Early Case Assessment Checklist

ECA Best Practices

- Analyze the context of the case as soon as possible
  Before you even start gathering ESI and interviewing custodians, make sure you gather as much context about the case as you can. Consider things like the timeline of events, parties involved, legal issues at hand, roadblocks or arguments that can hurt the case, etc. All of this data will create a solid foundation for the rest of your assessment and help you understand where and how to look for evidence.

- Have a strong preservation strategy
  Just like defensibly deleting data, a preservation strategy is something that needs to be established separately from an ECA process. However, issuing a legal hold that preserves all potentially relevant information as soon as the triggering event happens will minimize risks for your organization and ensure all the data you need to analyze is available at the time of conducting an ECA.

- Involve IT right from the start
  There’s no escaping it, your ECA will involve analyzing ESI. Make sure you identify the right person from IT to help you identify custodians and navigate the data environment.

- Create a data and custodian map
  With the help of an IT expert, create a list of all record locations while documenting which custodian/department is in control of that source. That will allow you to prioritize custodians and data sources in your document collection and be more efficient about your data assessment.

- Interview key custodians
  As discussed earlier, conducting custodian interviews is crucial in ECA. They can point you to the right documents, to more custodians, and even to some unknown case facts.

- Sample data sources
  Sampling data will help you determine the possible size of the entire dataset involved in a matter and associated costs to process and review.

- Deduplicate and cull data early in the process
  To properly assess expected review costs early in your case, it’s important to get rid of any irrelevant data that won’t be a part of the review process.

- Delete unnecessary data—but do it defensibly
  This is a process that needs to be set in place long before an ECA starts. The ultimate goal is to have a limited number of irrelevant documents to review whenever litigation arises, so a sound and defensible deletion strategy is crucial. Make sure your strategy is properly documented to avoid spoliation sanctions. It’s also recommended to ask outside counsel or your vendors for a data certificate of destruction. Some strategies that grant a defensible deletion are data culling, deduplication, or deNISTing.

- Establish an iterative ECA process to find all relevant ESI
  Actions must be repeated until your team feels it has a complete picture of the total universe of potentially collectible ESI.

- Use early case assessment software
  Leveraging available ECA tools to streamline the entire process is the best way to optimize your case assessment. Since ECA and eDiscovery are so closely related, the best early case assessment tools are usually eDiscovery platforms with features capable of handling ECAs.

- Don’t forget about paper documents
  Analyzing ESI is usually the central part of an ECA, but make sure you also include any potentially relevant physical documents in your assessment.

- Cooperate with opposing counsel
  After gathering a preliminary view of the evidence available during your ECA process, you should have a “meet-and-confer” with opposing counsel to try to limit over-collections and cost overruns.

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