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eBOOK

IDRM - the Investigations Done Right Model

Strategies for uncovering key evidence in modern ESI investigations

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Content

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Introduction

The Investigations Done Right Model (IDRM) is a new model that underscores the strategic application of process, technology and expertise to accelerate early insight into data for time sensitive ESI investigations.

Modern electronically stored information (ESI) investigations are critically important and intensely demanding. Timely, cooperative self-reporting plays a central role in today's heightened global regulatory environment and can obviate a sweeping agency investigation that would otherwise divert or exhaust valuable company time and resources. Finding the facts early might well mean the difference between a fully informed, favorable settlement and overly expensive and protracted litigation. And a quiet, behind-the-scenes review of an internal candidate's emails might help ensure that the new CEO does not engender an unanticipated public relations nightmare.

But shrinking timelines and ESI data proliferation make it increasingly difficult for investigation teams to zero in on the key facts that will reveal the true story.

Against this backdrop, this eBook outlines key components of the new IDRM to assist teams to implement an efficient and effective process to quickly locate key facts and critical evidence.

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Investigations are unique

The approach to reviewing documents for an internal or regulatory investigation differs significantly from a typical litigation review and production context. Recognizing this difference and the unique challenges of an investigation is the key to designing an efficient and effective document investigation protocol.

The objective of a typical litigation review is to proceed, from a reasonably known set of facts, to locate most of the relevant documents relating to the dispute, with the least amount of review effort. The emphasis is on document review, primarily to present the best documents for review and determine whether those documents relate to the underlying fact pattern.

In an investigation, the underlying fact pattern is either not known or not well developed. As a result, an investigation review is crafted to quickly find pertinent documents, including the "unknown unknowns," that will establish that fact pattern or otherwise answer the critical questions. It is not necessary to locate all, or even most, of the documents that may ultimately pertain to the fact pattern. It is most important to be certain that the critical documents are uncovered quickly.

An investigation is an effort to find the pieces of a puzzle and put them together to define a cohesive fact pattern—fast!

It is not necessary to locate all, or even most, of the documents that may ultimately pertain to the fact pattern. It is most important to be certain that the critical documents are uncovered quickly.

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Different contexts – common goal

Investigations can arise in any number of circumstances, and each situation is characterized by unique challenges. In general, investigations can be divided into three broad categories:

1. Internal

Proactive e.g. fraud, IP theft, insider threat, cybersecurity breach, HR/employee-related matters

2. Regulatory

Responsive to a government or quasi-government regulatory paradigm, e.g. FCPA, UK Bribery Act investigations
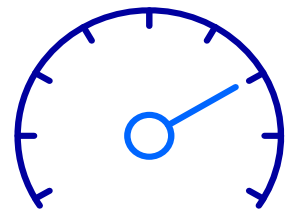
3. Due diligence

Pre-mergers, acquisitions, C-suite vetting, third parties

In all cases, the common goal is to find the key facts and evidence to inform strategy and rapid action.

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Modern investigation challenges - velocity, volume and unknown unknowns

1. Velocity

Whatever the impetus for the investigation, in every instance time is of the essence. The failure to promptly initiate an investigation, whether in relation to a whistleblower complaint, or allegations of sexual harassment, not only degrades the entire process, but could also give the impression that the organization is essentially discouraging legitimate complaints.

When a regulatory body comes knocking at the door, mandated times for a thorough and accurate response are tight. And virtually every merger or acquisition carries with it a post-deal due diligence period that is measured in days, barring subsequent recovery regardless of how consequential.

2. Volume

While timelines for modern ESI investigations are shrinking, data volumes continue to rise. Investigation teams face the challenge of thoroughly and effectively interrogating large unstructured volumes of documents to locate critical documents and key evidence.

The complexity is only increased by the dramatic shift to a remote workforce and increasingly ephemeral forms of communication (chat, texts etc).

3. Unknown, unknowns

In an investigation, there may be little to go on and investigators likely will not know exactly who is involved or the precise circumstances. When dealing with that level of unknowns, it is critical to ensure that collection is sufficiently expansive to encompass any documents that may be necessary to answer the specific information need underlying the investigation.

The investigation team needs access to all documents necessary to get the full fact picture, rather than leaving evidentiary holes that complicate analysis. That said, the need for expansive collection can lead to massive time and cost overruns unless investigators have the right team with the right process and technology to quickly interrogate large data sets to locate the key documents that tell the story.

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IDRM: Meeting and exceeding challenges with the right process, technology and team

The following 5 strategies can help you meet and exceed challenges of today's ESI investigations.

1. Preserve and collect expansively

Expansive collection of all data is the best way to ensure that the team uncovers the true story. While this may seem to run counter to expediency, ensuring fulsome collection at the beginning of an investigation reduces risk of overlooking the key evidence that tells the story and ultimately saves time associated with multiple piece-meal collections. Don't worry about the initial volume of data collected, as we will discuss below, investigators know how to implement processes and leverage technology to avoid review of extraneous data.

2. Optimize the process from start to finish leveraging the cloud

Optimizing time to results means looking at the entirety of the investigation process and taking advantage of every opportunity to improve and expedite workflow. To expedite the collection process, there should be a direct (and battle tested) line of communication between the investigation team and the collection expert, and a predefined, seamless pipeline to move collected data into a hosted environment to ensure prompt availability of ESI for review.

Cloud-based platforms are particularly well suited to investigations as they provide ease of use and remote access wherever the investigation team is located. Additionally, when the investigation team is well versed in the hosted analytics platform, they can begin their analysis almost as soon as the data is collected. No time is wasted in arranging for, training or coordinating with disparate providers, or coming up to speed on the most efficient and effective way to locate the documents necessary to respond to the information needs underlying the investigation.

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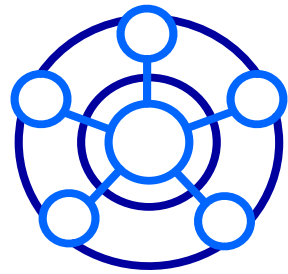
3. Use communication analytics to locate additional witnesses

Advanced communication analytics provide investigators with a macroscopic view of the entire social network of communication, identify critical individuals and focus on their individual communication patterns. Using analytics to drill even deeper into the communications between specific individuals, an experienced investigation team can quickly uncover witnesses that can be integrated in the interview and document collection process, ensuring comprehensive investigation.
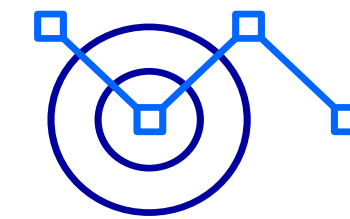
### 4. Review selectively yet thoroughly

One of the keys to rapidly locating critical documents amongst the data collected is selecting the appropriate technology-assisted review protocol (TAR)—one that uses true continuous active learning (CAL) and applies an algorithm specifically designed to ferret out documents amongst diverse pockets of contextual relevance.

Advanced TAR featuring CAL uses every review decision to improve the algorithm in real-time, continuously ranking the best documents for earliest review. This immediate, prioritized approach to TAR is particularly suitable for investigations.

Leading TAR tools also ensure that all pockets of the dataset are explored by seeking out and bringing forward documents that are contextually diverse from everything that is known to that point in time. The more contextually diverse documents that are seen over the course of the review, the less likely that the review and, in turn, the investigation, misses critical issues that are unknown at the outset.

With an experienced investigations team, the right TAR protocol can uncover the critical facts in the shortest amount of time possible.

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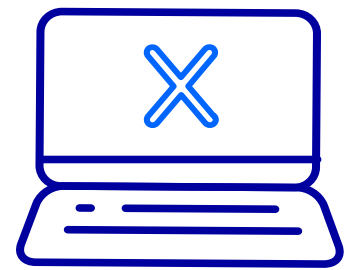
5. If you can't find relevant documents, prove a negative

Sometimes, there simply are no documents to be found in a document collection. When documents are the object of the investigation, as in governmental and regulatory investigations, that means reviewing the entire document population only to come up empty-handed. Leveraging TAR with CAL to establish that there are no relevant documents amongst a contextually diverse sample of the data offers a reasonable and defensible way to demonstrate the absence of responsive documents in a collection without having to review the entire collection.

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How OpenText can expedite your next investigation

Today, every ESI investigation is intensely demanding, with new added complexities brought on by the proliferation of a remote workforce and devices. The IDRM allows teams to succeed in the face of these challenges through proactive, careful, streamlined coordination of every component of the investigation, beginning at the earliest stage of the process.

OpenText™ Recon, a dedicated investigations service providing seamless end-to-end support, helps enterprises and outside counsel rapidly find the information that will answer critical questions. Led by a team of lawyers, data scientists, linguists and technologists experienced in unstructured data interrogation, the Recon team has a proven track record of finding the critical facts fast.

Contact a member of the OpenText Recon investigation team.

Optimize modern ESI investigations

→ Download the white paper

Find out more

→ OpenText™ Recon

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