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# Governance and Compliance in the Social Enterprise

*Joe Shepley, PhD*

April 13, 2011

1. Introduction

2. Early Case Assessment

3. The Compliance Risks of the Social Enterprise

4. Records Management and E-discovery at the Social Enterprise

5. E-discovery Cost/Benefit Analysis

6. Recommendations and Next Steps

# Agenda

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# Agenda

- How **early case assessment** programs support risk management and compliance audits

- The **compliance risks** of collaborative applications and social networking sites

- The **records management and e-discovery process** options for the social organization

- Insight into the **cost/benefit analysis** of proper e-discovery

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- **No "Chicken Little" FUD slides**

  - E-discovery risks are well known (though we can address if folks would find it useful)

  - Instead we'll focus on how to address the problem

- **Three key distinctions about how to be "proactive":**

  1. **Execution vs. Design (Run-time vs. Program):** performing day-to-day activities -- hopefully effectively and according to some plan… versus *the plan itself*, which includes designing and implementing the systems, processes, and other conditions necessary for discovery to be effective

  2. **Post-trigger vs. Pre-trigger:** the activities you perform *after* a discovery event has started (e.g. once the lawsuit hits the door) vs. the ones you do *before the lawsuit hits*

  3. **Driving Blind vs. Early Case Assessment (ECA):** applies only to post-trigger processes, and pertains to whether you can develop a solid strategy for the litigation as soon as possible after the trigger event
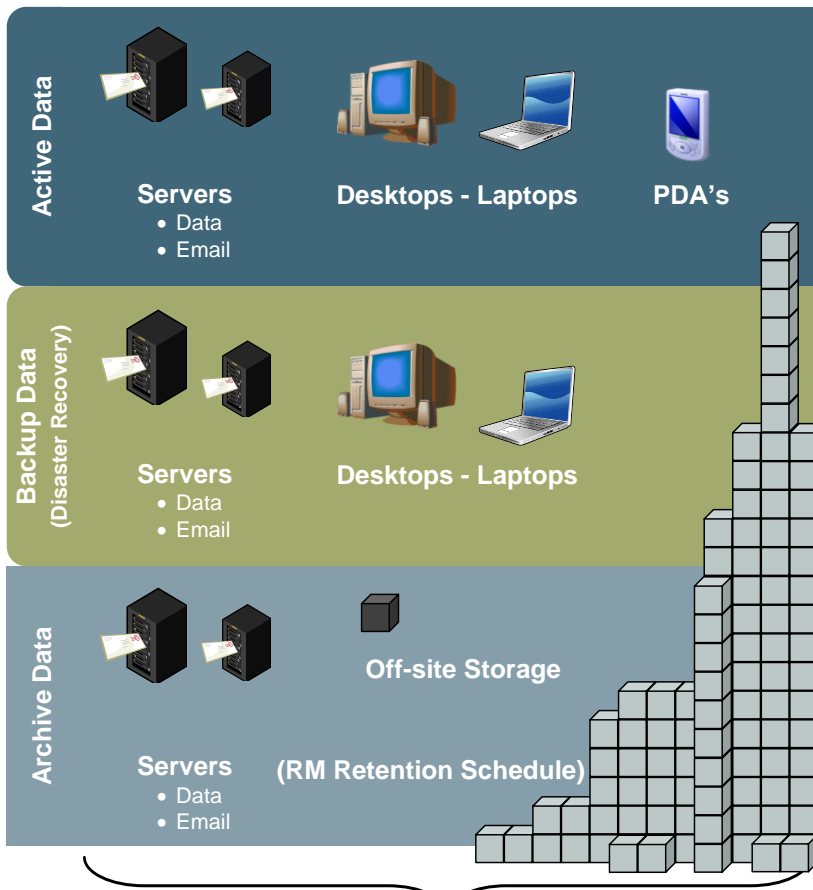
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1. The ESI Volume Problem
   – Solution: Funneling Processes

2. The Information Management Scope Problem
   – Solution: ESI Tiering

3. The Ownership Problem
   – Solution: Cross-functional and Balanced Roles

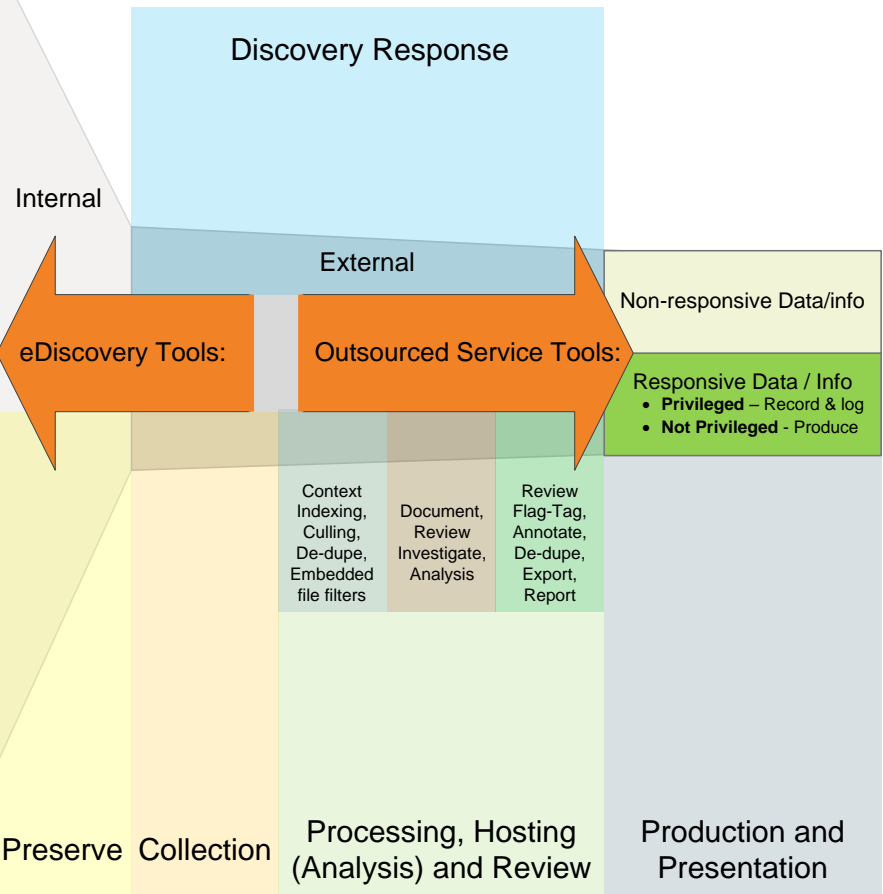*These solutions work, but you need a program to carry them out effectively*

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# The Discovery Funnel
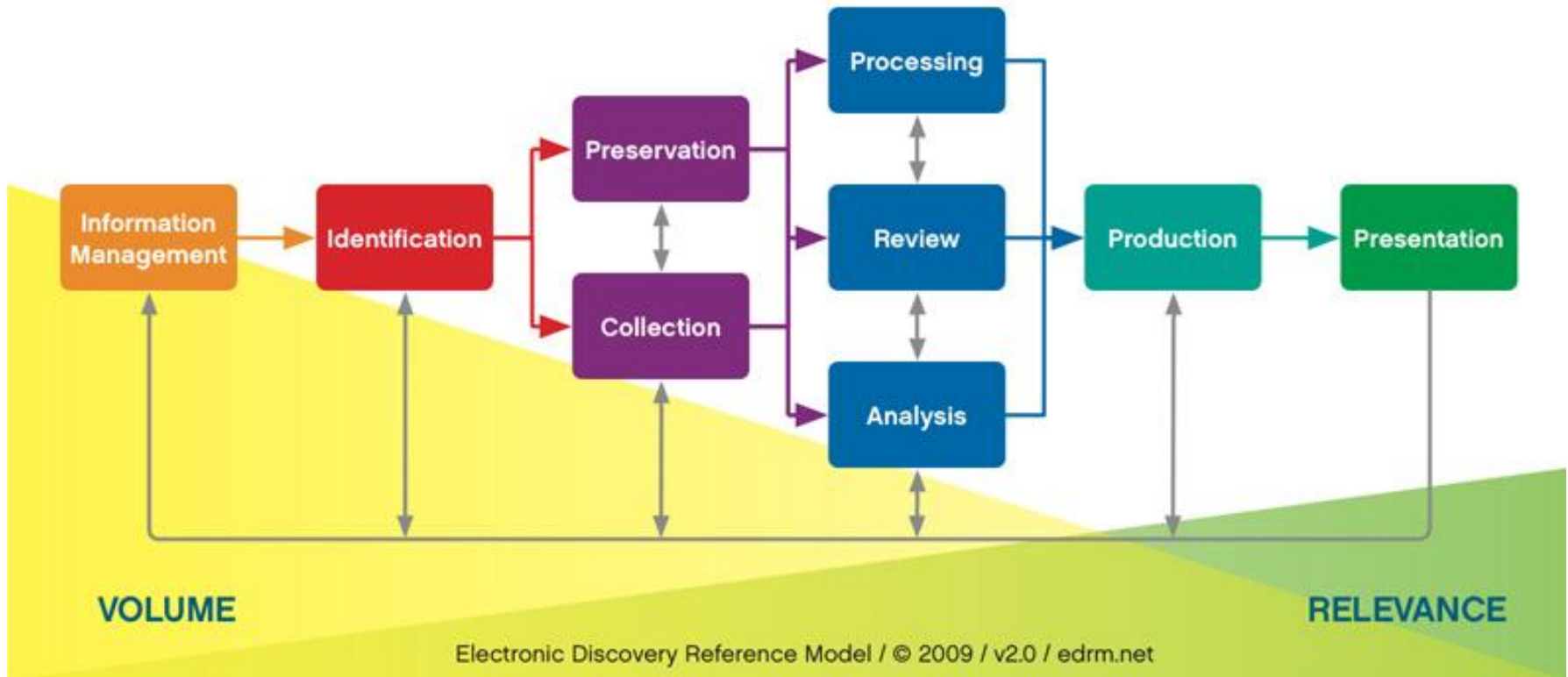
## Why It's a Problem

Total volume of Discoverable Data



**Active Data**

**Servers**
- Data
- Email

**Desktops - Laptops**

**PDA's**

**Backup Data (Disaster Recovery)**

**Servers**
- Data
- Email

**Desktops - Laptops**

**Archive Data**

**Servers**
- Data
- Email

**Off-site Storage**

**(RM Retention Schedule)**

Records Management and Identification

Internal

External

Discovery Response

eDiscovery Tools:

Outsourced Service Tools:

Non-responsive Data/info

Responsive Data / Info
- **Privileged** – Record & log
- **Not Privileged** - Produce

Context Indexing, Culling, De-dupe, Embedded file filters

Document, Review Investigate, Analysis

Review Flag-Tag, Annotate, De-dupe, Export, Report

Preserve | Collection | Processing, Hosting (Analysis) and Review | Production and Presentation

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## Electronic Discovery Reference Model



Electronic Discovery Reference Model / © 2009 / v2.0 / edrm.net

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## Delimit Scope of Records Management



**Risk**

**Manageability**

- Likely Discoverable Information
- Non-business Information (NBI)
- Other Business-related Information (OBRI)
- Declared Records
- Electronically Stored Information (ESI)

- # Too Narrow
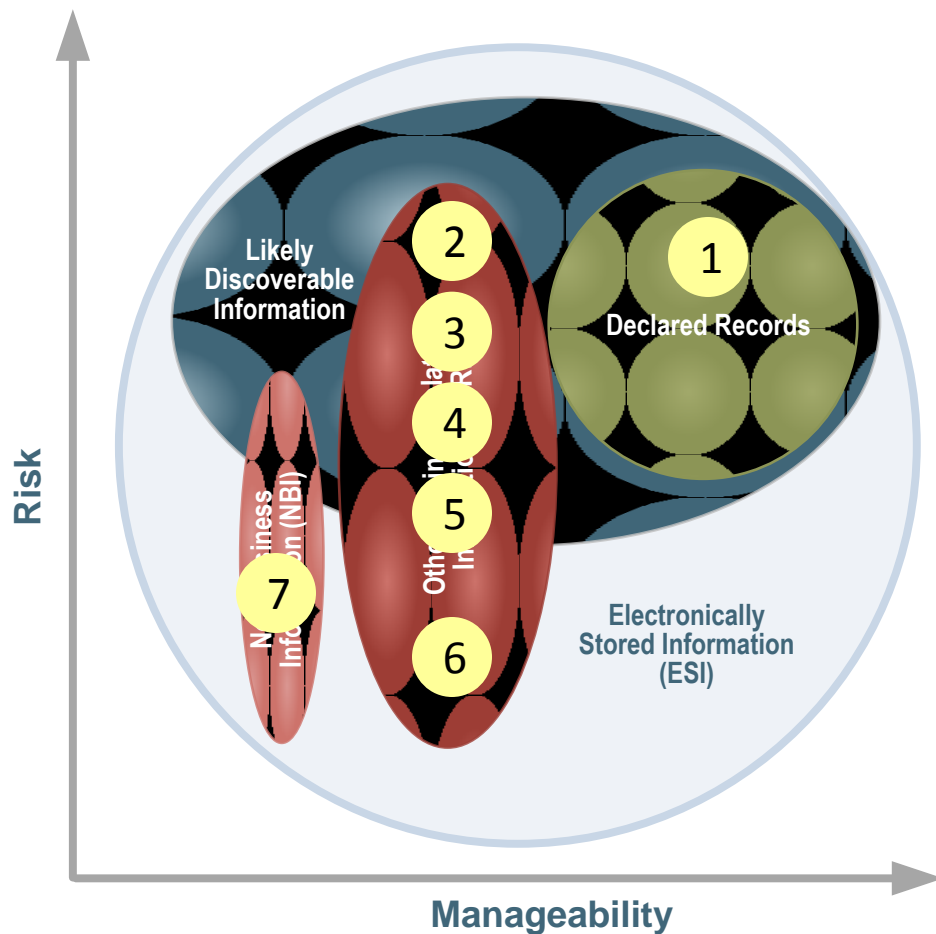  - Only declared records are "in scope" for records management

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## Delimit Scope of Records Management
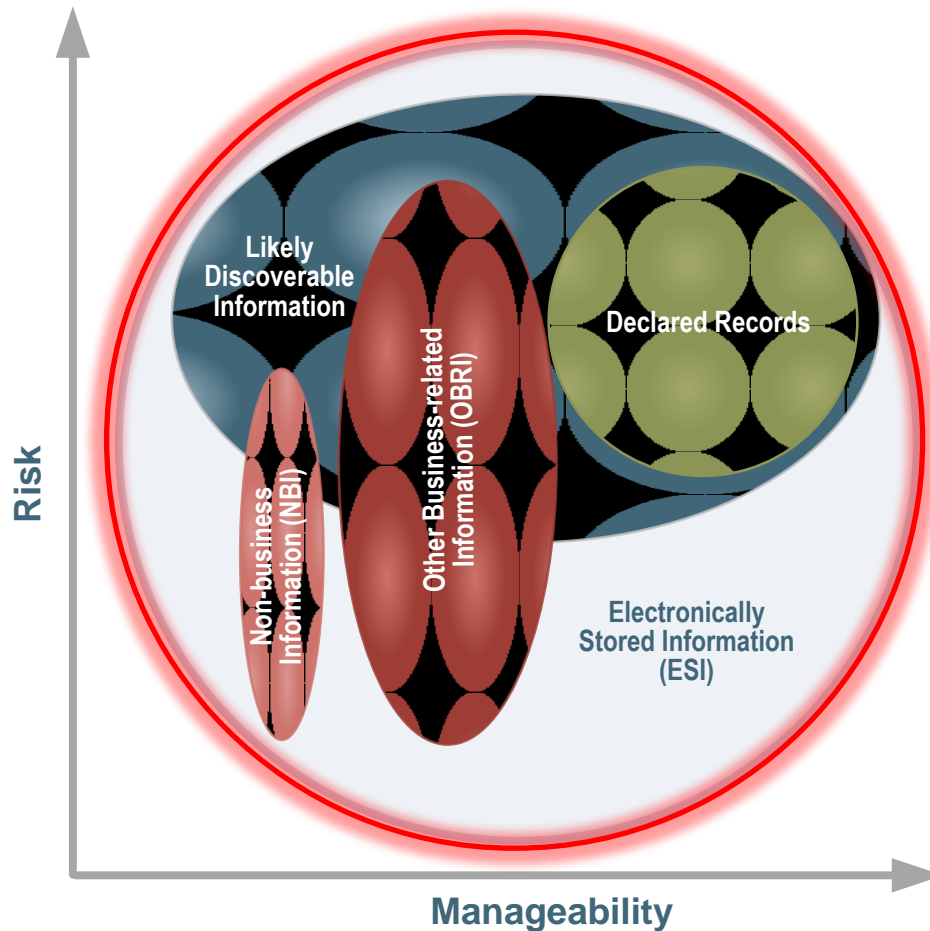


- Too Wide
  - All ESI is declared a record and therefore "in scope" for records management
  - Creates serious problems
    - High costs
    - Operational challenges
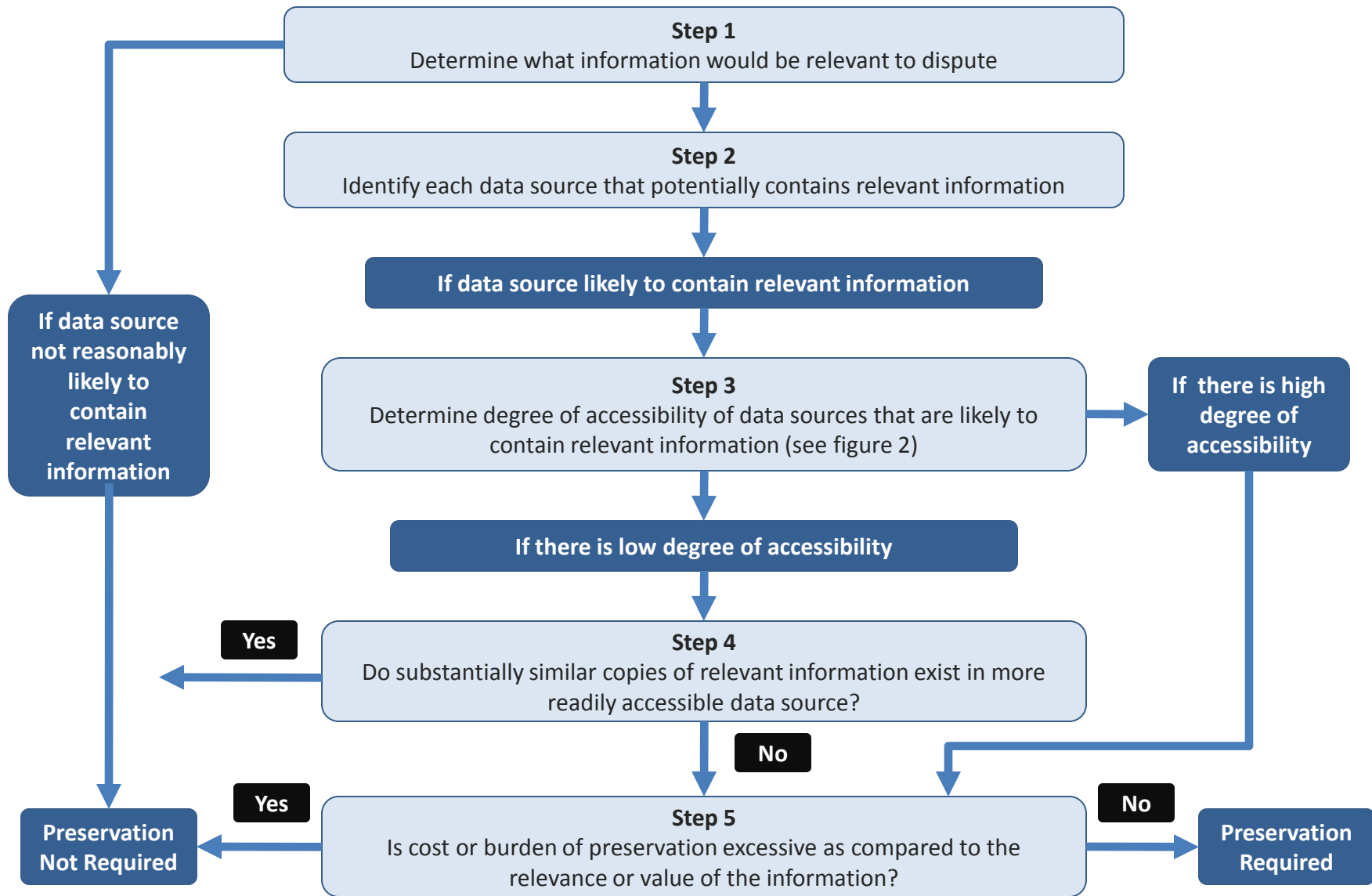  - Close to impossible to live up to in practice

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## Delimit Scope of Records Management



# Tiered Approach
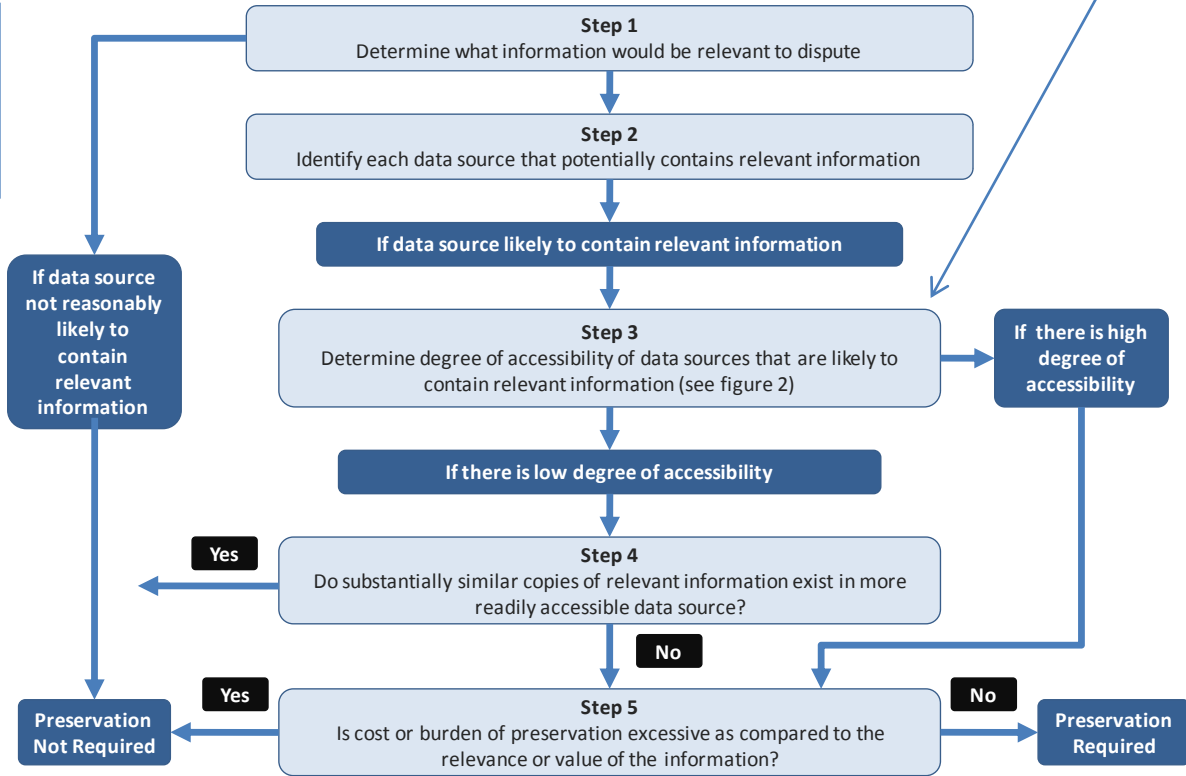
Different types of ESI are handled differently

1. Keep as records
2. Redefine as records
3. Keep as nonrecords but move to rigorous ECM/RM system
4. Keep as nonrecords but manage in specialist system (e.g. EMM, DAM)
5. Keep as nonrecords but manage in collaborative DM
6. Keep on (better managed) share Drives
7. Don't worry about them—they aren't worth it—keep or dispose according to general rules

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# Problem #3: Process Ownership

**Step 1**
Determine what information would be relevant to dispute

**Step 2**
Identify each data source that potentially contains relevant information

**If data source likely to contain relevant information**

**If data source not reasonably likely to contain relevant information**

**Step 3**
Determine degree of accessibility of data sources that are likely to contain relevant information (see figure 2)

**If there is high degree of accessibility**

**If there is low degree of accessibility**

**Yes**

**Step 4**
Do substantially similar copies of relevant information exist in more readily accessible data source?

**No**

**Yes**

**Preservation Not Required**

**Step 5**
Is cost or burden of preservation excessive as compared to the relevance or value of the information?

**No**

**Preservation Required**

**Figure 1: Decision Tree for Determining ESI Preservation Obligations (Sedona Working Group)**

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Who decides the "degree of accessibility" – IT or Legal?

"Reasonably likely" Means exactly what?

**Step 1**
Determine what information would be relevant to dispute

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Yes

No

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**Preservation Required**

"Burden of preservation", "excessive as compared to relevance", "value of information" – Far too nebulous for the common person to figure out!

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# Solution: Cross-Functional and Balanced Roles

- **Legal:**
  - Responsible for the overall program, policies, practices, and monitoring (program responsibilities)
  - Responsible for the coordination and execution of the E-D process (discovery event responsibilities).

- **IS:**
  - Responsible for working with Legal to establish realistic IM practices for the program, ensuring that current systems can align with program requirements (program responsibilities).
  - Responsible for executing specific technical tasks within the E-D process (discovery event responsibilities).

- **Business:**
  - Record Retention Leaders or site coordinators are responsible for working with Legal and IT reps to communicate program requirements and expectations to users (program responsibilities).
  - Record Retention Leaders are responsible for monitoring particular custodians' activities during E-D (discovery event responsibilities).
  - Individual users are responsible for adhering to program requirements (program responsibilities), and individual custodians are responsible for carrying out required tasks during E-D (discovery event responsibilities).

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# Some Preliminaries
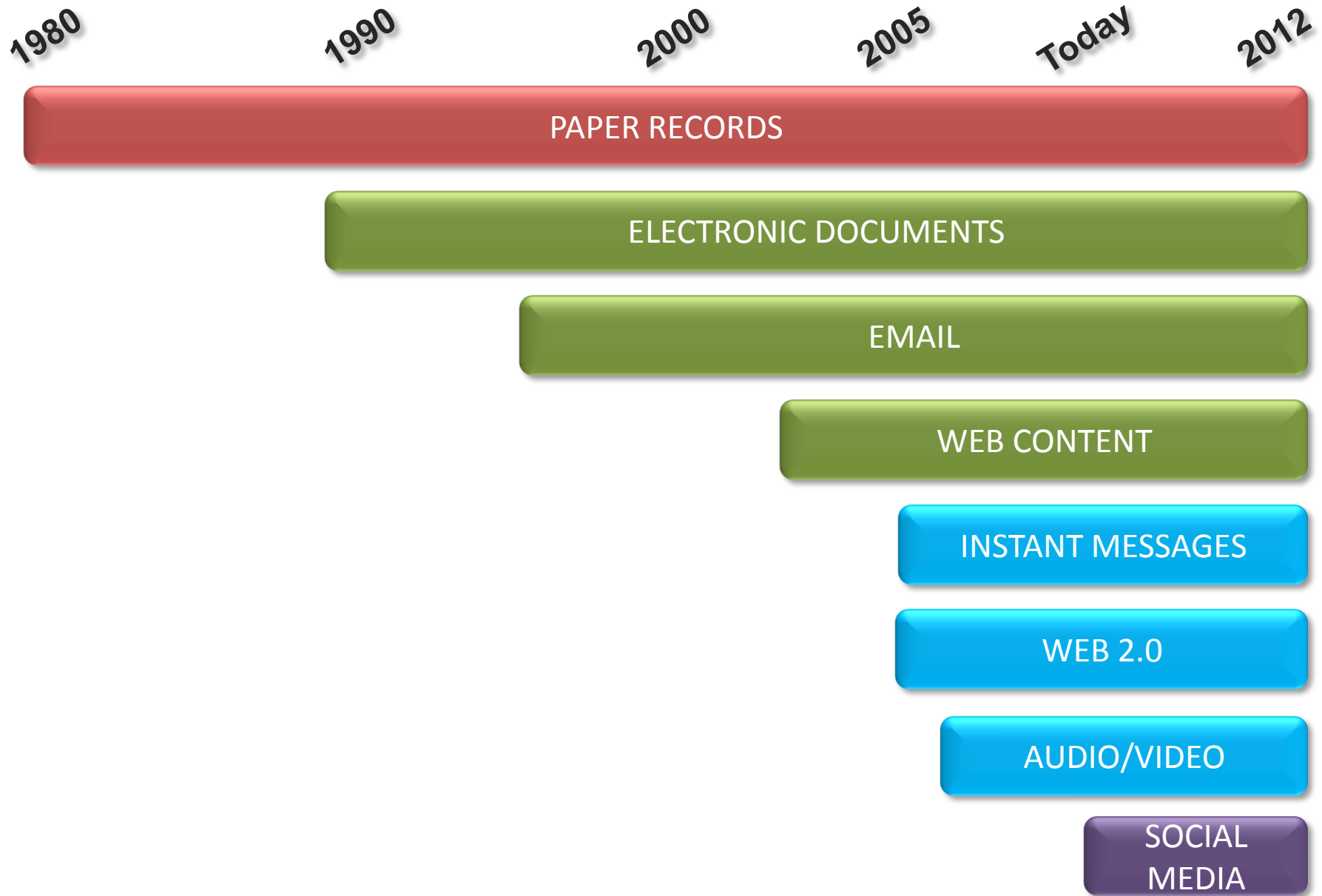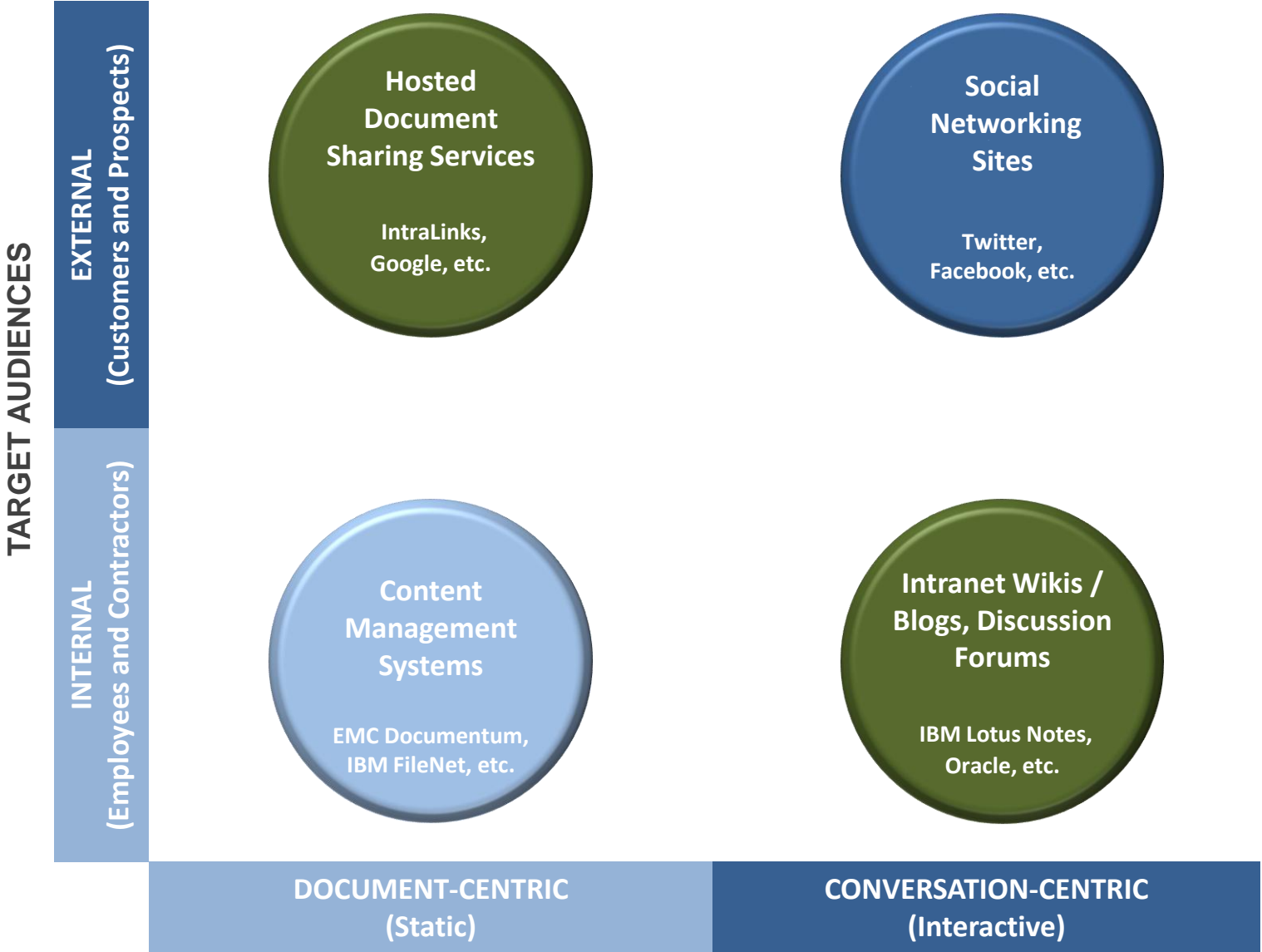
- **Assume that everyone is *generally* familiar with social media and collaboration**

    - What is it?

    - What are some of the relevant technologies inside and outside the enterprise?

    - What are the main issues facing organizations trying to provide social media and collaboration capabilities to employees while remaining compliant?

- **If not, we can take a quick detour to get everyone up to speed**

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# Increasing Complexity in Discoverable Content

1980   1990   2000   2005   Today   2012

**PAPER RECORDS**

**ELECTRONIC DOCUMENTS**

**EMAIL**

**WEB CONTENT**

**INSTANT MESSAGES**

**WEB 2.0**

**AUDIO/VIDEO**

**SOCIAL MEDIA**

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**TARGET AUDIENCES**

**EXTERNAL (Customers and Prospects)**

**INTERNAL (Employees and Contractors)**

**Hosted Document Sharing Services**

IntraLinks, Google, etc.

**Social Networking Sites**

Twitter, Facebook, etc.

**Enterprise Collaboration**

**Content Management Systems**

EMC Documentum, IBM FileNet, etc.

Microsoft SharePoint 2010, IBM Lotus Notes 8

**Intranet Wikis / Blogs, Discussion Forums**

IBM Lotus Notes, Oracle, etc.

**DOCUMENT-CENTRIC (Static)**

**CONVERSATION-CENTRIC (Interactive)**

**COLLABORATION TECHNIQUE**

**DOCULABS**

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## Hosted Document Sharing Services

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## Social Business Software

Jive, Social Text, etc.

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**COLLABORATION TECHNIQUE**

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# Guidance on Social Media – Varying Regulatory Guidelines

| Regulatory Body | Acronym | Industry |
|---|---|---|
| Federal Trade Commission | FTC | All |
| Children's Advertising Review Unit | CARU | All |
| National Association of Insurance Commissioners | NAIC | Insurance |
| Federal Drug Administration | FDA | Life Sciences |
| American Bar Association | ABA | Legal |
| Credit Union National Association | CUNA | Banking |
| Financial Industry Regulatory Authority | FINRA | Broker / Dealers |
| State Departments of Insurance | DOI | Insurance |
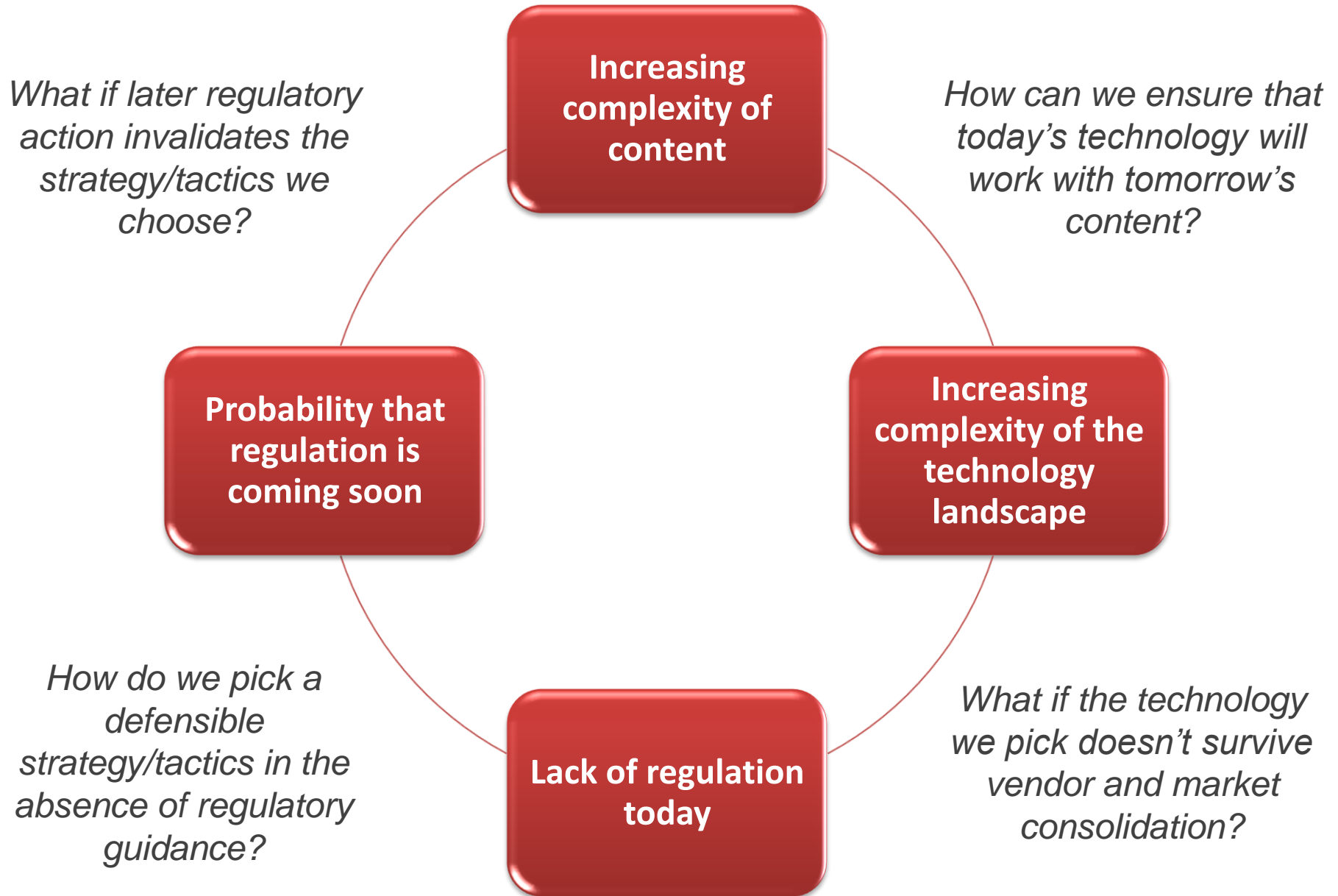
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What if later regulatory action invalidates the strategy/tactics we choose?

How can we ensure that today's technology will work with tomorrow's content?

**Increasing complexity of content**

**Probability that regulation is coming soon**

**Increasing complexity of the technology landscape**

How do we pick a defensible strategy/tactics in the absence of regulatory guidance?

**Lack of regulation today**

What if the technology we pick doesn't survive vendor and market consolidation?

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6.   Recommendations and Next Steps

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# Retention and Disposition Approaches

| Approaches | Retention & Disposition | Pros / Cons |
|---|---|---|
| #1 – Static copy of site content/database on periodic basis | Collect everything, indiscriminately, without any context or metadata | **Pros:**<br>• Ensures retention of copied ESI<br>• Relatively "dumb" archiving is a simple approach<br>**Cons:**<br>• Risk deletion of certain ESI unless copy is immediate<br>• Risk of over-retention<br>• No granularity for retention or disposition management |
| #2 - Treat all contributions as "e-communications" and manage as individual emails in email archiving system | Metadata such as contributor, time, date, and content can easily be indexed, but you don't know context (what was posted prior, links to other content) | **Pros:**<br>• Leverages existing email archive technologies for regulated/risky email<br>• Use existing quarantine, review process and staff<br>• More granular control for retention/disposition mgmt.<br>**Cons:**<br>• Email mgmt. tools and processes remain immature<br>• Risk of over-retention |
| #3 - Integrate social site with ECM/RM (IBM, EMC, Oracle, Open Text) system and migrate content | Social content is retained with documents and images, providing a holistic view of relevant materials | **Pros:**<br>• Facilitates retention and disposition, particularly for high value/high risk ESI (e.g. from registered reps)<br>**Cons:**<br>• ECM/RM systems work poorly with high volumes of indeterminate value/risk ESI ("slop") |

# E-Discovery Approaches

| Approaches | E-discovery | Pros / Cons |
|---|---|---|
| #1 – Static copy of site content/database on periodic basis | Requires powerful search tool to identify relevant ESI without context or metadata | **Pros**<br>• Can ensure basic preservation and access if done right ("At least you have a copy to fish through")<br>• Easy to demonstrate consistent process<br>**Cons**<br>• Because search tools are limited today without metadata, e-discovery is inefficient<br>• Potential spoliation risks |
| #2 - Treat all contributions as "e-communications" and manage as individual emails in email archiving system | Discovery approach is similar to email discovery, but context may be problematic | **Pros**<br>• Existing technology and process can be leveraged<br>**Cons**<br>• Collections are excessive, requiring additional review and culling<br>• Social "context" must be re-constructed |
| #3 - Integrate social site with ECM/RM (IBM, EMC, Oracle, Open Text) system and migrate content | With ESI retained in an ECM/RM system, discovery is significantly more efficient (but getting ESI into the RM system can be problematic) | **Pros**<br>• Strong chain of custody and audit controls<br>• Highly granular management<br>**Cons**<br>• Few reference clients/existing installs at this point |

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**$19.5M**
CURRENT 3-YEAR EDISCOVERY COST

**$19.5M**
FUTURE 3-YEAR EDISCOVERY COST

**$4.2M**
REQUIRED 3-YEAR INVESTMENT

**$-4.2M**
NET SAVINGS

IMPROVEMENT AREAS

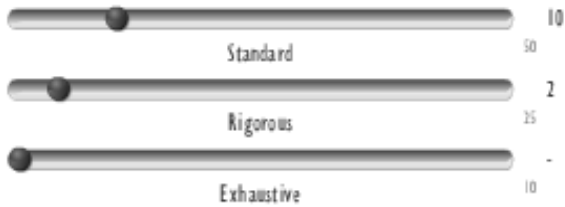CONTENT MANAGEMENT | EMAIL MANAGEMENT | RECORDS MANAGEMENT | AUTOMATED EDISCOVERY

NUMBER OF EVENTS BY LEVEL OF EFFORT
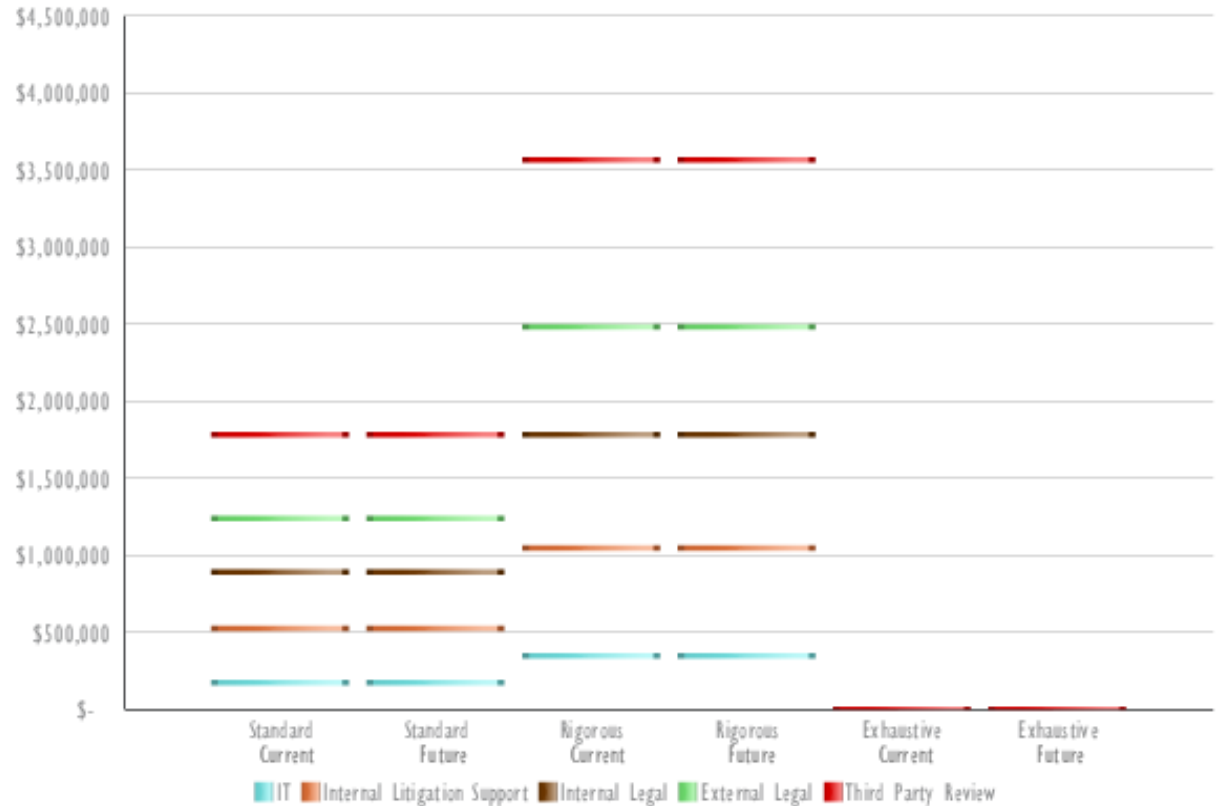
Standard — 10 / 50
Rigorous — 2 / 25
Exhaustive — - / 10

ASSUMPTIONS

Show 3-Year Invesment Components

ANNUAL EDISCOVERY ONE-YEAR COSTS BY LEVEL OF DISCOVERY EFFORT



Standard Current | Standard Future | Rigorous Current | Rigorous Future | Exhaustive Current | Exhaustive Future

IT | Internal Litigation Support | Internal Legal | External Legal | Third Party Review

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1. **Pursue social media and collaboration as a strategic, enterprise concern**
   - Siloed, departmental approaches lead to siloed solutions, content, and processes—and make it difficult to realize the full benefits of the social enterprise

2. **Get everyone involved**
   - Enabling the social enterprise requires more than just buying a piece of technology or having a single department engaged—IT, end users, and compliance functions (such as Records Management and Legal) all need to weigh in to increase your chances of success

3. **Address tangible, measurable business needs rather than social media and collaboration for its own sake**
   - Social media and collaboration is a means to an end, not an end in itself—make sure you're pursuing it in order to deliver business value

4. **Create a social media and collaboration Center of Excellence**
   - Can be a grassroots effort, a top down initiative, or something in between—but the increased visibility and attention a COE provides is a critical success factor for enabling the social enterprise

1. ***Doculabs on Social Media, Collaboration, Compliance (and More):*** check out our consultant blogs at www.doculabs.com

2. ***Watch the E-D Calculator:*** http://www.youtube.com/watch?v=7q0h2rZO0kw

3. ***White Papers:*** 10+ different topical papers available via PDF at www.doculabs.com

4. ***PDF Versions of Doculabs Modeling Tools:*** Business case modeling capabilities are embedded in stand-alone PDFs that you can use

5. ***Consultants Available for Briefings:*** Via a **1-hour call,** we can help you think through **some of the key social media, collaboration, and compliance challenges you face at your organization**

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Consulting Contact:   Joe Shepley, PhD
                      (773) 827-2945
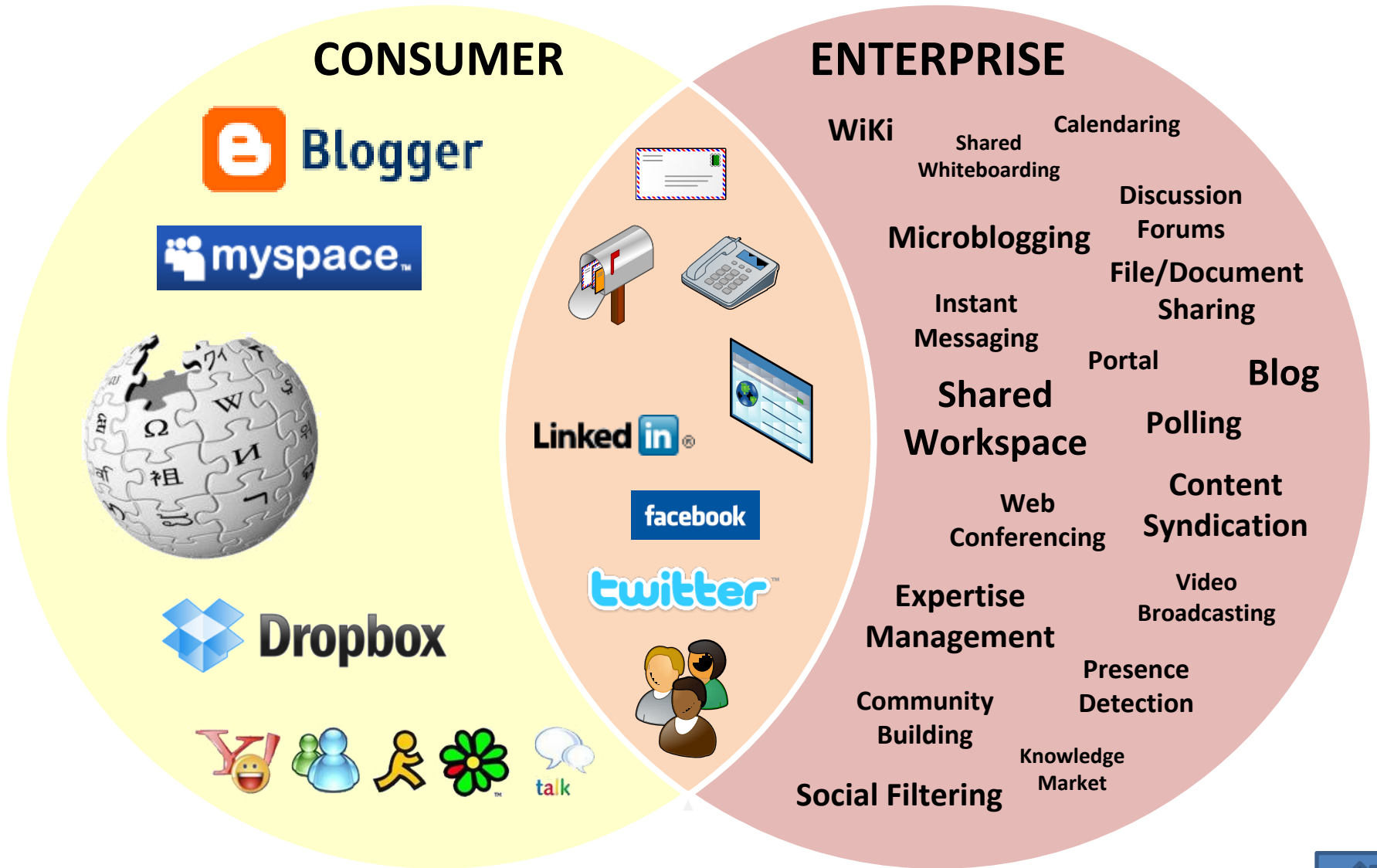                      jshepley@doculabs.com
                      http://flavors.me/jshepley

# Thank You

Doculabs, Inc.
(312) 433-7793
info@doculabs.com

# A Brief Introduction to Social Media

**CONSUMER**

**ENTERPRISE**

WiKi

Calendaring

Shared Whiteboarding

Discussion Forums

Microblogging

File/Document Sharing

Instant Messaging

Portal

Blog

Shared Workspace

Polling

Web Conferencing

Content Syndication

Expertise Management

Video Broadcasting

Community Building

Presence Detection

Social Filtering

Knowledge Market

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**How can we enable better communications with internal and external parties?**

1

**How can we leverage communities to enhance employee morale, customer affinity, and innovation?**

2

**Where can we enhance our existing processes with collaboration?**

3

**Will "social" tools enhance or hinder our productivity?**

4

**Can we quantify the returns from investments in social collaboration?**

5

**How can we ensure proper compliance for the retention and disposition of social content?**

6

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# Common Social Media Scenarios

**Content Authoring**
Authoring, Collaborating

**Expertise Management**
Searching, Learning, Networking

**Project Management**
Networking, Collaborating, Authoring

**Personalized Communication**
Authoring, Learning, Dashboarding

**Customer Service**
Publishing, Networking, Collaborating, Authoring

**Community Building**
Networking, Learning, Collaborating

**Discovery of Social Content**
Discovery, Tagging, Compliance

**Social Media**
Learning, Broadcasting, Networking

**Proposal Development**
Searching, Authoring, Collaborating

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# About Doculabs

Doculabs is a **consulting firm** that helps organizations develop sound **technology strategies** for **content-** and **process-related applications**.

Our engagements focus on helping **clients leverage their existing enterprise content management (ECM) investments** on a broader enterprise basis through objective analysis and in-depth market knowledge.

This approach is based on our fundamental belief that in order to protect a client's long-term interest, **technology advisors should not be implementers**.

**Quick Facts**
- Founded in 1993
- Headquartered in Chicago
- Privately held
- Delivered over 1000 ECM engagements to more than 500 customers

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# What We Do

| | |
|---|---|
| **ECM Strategy** | …benchmark current state, define target state, and create an implementation roadmap |
| **ECM as a Shared Service** | …help organizations transition from stand-alone decentralized deployments into a standardized enterprise-level provisioning organization |
| **Business Process Management** | …diagnose specific application scenarios for process automation, define requirements, create system design |
| **SharePoint Coexistence** | …leveraging the capabilities of SharePoint, specify the functional and technical requirements to interoperate with existing content management systems |
| **Records Management and Compliance** | …provide content assessment/analytics, create ESI inventory map, define taxonomy, apply retention and disposition schedules, modify policies and procedures |
| **E-discovery** | …create a litigation readiness framework to minimize exposure and cost by automating e-discovery |
| **Economic Justification/ Financial Analysis** | …build an economic model to track and measure the impact of ECM technologies – pre or post implementation |

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- **Vice President and Practice Leader**

  - *Industry specialties* include **Insurance, Financial Services, Health Care, Mining**

  - *Practice specialties* include **e-discovery, Enterprise 2.0, information architecture, program and governance development**

- Frequent speaker at industry events (e.g., AIIM, EFM, IBM, Jive)

- Regular contributor to **CMSWire and AIIM's E2.0 Community**

- **Self-publish two blogs**

  - *Agile Ramblings* – topics in Enterprise Content Management (ECM)

  - *The Intentional Leader* – topics in leadership and organizational transformation