Executive Summary

The growth of digital content is dramatically affecting the practice of law, especially when it comes to discovery. This proliferation of digital content threatens to overwhelm the ability of law firms to fulfill their discovery requirements, both in gathering the information necessary to win cases and in complying with mandates to deliver information to others.

The Electronic Discovery Reference Model (EDRM) was launched in May 2005 to help the legal profession address these escalating challenges. EDRM develops and publishes frameworks, standards and resources that empower legal practitioners to more effectively and efficiently execute e-discovery, while also taking a more strategic approach to information governance.

By adopting EDRM best practices, law firms can more quickly and consistently find, analyze and present relevant information — even as “haystacks” of digital content continue to grow in proportion to the “needles” of relevant information. EDRM also enables law firms to bring the exploding costs associated with e-discovery under control. The result is a practice that can achieve better outcomes for more clients with greater overall profitability.
The EDRM Framework

It wasn’t too long ago that the gathering of evidence consisted mostly of talking to people, examining physical objects and reviewing paper documents. That has changed dramatically. Law firms must now routinely navigate through massive amounts of electronically stored information (ESI) in order to assess the viability of cases, negotiate in an informed manner and optimally prepare for trial.

EDRM is essentially a nine-phase workflow through which ESI is transformed from raw material to legally useful material. These phases are:

**Information governance:** This is where digital content originates. In some cases, that content will be well organized and indexed. In others, it may be highly chaotic. EDRM provides a separate detailed model (the Information Governance Reference Model) for this phase to help firms be more proactive about accurately and efficiently fulfilling future e-discovery requirements.

**Identification:** In this phase, law firms attempt to identify potential sources of relevant information. This is typically done through interviews with key players to identify what type of records they have that may be relevant. Because the scope of potentially relevant data may be uncertain in the early phases of a legal dispute, identification teams must have a process in place for responding to change and capturing new information as a dispute unfolds.

**Preservation:** This phase is necessary to ensure that data is not destroyed or altered before it fulfills its legally appropriate use. When the duty to preserve data is triggered, it is particularly important to isolate and protect potentially relevant content in ways that are both legally defensible and credibly auditable in order to mitigate associated operational and legal risks.

**Collection:** This is the actual acquisition of information that is potentially relevant, as determined in the identification phase of the e-discovery process. Here, too, execution must be legally defensible and credibly auditable in order to mitigate associated operational and legal risks.

**Processing:** Because data can arrive from collection in all kinds of formats and files, it is typically necessary to convert, extract or otherwise process it so it can be readily used throughout subsequent phases of discovery. Some individual files or emails may also have to be extracted from larger containers in order to ensure defensible reduction of data that will be exposed going forward. This is also the phase where metadata is cataloged to support the appropriate handling of data as discovery continues.

**Review:** The review phase gives the legal team a good initial understanding of the content available so its members can appropriately organize, categorize, index and cull it. This is also the phase where legal teams can determine if there are privileged communications in the content mix that must be redacted or if foreign language documents require a translation. An effective review phase will help reduce costs and mitigate risks throughout the rest of the process.

**Analysis:** In this phase, the legal team can begin to determine its litigation readiness and define the measures needed to optimize that readiness. This can include a determination of the additional data sources, EDRM skills and technologies necessary to equip the legal team with all the information it needs to achieve the best results. This phase is also typically where projected ESI-related costs are considered and weighed in relation to the economic value of the case at hand.

**Production:** The goal of the production phase is to deliver ESI as usable media in a manner that is compliant with both legal mandates and any agreements with other parties. Of particular relevance are the Federal Rules of Civil Procedure, which under Rule 26(f) address “issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.”

**Presentation:** This is when content is actually used for one of its primary purposes — which can generally be categorized as enabling better understanding of the facts of the case, using facts to draw out more information from someone involved in the case or persuading another party about the case through fact-based argument. This requires a presentation of content that is clear, credible and legally sanctioned.

Interestingly enough, while the EDRM diagram flows chronologically from left to right, a suggested best practice is actually to start with at least some conception of presentation before initiating the EDRM process. That way, each step in the process can be executed to lead to a desired outcome.

To learn more about CDW’s EDRM solutions, contact your CDW legal sales account manager, call 888.631.4239 or visit CDW.com/legal.
Enabling Technologies for EDRM

Technology vendors have responded to the growing needs of law firms and corporate legal departments by developing advanced solutions that automate and add value to the EDRM process. These seven types of solutions can be combined and integrated to create a highly automated end-to-end EDRM environment:

**Intelligent discovery systems** make it easy for attorneys and legal assistants to quickly sift through large volumes of digital content and execute multiple phases of EDRM — including identification, preservation, collection, processing, review, analysis and production. Systems in this category can include features such as legal hold, semantic analysis and support for a full range of file types. More advanced solutions can even be used to process audio and video content through phonetic coding.

**Hosted discovery solutions** run in the cloud, eliminating the capital costs and operational burdens associated with on-premises discovery systems. As with other cloud-based technologies, these solutions also offer adaptive capacity, which can be helpful given how variable law firms’ e-discovery workloads are with cases of different sizes being brought in and then resolved. These solutions also make it easier for geographically distributed teams and contractors to collaborate on casework. Often, providers of hosted solutions also offer professional services as part of a turnkey package that further simplifies the acquisition of EDRM capacity on an as-needed basis.

**Early case assessment solutions** help legal teams more accurately predict the potential cost of a case based on the projected scope and complexity of discovery. These solutions are useful for helping determine the risk/reward ratio for taking a case to trial, which is an important factor in any pretrial settlement negotiations. Early case assessment is also relevant to the management of client relationships and reputational risk, since today’s market for legal services holds a decreasing tolerance for cost overruns.

**Computer-assisted review technology**, also known as “predictive coding,” accelerates document review and reduces total EDRM costs by capturing the coding decisions of human reviewers and using those decisions to “teach” an automated system how to make similar decisions. This technology is often included in broader EDRM-enabling e-discovery platforms.

**In-house forensic tools** enable legal teams to retrieve relevant data from hard drives, sometimes even in cases where digital content is password-protected. These tools are especially useful in situations where discovery must be performed on computers or mobile devices in a client’s possession — such as when a company is pursuing legal remedies against a disgruntled employee who compromised corporate intellectual property.

**Transcript management software** converts depositions and other records into mini-databases that legal teams can then easily search, annotate, summarize and cull to meet their needs. Advanced search capabilities can include similar words, dissimilar words, words in proximity to each other and numerical operators.
This technology makes it much easier for legal teams to zero in on specific passages based on their logical content, rather than on just whether they contain a specific word spelled in a specific way.

**Trial presentation software** helps attorneys prepare and manage complex exhibits that may include documents, diagrams, computer animations and live video in a trial setting — where even relatively minor problems with content can seriously undermine the examination of a witness or a presentation to a jury. Many packages include useful features such as video/transcript synchronization and transcript highlighting.

## The Benefits of EDRM Process and Technology

Law firms that invest in EDRM processes and associated technologies reap a variety of valuable benefits, including:

**Better outcomes:** When attorneys get faster access to more complete, accurate and up-to-date information — and when they can better organize that information to align with their case strategies — they can negotiate settlements from stronger positions and make more convincing arguments in court. EDRM thus translates directly into consistently better outcomes for law firms and the clients they represent.

**Lower costs:** Automation and well-defined workflows significantly reduce case costs. These savings can be passed along to clients, increasing the positive financial impact of realized wins and mitigating the downside financial exposure for losses. In addition, some legal opponents will often drive up discovery costs as a negotiating tactic. EDRM can neutralize this commonplace tactic.

**Reduced risk:** Inadequately managed discovery exposes law firms to a variety of risks, including errors that can lead to sanctions for discovery misconduct and breach of regulatory mandates regarding confidentiality. EDRM best practices, including appropriate automation and quality controls, greatly mitigate exposure to these risks.

**Practice scalability:** Limitations in a firm’s capacity to manage discovery can be a significant obstacle to the growth of the practice, in terms of both overall case volume and expansion into new practice areas. By increasing the efficiency of discovery processes, EDRM can remove such obstacles.

**Enhanced reputation:** High-worth clients have high expectations when it comes to the ability of their counsel to navigate an increasingly digital world. A strong EDRM practice has therefore become an integral component of every law firm’s brand value.

Simply put, no law firm can remain complacent about how it performs e-discovery, as the sheer volume of digital content continues to grow — and as case outcomes hinge on digital artifacts that are increasingly difficult to pinpoint. Every practice leader therefore should prioritize e-discovery modernization and consider investments in EDRM-enabling technologies.

### CDW: An EDRM Partner That Gets IT

When your firm is ready to start evaluating and implementing EDRM, CDW has the experts and resources to get you up and running with a reliable, cost-efficient environment that delivers the results you seek. Our team of experienced legal technology professionals understands that every law firm is different, so your dedicated CDW account manager will take the time to consider your requirements, objectives, existing IT resources, and budget before making any recommendations.

We have also established strong partnerships with leading providers of EDRM solutions, and have the technical expertise to integrate these solutions to support seamless, intuitive end-to-end EDRM workflows. You can be assured that the EDRM environment we build will conform to the highest standards of technical excellence.

CDW partners with solutions providers that can address the full range of EDRM lifecycle services including:

- On-site e-discovery needs assessment and workflow analysis
- EDRM environment design and specification
- Evaluations and recommendations of component technologies
- Technology demonstrations
- Transparent, itemized pricing proposals
- Technology proofs-of-concept and hands-on evaluations
- Solutions implementation — including hardware, software and integrations
- End-user and practice IT staff training
- Ongoing technical support

To learn how the right software helped a Pennsylvania law firm deal with large discovery requests, read CDW’s case study “Lamb McErlane Acquires New Tools in the Nick of Time.”