

# Early Case Assessment “In the Wild”

## New Approach to ECA

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**B**ecause the vast majority of legal cases are settled before ever going to trial, one of the most valuable and indispensable techniques used by corporate counsel is early case assessment (ECA). Using ECA, legal counsel can assess the merits of a dispute, formulate a legal strategy and make decisions concerning the matter before the costly process of taking the case to trial begins. However, ECA traditionally occurs close to the review stage of the e-discovery process since it requires that data already be processed and loaded into a review system. This late timing is not because ECA is particularly effective then, but is due to the old glacial pace of e-discovery and the lack of solutions to accomplish ECA earlier on. In addition to lacking effectiveness, conducting traditional ECA at this stage can often be an uneconomical and lengthy process, defeating the purpose of performing ECA in the first place.

Historically, in order to conduct ECA, counsel first determines who is involved (custodians), then preserves and collects their data so that the initial analysis and review can begin. Unfortunately, this premature collection and preservation process is expensive, inefficient and prolonged. This is because collection and preservation usually involves manual, forensic copying

of the custodian’s hard drive and a complete data dump of the custodian’s archived email and documents into a central repository. Only then can processing and analysis be performed to ready the data set for a first pass review. Clearly, these activities are time-consuming, wasteful, expensive and ultimately not an effective means to ECA.

### ECA in the Wild: In-place Analysis

In-place analysis is a different philosophy and approach to ECA. If an in-house information management and e-discovery solution is holistic and proactive, it can quickly index live data wherever it resides and can be used to search, classify, tag and, if required, preserve and collect custodial data. This enables in-house counsel to analyze the potentially responsive matter in place, dynamically tuning search criteria and modifying custodian lists (identifying additional matter-relevant keywords and custodians based on intelligent analytics), all prior to preservation and collection. In addition to saving an appreciable amount of time, this approach precisely limits the preserved/collected set of data that is subject to the “duty to preserve,” reduces legal risks and provides a legally defensible audit trail. Moreover, the data that is then produced for

downstream, formal review is qualitatively enriched, further reducing legal costs.

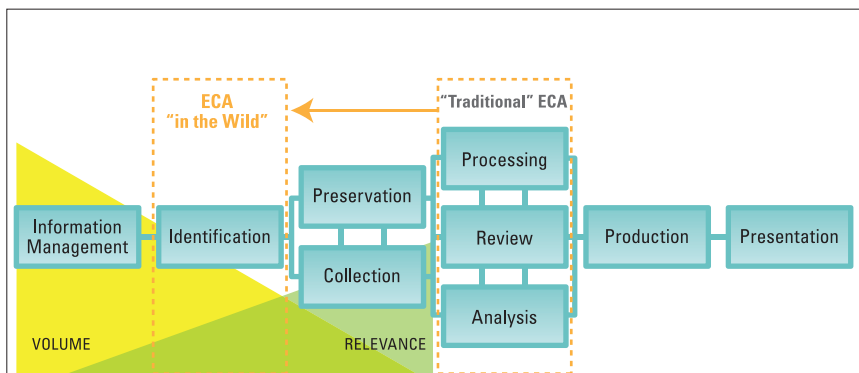
In addition to performing ECA “in the wild,” where data natively resides, another critical feature necessary to truly be an effective ECA solution is the ability to perform incremental collections. This eliminates the need to repeatedly collect the same data from custodians that are frequently subject to e-discovery requests. An adept e-discovery solution should maintain a record of all data that has been previously collected for prior matters, and only collect data that is not already on hold, or that has been modified since it was last collected, thereby minimizing the impact to normal business processes.

### E-Discovery Workflow—IT and Legal Working Hand-in-Hand

The ability to perform in-place ECA should be complemented by an e-discovery workflow that provides a simplified and efficient way to cull potentially matter-relevant data. This enables attorneys to very quickly process and analyze even large initial data sets with user-friendly analysis features to help make sense of a mass of information. The best solutions can form threads, comparisons, relationships and statistics much faster than human reviewers could. Their user interfaces typically include dynamic visuals, detailed reports and intuitive dashboards to accomplish in-depth analysis of unwieldy amounts of discovered data. As the in-house legal team shrinks the data set, some solutions even display a running count of the files eliminated; the potential savings from the downstream formal review cycle are automatically calculated. Throughout the entire e-discovery process, from “ECA in the wild” to forensically sound collections, an integrated solution will maintain thorough, legally defensible audit trails and a complete chain of custody.

This novel approach to ECA, in effect, allows the in-house legal teams to compress the EDRM. It allows for analysis of the data set during the identification stage, moving ECA earlier into the e-discovery process. By accomplishing ECA near the beginning of the e-discovery workflow, ECA finally achieves the goals it originally set out to accomplish for improved legal strategy decisions and cost reduction. ■

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By moving ECA to the identification stage of the e-discovery workflow, ECA achieves the goal it always should have had in planning and strategy, while significantly reducing downstream costs.