



Preservation Response Checklist

by Thomas Barnett & Kenneth Shear
Electronic Evidence Discovery, Inc.

Here's a four-step process to undertake when responding to (or anticipating) a data preservation request, for both legacy and future data.

- 1. Notify both the computer system users and the I.T. department quickly about the need to preserve data.
- 2. Follow up quickly to inventory and obtain information about what computer systems may store relevant data. Make reasonable determinations about what needs to be done to preserve it.

If a preservation order has been imposed, you must act fast — address any issues that may make it impractical or impossible to follow the order.

Teamwork between counsel, technology professionals and end users is crucial.

- 3. Take affirmative steps to (reasonably) protect data that needs to be preserved. Remember: computer systems are dynamic, meaning that both data and the environment of computer systems changes as time passes. When data is collected, monitor changes and evaluate what must be done to maintain the integrity of the data.
- 4. Fully document quality control measures. The computer processes and work flow procedures necessary for identifying relevant data and preserving it can become complex. Computer data is always subject to system malfunctions and human error. One must avoid inadvertently allowing the preservation process itself to lead to evidence destruction charges — so keep a record to show your diligence and attention to detail.

Going forward, establish an archiving system (with the capacity to preserve information pursuant to any litigation needs) for e-mails that have business significance or regulatory retention requirements.

The underlying problem is that e-mail systems are designed to hold data, but not to manage it. Consider installing automated systems that incorporate appropriate preservation guidelines into the day-to-day operation of your e-mail system. These can increase compliance with legal requirements, and help you avoid costly and potentially inadequate ad-hoc preservation steps.

Move quickly to preserve evidence when hit with litigation. The first few days can be critical. The facts relating to a lawsuit are often historical and can easily be lost without a well-reasoned, systematic process in place.

For more information on the most effect ways of responding to a data preservation request from a EED representative.



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