Easing e-Discovery: The Electronic Discovery Reference Model and the Information Management Reference Model

By William S. Horn, MBA

The Electronic Discovery Reference Model (EDRM) project offers guidelines and standards for e-discovery. It has helped reduce the cost, time, and manual work associated with e-discovery and has proven to be invaluable to those engaged in litigation support since its creation in 2005.

Now this model is traveling upstream in order to provide the same benefits to records and information management professionals. In particular, a subgroup is dedicated to providing a healthcare-specific viewpoint in the Information Management Reference Model.

EDRM-A Common Framework

In order to understand the growth and impact of electronically stored information, imagine the following scenario. A hospital receives a request from a federal court for all information related to patients who are potentially part of a class action lawsuit involving a regulated drug or medical device. The court requests electronic health records, all medical images, e-mail communications, medical bills, and any other type of electronic information for dozens of patients over several years.

Requests such as these led to an influx of vendors with technology products and services designed to quickly find and prepare relevant information for presentation to a court or regulator. Unfortunately, customers evaluating different vendors found it challenging to make an "apples to apples" comparison. Vendors too found it frustrating to differentiate themselves from others in the marketplace.

Litigation attorneys George Socha and Tom Gelbmann confirmed these issues with an industry survey and subsequently founded the EDRM project to define the e-discovery process in a simple model with common terminology. Through this model, vendors were able to map their products and services to steps in the process and to use industry-defined terms to describe their offerings for customer comparison.

The sidebar offers a high-level description of the model.

The EDRM has been enormously successful in defining the e-discovery process not only for vendors and customers, but also for the courts and regulators. The group's standards have led to additional guidelines by the Sedona Conference and changes to the Federal Rules of Civil Procedure governing the interaction between parties in federal court proceedings.

IMRM-Moving Upstream

Technology improvements have made it easier to find information. However, they have also highlighted some problems:

- Data storage is growing unchecked. Organizations are creating more data, but e-discovery has revealed that too many are not managing it through the entire lifecycle to disposition. This excessive volume increases the risk of finding damaging information and e-discovery costs.
- It is too hard to find all relevant data. Departments sometimes operate independently, and legal teams unfamiliar with the business operations and information management lack a comprehensive view of where the data they need are stored.
- IT departments do not have control over copies of documents. It is not enough to destroy an original document or e-mail at the end of its lifecycle. Copies are still discoverable and pose the same risks and costs. In fact it is worse if legal counsel reports to the courts or regulators that the data do not exist only to find a copy later.

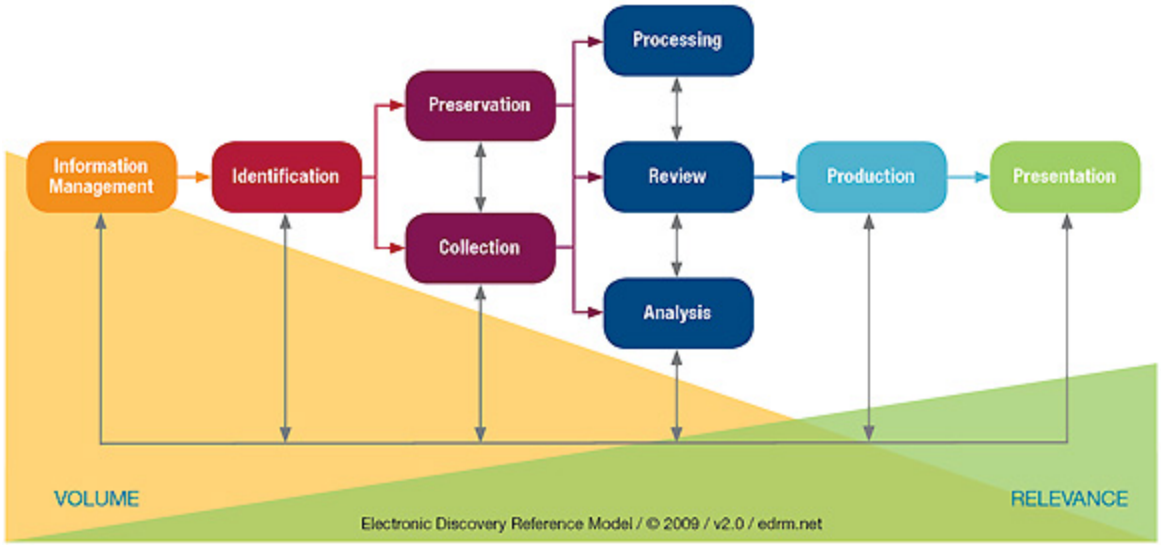
- Organizations lack a comprehensive records hold process. Once legal or regulatory action is reasonably anticipated, all relevant data must be preserved. They do not have to be collected immediately, but they cannot be destroyed. Destruction of data subject to a hold is spoliation. Regulators have imposed substantial fines for spoliation, and judges have imposed adverse inference instructions to juries, telling them to assume that the data destroyed were incriminating.

For these reasons, the EDRM team decided this year to attack the first box of the EDRM diagram, information management.

The Information Management Reference Model (IMRM) project was formed to "provide a common, practical, flexible framework to help organizations develop and implement effective and actionable information management programs."[1] The project seeks to engage legal, IT, records management, and business stakeholders and provide a common reference for discussion and decision making based on an organization's needs.

Electronic Discovery Reference Model

The EDRM defines the e-discovery process in a simple model with common terminology, which offers vendors a way to map their products and services to steps in the process and use industry-defined terms to describe their offerings for customer comparison. The volume of information handled, represented by the yellow triangle, decreases as the process progresses. The green triangle represents the relevance of the information handled, which generally increases in tandem with the decreased volume.



Information management: getting the organization's electronic house in order to mitigate risk and expenses should electronic discovery become an issue, from initial creation of electronically stored information through its final disposition
Identification: locating potential sources of electronically stored information and determining its scope, breadth, and depth
Preservation: ensuring that electronically stored information is protected against inappropriate alteration or destruction
Collection: gathering information for further use in the e-discovery process (e.g., processing and review)
Processing: reducing the volume of information and converting it, if necessary, to forms more suitable for review and analysis
Review: evaluating the information for relevance and privilege
Analysis: evaluating information for content and context, including key patterns, topics, people, and discussion
Production: delivering information to others in appropriate forms and using appropriate delivery mechanisms
Presentation: displaying the information before audiences (e.g., at depositions, hearings, and trials), especially in native and near-native forms, to attempt to persuade or elicit further information

Source: Electronic Discovery Reference Model. www.EDRM.net.

A Healthcare-Specific IM Model

The project kicked off with a meeting in May 2009 attended by 30 or so volunteers representing consulting firms, software companies, service providers, and corporations in several industries who came to the table with business, legal, and IT backgrounds.

The healthcare industry stood out as unique as participants discussed their experiences in information management. Everyone had heard the healthcare reform discussions stressing the need for a migration to electronic health records management. Most had worked in industries that had been automated and electronically integrated with business partners for years, if not decades.

Members were aware of digital automation in pharmaceutical and insurance companies and knew that larger hospitals generally had system applications, but the degree of penetration in the provider community and the integration between business partners seemed to be lacking. It struck the group that if it could build an IMRM specifically for healthcare, the industry may be able to avoid some of the mistakes made by other industries as they automated.

The IMRM will be published in draft form for comment in early 2010 at www.EDRM.net. It will include a high-level diagram and glossary describing the types of information systems, roles of key stakeholders, and the relationships between them. It will also include a detailed maturity model for benchmarking.

The model will describe four levels of information management maturity with regard to the distinct stages of the information lifecycle, the recognition of roles and responsibilities stated in policies and procedures, the rate of adoption among the workforce, the level of integration between stakeholders' systems, the governance structure of the information program, and the monitoring capabilities for continuous improvement.

It will also have a risk assessment component so that organizations can measure gaps based on current state and desired levels of maturity and weight those gaps according to impact of noncompliance, likelihood of occurrence, alignment with strategic priorities, cultural fit, and ease of implementation.

A better understanding of the e-discovery process and records and information management fundamentals will help healthcare organizations reduce legal and regulatory risk as well as reduce e-discovery review costs. A more comprehensive understanding of the information flow will lead to operational efficiencies through end-to-end business process improvements. A common understanding of departmental information requirements and a common terminology to describe them can improve purchasing decisions, reducing costs through shared IT applications and better systems integration. These are just a few of the potential benefits of the healthcare IMRM, but clearly it will be an asset as the industry moves to electronic health records.

The IMRM will change over time just as the EDRM matured over a few years and continues to evolve. Developing and implementing the IMRM will not be trivial. However, information management professionals in the healthcare industry are well suited to the challenge.

The IMRM project welcomes participants. More information may be found at www.EDRM.net.

Note

1. "Information Management Reference Model." Available online at http://edrm.net/activities/projects/information-management-reference-model.

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