

From Litigation Response to Litigation Readiness




ZyLAB White Paper

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Summary

Managing and controlling electronically stored information (ESI) is a matter of technology, but also of strict procedures, quality control and well-documented information management activities. ESI has become one of the most serious sources of legal exposure and risk.

Technology is essential and the technology options abound: advanced culling; processing and (forensic) full-text indexing; concept and fuzzy search; automatic pre-classification of documents into privileged, claim-related and non-related documents; intelligent redaction; machine translation; pattern recognition; relevance ranking; exact and near de-duplication; email trail visualizations; and many other smart and innovative solutions.

However, organizations need more than just software. They should rely on professional services from specialists and—just as importantly— best-practice methodologies, including quality control, reporting and auditing that will help organizations bring e-discovery, records management, risk control and compliance in-house in a defensible manner.

This white paper will address several key questions that any organization should consider in today's business climate.

Bringing E-Discovery In-house

There are several key questions an organization must consider in today's business climate. Is your organization prepared to respond to an e-discovery demand imposed by regulators, civil parties or a competitor? Is your organization able to find and produce all relevant documents? If so, at what price and how fast?

Only about 1% of organizations are reportedly prepared for full-scale e-discovery activities. As a result, the vast majority of organizations facing litigation are forced into a costly reaction mode in order to respond to discovery requests within court-imposed timelines.

So, when the clock is ticking and the meter is running, how do you sift through internal databases, networks, computer systems, servers, archives, backup or recovery systems, laptops, PDAs, mobile phones and pagers to assess your legal risk and defend your organization? And further, how can you possibly meet the rigorous demands of the impending e-discovery while also preparing your organization for litigation that may be looming?



Figure 1: There are many stakeholders with different needs and requirements in a typical e-discovery process

Take Control of Your Information Now

In most cases, the review of information for relevance and privilege and the processing of vast volumes of data in preparation for formal legal review are the most expensive elements of e-discovery—accounting for as much as 50%-80% of the budget when using external sources. Therefore, more and more organizations have acquired advanced tools to help them to control the costs and risks of the e-discovery process. Most notably, organizations have started to deploy information management software and systems to help them respond to a specific legal matter now and prepare for future litigation.

Technology is Essential

- Information access technology solutions ideally help address today's compliance, risk, e-discovery and early case-assessment challenges, but organizations must implement the right tools—if there is something out there that is relevant to a case, it must be found. The best positioned tools are those that are optimized for high recall that can also find non-obvious issues such as misspellings, word patterns, concepts or people that do not want to be found and are deliberately hiding information. In this context, advanced search, text analytics and data visualization are very important.
- Workflow, data identification and collection technologies are what is needed for the legal hold, identification and collection process. Both corporate legal and IT organizations are in great need for technology that will help manage the first phase of an *electronic information request*. In this phase there is more demand for technology to address the specific e-discovery process.
- Automatic content-based archiving will solve the enterprise information management problem. Text analytics and text mining¹ are also essential in this phase. Many organizations are implementing this last phase in the development of the e-discovery marketplace in order to realize proper enterprise information management.
- Data monitoring technology is required for ongoing auditing and compliance on dynamic and static (archived) data. Known *current awareness* and *selective dissemination of information* (SDI) technology from the intelligence and security industry is going through a second live phase due to these new (corporate) compliance requirements.

¹ See the ZyLAB white paper “*Text Analytics: the next step in search*”

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However, organizations need more than just software. They should rely on professional services from specialists and—just as importantly— best-practice methodologies, including quality control, reporting and auditing that will help organizations bring e-discovery, records management, risk control and compliance in house in a defensible manner.

The most comprehensive and desirable systems are those that incorporate true information management capabilities, so that an organization may assess the case as early on as possible. Secondly, the best systems automate the more administrative aspects of the e-discovery process (like legal hold workflow and intelligent collections and preservations), thus reserving resources for more thorough legal review and analysis by professionals. The added benefit is that the simplified and automated nature of the e-discovery solution can be easily extended to everyday information management initiatives.

Meet the Needs of all Stakeholders

Various dynamics add to the extreme pressure of the situation and underscore the need for a proper methodology for managing vast volumes of information:

- Both in-house and outside counsel want to prevent being ambushed by unknown liabilities. Therefore, one will have to find all of the relevant information—even files that have been deliberately altered and concealed. High recall, coupled with filtering and de-duplication tools, is paramount for e-discovery technology because it gives outside counsel the assurance that they have all of the facts.
- Everyone wants to reduce outside counsel's risk of court sanctions, fines and negative verdicts. If the potentially relevant information is properly preserved, collected and locked-down in legal hold, outside counsel is relieved of the risk of spoliation (accidental or deliberate) and related court sanctions or fines that can negatively impact the case.
- Everyone wants to reduce the likelihood of premature settlements. Despite their innocence, some organizations settle cases if they believe the cost of e-discovery will outweigh the cost of a settlement. We need technology to bring substantial savings and efficiencies to the client so that they can maintain their legal representation and protect their interests, reputation and cash flow.

Related to the previous point, executives always have an eye on the bottom line, and as a result, they may demand more proactive and pragmatic information management solutions instead of draining significant resources to defend specific legal matters.

E-discovery places an enormous burden on IT departments. Incremental collections from all different electronic sources (on-line, off-line, near-line and in the cloud) are incredibly time consuming. Automation and preparation can relieve IT tremendously and enable them to focus on more strategic IT solutions to support the entire enterprise.

Litigation Response and Readiness are Moving Targets

While the latest e-discovery and information management technologies have made great progress toward putting organizations in control of their information assets and liabilities, the environment is dynamic and requires solutions that can scale and adapt to new realities:

- Even after 50 years, Moore's Law still applies: Every 18 months, the volume of our stored data doubles. At that rate, the amount of information stored by an organization will have grown 100 times over in 10 years.
- The legal industry is one of the most conservative industries out there. Adoption of new technology is not a revolutionary process, but an evolutionary one which leads to higher costs from prolonged inefficiency.
- The use of new social media such as Twitter and Facebook and non-searchable multimedia platforms like YouTube is growing exponentially.
- With the introduction of cloud computing, information is everywhere and nowhere at the same time.
- The number of law suits will only increase in the coming years due to the credit crisis, but also due to the increasingly litigious nature of our society.
- Therefore, the only real solution to solve the e-discovery burden now and in the future is to start properly managing all of your enterprise information as part of daily operations. Figure 2 shows the relation between e-discovery and information management.

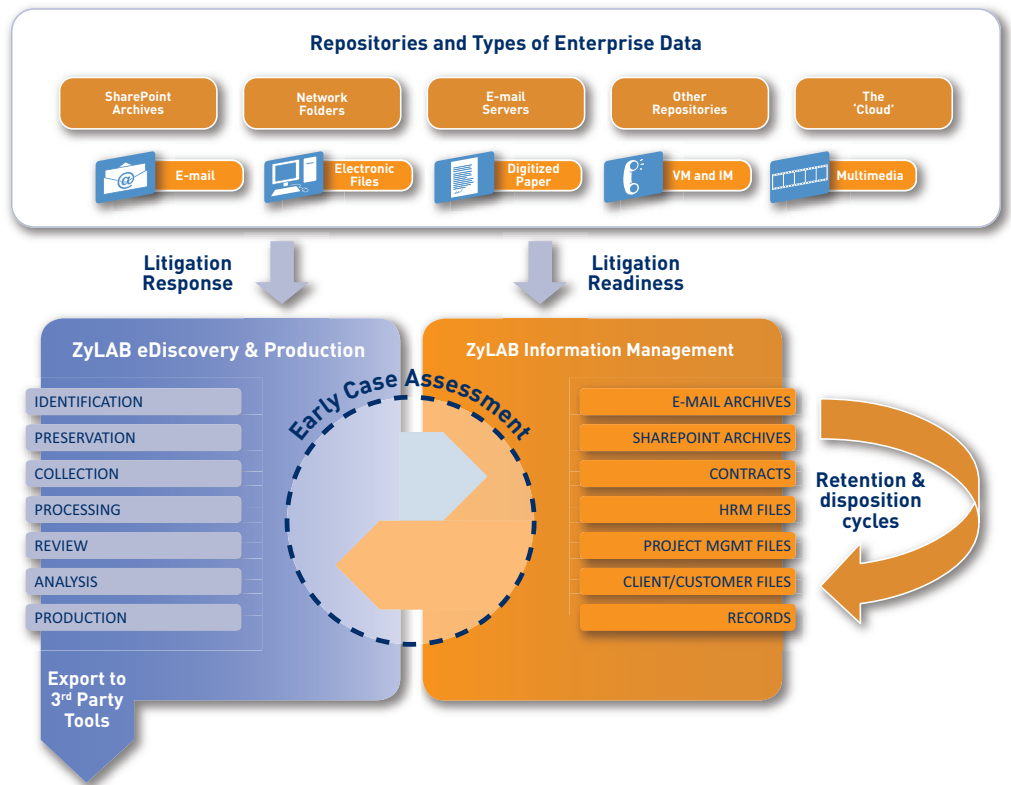


Figure 2: From Litigation Response to Litigation Readiness


Reaction Mode vs. Smart, Proactive Practices: from litigation response to litigation readiness

While in-house e-discovery systems are generally implemented to investigate a specific legal matter, more and more organizations are looking for a solid and robust foundation from which to pursue proactive, enterprise wide objectives for information management.

In fact, the costly and disruptive nature of e-discovery often triggers a broader information management initiative championed by executive leadership.

Proper information management initiatives may be based upon principles similar to e-discovery (i.e., identification, collection, review, etc.), but it often requires additional technology, procedures and user training to help organizations achieve corporate governance despite the continued— and rapid—growth of their data populations.

Information management involves not only archiving, but also the implementation and enforcement of retention and disposition schedules to ensure organizations are not storing vast volumes of information unnecessarily. It is actually quite similar to the culling process during e-discovery, yet in a broader form that is widely adopted as part of daily operations in all departments.



Email, SharePoint, HRM files, project files, customer files, official company records and legal contracts all contain potential future legal liability and cost considerations. For example, retaining 100,000 emails—which may have important files attached—in one’s inbox, sent folder or hard disk exposes the organization to more risk and unnecessary storage costs. And the vast information stored on backup tapes and in MS SharePoint collections in a completely unstructured format presents its own potential risks, especially if the data is related to projects or litigation involving human resources or C-level management. Organizations will always have these types of unstructured data sets, but their potential risk can be managed by the right information management technology and protocol.

Information collections such as the ones noted above need to be ordered and classified in a filing plan, which can be done in a rather straightforward and pragmatic way. This action limits the amounts of data (and thus the potential cost of litigation), makes early case assessment possible on your live data, and limits the need for the expensive processes to collect and preserve all data in advance.

About ZyLAB

ZyLAB's industry-leading, modular e-Discovery and enterprise information management solutions enable organizations to manage boundless amounts of enterprise data in any format and language, to mitigate risk, reduce costs, investigate matters and elicit business productivity and intelligence.

For nearly 30 years ZyLAB has been a dominant player in compliance and e-Discovery-related solutions, due in part to its' advanced capabilities for multi language support, searching, content analytics, document reviewing, and e-mail and records management (for both scanned and electronic documents).

While the ZyLAB eDiscovery & Production system is generally implemented to investigate a specific legal matter, it is a solid and robust foundation from which to pursue proactive, enterprise-wide objectives for information management. Those broader goals are achieved through the use of the ZyLAB Compliance & Litigation Readiness system.

The ZyLAB eDiscovery system is directly aligned with the Electronic Discovery Reference Model (EDRM) and features modules for forensic sound collection, culling, advanced e-mail conversion (Exchange and Lotus Notes) and legal review.

The company's products and services are used on an enterprise level by corporations, government agencies, courts, and law firms, as well as on specific projects for legal services, auditing, and accounting providers. ZyLAB systems are also available in a Software-as-a-Service (SaaS) model.

ZyLAB's products are extremely open and scalable, with installations managing some of the largest collections of mission-critical data in the world. The award-winning ZyLAB Information Management Platform bundles our core capabilities into a single solution that provides an optimal framework for six, specialized, all-in-one system deployments.

Currently the company has sold 1.7 million user licenses through more than 9,000 installations. All of our solutions include full installation, project management and integration services. Current customers include The White House, Amtrak and US Army OIGs, US Department of Treasury, The EPA, National Agriculture Library, and Royal Library of the Netherlands, FBI, Arkansas and Ohio state police forces, German customs police, and Danish national police, War Crimes Tribunals for Rwanda, Cambodia, and the former Yugoslavia, KPMG, PricewaterhouseCoopers, and Deloitte, Akzo Nobel, Sara Lee, Pacific Life, Siemens, Dow Automotive and Lloyds of London.

ZyLAB has received numerous industry accolades and is one of the few companies to be positioned as a Leader in Gartner's "Magic Quadrant for Information Access Technology" for 2007, 2008 and 2009. ZyLAB has received numerous industry accolades and is one of the few companies to be positioned as a Leader in Gartner's "Magic Quadrant for Information Access Technology" for 2007, 2008 and 2009. In addition, Gartner has given ZyLAB the highest rating ("Strong Positive") in its "MarketScope for E-Discovery and Litigation Support Vendors" for 2007, 2008 and 2009, as well as a "Visionary" rating in its 2011 "Magic Quadrant for E-Discovery".

ZyLAB is certified and registered as compliant with the International Standards Organization (ISO) 9001:2000. ZyLAB also lets Microsoft, Oracle and other infrastructure providers regularly certify critical components that work closely with their infrastructure. ZyLAB was certified under the US-DoD 5015.2 records management standard and ZyLAB is compliant with the European MoReq2 standard and various other regulations

Headquartered in Amsterdam, the Netherlands and McLean, Virginia, ZyLAB also serves local markets from regional offices in New York, Barcelona, Frankfurt, London, Paris, and Singapore. To learn more about ZyLAB visit www.zylab.com

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