



KPMG Forensic Technology Services

Managing Costs in e-Discovery

AUDIT • TAX • ADVISORY

October 14, 2010

Agenda: Strategies to Manage Costs in e-Discovery

◆ **Pre-collection Strategies**

◆ **Filtering Strategies**

◆ **Review and Production Strategies**

The Rising Risk and Expense of e-discovery for Corporations

- ◆ 2 GB+ (and rising) of “discoverable” content per legal matter per custodian
 - \$17,000 per custodian per legal matter in total expense
- ◆ Generally 80%+ of collected content is irrelevant to the legal matter
- ◆ In many cases, discovery represents more than half of the overall cost of litigation (*EDDix*)
- ◆ Average of 125 active legal matters (*Information Week*) per corporation

“

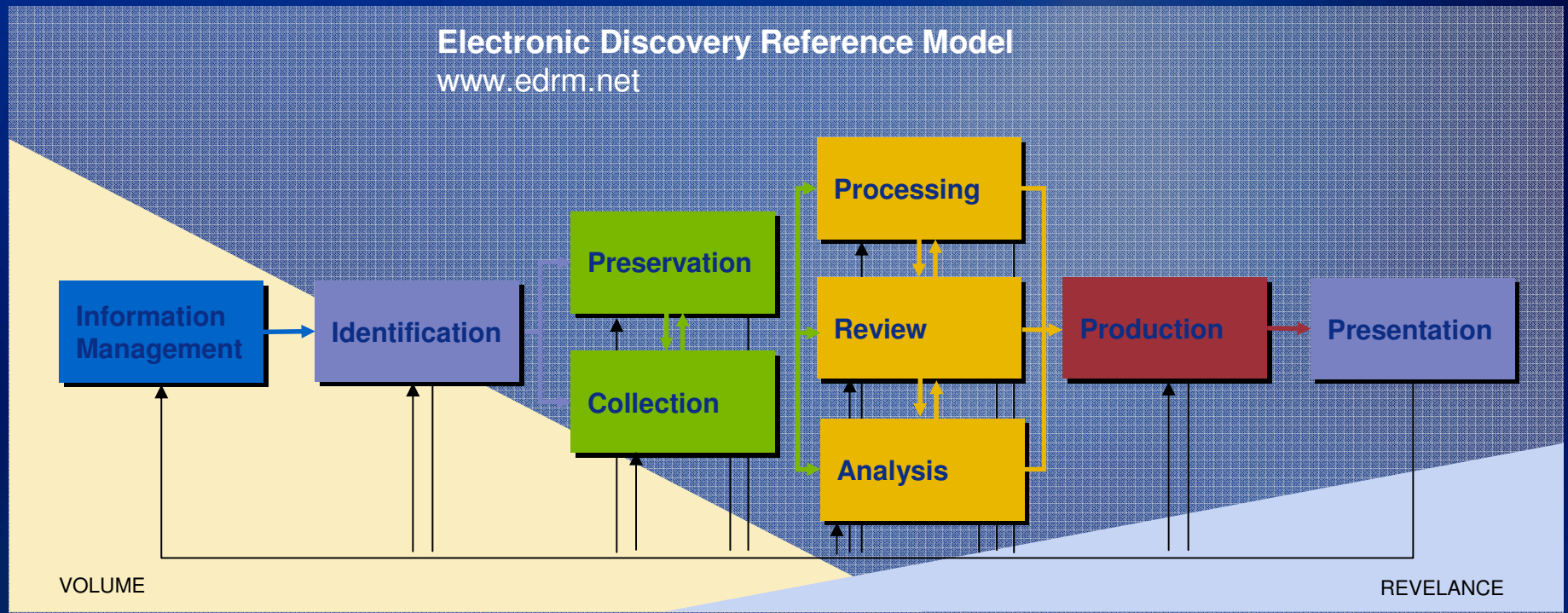
...Corporate CFOs are beginning to balk at the actual cost of the e-discovery process... and researchers say \$140,000 is the minimum per suit.

”

- *Accountancy Age*,
March 2006

e-Discovery Services Industry Overview

The Electronic Discovery Reference Model (EDRM) provides an industry-developed overview of the e-discovery process



Strategies to Manage Costs in e-Discovery

Pre-collection Strategies

Where is the data?



Voice Mail



e-mail



Recycle Bin



CDs & DVDs



Solid State Storage



Removable Disks



iPods/Mp3 Players



Notebooks



PCs & Workstations



PDAs & Cell Phones



Tapes



Printer



Scanner



Fax Machine



Copier



IP Telephone



Mainframes & Storage Servers

What Is Information Management?

- ◆ **Broader category that relates to the creation of documents/data/content within a corporation**
- ◆ **Relates to how a company empowers and restricts user access to systems**
- ◆ **Relates to how a company differentiates between record data and nonrecord data**
- ◆ **Increasingly becoming an area of interest to corporate general counsel**



Preservation

- ◆ **Review document retention policies**
- ◆ **Review preservation notice**
 - When was it sent?
 - Did they require/receive acknowledgement/confirmation?
- ◆ **Was IT informed?**
 - Suspension of active server and custodian data destruction
 - Suspension of backup tape rotation
 - Suspension of workstation upgrades

Strategies to Manage Costs in e-Discovery

Collection Strategies

- ◆ Targeted Collections
- ◆ Investigative Interviews Prior to Collection
- ◆ Custodian Surveys
- ◆ Statistical Sampling
- ◆ Internal IT Collections – BEWARE
 - Resources
 - Qualifications
 - Independence



Data Preservation: Other Considerations

- ◆ Does company employ any encryption or other protection?
- ◆ What happens to data when employees leave the company?
- ◆ Are there any legal or regulatory preservation holds in place?
- ◆ Have there been any out-of-cycle or special backups for system upgrades, migrations, etc. for which backup tapes have been preserved?

Strategies to Manage Costs in e-Discovery

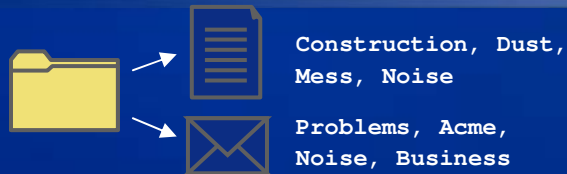
Filtering Strategies

- ◆ De-duplicate Exact Files
- ◆ Near De-duplication of e-Mail Chains
- ◆ Date Specific Searching
- ◆ Complex Searches (i.e., using proximity)
- ◆ Matter or Industry-specific Keywords
- ◆ Creating Assignments/Batches Effectively

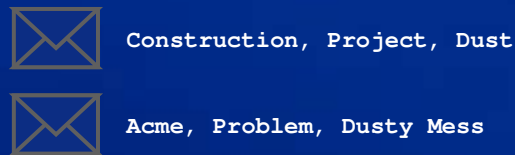
Culling Leading Practices

- ◆ Should be sufficiently broad to capture documents relating to the matter, but not so broad as to generate a high level of false positives
- ◆ Run hit count tests to vet terms and perform tuning to limit false positives
- ◆ Run QC checks on words/phrases that return zero hits to mitigate risk of syntax errors and misspellings
- ◆ May suggest sampling of data to assist with generation of search terms

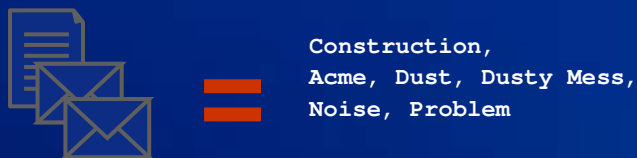
Concept-based Approach: How the Concept Map Is Created



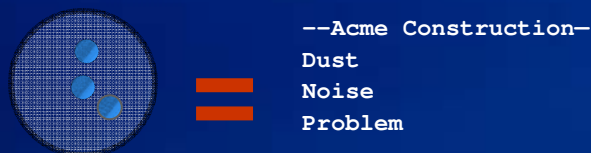
Linguistic engine extracts nouns and noun phrases from e-mails and other electronic documents.



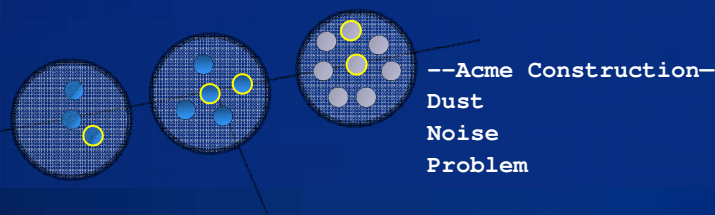
Nouns and noun phrases (concepts) are weighted by occurrence and frequency.



Documents with similar concepts “go find their friends” and group into clusters.



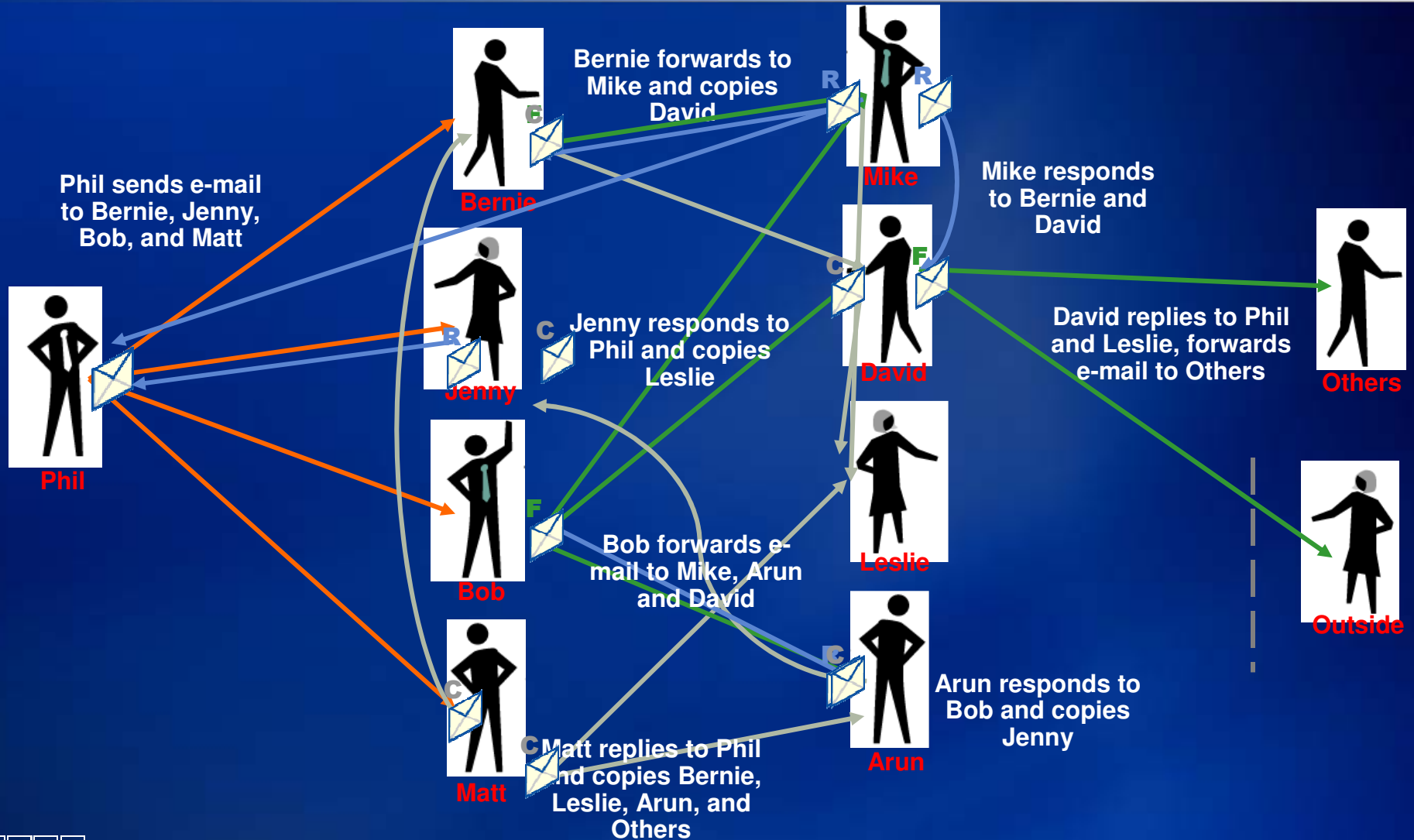
Clusters are mapped based on content similarity.



Clusters enable rapid identification of relevant (and irrelevant) content.

Analyzing Conversations...

How Can You Track This Interaction Easily?



Strategies to Manage Cost in e-Discovery

Review Strategies

◆ “Linear-based” processing

- Metadata extraction
- Native file delivery
- Text extraction
- Filtering

◆ “Concept-based” processing

- Clustering via algorithms
- Visualization tools
 - Group similar or familiar documents
 - Dynamically linked to other views of documents
 - Initial understanding of documents prior to deeper dive

Strategies to Manage Cost in e-Discovery Productions

- ◆ Native production vs. imaged production
- ◆ Rolling production
- ◆ Privilege review and automatic logging (vs. manual log generation)
- ◆ Redactions, auto-redactions and automatic logging (vs. manual log generation)

Produce

- **Production Options**
 - **Native Production vs. Imaged Production**
 - **Hybrid Production**
 - **Rolling Production**
 - **Database Production**
- **Privilege review and automatic logging**
- **Redactions, auto-redactions and automatic logging**
- **Bookmarking and issue coding**
- **Production TIFFs “On Demand”**

Strategies to Manage Cost in e-Discovery

Questions?

About the Speaker

- ◆ **Jason Velasco is a director with KPMG with more than 14 years of experience in electronic discovery issues and forensic investigations. Mr. Velasco has conducted more than 350 computer forensic examinations for civil litigators and companies and has emerged as a leading computer forensic specialist, providing expert witness services related to electronic evidence topics and data preservation issues.**
- ◆ **As one of the founders of RenewData, Mr. Velasco has held many positions within the company throughout its growth to a tier-one vendor. Mr. Velasco also worked two years for Merrill Corporation running their client services and forensic practices. Prior to RenewData, Mr. Velasco served in various forensic and data recovery positions at Ontrack Data International, Inc. (now Kroll Ontrack).**
- ◆ **Mr. Velasco also currently serves as an active member of:**
 - The Sedona Conference (www.thesedonaconference.com) on Working Group 1: Electronic Document Retention and Production and Working Group 6: International Electronic Information Management, Discovery, and Disclosure
 - The Electronic Discovery Reference Model (EDRM) Project (www.edrm.net) as the leader of the EDRM Evergreen Project, a participant on the EDRM PR Committee, and the EDRM Advisory Committee
 - The Association of Records Managers and Administrators (ARMA) (www.arma.org)
- ◆ **In addition, Mr. Velasco has authored a number of published white papers and articles, as published in *Compliance Solutions Advisor* magazine. Mr. Velasco has also been a frequent panelist and speaker for technical organizations and companies, Web seminars, and at industry events including the U.S. Law Network Client Conference and the International Quality & Productivity Center (IQPC) E-Discovery Conference.**
- ◆ **Mr. Velasco has also conducted more than 700 CLE courses on topics such as e-discovery, document retention, preservation archiving, collection methodologies, e-mail archiving and compliance, effective communication with IT, and the technical aspects of electronic evidence.**
- ◆ **Mr. Velasco often consults for FORTUNE 500 companies and law firms by designing procedures and protocols related to the technical and legal aspects of electronic evidence productions.**

Presenter's contact details

Jason Velasco

KPMG LLP

Cell: 512-658 8277

jasonvelasco@kpmg.com

www.us.kpmg.com

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