Electronic Discovery Reference Model and Metadata
September 26, 2016

Peter S. Vogel, Adjunct
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Sonya Everitt has 15 years of Litigation Support, Project Management and Training experience, and is currently working for Gardere Wynne Sewell, LLP as their Practice Support Manager. Sonya works with the firm’s management team to create and implement strategies for Litigation support that focuses on quality work product, customer and client care and innovative technology solutions.

**Areas of Expertise:**
- Project Management, Database Administration, Electronic Discovery, and Document Productions
- Automated Litigation Support
- Well versed in database conversions and manipulating data
- Incorporating Training Departments and Project Specific Trainings for firms

**Professional Affiliations:**
- Dallas Association of Litigation Support Managers (2007-2013)
- Women of eDiscovery (2011-2015)
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Certifications:
• Ringtail Administration for Project Management
• Clearwell Technical and Project Management Certified
• CaseMap/Time Map Technical Certification
• LiveNote Certification
• ProLaw Training
• Law Admin/EDD & Law Admin/EDA Certification

Litigation Support Product Experience:
• Relativity
• Ringtail
• Disco
• Clearwell
• CaseMap/TimeMap
• Textmap
• LiveNote CaseNotebook
• Summation
• LAW
• Concordance
Duke Law, EDRM Join Forces to Advance E-Discovery Education and Standards

Duke Law Acquires EDRM to Expand Educational Efforts in Legal Technology and Facilitate Improvements in Administration of Justice

St. Paul, MN – August 24, 2016 – EDRM (Electronic Discovery Reference Model), the leading standards organization for the ediscovery market, announced today that Duke University School of Law has acquired EDRM.

The move advances the missions of both organizations. For EDRM, Duke provides an institutional home with a large and respected organization, ensuring the continued vitality of EDRM. Duke Law and its Center for Judicial Studies gain resources that expand the center’s involvement in electronic discovery and information governance in support of its mission to promote better understanding of the judicial process and to generate ideas for improving the administration of justice.

"This agreement sets the stage for an expansion of EDRM efforts in industry education and standards," says Dean David F. Levi. "E-discovery is a major component of today’s litigation practice, and EDRM provides valuable resources to educate not only experienced practitioners, but also law students and new lawyers about practical discovery problems they will encounter. This acquisition is also an important step in Duke’s continued efforts to bring together the judiciary, legal practitioners, educators and government organizations to advance the understanding of the judicial process and improve the complex processes in the administration of justice."

"We are proud of the significant impact EDRM has made on education and practices in electronic discovery and information governance since 2005," says George Socha, co-founder of EDRM. "The achievements of EDRM are a direct result of the hard work of many legal and technology practitioners whose efforts and expertise have improved e-discovery and information governance practices and ultimately the judicial process. Tom Gelbmann and I extend to each of them our sincere appreciation, and we encourage continued participation in this exciting next phase with Duke Law."
EDRM Wall Poster

Download 24" x 36" wall chart of EDRM diagram with IGRM diagram and stage descriptions...

EDRM News & Updates

September 14, 2016: Join Us Sept. 21 for the EDRM webinar, "Managed Services – Treat the Cause... Not the Symptoms," sponsored by Stroz Friedberg

August 25, 2016: Call for Comment: Proposed Revisions to Guidelines and Practices for Implementing the 2015 Discovery Amendments to Achieve Proportionality

August 25, 2016: REMINDER – Join us today for the EDRM webinar, "9 Habits of Resilient e-Discovery Leaders," sponsored by kCura

August 24, 2016: Duke Law, EDRM Join Forces to Advance E-Discovery Education and Standards

EDRM Stages

The EDRM diagram represents a conceptual view of the e-discovery process, not a literal, linear or waterfall model. One may engage in some but not all of the steps outlined in the diagram, or one may elect to carry out the steps in a different order than shown here.

The diagram also portrays an iterative process. One might repeat the same step numerous times, honing in on a more precise set of results. One might also cycle back to earlier steps, refining one’s approach as a better understanding of the data emerges or as the nature of the matter changes.

The diagram is intended as a basis for discussion and analysis, not as a prescription for the one and only right way to approach e-discovery.

Below are summary explanations of each EDRM stage. For guides for each stage of the e-discovery process, move the cursor over the boxes below for links to guides for each stage of the e-discovery process or select from the headings above the summary explanations.

Electronic Discovery Reference Model

Information Governance
Getting your electronic house in order in order to mitigate risk & expenses should e-discovery become an issue, from initial creation of ESI (electronically stored information) through its final disposition.

Identification
Locating potential sources of ESI & determining its scope, breadth & depth.

Preservation
Ensuring that ESI is protected against inappropriate alteration or destruction.
Electronic Discovery Reference Model

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Metadata
e-Discovery: Basic Principles of Digital Documentation

PETER S. VOGEL
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Dallas, Texas 75201

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State Bar of Texas
22nd ANNUAL ADVANCED EVIDENCE AND DISCOVERY COURSE
April 16-17, 2009
Houston

CHAPTER 10
### Chapter 10

**General Information**
- **Created:** Wednesday, February 25, 2009 9:45:00 AM
- **Modified:** Sunday, March 01, 2009 11:45:53 AM
- **Accessed:** Sunday, March 01, 2009 11:45:53 AM
- **Printed:** Sunday, March 01, 2009 11:52:00 AM
- **Last saved by:** Peter Vogel
- **Revision number:** 8
- **Total editing time:** 442 Minutes

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Casey Anthony Family Computer Showed Searches for 'Chloroform'

BY STEVE HELLING

Wednesday June 08, 2011 12:45 PM EDT

Months before Caylee Anthony disappeared in 2008, someone logged into the family computer and searched the Internet for the word "chloroform."

According to detective Sandra Osborne, a computer examiner for the Orange County Sheriff's Office, Internet searches for "chloroform" were deleted.
Temporary Internet Files

Internet Explorer stores copies of webpages, images, and media for faster viewing later.

Check for newer versions of stored pages:
- Every time I visit the webpage
- Every time I start Internet Explorer
- Automatically
- Never

Disk space to use (8-1024MB)
(Recommended: 50-250MB) 14904

Current location:
C:\Documents and Settings\Peter Vogel\Local Settings\Temporary Internet Files\

Move folder... View objects View files

History

Specify how many days Internet Explorer should save the list of websites you have visited.

Days to keep pages in history: 20
The free upgrade offer to Windows 10 has ended. For more information, click here.

Download Windows 10

Looking to install Windows 10 on your PC?
Download and run the media creation tool to get started. For more information on how to use the tool, see the instructions below.

Download tool now

Privacy

+ Using the tool to upgrade this PC to Windows 10 (click to show more or less information)

+ Using the tool to create installation media (USB flash drive, DVD, or ISO file) to install Windows 10 on a different PC (click to show more or less information)

+ More download options

+ Give feedback
macOS Sierra

What can your Mac do now? Just ask.

Siri makes its debut on Mac, with new capabilities designed just for the desktop. And that’s not the only way your Mac is smarter. macOS Sierra helps you rediscover your best photos, shop more securely online, and work more seamlessly between devices. It can also help free up valuable storage space. Now your Mac does even more for you, so you can do more with your Mac.

Coming this fall
The Open Group offers various open source software downloads that enable cross-platform interoperability in IT solutions.

Open Motif is a source code version of Motif®️, available under a public license, the effect of which allows Open Motif to be distributed, royalty-free, when the platform upon which it is shipped is Open Source.

- Open Motif®️
Linus Torvalds Reflects on 25 Years of Linux
When Linus Torvalds first announced his new...

How DIGIT Created High Availability on the Public Cloud to Keep Its Games Running
The mobile gaming company must deliver a seamless...

Let's Encrypt: Every Server on the Internet Should Have a Certificate
The web is not secure. As of August 2016, only 45...
unix/linux
Microsoft Explorer
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Metadata

Choose Details

Select the details you want to display for the files in this folder.

Details:
- Name
- Size
- Type
- Author
- Date Modified
- Attributes
- Date Created
- Date Accessed
- Status
- Owner
- Title
- Subject
- Category
- Pages
- Comments

Width of selected column (in pixels):
Choose Details

Select the details you want to display for the files in this folder.

Details:
- Comments
- Copyright
- Artist
- Album Title
- Year
- Track Number
- Genre
- Duration
- Bit Rate
- Protected
- Camera Model
- Date Picture Taken
- Dimensions
- Episode Name
- Program Description

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[OK] [Cancel]
Metadata

Choose Details

Select the details you want to display for the files in this folder.

Details:
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- Camera Model
- Date Picture Taken
- Dimensions
- Episode Name
- Program Description
- Audio sample size
- Audio sample rate
- Channels
- Company
- Description
- File Version
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wav file
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CAUSE NO. CC-03-11791D

MICRO ELECTRONICS, INC.
d/b/a MICRO CENTER,
Plaintiff,

v.

UMAX TECHNOLOGIES, INC.
d/b/a UMAX TECHNOLOGIES,
Defendant.

COUNTY COURT AT LAW
NO. 4
DALLAS COUNTY, TEXAS

ORDER OF REFERENCE AND APPOINTMENT OF SPECIAL MASTER

BASED ON THE PLEADINGS and other case papers in this case and as a result of the hearing on November 12, 2004 on Plaintiff’s ("Micro Center") Second Set of Discovery Motions Against Defendant ("UMAX") as well as the argument presented to this Court on a number of issues in dispute, the Court, pursuant to the provisions of Texas Rules of Civil Procedure ("TRCP") Rule 171, hereby orders that Peter Vogel is appointed as a Special Master (the "Special Master") for certain discovery issues in this case asserted in the Plaintiff’s First and Second Set of Discovery Motions (the "Discovery Motions") to be paid a reasonable fee charged as taxable costs, to be initially assessed equally to the parties herein, subject to further orders of the court.

The Court determines that these discovery and computer issues require special expertise and that these issues create exceptional circumstances and good cause for the appointment of Master. Those discovery issues presented to the Special Master shall include review and analysis of, and reporting the Special Master’s conclusions to the Court and counsel for all parties, about the following matters:

ORDER OF REFERENCE AND APPOINTMENT OF SPECIAL MASTER
Page 1 of 3
Printed from Justia.com's Court-Record of Order of Reference and Appointment of Special Master Dec 16 2004
tiff
Title: this is a test to demonstrate
Subject: that anyone can change
Author: this field
Category:
Keywords: or that field
Comments: or whatever
### Order of Reference and Appointment

#### General

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Elevate data

Create your own database apps easily in formats that serve your business best.

Buy now  Try now

Create custom apps fast without being a developer*
Microsoft Access Database

[Image: A properties dialog box for a Microsoft Access database file named 'dnary.mdb'. The dialog box shows the file type as a Microsoft Office Access Database and details about the file's location, size, creation and modification dates.]
Microsoft Access Database

This is a sample

to demonstrate

that a user

can change

this field

or another

Advanced >>
Microsoft Access Database
**Hash:** A mathematical algorithm that represents a unique value for a given set of data, similar to a digital fingerprint. Common hash algorithms include MD5 and SHA.
Hash

MD5: (Message-digest Algorithm 5) A hash algorithm used to give a numeric value to a digital file or piece of data. Commonly used in electronic discovery to find duplicates in a data collection.

SHA-1 and SHA-2 (Secure Hash Algorithm): for computing a condensed representation of a message or a data file specified by FIPS PUB 180.
Hash Coding: To create a digital fingerprint that represents the binary content of a file unique to every electronically-generated document; assists in subsequently ensuring that data has not been modified.
Hash Function: A function used to create a hash value from binary input. The hash is substantially smaller than the text itself, and is generated by the hash function in such a way that it is extremely unlikely that some other input will produce the same hash value.
Disk Fragmentation

- Delete v. Undelete
- Copying over all files
- Slack space
EnCase Forensic

File: Case 1\C\pk-test-cases\acbtkey\a6-(empty).pdf
Type: Acrobat 6.0
Protection: Permissions Password, RC4 Encryption, Printing Not Allowed
Decryption: Instant Unprotection, File patching required

File: Case 1\C\pk-test-cases\acbtkey\a6-daniil.pdf
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Protection: Open Password, Permissions Password, RC4 Encryption
Decryption: Brute-force - Medium, File patching required

Case 1\C\pk-test-cases\acbtkey\a8-openpass.pdf (PS 41613240 LS 41613240 CL 5201655 SO 000 FO 0 LE 0)
Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

   (A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

   (B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated thing located on it.
Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(b) **PROCEDURE.**

(2) **Responses and Objections.**

(B) **Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.
(b) Procedure.

(2) Responses and Objections.

(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.
(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.
(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.
(E) **Producing the Documents or Electronically Stored Information.** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.
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(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.
(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.
Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

COMMITTEE NOTES ON RULES—2015 AMENDMENT

Several amendments are made in Rule 34, aimed at reducing the potential to impose unreasonable burdens by objections to requests to produce.

Rule 34(b)(2)(A) is amended to fit with new Rule 26(d)(2). The time to respond to a Rule 34 request delivered before the parties’ Rule 26(f) conference is 30 days after the first Rule 26(f) conference.

other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated

Rule 34(b)(2)(B) is amended to require that objections to Rule 34 requests be stated with specificity. This provision adopts the language of Rule 33(b)(4), eliminating any doubt that less specific objections might be suitable under Rule 34. The specificity of the objection ties to the new provision in Rule 34(b)(2)(C) directing that an objection must state whether any responsive materials are being withheld on the basis of that objection. An objection may state that a request is overbroad, but if the objection recognizes that some part of the request is appropriate the objection should state the scope that is not overbroad. Examples would be a statement that the responding party will limit the search to documents or electronically stored information created within a given period of time prior to the events in suit, or to specified sources. When there is such an objection, the statement of what has been withheld can properly identify as matters “withheld” anything beyond the scope of the search specified in the objection.

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated portion thereof.
Rule 34(b)(2)(B) is further amended to reflect the common practice of producing copies of documents or electronically stored information rather than simply permitting inspection. The response to the request must state that copies will be produced. The production must be completed either by the time for inspection specified in the request or by another reasonable time specifically identified in the response. When it is necessary to make the production in stages the response should specify the beginning and end dates of the production.

Rule 34(b)(2)(C) is amended to provide that an objection to a Rule 34 request must state whether anything is being withheld on the basis of the objection. This amendment should end the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld on the basis of the objections. The producing party does not need to provide a detailed description or log of all documents withheld, but does need to alert other parties to the fact that documents have been withheld and thereby facilitate an informed controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated
RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY

196.1 Request for Production and Inspection to Parties.

(a) Request. A party may serve on another party - no later than 30 days before the end of the discovery period - a request for production or for inspection, to inspect, sample, test, photograph and copy documents or tangible things within the scope of discovery.

(b) Contents of request. The request must specify the items to be produced or inspected, either by individual item or by category, and describe with reasonable particularity each item and category. The request must specify a reasonable time (on or after the date on which the response is due) and place for production. If the requesting party will sample or test the requested items, the means, manner and procedure for testing or sampling must be described with sufficient specificity to inform the producing party of the means, manner, and procedure for testing or sampling.

(c) Requests for production of medical or mental health records regarding nonparties.

(1) Service of request on nonparty. If a party requests another party to produce medical or mental health records regarding a nonparty, the requesting party must serve the nonparty with the request for production under Rule 21a.

(2) Exceptions. A party is not required to serve the request for production on a nonparty whose medical records are sought if:

(A) the nonparty signs a release of the records that is effective as to the requesting party;

(B) the identity of the nonparty whose records are sought will not directly or indirectly be disclosed by production of the records; or

(C) the court, upon a showing of good cause by the party seeking the records, orders that service is not required.

(3) Confidentiality. Nothing in this rule excuses compliance with laws concerning the confidentiality of medical or mental health records.

196.2 Response to Request for Production and Inspection.

(a) Time for response. The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant served with a request before the defendant’s answer is due need not respond until 50 days after service of the request.

(b) Content of response. With respect to each item or category of items, the responding party must state objections and assert privileges as required by these rules, and state, as appropriate, that:

(1) production, inspection, or other requested action will be permitted as requested;

(2) the requested items are being served on the requesting party with the response;
196.4 Electronic or Magnetic Data.
To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot - through reasonable efforts - retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.
196.4 Electronic or Magnetic Data.
To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot - through reasonable efforts - retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.
196.4 Electronic or Magnetic Data.
To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot - through reasonable efforts - retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.
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The Sedona Guidelines:

Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age

A Project of The Sedona Conference

Second Edition
November 2007
3. An organization need not retain all electronic information ever generated or received.

a. Destruction is an acceptable stage in the information life cycle; an organization may destroy or delete electronic information when there is no continuing value or need to retain it.

b. Systematic deletion of electronic information is not synonymous with evidence spoliation.

c. Absent a legal requirement to the contrary, organizations may adopt programs that routinely delete certain recorded communications, such as electronic mail, instant messaging, text messaging and voice-mail.

d. Absent a legal requirement to the contrary, organizations may recycle or destroy hardware or media that contain data retained for business continuation or disaster recovery purposes.

e. Absent a legal requirement to the contrary, organizations may systematically delete or destroy residual, shadowed or deleted data.

f. Absent a legal requirement to the contrary, organizations are not required to preserve metadata; but may find it useful to do so in some instances.
THE SEDONA PRINCIPLES:
SECOND EDITION

Best Practices Recommendations & Principles for Addressing Electronic Document Production

A Project of The Sedona Conference®
Working Group on Electronic Document Retention & Production (WG1)

JUNE 2007

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The Sedona Principles for Electronic Document Production
Second Edition

1. Electronically stored information is potentially discoverable under Fed. R. Civ. P. 34 or its state equivalents. Organizations must properly preserve electronically stored information that can reasonably be anticipated to be relevant to litigation.

2. When balancing the cost, burden, and need for electronically stored information, courts and parties should apply the proportionality standard embodied in Fed. R. Civ. P. 26(b)(2)(C) and its state equivalents, which require consideration of the technological feasibility and realistic costs of preserving, retrieving, reviewing, and producing electronically stored information, as well as the nature of the litigation and the amount in controversy.

3. Parties should confer early in discovery regarding the preservation and production of electronically stored information when these matters are at issue in the litigation and seek to agree on the scope of each party’s rights and responsibilities.

4. Discovery requests for electronically stored information should be as clear as possible, while responses and objections to discovery should disclose the scope and limits of the production.

5. The obligation to preserve electronically stored information requires reasonable and good faith efforts to retain information that may be relevant to pending or threatened litigation. However, it is unreasonable to expect parties to take every conceivable step to preserve all potentially relevant electronically stored information.

6. Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.

7. The requesting party has the burden on a motion to compel to show that the responding party’s steps to preserve and produce relevant electronically stored information were inadequate.

12. Absent party agreement or court order specifying the form or forms of production, production should be made in the form or forms in which the information is ordinarily maintained or in a reasonably usable form, taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case.

13. Absent a specific objection, party agreement or court order, the reasonable costs of retrieving and reviewing electronically stored information should be borne by the responding party, unless the information sought is not reasonably available to the responding party in the ordinary course of business. If the information sought is not reasonably available to the responding party in the ordinary course of business, then, absent special circumstances, the costs of retrieving and reviewing such electronic information may be shared by or shifted to the requesting party.

14. Sanctions, including spoliation findings, should be considered by the court only if it finds that there was a clear duty to preserve, a culpable failure to preserve, and produce relevant electronically stored information, and a reasonable probability that the loss of the evidence has materially prejudiced the adverse party.
Production (Metadata and Form) - Sedona Principle 12

The 2005 version of Sedona Principle 12 provided that “[u]nless it is material to resolving the dispute, there is no obligation to preserve and produce metadata absent agreement of the parties or order of the court.”\textsuperscript{32} As part of the 2006 Amendments, Rule 34 was amended to provide that electronically stored information could be produced in either the form in which it was ordinarily maintained or in a “reasonably useable” form. Neither the rule nor the Advisory Committee Comments to Rule 34 directly address the extent to which metadata would be required in a particular case.

After considerable discussion at the La Jolla Annual Meeting and among the Steering Committee, Sedona Principle 12 has been extensively revised to both reflect the
emphasis on “form or forms” of production in the 2006 Amendments and to provide a more neutral view of the need for metadata.

*Sedona Principle* 12 now provides that in the absence of early agreement on the topic or a court order, production should be made in either the form or forms in which the information is ordinarily maintained or in a reasonably usable form, “taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case.”

The Comments to *Principle* 12 have also been extensively rewritten to explain the advantages and disadvantages of particular forms of production with relationship to the impact of the choices on metadata.

CIVIL ACTION No. 03–2200–JWL–DJW

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

2005 U.S. Dist. LEXIS 21966

September 29, 2005, Decided
September 29, 2005, Filed


For Right Management Consultants, Movant: James A. Durbin, Swanson Midgley, LLC, Crown Center, Kansas City, MO.

JUDGES: David J. Waxse, United States Magistrate Judge.
II. Discussion

In its response to the Court's Show Cause Order, Defendant states that it provided the spreadsheets as requested by Plaintiffs in native Excel format, with the following four modifications, none of which affected the discoverable data regarding the RIFs at issue this lawsuit: (1) Defendant deleted the adverse impact analyses; (2) Defendant deleted the social security numbers of employees referenced in the spreadsheets; (3) Defendant deleted metadata from the electronic files that included the spreadsheets; and (4) Defendant locked the value of the cells in the spreadsheets.

Defendant asserts that these four modifications to the RIF spreadsheets were made in good faith and for legitimate purposes, namely to protect from disclosure information that Judge Lungstrum determined is not discoverable, to ensure the Court's rulings could not be circumvented, and to maintain the integrity of the data. Defendant maintains that under these circumstances its actions were appropriate and do not warrant the imposition of sanctions.
Appendix E to *The Sedona Guidelines* further explains the importance of metadata:

Certain metadata is critical in information management and for ensuring effective retrieval and accountability in record-keeping. Metadata can assist in proving the authenticity of the content of electronic documents, as well as establish the context of the content. Metadata can also identify and exploit the structural relationships that exist between and within electronic documents, such as versions and drafts. Metadata allows organizations to track the many layers of rights and reproduction information that exist for records and their multiple versions. Metadata may also document other legal or security requirements that have been imposed on records; for example, privacy concerns, privileged communications or work product, or proprietary interests. n34
Having concluded that neither the federal rules nor case law provides sufficient guidance on the production of metadata, the Court next turns to materials issued by the Sedona Conference Working Group on Electronic Document Production. The Court finds two of the *Sedona Principles for Electronic Document Production* particularly helpful in determining whether Defendant was justified in scrubbing the metadata from the electronic spreadsheets. Principle 9 states that "absent a showing of special need and relevance a responding party should not be required to preserve, review, or produce deleted, shadowed, fragmented, or residual data or documents." n53 Principle 12 provides that "unless it is material to resolving the dispute, there is no obligation to preserve and produce metadata absent agreement of the parties or order of the court." n54


United States District Court,
D. Delaware.
Wyeth, Plaintiff,
v.
Impax Laboratories, Inc., Defendant.

No. Civ.A. 06-222-JJF.

Background: Manufacturer of brand name drug filed patent infringement action against manufacturer of generic version of that drug. Defendant filed motion to compel production of documents.

Holdings: The District Court, Joseph J. Farnan, Jr., J., held that:

1. Defendant’s discovery request was overly broad;
2. Plaintiff was not required to produce electronic documents in their native format; and
3. Plaintiff failed to demonstrate good cause to redistribute discovery costs.

Motion granted in part and denied in part.

West Headnotes

[1] Patents 291 → 292.3(2)

291 Patents
  291 XII Infringement
    291 XII(B) Actions
    291k292 Discovery
    291k292.3 Production of Documents and Things
    291k292.3(2) k. Subject matter. Most Cited Cases
4. Production of All Responsive Documents Generated After February 10, 2003
Impax contends that, except for self-selected discrete categories, Wyeth is refusing to look for or produce documents created or generated after February 10, 2003. Wyeth, in response, contends that documents created after February 10, 2003 are irrelevant and that updating the search would be burdensome and unlikely to produce relevant material. Wyeth also contends that it has offered to update searches in those areas that might possibly have subsequent relevant documents generated after February 2003.

The Court finds that Wyeth's proffered production is reasonable. Wyeth has identified those areas where relevant documents may have been created or generated after February 2003, and is willing to continue to augment its discovery responses. Since Impax has not demonstrated that the broad search it asks for will generate additional relevant documents, the Court concludes that the burden of production on Defendant outweighs its likely benefit to Impax. Accordingly, this portion of Impax's Motion is denied.
United States District Court
Southern District of California

Qualcomm Incorporated,  
Plaintiff,  

v.  

Broadcom Corporation,  
Defendant.  

________________________________

and RELATED COUNTERCLAIMS.  

Case No. 05cv1958-B (BLM)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S MOTION FOR SANCTIONS AND SANCTIONING QUALCOMM, INCORPORATED AND INDIVIDUAL LAWYERS  

[DOC. NOS. 489, 540, 599, 614]

At the conclusion of trial, counsel for Broadcom Corporation ("Broadcom") made an oral motion for sanctions after Qualcomm Incorporated ("Qualcomm") witness Viji Raveendran testified about emails that were not produced to Broadcom during discovery. Doc. No. 489. The trial judge, United States District Court Judge Rudi M. Brewster, referred the motion to this Court pursuant to 28 U.S.C. § 636(b) and Civil Local Rule 72.1(b) of the United States District Court for the Southern District of California. Doc. No. 489, at 1. On Nov. 20, 2007,
CONCLUSION

For the reasons set forth above, the Court **GRANTS IN PART** and **DENIES IN PART** Broadcom’s sanction motion and **ORDERS** Qualcomm to pay Broadcom $8,568,633.24. Qualcomm will receive credit toward this sanction for any amount it pays to Broadcom to satisfy the Exceptional Case sanction. The Court also **REFERS** to The State Bar of California for an investigation of possible ethical violations attorneys James R. Batchelder, Adam A. Bier, Kevin K. Leung, Christian E. Mammen, Lee Patch and Stanley Young. The Court **ORDERS** these six attorneys and Qualcomm in-house attorneys Alex Rogers, Roger Martin, William Sailer, Byron Yafuso, and Michael Hartogs to appear 9:00 a.m. on Tuesday, January 29, 2008, in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, 940 Front Street, Suite 5140, San Diego, California, 92101 to develop the comprehensive Case Review and Enforcement of Discovery Obligations protocol in accordance with this Order.

**IT IS SO ORDERED.**
OPINION AND ORDER

10 Civ. 3488 (SAS)

I. INTRODUCTION

Plaintiffs brought this action for the purpose of obtaining records, pursuant to the Freedom of Information Act ("FOIA"), from four government
Once again, this Court is required to rule on an e-discovery issue that could have been avoided had the parties had the good sense to “meet and confer,” “cooperate” and generally make every effort to “communicate” as to the form in which ESI would be produced. The quoted words are found in opinion after opinion and yet lawyers fail to take the necessary steps to fulfill their obligations to each other and to the court. While certainly not rising to the level of a breach of an ethical obligation, such conduct certainly shows that all lawyers — even highly respected private lawyers, Government lawyers, and professors of law — need to make greater efforts to comply with the expectations that courts now demand of counsel with respect to expensive and time-consuming document production.

Lawyers are all too ready to point the finger at the courts and the Rules for increasing the expense of litigation, but that expense could be greatly diminished if lawyers met their own obligations to ensure that document production is handled as expeditiously and inexpensively as possible. This can only be achieved through cooperation and communication.
ORDER

10 Civ. 3488 (SAS)

This Court has been informed that the parties have recently resolved their dispute regarding the form and format in which records will be produced by defendants in this Freedom of Information Act lawsuit. In the interests of justice, this Court now believes that it would be prudent to withdraw the opinion it issued on February 7, 2011 (Docket # 41). I do so because, as subsequent submissions have shown, that decision was not based on a full and developed record. By withdrawing the decision, it is the intent of this Court that the decision shall have no precedential value in this lawsuit or in any other lawsuit.
MONIQUE DA SILVA MOORE, et al., Plaintiffs,

V.

PUBLICIS GROUPE & MSL GROUP, Defendants.

No. 11 Civ. 1279 (ALC) (AJP).

United States District Court, S.D. New York.

February 24, 2012.

OPINION AND ORDER

ANDREW J. PECK, Magistrate Judge.

In my article Search, Forward: Will manual document review and keyword searches be replaced by computer-assisted coding?, I wrote:

To my knowledge, no reported case (federal or state) has ruled on the use of computer-assisted coding. While anecdotally it appears that some lawyers are using predictive coding technology, it also appears that many lawyers (and their clients) are waiting for a judicial decision approving of computer-assisted review.

Perhaps they are looking for an opinion concluding that: "It is the opinion of this court that the use of predictive coding in a case may be acceptable, even if some of..."
THORNE RESEARCH, INC. and SOFTGEL FORMULTORS, INC.,
Plaintiffs,
v.
ATLANTIC PRO-NUTRIENTS, INC., d/b/a/XYM OGEN, Defendants.

Case No. 2:13-cv-784.

United States District Court, D. Utah, Central Division.

March 22, 2016.

MEMORANDUM DECISION AND ORDER

PAUL M. WARNER, Magistrate Judge.

District Judge Ted Stewart referred this case to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court are the following motions: (1) Atlantic Pro-Nutrients, Inc. d/b/a/Xymogen's ("Defendant") motion to compel; (2) Thorne Research, Inc. ("Thorne") and Softgel Formulators, Inc.'s ("SFI") (collectively, "Plaintiffs") motion for dedesignation of allegedly privileged documents; and (3) Defendant's motion for leave to amend or supplement invalidity contentions. The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to civil rule 7.1(f) of the Rules of Practice for the United States District Court for the District of
Electronic Discovery Reference Model and Metadata
September 26, 2016

Peter S. Vogel, Adjunct
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