

How E-Discovery is changing the face of today's litigation world

The IT revolution has proven to be a double edged sword for litigators. *The Economist* recently reported that “[a] deluge of electronic information may overwhelm American civil justice.” With the use of emails and corporate databases being ubiquitous, most of the information which litigators need gets recorded on electronic media. This is great for litigators because what they need is out there somewhere. On the flip side, however, due to the complexity in retrieving and analyzing that electronic information, the discovery process has become more unpredictable and costlier than ever.

What does this mean for today's litigator? The vastness and complexity of electronically stored information poses a material risk of overlooking critical information which can alter the outcome of a case. The main challenge a litigator faces is defining, identifying and assessing the subset of relevant electronic transactions.

Are there standard approaches to manage e-discovery process? Yes. Electronic Discovery Reference Model as described on www.edrm.net is the most followed standard. The website highlights four critical stages in the discovery process: Locating potential sources of Electronically Stored Information (“ESI”) and determining its scope, breadth and depth; Gathering ESI for further use in the electronic discovery process (processing, review, etc.); Reducing the volume of relevant ESI and converting it to more suitable forms for review and analysis; and Evaluating ESI for content and context, including key patterns, topics, people and discussions.

The primary type of transaction most relevant to e-discovery is email. Email also forms the primary information repository to apply the well regarded “who, what, where, when, why and how” investigation formula. Different metadata of an email like To, From, Subject, Date Sent, conversation-chain and transactional relationships which emailing entities form with one another can uncover case-changing information for litigators. Email attachments can often contain important documents like financial spreadsheets, contracts, marketing agendas, preliminary drafts for corporate strategy etc., all of which can be relevant to issue at hand.

Another type of business transaction which is primarily important in uncovering corporate financial fraud are corporate databases like ERP (enterprise resource planning) and CRM (Custom Relationship Management). To uncover relevant evidence from databases is a lot more burdensome, since unlike email systems where Microsoft and IBM cover majority of market leading to standardization in email systems, the corporate information systems market is much more complex and is fragmented into several niche markets. At the same time, the fact that people initiate transactions with motives and can be ultimately held responsible for them has not changed and the discovery process can be enhanced if done by focusing on key individuals or transactions as central points of investigations. Other than above two primary sources of electronically stored information, a study of impact of technology revolutions reveals additional places where

information resides such as smart phones and phone call logs, online social networks, e-commerce and banking transactions etc.

Indeed, harvesting an advantage presented by electronic data is rapidly becoming a strategic challenge as well as source of opportunities for savvy litigators. Axia Advisors LLC and IT Elite Inc have teamed up to provide comprehensive litigation support services which include assisting in the preparation of document requests, data collection, data forensics, e-discovery project management, document review solutions, building complex databases, document productions, regulatory compliance solutions and custom software development.

About the Authors

Jorge Amador has provided a variety of consulting services to clients facing the challenges of disputes, litigation, forensic investigations, discovery and regulatory compliance. Mr. Amador is a Certified Public Accountant and Certified Fraud Examiner with over 20 years of corporate and public accounting experience. He was formerly the Director of Forensic Accounting at Milberg Weiss LLP, where he led a group of accounting professionals that furnished investigative accounting and consulting services to counsel in private securities lawsuits involving complex financial issues. Under Mr. Amador's leadership, the Group provided initial assessments on GAAP and GAAS issues, assisted with pleadings and discovery issues, and interpreted damages assessments. Mr. Amador has both advised and litigated many major securities cases, such as Enron, Tyco, and Rite Aid.

Harshad Patil has provided technology solutions for several large electronic discovery cases and cross-border forensic investigations and has executed pioneering technology efforts in electronic discovery, document review and forensic technology services at global advisory firms such as KPMG LLP and First Advantage Inc. He has been technology advisor to e-discovery project management teams working on international discovery and document review cases and has handled chain-of-custody and cataloging issues for most major electronic data types and information sources. Mr. Patil has experience developing Forensic Data Analytics solutions for financial fraud detection and FCPA/OFAC compliance. He holds a Masters degree in Electrical Engineering from University of Southern California.

About the Firms

Axia Advisors LLC, is a full service forensic accounting and litigation support services firm, assisting law firms and their clients in detecting and quantifying accounting fraud; expert witness testimony; discovery assistance; claims analysis; and compliance auditing.

IT Elite Inc, is a technology consulting firm with extensive experience in providing evidence discovery management, document review solutions, forensic services and custom software development services for litigation support, electronic data processing, forensic technology, regulatory compliance and information risk management.