

## **Better Understanding Electronically Stored Information**

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Electronically stored information, or ESI, seems pretty self-explanatory, but a definition for it does exist. “If you use the [Federal] Court’s view, ESI is anything that can be digitally stored and is potentially discoverable,” says John Bace, research vice president at Gartner.

The Federal Rules of Civil Procedure formally defined ESI in early 2006 and put it into effect that December. “Up until that point, believe it or not, lawyers were going into court and arguing that email and other electronic documents were not valid until they were inked on paper,” Bace explains.

Dave Canfield, managing consultant for the electronically stored information consulting group at Kroll Ontrack ([www.krollontrack.com](http://www.krollontrack.com)), says that ESI encompasses everything from traditional data, such as email and Microsoft Office files, to less traditional information, such as unified messaging, electronically stored voicemail, video, and scanned documents, among other things. “Anything that can be stored as an electronic file that can be retrieved, viewed, and accessed falls under that definition,” Canfield says. “It’s deliberately broad and gives most people a headache as they’re trying to deal with it from a legal perspective.”

### **How To Judge Your Data**

Given that ESI covers just about everything that isn’t in analog form, how do you come up with an effective information governance plan? According to Bace, you first need to understand two primary components of each piece of ESI you have. “When you create a piece of information, that information has value, which is generally highest at the point of its creation, and it has a potential preservation obligation attached to it—in other words, you have to keep it around for a certain period of time for whatever reason,” Bace says.

Bace gives two examples that describe the difference between the two concepts. “If I am sitting at my Gartner terminal, and I send an email to my son about the Chicago Cubs, the value of this piece of information I have just created in my Gartner email account is priceless. However, there is no preservation obligation attached to it, so it can disappear as quickly as it appeared,” Bace explains.

In contrast, if Bace interviews a job candidate at his base in Chicago and sends his San Diego-based manager notes on the candidate via email, those notes have both value and a preservation obligation attached to them. “They have value because they represent an investment of our time looking at a potential candidate, and then it could be argued that they’re the beginning of an employment record, which needs to be kept for a minimum of two years in the state of Illinois,” Bace says. “Those are the types of issues that IT, legal, and business need to understand when they’re looking at the big picture.”

### **Handling Information Governance**

Information governance involves three parties within an organization: the business owners and/or those responsible for a company’s direction; the legal department, which keeps track of compliance-related concerns; and IT, which implements the plan. “IT is not going to be the one who is going to take and determine what’s important. Their job is to make sure that they can take and execute on the ESI plan,” Bace explains.

However, Federal Rules of Civil Procedure do not specify any requirements or guidelines for storing ESI. “The rules are intended to let a business still operate in the normal course that the business operates,” Canfield says. “But if you are, or reasonably believe you could be, the subject of an investigation or litigation, you do have a requirement to identify and preserve the sources of data that are potentially relevant.”

But, as Canfield points out, nobody plans for multiple litigations in their budgetary cycles, and figuring out which department’s budget takes the hit only compounds the nightmare.

“Unfortunately, the C-suite or legal mandates the project, and then they tend to just drop it in IT’s lap, and IT will typically just buy a box or buy a cloud service and start shoving data in there without really understanding its ramifications—a recipe for disaster,” he says. “If they had taken a little extra time to define the parameters and what should go in and how it should be retained, they could have saved a significant amount of time, cost, money, and effort going forward,” Canfield says.

### **Proper Archiving Strategies**

Once your organization has defined its parameters, you need to find archiving technologies that enable you to access and export information easily. “For the most part, we’re looking at the same archiving technologies that have been out there for seven, eight, or nine years now, designed to pull data from email and other types of traffic and just store it,” Canfield says.

Jennifer Walzer, CEO of Backup My Info! ([www.backupmyinfo.com](http://www.backupmyinfo.com)), says that a good archiving solution has to give you the ability to grab specific data, such as an email conversation between two individuals, without having to slog through unrelated information of the other 998 employees in an organization. “Find a tool or application that lets you quickly index all of your data; otherwise, it will be nearly impossible to find what you need,” she says.