

Eight Key Differences Between eDiscovery and Information Governance

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Introduction

Information Governance (“IG”) is everywhere these days. It seems the biggest promoters of its concepts are the same parties who touted the benefits of Electronic Discovery (“ED”) just a few years ago. Is IG just a new name for ED, or is something else going on?

IG is a new field of practice that encompasses some, if not all of the elements of ED, but also much more. IG comprises ED, plus records management, compliance, security and many factors related to the management, storage and usage of enterprise information.

The goal of this article is to point out eight key differences in the practices, tools and providers of both areas so that IG and ED practitioners can make informed decisions in their business practices and purchases.

eDiscovery is..

The process of identifying, locating, preserving, collecting, preparing, reviewing, and producing Electronically Stored Information (ESI) in the context of the legal process.
- *Sedona Conference Glossary*

Information Governance is..

The activities and technologies that organizations employ to maximize the value of their information while minimizing associated risks and costs. – *Information Governance Initiative*

1.0 Main Objective: Culling vs. Organization

The main objective in every eDiscovery process is to remove (or “cull”) documents from the collected set that are not germane or useful to the litigation team’s objectives. Typically, the mandate is to produce documents to an opposing party, so the tactical goal is to remove documents from the population that are not responsive to the request for production, as well as to remove (or protect from disclosure) those documents that are privileged to the producing party. This culling process revolves around tools and practices that remove

documents at ever more fine distinctions. The most commonly known techniques are de-NISTing¹, date range filtering, keyword filtering and predictive coding, in which a knowledgeable expert trains the system on which files to keep or cull. Before documents are turned over (produced) to another party, they are reviewed by attorneys for final approval, a step commonly called “Document Review.” Document Review is expensive, time-consuming and arduous. It is the single most expensive step in nearly all litigation preparations, and there is great emphasis and incentive to reduce costs by eliminating files wherever possible.

The main objective in Information Governance is to organize the vast collection of documents, files and content spread throughout an enterprise. Unlike ED, IG is not primarily seeking to *reduce* the information set, but rather to *organize* it into logical categories and use cases. IG is about structured, disciplined coordination and control of information. The typical IG sequence of tasks starts with an assessment of what data/files/content exists in the organization and where it can be found (or alternately, where/how it is stored). This task, called Data Mapping or Inventorying, covers many types of information, including paper files². Once mapped, a typical IG process will cover Data Retention, Legal Hold, and other policies which dictate the storage, handling and disposal of different types of information. From there, IG practice differs. Some organizations will catalog all their content (existing and future); others will not. Some will apply automated processing based on rules to manage that information, others will do it by hand. Still others have no formal IG process, and simply store everything for a future generation to inherit.

2.0 Timeframe

eDiscovery is explicitly concerned with a given litigation time window. All litigation matters have a fixed start and end date to the claims in question, and documents or files that exist outside of that timeframe are not part of the collected information. As far as ED is concerned, information outside the window does not exist. Tomorrow’s document has no place in today’s eDiscovery.

In contrast, Information Governance is explicitly tasked with managing content from *all* time windows, particularly the go-forward one. Many companies pick a starting time for the initiation of IG practices, but there is usually no end date. IG activities operate forever.

These very different notions of time have important ramifications on the tools, techniques, and purpose of the activities the organization undertakes. In a way, ED operates in a disposable environment, while IG endures permanently.

3.0 Available Tools

The ED marketplace marks its 10-year maturity level next year. Today there are low cost, easy-to-use, off the shelf tools that are readily available to most litigation support and legal departments. And if not, there are countless vendors offering those same tools (Nuix, Relativity, Clearwell, EnCase, etc.) all around the world. There is little differentiation, and the technologies are proven and reliable. In fact, the entire course of how eDiscovery should

¹ DeNISTing refers to a process in which document file types are eliminated from a collection based on their file extensions (ex: .MSG vs. .DLL). Those extensions listed on the National Institute of Standards and Technology (NIST) are considered content-rich, and all other file types are removed.

² It is very rare for eDiscovery to include paper files, thus the “e” in eDiscovery, which stands for electronic.



(and does) work is well-documented by the EDRM³. As such, the typical ED solution provider is more of a data mechanic than anything else.

IG, on the other hand, is a new and evolving field of practice, with few tools and a great deal more customization in the service offerings. The tools and approaches to IG are not yet evolved or well-understood. Solution providers often have a consulting aspect, covering areas such as education, policy-creation, technology or vendor selection, and implementation oversight. Each organization's IG implementation will be different, since their data and information are as different as the organizations themselves. Strategy is the driving IG force, rather than tools, and the typical IG solution provider is a strategic advisor or consultant.

4.0 Starting Point: Collection vs. Intake

eDiscovery begins when documents and files are gathered from a litigating party, a process known as "forensic collection." This process intentionally makes a duplicate copy of the files in question, specifically for the purpose of legal examination. This second set of information almost always lives in a custom, litigation database (frequently Relativity), outside of and separate from its original content source.

Information Governance begins at the point of origin of a set of information. The documents and files in question are either in active, day-to-day use, or they are in a storage archive of some kind. IG processes typically utilize a corporation's actual documents, and not a second copy.

Because ED documents are a fixed set, there is no notion of ongoing document acquisition once the requested sets are obtained. IG documents are constantly being newly created as time goes on, and so they have an element of coordinated *Intake*. That is, new documents and files being created must be properly incorporated into the existing IG universe. Examples of common Intake techniques include: custom email addresses (such as auto-forwarding or auto-copying), drag and drop (Dropbox) capabilities, custom fax or mail addresses, and automatic ftp or file syncing for mobile devices.

5.0 Ending Point

eDiscovery solutions are meant to be utilized for a finite period of time, the discovery and trial portions of a litigation matter. Once the case has concluded, the eDiscovery solution is usually dismantled. Hosted documents are deleted and associated work product is eliminated. With the added stress of needing to win the case, most ED solutions are ad hoc, expensive and not particularly optimized for ongoing use. A good slogan for ED matters is Nike's "Just Do It."

IG solutions are the opposite. They must endure across time, transcend turnover in people and organizational structure, support the changing ways we communicate and store information, and serve evolving societal concerns about how we manage and handle information. Such solutions must be cost-effective and well thought out. They must integrate across a large and changing IT landscape and be adaptable to new needs and concerns over time. A good slogan for IG matters is Ford's "Built To Last."

³ Electronic Discovery Reference Model, a framework for the selection, evaluation and use of electronic discovery products and services.



6.0 Accuracy & Error Tolerance

There can be dire consequences to mis-categorized or simply just missed documents in a litigation matter. Mistakes can cause cost overruns, loss of privilege, mistrials, or even sanctions. Usually the solution to ED errors is to fix them at any cost.

IG has a fairly high tolerance for error. Mistakes are not only tolerated, but expected and typically do not cause much damage. Usually the solution is to leave the errors alone or address them in subsequent processing rounds or upgrades.

7.0 Who Pays? Budgetary Concerns

In eDiscovery, the client (the litigant) pays for the management of data and information related to their case matter. Costs are assessed simply as a sum of expenses related to the Discovery portions of litigation.

In Information Governance, the enterprise itself pays for the management of its data and information. Because such systems are viewed as a form of overhead that will endure for years to come, they are typically subjected to rigorous ROI calculations, and treated as assets with depreciating value over several years.

8.0 Where the Solution Lives

ED solutions typically live in one of two places: either within the litigation support department (outside counsel or inside legal department) or at the vendor. Solutions purposefully exist outside the corporate IT infrastructure and are often hosted (SaaS) in some form in the cloud. Accordingly, pricing for such services tends to be transactional in nature, priced per GB or per custodian.

IG solutions almost always live behind the corporate firewall, often on premise. They are mapped directly to IT infrastructure, such as the corporate DMS (document management system), email server and other fileshares. Pricing for such services tends to be license-oriented, rather than transactional, priced per month or year.

Summary

The two worlds of eDiscovery and Information Governance sound similar on the surface, but in reality operate very differently, with different assumptions, processes, timelines, tools, expectations and durations. To treat them interchangeably is to short-change one or the other and put litigation or enterprise information at risk. Legal practitioners would be wise to set expectations accordingly with different plans and processes for ED and IG.

About Valora Technologies, Inc.

[Valora](#) is a technology-based provider of automated document management, analysis & review services for the legal, records management & information governance markets. We offer data mining, analytics, document intake and visualization, and hosted solutions for corporations & government agencies, as well as their advisory, inside & outside counsel organizations around the world.

Valora has developed a strong expertise in the processing, management & analysis of large and small matters with complex requirements, such as short deadlines, sensitive material & mixed languages. Our specialty is providing efficiency, organization and cost control.

For more information on these topics and many more, please visit Valora's [website](#) and [blog](#), or contact us at: 781.229.2265.



About Sandra Serkes

Sandra Serkes is a dynamic leader with an extensive background spanning 25 years in software marketing, product management & corporate strategy, particularly in document processing & analytics, computer telephony & speech recognition. Today, Ms. Serkes oversees Sales & Marketing, Finance & Administration, Operations, Engineering and Corporate Strategy at [Valora Technologies, Inc.](#), where she is CEO, President & Co-Founder.

A graduate of Harvard Business School and MIT, Ms. Serkes is a frequent industry speaker & panelist. She is an active participant in the Women Presidents' Org., The Commonwealth Institute, the MIT Enterprise Forum, the MA Software Council & the Network of Harvard Alumnae. Ms. Serkes serves on the boards of several technology and service start-ups, and was named a 2006 "Woman to Watch" by Womens' Business magazine. Ms. Serkes was featured as Keynote Speaker at the ARMA Northeast Regional Convention and was recently named as Information Governance Technology Evangelist of the Year (Honorable Mention) by the Information Governance Initiative.