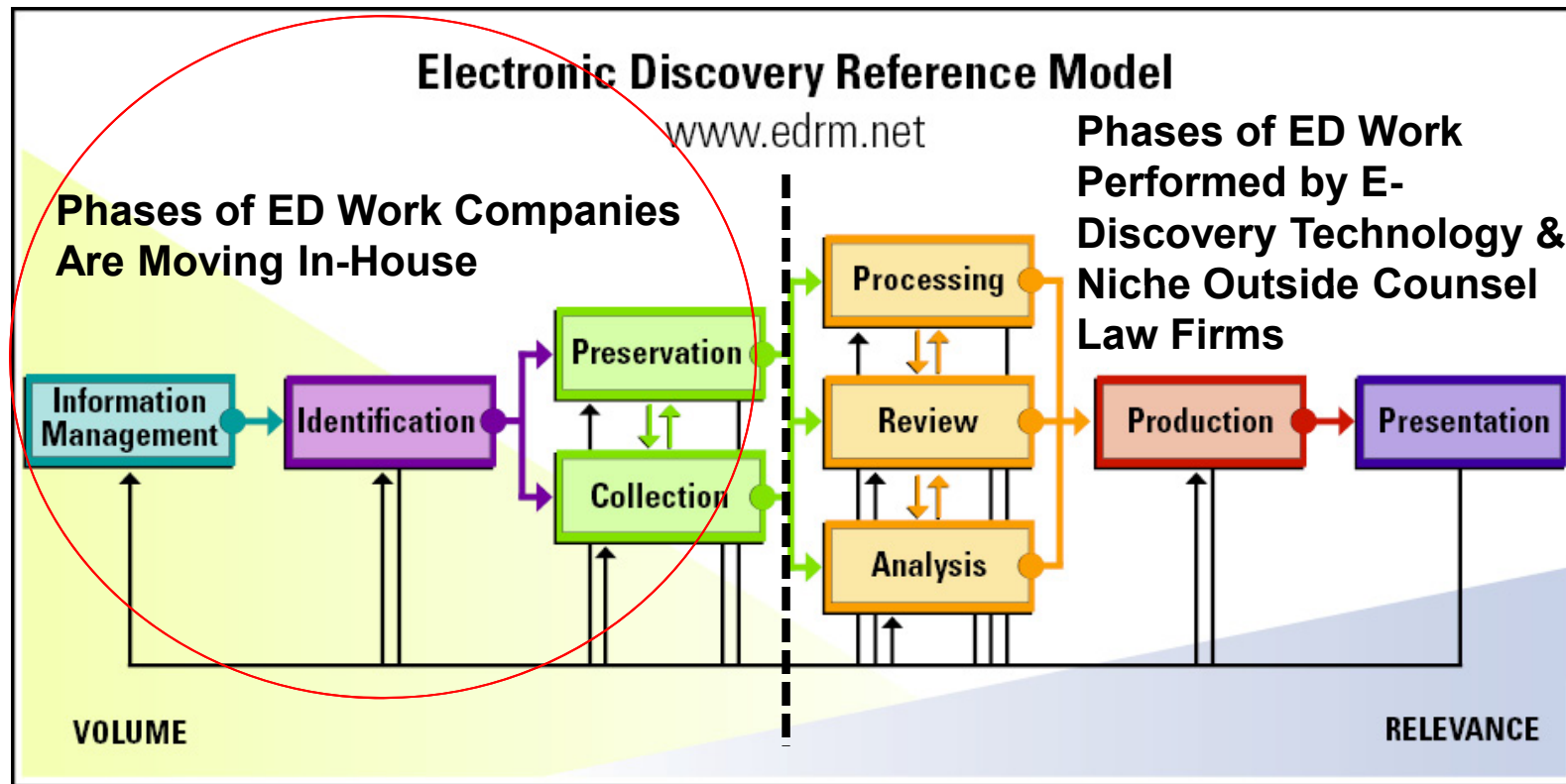   - Careful, comprehensive litigation hold coordination and management

Source: *E-Discovery Special Report: The Rising Tide of Nonlinear Review*, Hudson Legal Blog, February 29, 2012; Excerpt from The National Law Journal; International Data Corporation, "*Extracting Value from Chaos*", by J. Gantz and D. Reinsel, White Paper, June 2011.

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Current Environment – Cause & Effect

- **Cause**: Disproportionately high cost of document review still largest source of fiscal pain in e-discovery: Rand Corporation January 2012 study found document review comprised 73% of total e-discovery costs borne by litigants

- **Effect**: Savvy companies are taking proactive steps to reduce costs by:
  - Narrow the list of technology vendors and outside counsel firms for greater predictability, accountability, cost-containment and development of "consistent, repeatable processes"
  - Consider strategic use of Early Case Assessment (ECA), Technology Assisted Review (TAR) / Predictive Coding, Sampling and Prioritized Automated Electronic Review Protocols, Technologies and Strategies

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EDRM Lifecycle for Electronically Stored Information (ESI) / E-Discovery Data

Electronic Discovery Reference Model
www.edrm.net

Phases of ED Work Companies Are Moving In-House

Phases of ED Work Performed by E-Discovery Technology & Niche Outside Counsel Law Firms

Information Management → Identification → Preservation / Collection → Processing / Review / Analysis → Production → Presentation

VOLUME — RELEVANCE

New View: An opportunity matrix…

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Information Management & Identification Phases

- **DEFINITION: Identification**: Locating potential sources of ESI & determining scope, breadth & depth. Also referred to as: Data-Mapping, ESI Data Sourcing, ESI Data Road Mapping
  - Hybrid process between In-House Counsel, Information Technology, Information Security, Risk Management, Internal Audit, Operations and/or Compliance , Outside Counsel, ED/IG Consultants
  - *Problem Statement*: Many early Records Information Management (RIM) policies crafted within companies are largely outdated and/or not enforceable from a human/technology resources, procedural or volume/complexity standpoint
    - *Solution*: New attention on Information Governance (IG) expanded to c-suite and business unit stakeholders, combined with universal need for enhanced cybersecurity efforts are leading change management within businesses

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Information Management & Identification Phases – *Before…*

Information Management & Identification Phases – *After…*

- An opportunity to build, administer and house related policies, procedures and information assets (Big Data) in a single, secure, cost-effective database repository

- <u>Why Focus on O365</u>: Other robust e-mail archival , Cloud storage and DMS platforms available offer comparable features/functionalities but with limited integration opportunities/connectors simply because ***only MS Office 365 is specifically designed for the dominant corporate e-mail management service offering – MS Exchange Server(s)***

- MS Office 365 Security & Compliance Modules includes these features and functionalities:
  <u>Information Security</u>
  - Data Loss Prevention (Exchange)
  - Encryption (Exchange)
  - Information Rights Management (IRM) (Exchange, SharePoint)
  - Auditing (All Office 365 components)
  - Mobile Device Management (MDM) (Exchange)
  - Transport Rules (Exchange)

  <u>Retention & Disposition</u>
  - In-Place Archive (Exchange)
  - Document deletion policies (SharePoint)
  - Information Management Policies (SharePoint)
  - Messaging Records Management (MRM) (Exchange)
  - Records Management (SharePoint Records Center) (SharePoint)
  - Site Closure Policies (SharePoint)

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Preservation Phase

- **DEFINITION: Preservation:** Ensuring that ESI potentially subject of discovery in a to a litigation matter or regulatory investigation is protected against inappropriate alteration (spoliation) or destruction.

- Protecting metadata against spoliation in a 'forensically sound manner' to mitigate risk of inadmissibility, e-discovery disputes and spoliation sanctions

- 2015 FRCP E-Discovery Amendments still maintain early preservation trigger, but, significantly narrow overall scope through use of Reasonableness and Proportionality rules and standards

- Preservation is a two-part process:

  – Legal compliance and issuance of litigation hold to affected custodians and third parties and notice, disclosure , to adverse parties

  – Technical compliance and execution of litigation hold against data subject to scope of hold

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Preservation Phase – *Before…*

Preservation Phase – *After…*

Collection Phase

- **DEFINITION: Collection:** Gathering ESI in its native file format from original ESI sources for further use in the e-discovery process (i.e. for performing electronic document review and production of documents to opposing party, court and/or government agency that requested or subpoenaed it).

- Strategic prioritized collection strategies based on enterprise level Information Management Road Map and case-by-case litigation/investigation matter ESI Data Maps

- Self-collection methodology generally considered legally defensible now assuming adherence to:
  - Consistent repeatable process
  - Reasonable and proportional to the value and issues at stake in the case
  - Clear audit trail reporting of all collection actions, chain of custody and related legal and technical procedures

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Collection Phase – *Before…*

Collection Phase – *After…*

Analysis Phase (Pre- and Post- Processing) – *After…*

- **DEFINITION: Data Mining & Analysis via Early Case Assessment (ECA) Technology in 2010:** Methodologies and technology used to analyze various ESI data stores, typically unstructured ESI, by applying math and language algorithms to the data and objectively reporting the resulting statistics, patterns and relationships surrounding the ESI in question, in order to more accurately determine scope and relevancy assessments

  - Concept clustering

  - Email threading

  - Vector space analysis

  - Probabilistic latent semantic analysis (PLSA)

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EDRM Lifecycle for Electronically Stored Information (ESI) / E-Discovery Data

Right Side Model Phases
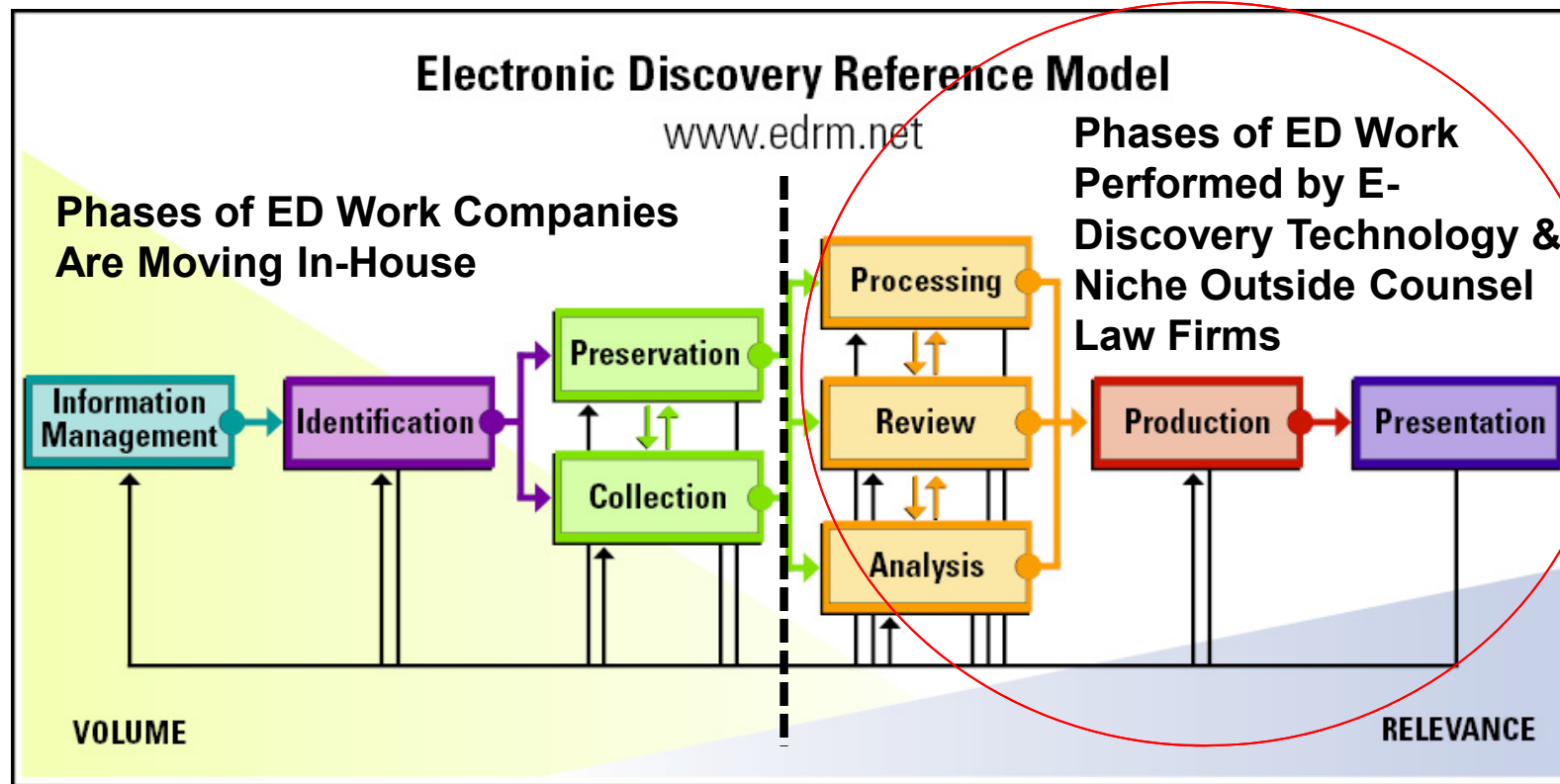
Using Information Governance & MS O365 to Proactively Stem the Tide of Big Data Explosion, and, The Internet of Things – Critical Considerations

- *High Level*: IT/IS/Risk/Counsel need to demonstrate and translate larger **enterprise-wide value** from migration project to c-suite and business unit managers

  - *The Numbers*: Making effective business case study evaluations : current process vs. envisioned future process (i.e. growing value of information asset, reducing storage/backup/security spend through defensible deletion projects, building a lifetime ESI Data Map to be recycled in perpetuity)

  - *Risk Tolerance Frameworks*: Determining and applying Risk Management principles to IG and Litigation Readiness disciplines

  - *Project Stakeholder Agreement*: Careful project priorities and balancing between cost savings opportunities vs. compliance risk vs. lost opportunity cost

  - *Detailed Analysis*: Using your ESI Data Map to make strategic defensible deletion and future migration decisions prior to migration from old e-mail platform to new MS O365 or similar platform

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