



EMC's eDiscovery Solution Facilitates a Better Response to Legal Discovery Requests

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Management Summary

Legal discovery is a process that is imposed on an enterprise by the government or, when the enterprise is in litigation, by opposing counsel. In the old days, this discovery meant sorting through file cabinets. Now that business documentation resides on IT systems, the process is more complex, more expensive, and it is a lot harder to prove that it has been done correctly and comprehensively. Unfortunately, in a litigiously-inclined society, this is exactly what you must do.

If an enterprise is served with a discovery request, many things have to happen. The enterprise must determine which email accounts and internal files and databases may have information relevant to the issue in question. It must capture a copy of the information and assure that it is safe and inviolate for the duration of the litigation, even if this is contrary to normal business retention policies. These steps must be taken quickly to preserve the evidence, for the enterprise is liable if it is found that evidence is changed, corrupted, or missing. Subsequently, the process does not get easier. The potential evidence is then perused by someone, usually a company lawyer or contracted outside counsel, to winnow out irrelevant material. Then it is presented to the court or the government. The quality of filtering and organization is important to getting the job done quickly. As it is also important to get the job done well, the process cannot be haphazard or subjective. The process must be auditable, in order that the proof of a negative (i.e., that the enterprise has not done anything wrong) be complete.

This eDiscovery process is somewhat like in-advance planning a funeral. It is an inevitable part of life that you hope will not happen. When it does, you must act quickly, satisfy all the requirements, and still keep up with the demands of daily life. This requires superb organization, adequate resources, and the ability to act so that one set of demands does not overwhelm the other. Very large or global companies are familiar with this risk, but for other enterprises, the challenge of legal discovery can be overwhelming. So, like a funeral, legal discovery is a case where you may want to leverage the expertise of someone who does eDiscovery often. However, outsourcing is expensive, and can be an unacceptable exposure of business information.

EMC offers an eDiscovery solution, with all the components needed to meet the needs of the most disorganized enterprise. Of course, the more organized you are, the fewer services you will need, and the more EMC technology you have, the less you will have to purchase. EMC's eDiscovery solution is more than just hardware and software – it is the methodology for pulling all the necessary parts together into an effective, cost-efficient process – in a way that leaves business processes unimpaired. And, as such, it has enormous value. Read on to find out why.

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Dealing with the Unanticipated

In legal discovery, completeness and efficiency spell the difference between a well-orchestrated response to an intrusive event and a fiasco. While legal discovery is by its nature an unplanned event, there are steps a company can take to prepare for the inevitability of a discovery request. Many companies respond by simply saving all business information indefinitely, in case it is needed. This is an ineffective use of resources as a “save everything” strategy introduces its own risks – and simply saving information does not make it retrievable. **A more effective use of company resources would be to understand your risk exposure profile and take pro-active steps to build an IT infrastructure able to meet the demands of discovery.**

Even for the enterprise that already applies e-mail archiving and content management (software-based activities delivered by EMC) to databases and file systems to achieve desired data organization, and uses search technologies to find what’s needed, eDiscovery presents two challenges, both met by EMC’s eDiscovery solution.

The Approach Must Be Top-Down

The search must be broad and consistent over the entire domain of potential evidence, or top-down, if you are going to prove a negative, which is usually what you are trying to do. It is also necessary to take this approach to be able to declare the job done. This is contrary to the development trajectory of many IT processes. As in many technology *solutions*, it is a case of the business doing what it wants to do in spite of the way IT might want them to do it.

Content management solutions, such as those provided by EMC’s Documentum unit, allow search and other useful functions over the breadth of the content they manages. This content typically does not include e-mail, which is where the documentation of business operations (and thus of malfeasance) is now found. **It is important that the top down cover all the domains of interest.**

Separation of Concerns Must Be a Part of the Solution

Legal discovery will cross-organizational boundaries and touch many parts of an organization. If business productivity and legal mandates are to be simultaneously supported, **the eDiscovery process must be separate from the IT structures supporting business as usual.**

Leveraging the External Community Inherent in a Commercially-Offered Solution

Legal discovery is a situation where using an external solution, honed by the demands of a customer base and constantly enhanced and extended to new data sources, makes a lot more sense than a homegrown solution. The demands of the customer base will force EMC to keep abreast of the new wrinkles in eDiscovery in order to support the solution in all geographies. Expertise on the ramifications of an unanticipated event is something hard to support in-house.

The EMC eDiscovery Solution

The EMC solution comprises EMC hardware, software, and services. The hardware comprises EMC *Centera*, and *CLARiiON*. *Centera*¹ is a Content Addressed Storage (CAS) secure archive that can assure the authenticity of information and has the retention hold feature that eDiscovery needs to comply fully with U.S. law. *CLARiiON*² is a mid-range storage array that holds the indices for the first cut collection of potential evidence.

Manipulation and search across these indices is what allows an enterprise’s lawyers to winnow out irrelevant information, reducing the bulk that must be sent to external lawyers for review.³ **Filtering the evidence carefully makes the process go faster, cost less, and expose less business information unnecessarily.**

EMC Software

EMC software plays a more interesting role in the process. The eDiscovery solution uses *EmailXtender*⁴ ability to extract the email from the mail server, use keyword search to winnow

¹ Clipper has written bulletins about Centera since its launch in 2002. The latest is **The Clipper Group Navigator** entitled *EMC Celerra Plus Centera Equals File Serving Consolidation and Archiving*, dated January 3, 2006. It is available at <http://www.clipper.com/research/TCG2006001.pdf>.

² See also **The Clipper Group Navigator** entitled *CLARiiON Disk Library Fits Right Into Backup*, dated April 9, 2004, and available at <http://www.clipper.com/research/TCG2004035.pdf>.

³ Of course, an audit trail should be kept of the filtering process, so that the lawyers, if their suspicions are aroused, can quickly get access to the filtered-out data.

⁴ See **The Clipper Group Navigator** entitled *EMC’s “Making Storage Simple” Approach Solves Business Problems for Mid-Sized Enterprises*, dated March 9, 2005, and available at <http://www.clipper.co/research/TCG2005013.pdf>.

out the mailboxes that are potentially relevant, and archive that material on *Centera*. That is the limit of *EmailXtender*'s involvement in the solution. This policy structure does not have to be modified to accommodate eDiscovery.

The e-mail in *Centera* becomes content that can be addressed by Documentum, as can internal data that may be relevant to the legal discovery process. The process flow of eDiscovery is carefully designed to ensure that the capture is complete, and that the lawyer who must assess the information has the access, and search capabilities, to do this as expeditiously as possible. By exporting the winnowed e-mail to Documentum, the EMC eDiscovery solution ensures the following.

- *The email files will be properly retained.* The eDiscovery Solution gives each file a unique MD5 hash that keeps the file from being changed. The solution enforces access controls, and creates an audit trail of anyone that has accessed the legal matter. All of this enhances the quality of the support for legal discovery.
- *The email files will be fully searchable.* Documentum includes search capabilities beyond that found in e-mail environments.
- *The legal discovery process will not complicate normal business governance.*

To federate all the sources of relevance, EMC has created *Enterprise Content Integration Service* (ECIS) – a federated-search framework for searching multiple repositories. ECIS features adapters for popular third-party repositories and services to build needed adapters that do not exist, building extensibility into the solution.

eDiscovery Services

EMC has a full array of services that help customers achieve their eDiscovery objectives.

- *E-mail Policy Assessment and Gap Analysis* looks at enterprise e-mail policies and regulations, and sets priorities for the response to a legal discovery request.
- *Email Archiving Assessment Services* takes the policies and priorities developed above and develop the deployment architecture.
- *Records Management Assessment Services* looks at non-email documents and sets up an action plan for extracting the relevant documents for litigation hold.
- *E-mail Archiving Solution Implementation Services* implements the e-mail archiving component of the solution.

- *EDiscovery Solution Sizing and Implementation Service* more broadly manages the implementation of the eDiscovery solution, from developing sizing requirements to deploying the solution.
- *Tape Restoration and Migration Service* is of value to customers who have to restore information from tapes and migrate it to disk for search and evaluation as part of the discovery process.
- *Data Erasure Service* can expunge the material retained, once the litigation hold is lifted, returning storage capacity to the enterprise for reuse.

Conclusion

In legal discovery, the completeness of the process defines its quality, and its ability to prove a negative. Each instance of legal discovery will be looking for something different – and the something will be very specific. These requirements mandate eDiscovery solution characteristics concerning process, organization, and economics.

- *On the process side, the process must be satisfactorily comprehensive.* Capture must be automated to ensure that nothing is forgotten. Analysis must be consistent.
- *Organizationally, the eDiscovery process should be non-intrusive.* Email and content management systems should not suffer from intrusive eDiscovery demands.
- *The solution should also minimize the economic impact of legal discovery.* This can be accomplished by minimizing the time lawyers and investigators take searching the data sources to determine what is and is not there.

EMC's solution is far more than a sales-side bundling of products and services. It also offers the methodology and framework that bind the hardware, software, and human service components together into a process that can be reused for the next legal discovery situation. You should also consider how this approach could be used to meet a broader enterprise need to assess itself quickly and non-disruptively – when contemplating an acquisition, a new initiative, or a tweak to the business model. Perhaps, in this case, necessity may just be the mother of innovation.



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