Microsoft

Meeting Modern eDiscovery Challenges

How to optimize your eDiscovery process to reduce risk and cost in the hybrid workplace

Introduction

For many businesses, the workplace is no longer thought of as just the four walls of an office. Rather, companies are expanding their definitions of the workplace to include not only the physical office but also working from home, and other remote locations. The hybrid work model has become an increasingly popular choice for organizations thanks to the rise in cloud usage for storage and for services, work-life balance, and pandemic-related remote work.

Now, most organizations primarily use digital sources to host work and to store and archive their files. However, digital workloads add to the volume, accessibility, and diversity of data. The increased complexity of data types introduced in this transition has magnified eDiscovery challenges. Leveraging in-place eDiscovery capabilities in your cloud environment introduces ways to scale your approach so that you can sustainably match the continuous rise of big data while minimizing risk.

This whitepaper serves as a guide to help you make the most of the eDiscovery capabilities currently available from Microsoft. This can help you adopt an efficient workflow to better manage risk and cost by quickly finding relevant content to satisfy eDiscovery requirements related to internal investigations, legal and regulatory requests.

Setting the stage

Technological advancements have changed the way that we do business. For legal professionals, the tools used in processes like eDiscovery have greatly impacted how quickly and efficiently we can find and analyze data. Digital communications and collaboration have resulted in more data for teams to sort and prioritize. This makes the past approaches of "export all my data for analysis" incredibly time-consuming and costly as organizations deal with growing data sets that continue to increase in complexity.

Courts today know that effective eDiscovery tools are out there, and they expect organizations to use them. The United States District Court for the Southern District of New York Judge Edgardo Ramos reminds us in his Industrial Quick Search opinion that effective eDiscovery is a major part of an attorney's duties. Without properly preserving the files relevant to the case, a firm may face costly outcomes.

In fact, the ABA (American Bar Association) estimated in 2020 that document review alone accounts for more than 80 percent of total litigation costs, or $42.1 billion dollars a year.[1] The expense continues to grow with the ever-expanding volumes and forward-looking organizations are working to address this challenge at the source. These organizations rely on in-place eDiscovery tools that empower managers with the ability to consistently mitigate this risk with affordable, time-efficient, and defensible processes. But before we dive into how your organization can leverage these in-place eDiscovery tools as well, it is important to understand what a typical eDiscovery process looks like.

The eDiscovery Process

For most eDiscovery managers, the process of collecting evidence can be incredibly involved. But the process is critical when building a case because the relevant digital evidence will naturally have a significant impact on your case's outcome.

Let us consider the Electronic Discovery Reference Model (EDRM) as a fundamental set of guidelines for the eDiscovery process (Figure 1).

[1] Jeffery S. Haff Dady & Gardner, P.A. et al., "W-8 Focusing on the bottom line: managing costs and driving value when resolving franchise disputes," October 30, 2020, https://www.americanbar.org/content/dam/aba/events/franchising/2020/w8.pdf

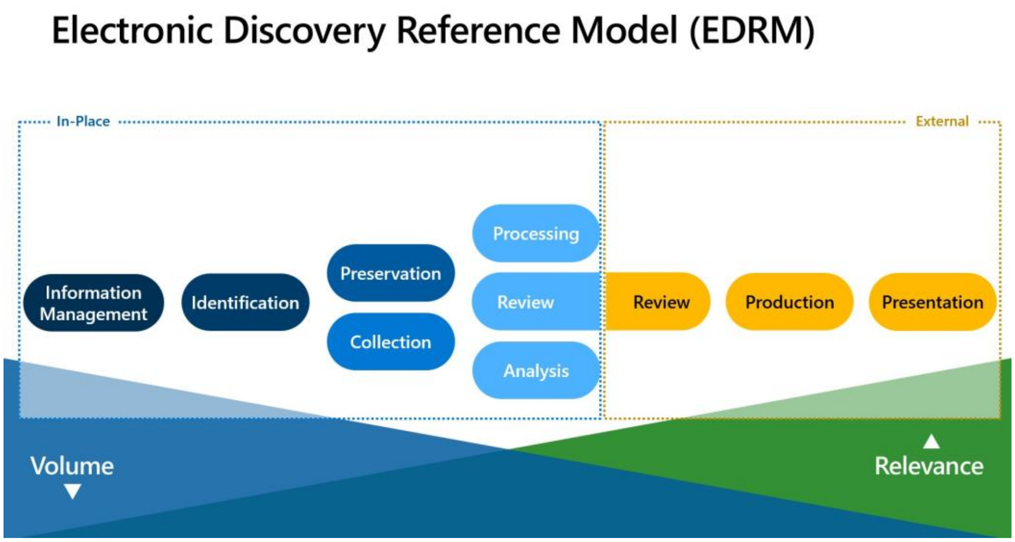

Figure 1. eDiscovery reference model of general eDiscovery stages

Generally, the eDiscovery process starts with the identification of representative custodians and key data sources. Then, with a combination of instructions, in-place hold policies, and even some collection efforts, the legal team preserves the data connected to the custodians and the locations where potentially relevant data is stored. Eventually, significant volumes of data are likely collected and processed for review. Average volumes today are often far greater than an entire team of review attorneys could manage without sophisticated technology and detailed strategy.

After the content is collected, it is meticulously processed, filtered, grouped, and sorted for easier understanding. Managers may export data to third-party tools or other groups that need to review the data. The result is a carefully cultivated dataset of content confirmed to be relevant to the case.

This dataset then goes through a production formatting process before it is ultimately disclosed to the requesting party. After the necessary parties receive this information, they plan out how the evidence will be presented at the trial.

With the evolution of technology, some workstreams have become simpler while others have only become more complex, and eDiscovery practitioners must constantly reassess and refine their processes to continually deliver successful results.

Challenges with the eDiscovery Process

The rise in hybrid work and the continuous increase in the volume of data being produced has caused eDiscovery to become even more demanding on the organization and the teams that oversee the eDiscovery process. Organizations need to manage the needs and desires of the business to leverage new communication and collaboration tools. But they cannot ignore the risks and costs associated with preserving, collecting, reviewing, and producing data in litigation.

Never-Ending Data Growth

Organizations have generated more electronic data over time. SG Analytics found that in 2020 alone, the world generated an average of 2.5 quintillion bytes of data per day[2]. A quintillion bytes is equal to a billion gigabytes. By comparison, phones on average can only store around 64 gigabytes. Volume is a major driver of cost in eDiscovery scenarios. Today's standard data volumes often make the old approach of unfiltered collections for external processing and review cost-prohibitive and unattainable within the court-ordered deadlines.

Context is Critical

When it comes to providing accurate evidence in a case, the data itself may not be enough. Metadata and original context can be essential components of digital evidence, though some data formats are more reliant on context and metadata than others. This is especially true when working with online collaboration tools, with their advanced sharing and versioning capabilities, and nuanced archive formats.

This scenario can be extended further with email and chat conversations, such as in Microsoft Teams. eDiscovery Managers should have a plan when reviewing their custodians' chat history because these cannot just be presented in chronological order or as individual items. The custodians whose conversations they are searching could be engaged in multiple chats at the same time or responding to earlier messages, which wouldn't be apparent if reviewers only read the individual text files as standalone items. Legal teams should be prepared to present electronic data as clearly as possible within the context of its original format. Let us examine how eDiscovery can be optimized for hybrid workplaces.

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[2]Jency Durairaj, "2.5 billion bytes of data generated everyday top data trends 2020," SG Analytics, August 14, 2020, https://us.sganalytics.com/blog/2-5-quintillion-bytes-of-data-generated-everyday-top-data-science-trends-2020/

Adapting eDiscovery for hybrid workplaces

The hybrid workplace complicates how eDiscovery processes scale to the ever-increasing challenges of data collection, industry standards, and context. Organizations still expect a complete set of discoverable data for each court case but achieving them in a hybrid work environment with rapidly evolving data grows more costly every time. eDiscovery practitioners need a way to keep pace not just with the current state of data in the hybrid workplace, but with future growth in the volume, velocity, and diversity of data.

One approach leverages [Microsoft Purview eDiscovery (Premium)](), a suite of features designed to help you optimize your eDiscovery response while minimizing cost and the impact on your business.

Microsoft litigation team has adopted this toolset and has transformed the way they do eDiscovery resulting in significant reductions in cost and risk (Figure 2).

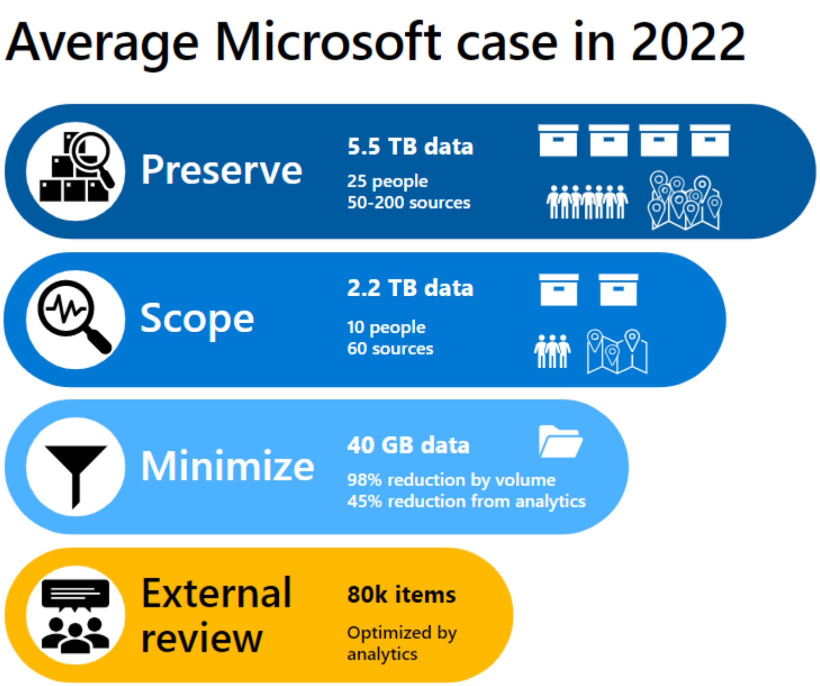

Figure 2. The amount of data in an average Microsoft case from 2022 that needs review after using eDiscovery (Premium)

Solving eDiscovery problems, the Microsoft way

As a native Microsoft solution with direct access to other Microsoft products, eDiscovery (Premium) comes with fully developed tools to help eDiscovery managers efficiently tackle multiple steps of the EDRM. eDiscovery managers may not need to build up their own custom solutions; they have a solution in eDiscovery (Premium) that is ready for use. eDiscovery (Premium) provides tools to equip eDiscovery managers for the complex tasks of identifying, preserving, collecting, reviewing, analyzing, and exporting content. (Figure 3).

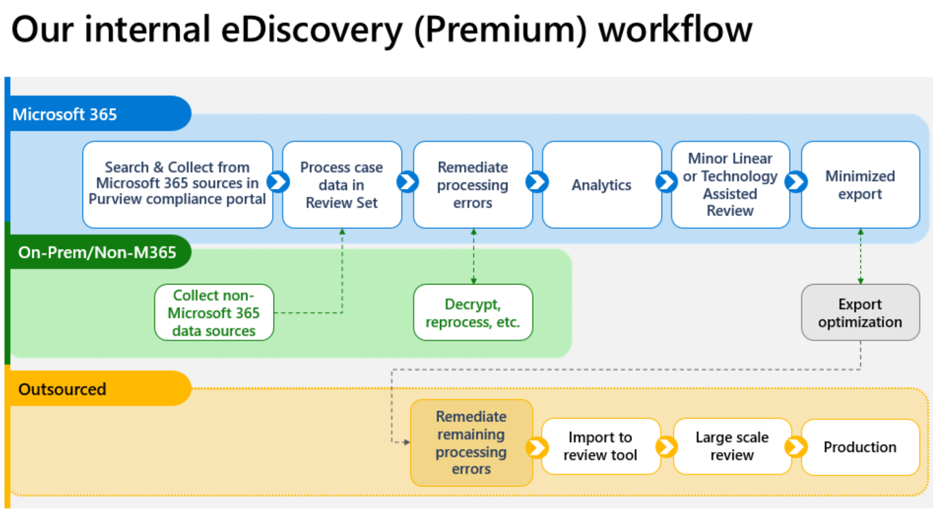

Figure 3. Flowchart of internal eDiscovery (Premium) workflow

You can use eDiscovery (Premium) to help:

Preserve data in place: eDiscovery (Premium) directly preserves and collects data within Microsoft 365.

- Enforce data preservation without making copies outside of Microsoft 365.
- Enable higher fidelity search for content in Microsoft 365 without major collection efforts.
- Run as many targeted collections as necessary to extract potentially relevant subsets without experiencing the downtime of reprocessing large volumes in other systems.

Speed up the data collection process: eDiscovery (Premium) swiftly removes duplicate information, surfacing the unique data you need to build a stronger case without sacrificing your data's integrity.

- Exercise precise control over which data you do and do not want to include in your search.
- Find specifically relevant video files and meeting recordings in search via searchable transcripts.
- Automatically retrieve Microsoft 365 cloud attachments to messages in your collection set without even knowing specifically where they may reside within your tenant.

Experience enhanced data analysis and review: eDiscovery (Premium) provides native analytics tools to find relevant content, reduce downstream reprocessing, and present data with full contextual clarity.

- Easily capture and reconstruct digital conversations with modern attachments in a manner that is optimized for review and production.
- Filter, review, tag, and annotate collected data all within your Microsoft 365 tenant.
- Use familiar analytics features like threading and deduplication to minimize your collections and distill your datasets to the most concise, representative form before investing in downstream review.
- Ingest and process non-Microsoft 365 content for review and analysis alongside the native Microsoft 365 content to maximize process consistency.

Categorize data for structured insights: eDiscovery (Premium) discerns themes within collected datasets to support the review process.

- Save time by letting eDiscovery (Premium) organize the data for you to review.
- Reveal latent themes and connections across unstructured data.

  Leverage out-of-box classifiers and build case-specific models to make decisions at scale.

Optimize downstream review and production projects: eDiscovery (Premium) enables you to port the native and analytics metadata for direct use in popular 3rd party review platforms.

- Eliminate reprocessing efforts by using the Condensed Directory Structure export format, mapping the load file values to the corresponding fields in external tools.
- Utilize fields like Set ID, Family ID, and Group ID to keep related content together.
- Depend on Deduped Custodian, Deduped File ID, and Deduped Compound Path values to easily identify where duplicate copies exist, even if you suppress them.

- Leverage sort order fields like “ND_ET_sort_incl_attach” and “Set_order_inclusives_first” to organize the grouped data in the most logical order to optimize understanding and maximize consistency.

eDiscovery (Premium) is specifically designed to help you navigate the challenges of time, risk, and understanding the eDiscovery process.

By providing in-place preservation, streamlined data collection, and insightful analytics, eDiscovery (Premium) helps you reduce the number of tasks that you need to handle. You’ll have fewer disruptions and more time to focus on the tasks that are the most crucial to your case. eDiscovery (Premium) has the capability to repeatedly handle the challenges of eDiscovery in the hybrid workplace. But, its value, like every tool, is still dependent on how eDiscovery managers set up their workflows and how they apply the capabilities of eDiscovery (Premium) to their specific circumstances.

Getting started with your eDiscovery investment

Integrating new systems into your organization can be tricky because they need to work with your existing technical workflows and be accepted by the people you work with. This means that you’ll likely need to consult with various vendors and other interested parties to determine what eDiscovery tool is the best fit for your business. Get the most out of your eDiscovery investment by following these steps:

1. Evaluate your organization’s current workflows and their capabilities for cloud centralization.
2. Invite and meet with cloud partners to learn about suggested cloud methodologies.
3. Start a conversation with interested parties like your company’s IT department, risk management committees, and outside counsel to gain guidance on what eDiscovery solution would be the best fit for your case.
4. Explore your options for eDiscovery by checking out eDiscovery (Premium) and the other tools within our Microsoft 365 E5 Compliance suite. Sign up to try eDiscovery (Premium) for yourself by visiting our Trial Offering page.

eDiscovery (Premium) best practices

eDiscovery (Premium) continues to accrue value as you learn to harness its full potential. The Microsoft Legal team has shared some of their best practices gathered after using eDiscovery extensively and collaborating with customers. Below you will find some ways to help plan for the long term and get the most out of your investment.

Leverage in-place preservation to reduce collection risks

Boost your confidence in your in-place minimization decisions by enabling in-place preservation on the native data sources. This way, if your review process reveals indications of missed content, you can easily run subsequent collection actions, automatically deduplicating against earlier batches. In these instances, be mindful to simply add newly collected documents to the existing analytics model instead of rebuilding the analytics in full.

Add intelligence to your custodian interviews

While eDiscovery (Premium) simplifies the task of identifying Teams, Yammer, and other Microsoft 365 sources used by case custodians, nothing fully replaces the value of a full custodian interview. Boost the efficiency of these conversations by discussing the specific sources shown in the location picker UI to get their direct confirmation of what may contain relevant information and what will not.

Leverage the premium indexing capabilities

Make sure the "re-indexing custodian data" job(s) have completed before committing your collections. This job is automatically initiated when a custodian or data source is added to the case on the Data Sources tab, and automatically identifies and remediates indexing errors within the repositories. This enables the most accurate collections and fewer blind spots. Any continuing processing exceptions can be identified and manually remediated on the Processing tab.

Record metrics to help benchmark the value of eDiscovery (Premium)

As you use the tool, record metrics as benchmarks to help you measure your return on investment. Consider some of the following metrics as you realize eDiscovery (Premium's) impact on your business:

- External eDiscovery cost per case
- Average cost per custodian
- Average review volume
- Average volume of unfiltered data per Custodian
- Number of processing exceptions per case

Refine your eDiscovery plan to maximize repeatability and efficiency

By creating and refining your eDiscovery plan over time, you can build trust with your peers and other legal firms. Make a shareable educational document to help train your team on how your company uses eDiscovery (Premium) throughout a case. This practice can help you standardize the eDiscovery process and make future eDiscovery discussions more efficient by using shared terms. Useful elements and conventions that the plan should clarify include:

- How files with cloud attachments are collected
- What tags are used and what data is intended to use those tags
- The types of data that machine learning culls from searchable results
- What information needs to be redacted
- How you templatize metadata mapping to other tools used in your process

Automate tasks to help save time

As you review your eDiscovery plan, search for patterns in your workflow. These patterns can give you valuable insights on where you can save more time. In these instances, you can look to task automation to help you better distribute your team's time and resources. This can free up time for you to focus on more pressing business matters without interruption from switching between tasks. Make sure to consult your IT and legal teams before implementing any automation tools to not disrupt your existing process.

A few examples of tasks that you can automate include:

- Creating cases, standard saved searches, tag sets, and coding palettes
- Mapping sources to custodians
- Starting the preservation process

Learn more about the eDiscovery Graph API: aka.ms/eDiscoveryGraphAPIDocsa

Bringing eDiscovery (Premium) to your business

For deeper insights about eDiscovery (Premium) and to learn how it can transform your company's eDiscovery process, access our eDiscovery (Premium) feature guide pages.

Ready to buy eDiscovery (Premium)?

Reach out to your Microsoft Account Team to get started.

Experience a trial run of Microsoft Purview eDiscovery (Premium) for yourself, by visiting our Microsoft Purview Trial page.

Stay up to date on the latest eDiscovery (Premium) feature releases by visiting our eDiscovery blog: aka.ms/eDiscoveryBlog.