



LEGACY ESI EVALUATION & RISK ANALYSIS

A Legacy ESI Evaluation and Risk Analysis provides a corporation with essential information regarding the condition and status of the “legacy” Electronically Stored Information (LESI) created by the organization in the past. It includes information about how accessible the data is, what type of data exists, and the risks and costs associated with retaining or disposing of it.

Information developed
in the process will
improve informed
decision-making
regarding the various
options available.

THE SITUATION

Most corporations have retained large amounts of “legacy” ESI or LESI in active IT systems, as well as in stored backup media. Much of this LESI is poorly organized or catalogued, has limited search capability, and all is potentially subject to legal discovery and therefore carries a high potential liability and risk. Much of this LESI has simply accumulated over time, as the cost of storage media has steadily declined, and therefore the incentive to eliminate it has declined.

Recently though, the rules of legal discovery have evolved and all of it has become fair game for litigants seeking discovery. The cost to restore ESI from backup media can be daunting. Backup tapes for example, contain high volumes of ESI, all of which must be restored before certain subsets of ESI can be extracted. It is common that backing up, for example, a single server requires multiple tapes, so the number of such backups that can be relevant in litigation can be quite large. Accordingly, corporations with large libraries of LESI have a significant interest in evaluating it and taking appropriate steps to characterize it.

Although the rules of legal discovery allow parties to argue to exclude designated sources of ESI due to a disproportionate cost burden, these arguments are uncertain, particularly if the relevant period of interest is best represented by the LESI. The biggest obstacle to its elimination though, is being able to establish with reasonable certainty that its contents are not under any such obligation.

THE SOLUTION

Scarab Consulting addresses the problem with a systematic approach to first identifying and quantifying the LESI, then establishing its content to a degree deemed reasonably adequate to consider appropriate disposition options.

If, for example, there are a large number of tapes that can be reasonably established, via their labeling and/or historical knowledge, to have backed up the same ESI source such as a specific server, at different unknown times and it is known that the ESI source maintained ESI relevant to a specific type of litigation, it may only be necessary to confirm the content on a small sample of tapes and be able establish a “reasonable certainty” as to the content of them all.

As a result, an informed consideration of disposal options can be made. Depending on the relevant litigation, the benefit of disposal of some or all of the LESI may outweigh the risk burden of continuing to keep the LESI.

There are a variety of technology options available that can be employed to establish the likely content of LESI repositories. These include options for backup tapes ranging from simple tape header scans to file listing scans to full ESI extraction of a selected sample of tapes. For ESI retained in “active” network repositories such as Storage Area Networks (SAN’s), there are technologies that can scan ESI and create an indexed database that enable fast searches and/or automatically classify ESI based on custom-developed rules.

Scarab will develop a detailed report regarding the corporation’s legacy ESI which includes;

- ✓ Inventory of LESI repositories and sources
- ✓ Content of LESI, to the extent possible obtained from labeling and/or technology assessment including tape header analysis, tape scan listings, or full restoration
- ✓ Inventory of LESI relevant to litigation
- ✓ Inventory of LESI needed to be retained for business purposes
- ✓ Options and costs regarding culling and purging of LESI and associated risks

THE BENEFITS

The Legacy ESI report provided by Scarab will provide detailed information that will enable the corporation to;

- ✓ Know what LESI is being stored in the organization
- ✓ Make fully informed, legally defensible decisions as to the disposition of LESI
- ✓ Determine whether certain data is inaccessible or discoverable
- ✓ Prepare for FRCP (26a) by identifying all potential sources of ESI
- ✓ Improve ability to negotiate during Meet & Confer
- ✓ Reduce risk of spoliation and sanctions

ABOUT SCARAB CONSULTING

Scarab Consulting provides global, results-driven, litigation and investigation oriented discovery services including collections, social media surveillance, processing (electronic and paper), hosting, managed review and court reporting/ deposition services to corporations and their law firms, managing the risks and cost before and during litigation. Scarab Consulting’s professional consultants utilize their industry-proven experience inside large corporations and law firms to provide proactive, legally defensible and technically sound services relative to information governance and litigation preparedness. With a suite of fixed-priced consulting solutions, Scarab Consulting is able to custom design a solution to fit each client’s needs. Legal/technology driven solutions for litigation and e-discovery including electronic data processing, review, and hosting, as well as document scanning and coding, help increase efficiency and reduce costs for organizations. Powerful technology enables Scarab Consulting’s Social Media Surveillance Services to monitor web sites and collect information related to the issues and target individuals associated with a particular matter. In addition, Scarab Consulting provides accurate, timely, and quality court reporting and deposition services delivered by a highly qualified, dedicated Scarab Consulting case management team. Scarab Consulting’s alliance with numerous technology providers ensures that the industry’s best practices e-discovery and litigation tools are utilized, guaranteeing the best possible solution for every client. For more information, go to www.consultscarab.com.