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Litigators navigate ESI with data maps

The definition of "data map" changes depending on who you ask — kind of like the definition of a "good" season for the Chicago Cubs. It can include the identification of data relationships for data integration, the discovery of hidden data or the identification of the electronic information for the purposes of consolidation and implementation of a records retention policy. For litigators, a simpler definition works — a data map is the information your client has and where the information is stored. A data map is the first step toward gaining knowledge of your client's electronically stored information (ESI) before a Rule 26(f) conference or the development of a defensible subpoena compliance plan.

Some companies' data maps are like 16th century Western Hemisphere maps, showing a passage between the Atlantic Ocean and India, with sea monsters and shipwrecks on the margins. Other companies do not have a data map at all. Data maps are often deficient because the client merged or acquired other companies, along with their data. Employee turnover can also contribute to incomplete data maps. For example, former management may have used a customized database to track key information, but current management uses a completely new system that is not integrated with the former system. Unknown systems can add expense and headaches when they are uncovered during the course of discovery. Therefore, it is important that attorneys make every effort to have a good data map of their client's information to avoid the "sea monsters" that gobble up time, money and distract from the matter at hand.

Get expert help. Attorneys should not undertake a data-mapping process alone. The information below can help attorneys communicate with the client's information technology specialists (IT), records managers and outside consultants about a data-mapping process. Data-mapping requires knowledge of various operating and software systems. It is important to select a qualified ESI vendor for the process, but that goes beyond the scope of this article.

Start with a plan. The first step of any data-mapping process is to identify the end objective. A seasoned explorer would not point their ship in a random direction and map wherever they make landfall. You should determine the destination or objective of the data-mapping process and work with the client to set expectations for the project. Set a timeline, budget and expected deliverables that include a final map, usually in Microsoft Excel or Access format, and may include policies and procedures for the preservation and collection of discovered information.

For example, if a client routinely defends product-liability cases, the objective may be to understand the location and custodians of all information that relates to the design, manufacture and packaging of its product. The human resources department's ESI related to employee time-off is likely irrelevant. This is not to say that the information should not be identified on the map, but a foray into the specific data structure of certain departments is likely not necessary. The location of irrelevant information should be noted in case future exploration is necessary.

Begin with what you know. A basic inventory of the number of known systems and existing documentation will serve as the basis for the final data map. It will provide a framework with which new policies and procedures mesh. One of the most important parts of a plan is the list of business and IT owners. Business owners are those who use the information and IT owners are those who technologically maintain it. Employees with long tenures at the client may be your best source of information. Often a manager on the cusp of retirement has more information on the location of legacy systems and ground-level documents, like customer purchase orders, than the recently hired department vice president. While you can collect information using surveys, in-person interviews are the most effective way to ensure you receive complete, detailed information.

Make employees' lives easier. The owners of ESI can be defensive. To them you are invading their territory, intent on disrupting the way they have historically preserved and collected information. They may feel apprehensive about you going back to their superiors to report on the primitive systems you have seen. Before you wade from the surf to the shore, assure the employees that you are only there to observe, understand the department data topography and will be moving along to the next island shortly. Explain that a data map will make their lives easier by saving them time when the legal department requests documents. It will also allow them to delete information that the company has no duty to preserve under its records retention policy or litigation holds.

Collect detailed information. Data sources will be added to the data map as they are identified. Just like there are a variety of maps — ones that show political boundaries, physical features of the landscape or the demographics of a region — there are information categories that need to be collected for your data map. This includes a description of the technology and content, the users, business owner, technology owner, the date range and size of the information and its relationship to other information, databases and systems.

Keep the data map evergreen. The final data map should be circulated to the various owners for review and to draw upon collective company knowledge. Employees in one department may be aware of historical information they provided to the predecessors of current data owners in another department. To get maximum use out of the new data map, the client should implement a maintenance schedule to keep the data map evergreen or current. This may mean that IT and the business owners should meet regularly to discuss any changes to the storing of information. In other words, never stop exploring.

NEXT CHAPTER

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