



E-Discovery Business Readiness

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What is Business Readiness in
terms of E-Discovery?

Risk Adjusted Management of ESI



Agenda

- The E-Discovery Factors
- E-Discovery Challenges to Overcome
- Business Readiness Foundation

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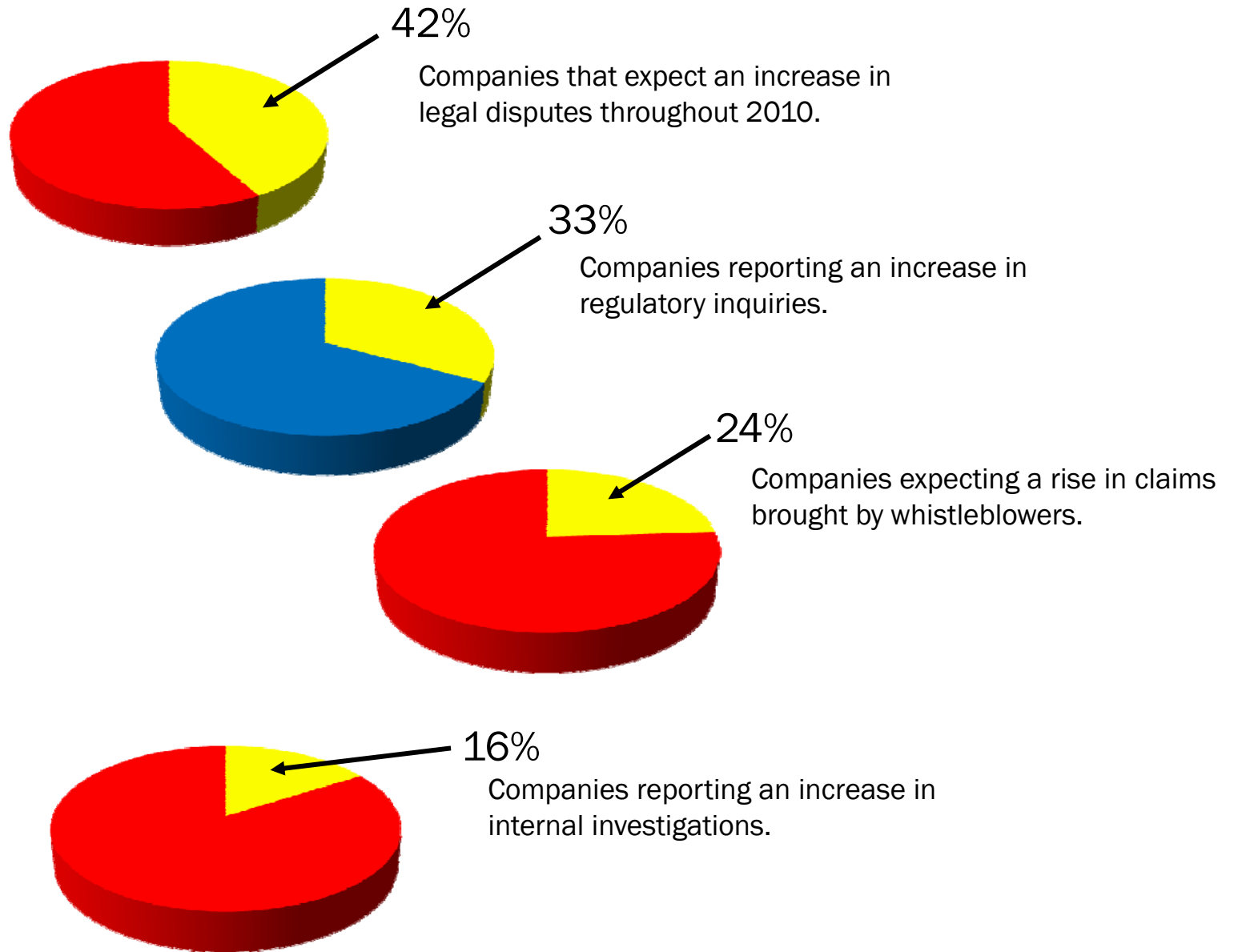


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2010 Legal Landscape



Based on Fullbright & Jaworski 2009 Litigation Trends Survey

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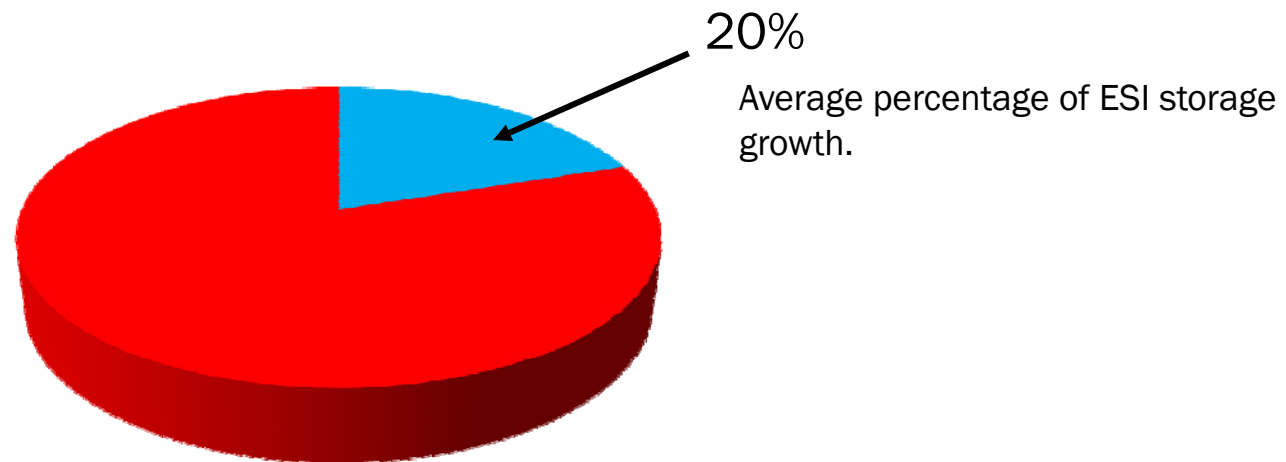
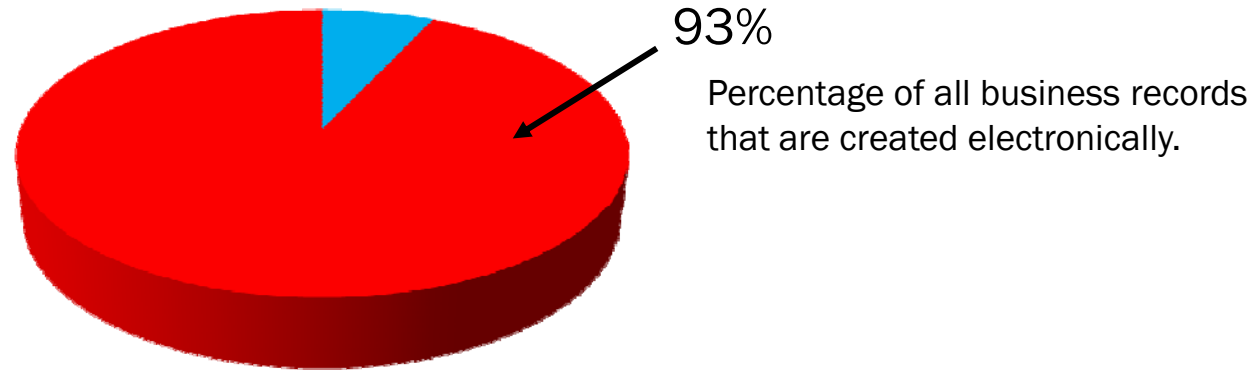


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E-Discovery Factors



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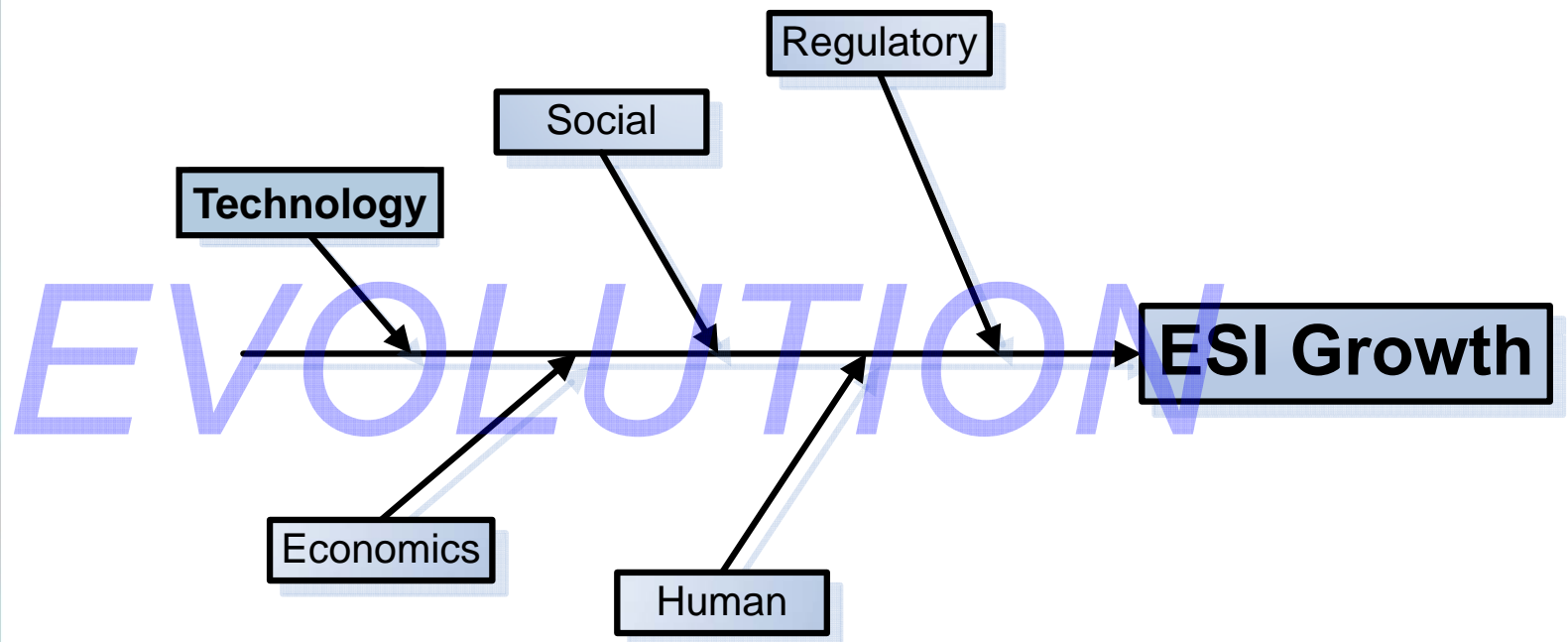


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Catalysts to ESI Growth





Technology

“Resiliency, Response, Redundancy and Recovery”

- Virtualization
 - Server and Desktop
 - Application
 - Storage
 - File
- Converged Infrastructure
- Cloud Computing
- Hardware Appliances
 - BDRs
 - Archivers
 - Loggers
- XaaS



Economics

- More for Less
 - 1 TB external storage < \$160
- Recession Impact
 - Lower IT Budget Spend
 - IT Staff Reductions
 - Outsource v. In-Source



Social

- Email
- Text Messaging
- Instant Messaging
- Online Social Networks / Forums



Human

- The Information Age
 - Information overload for our mind's capacity for retention
 - Retention is an index v. actual information
- “Rules were made to be broken”
- IT Discipline Conflict
- IT Job “Life Expectancy”



Regulatory

“The Rise of eDiscovery”

- Explosive Growth of Business Automation
- Metadata
- Legal Direction & Drivers
 - Federal Acquisition Regulations part 52.215
 - 1996: HIPAA
 - 1997: SEC 17a-4
 - 1999: GLBA / FMA
 - 2002: California SB1386 / FISMA
 - 2003: Sarbanes-Oxley
 - 2004: PCI
 - 2006: Revised FRCP Rules 26, 34, 37
 - 2008: Nevada NRS 597.970
 - 2010: Massachusetts 201 CMR 17.00



Challenges & Gaps

- Impact of FRCP 2006 Amendments
 - Ambiguity of the rules interpretation
 - Preservation Risk: conservatism v. reasonableness
- Time span between notice of litigation and enactment of litigation hold
- No retention policy (or loose adherence thereto)
- Communication
 - Legal Counsel does not speak “geek”
 - IT does not speak “legal-ese”
 - Business leadership understands costs, not complexity
- To err is human, but judges don’t care
- Technology innovation outpacing legal governance
 - Reactive retrofit or replacement



Challenges & Gaps

Attorney Risk
+ Unprepared Client
= Conservative E-Discovery Approach



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View of Solar System from above
2007 APR 04



- | | |
|------------|---|
| Pioneer 10 |  |
| Pioneer 11 |  |
| Voyager 1 |  |
| Voyager 2 |  |



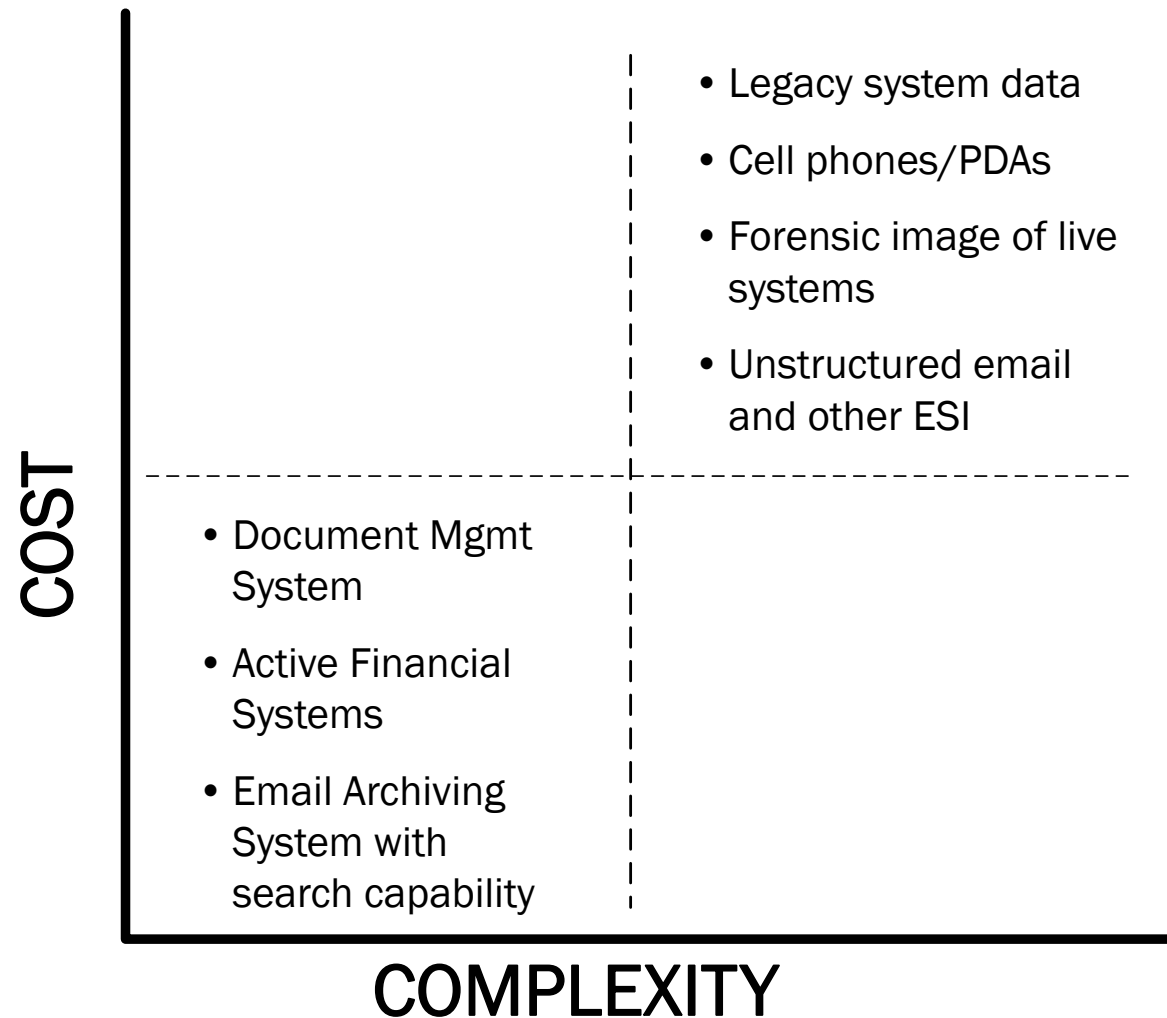


Risk Factors

- Lack of Information Asset Inventory & Management
- Policy Compliance & Adherence
- Control of Data Sprawl
- Data Retention (short-term / long-term)
- Loose Adherence to Litigation Hold



Assessing the Litigation Risks



ESI Ownership

Controlled by Both



Business Controlled ESI

- Applications
- Corporate Email
- Email Archiving
- Network Stored ESI
- User Computers Storage
- System Logs
- Web Enabled Repositories
- Backups / Offline Storage
- Fax & MFPs
- Legacy Systems
- 3rd Party Hosted ESI


Employee Controlled ESI

- Personal/Home Computers
- Personal Email
- Employee Web Presence

Text Messaging
Portable Media
Social Technology
PDAs



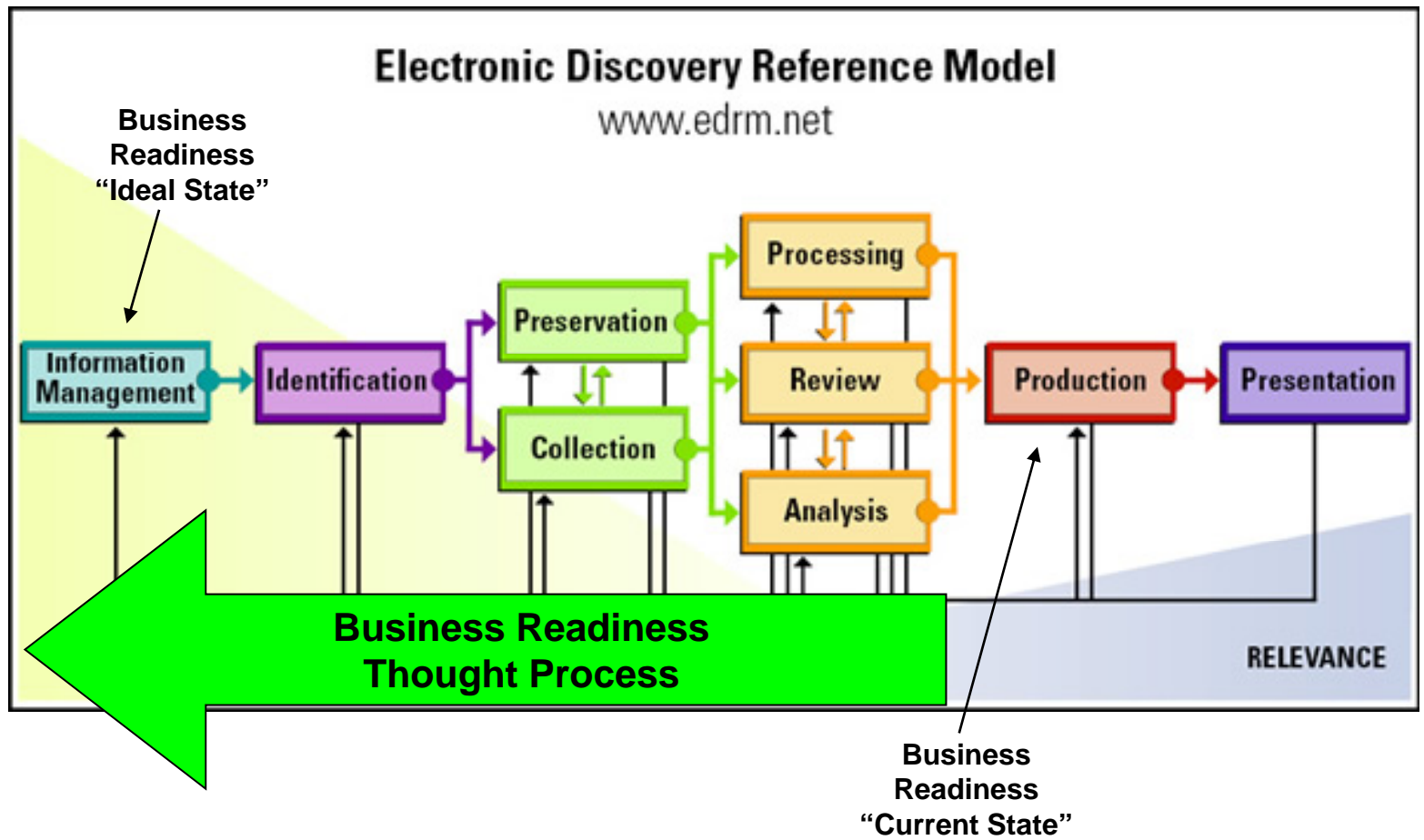





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Proactive E-Discovery



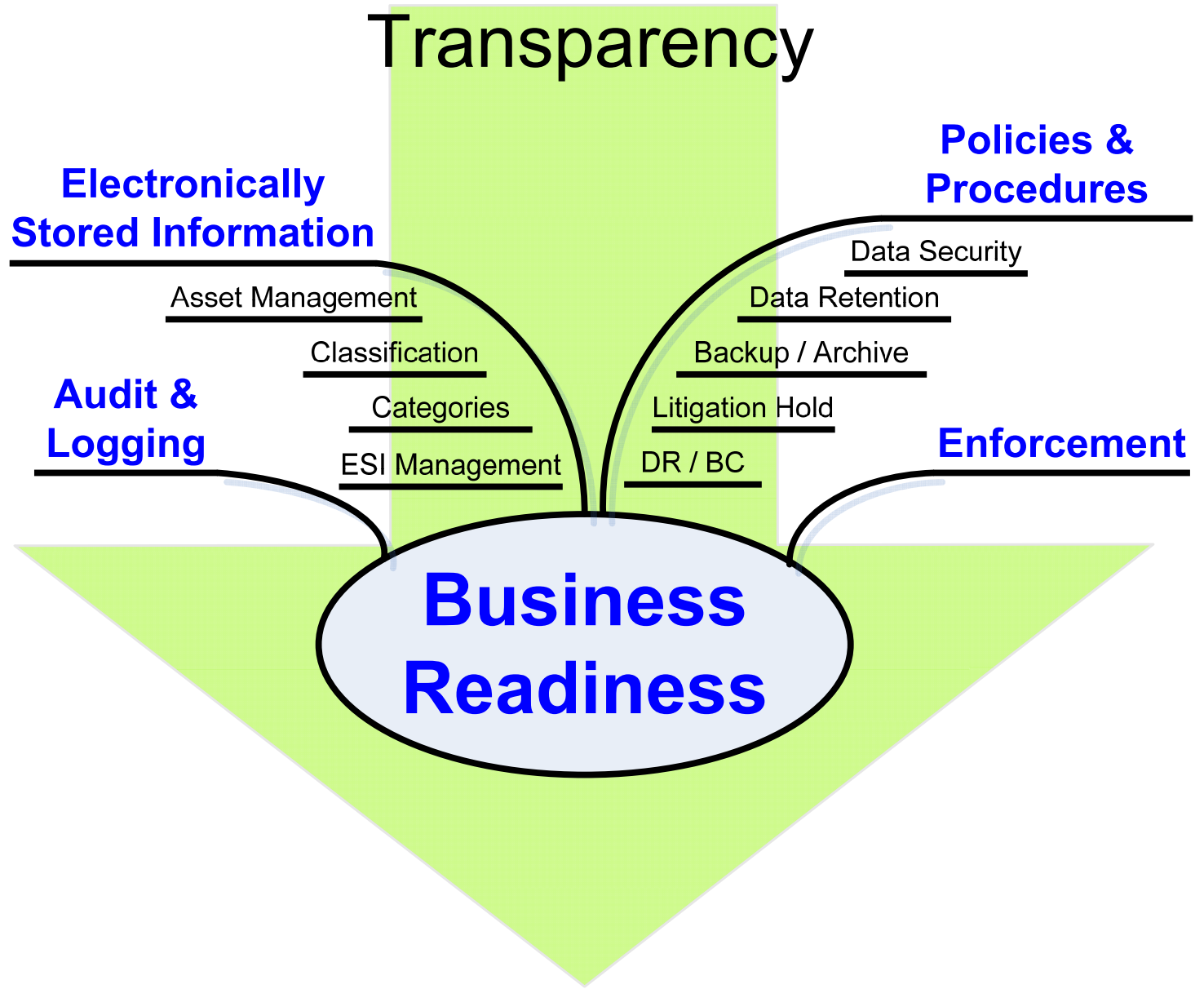
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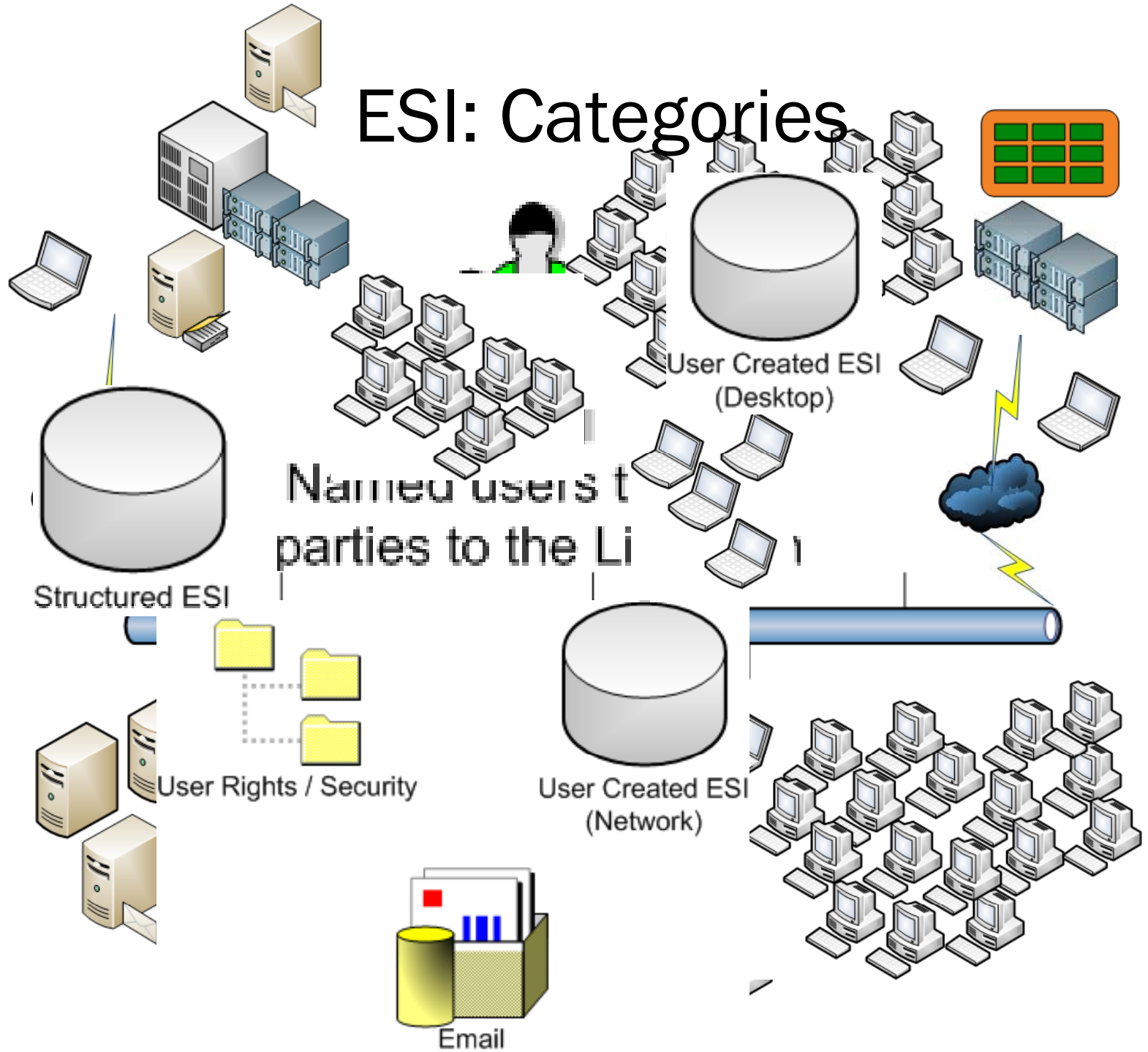


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ESI: Categories



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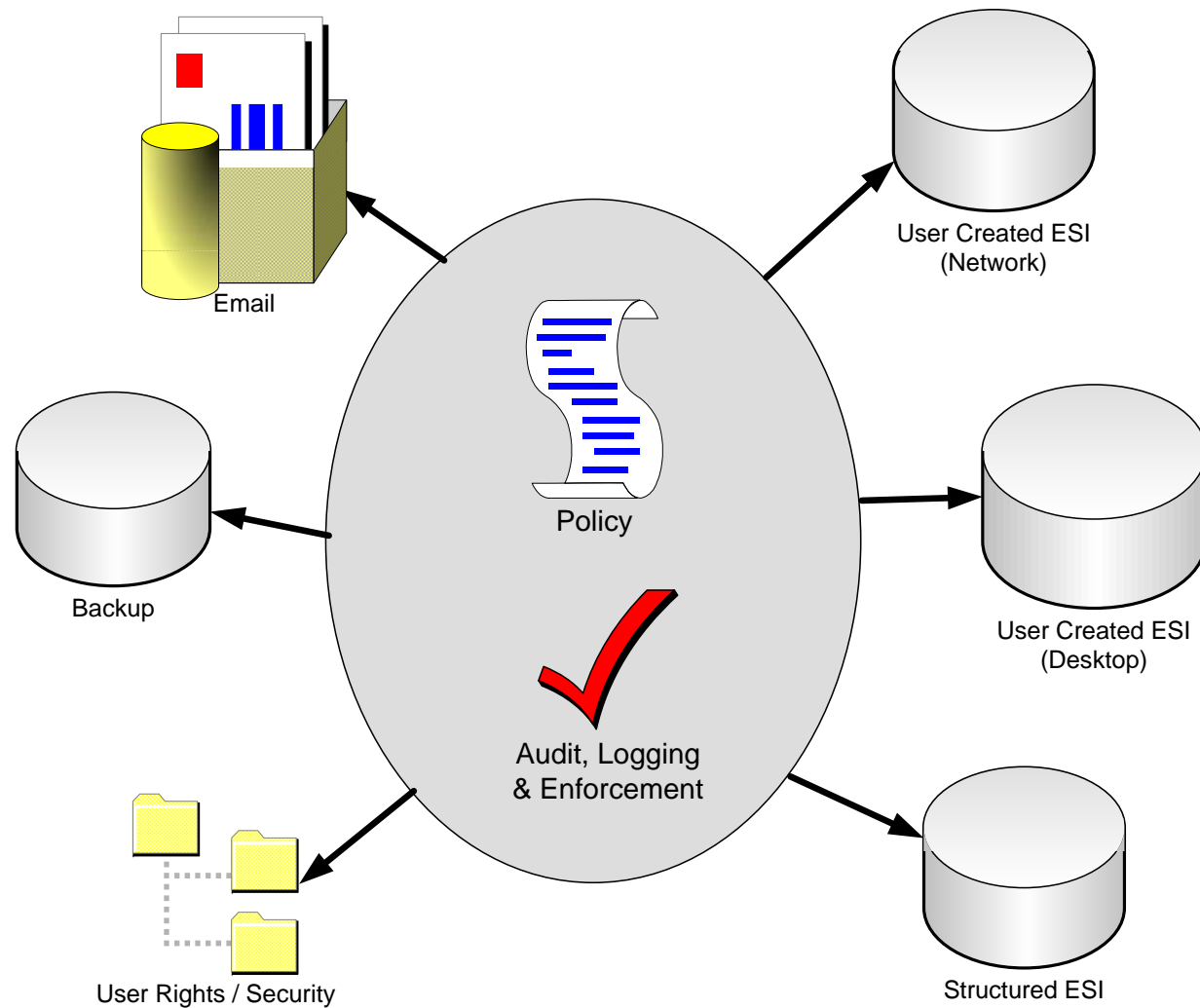


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ESI: Categories






GOALS

- Reduce the unnecessary E-Discovery costs
 - outside counsel “administrative overhead”
 - pinpoint what’s relevant in the ESI universe
- Faster retrieval of relevant information and measures
- Defensible in-house plan and procedures



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E-Discovery Business Readiness

Building Blocks

| | | | |
|--------------------------|------------------------------------|------------------------------|---|
| | Litigation Readiness Response Plan | | |
| ESI Lifecycle Management | | Audit, Logging & Enforcement | |
| | Risk Assessment | | Policies: Retention, Security, Backup, Acceptable Use |
| Define the ESI universe | | Data Map | |

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What's the ESI universe?

How much of the ESI is relevant?



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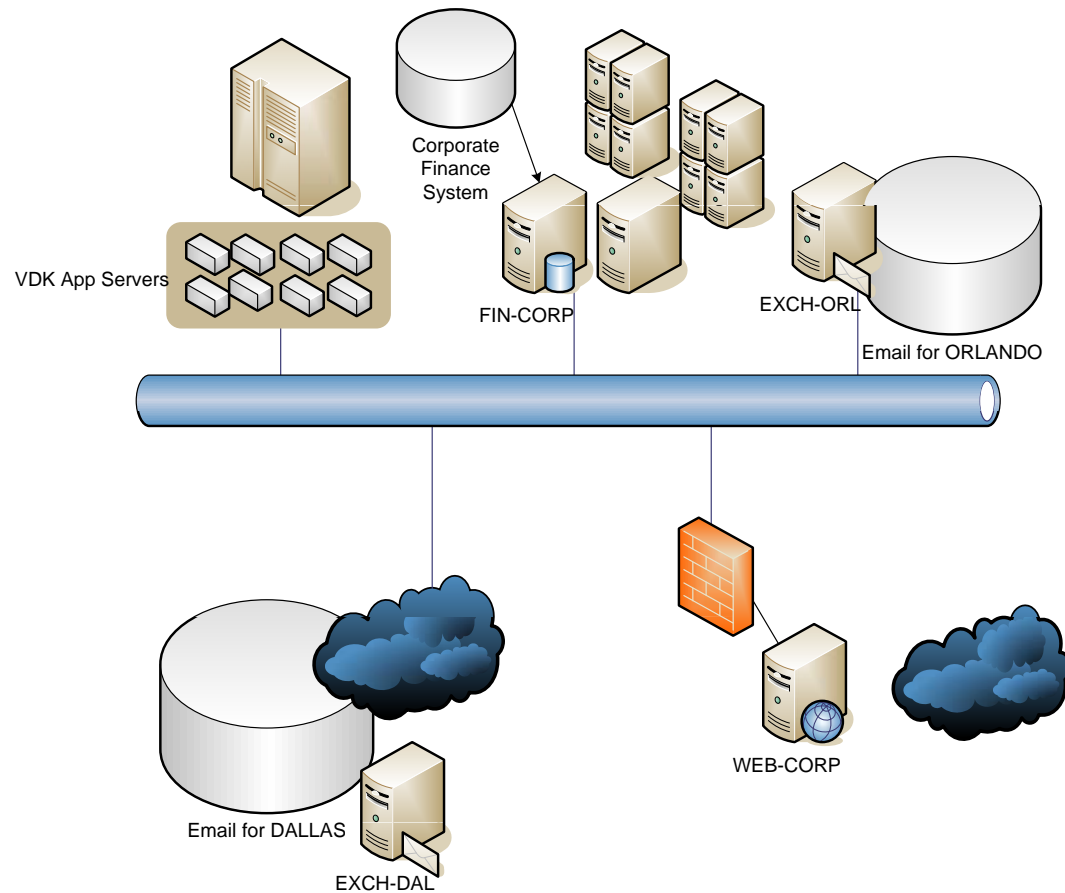


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The Data Map



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ESI Lifecycle Management

Live Systems



Backup / Archive

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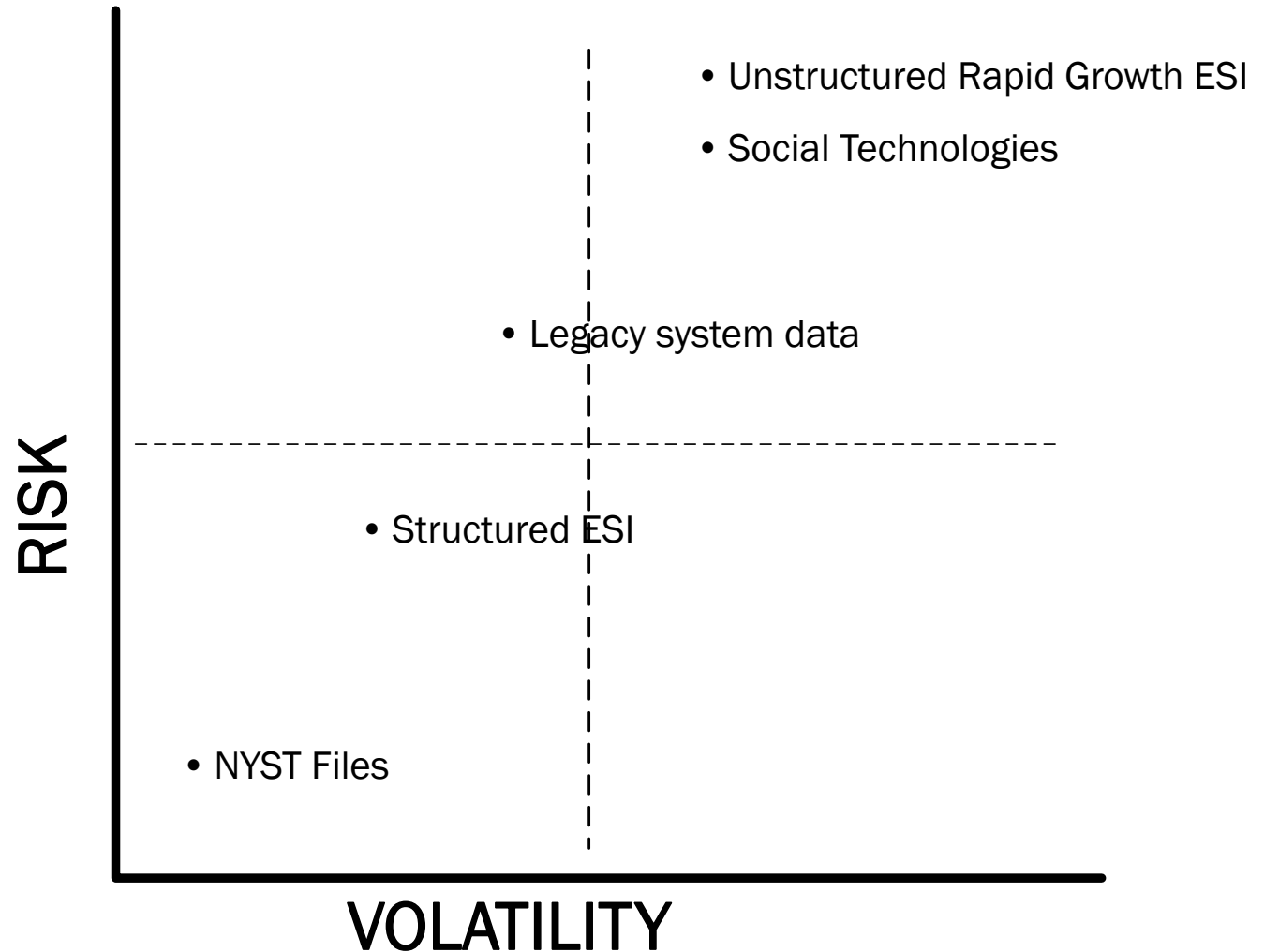


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Risk Assessment





Policies

- Backup
- Acceptable Use
- Litigation Hold
- Data Security
- ESI Retention

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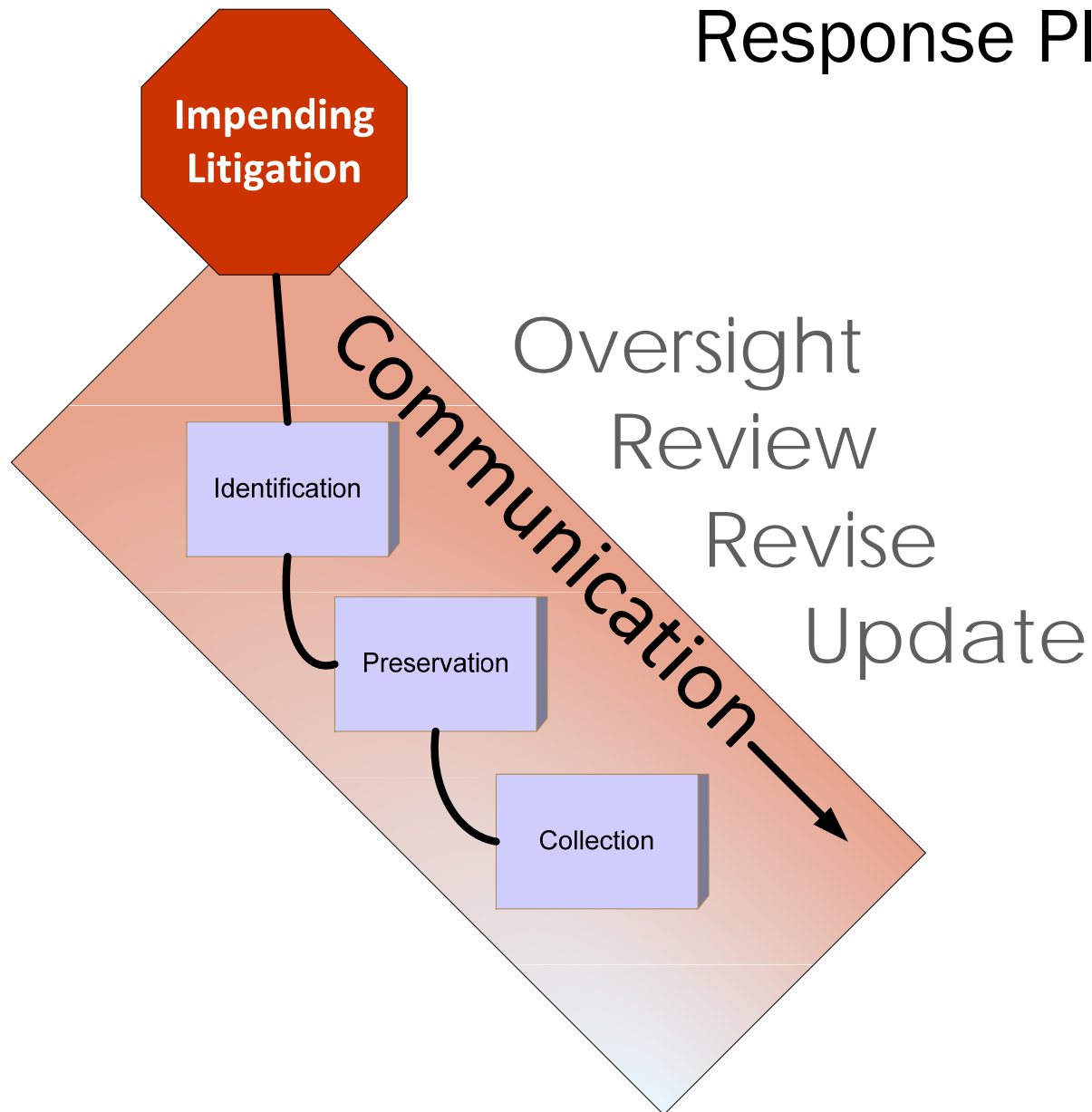


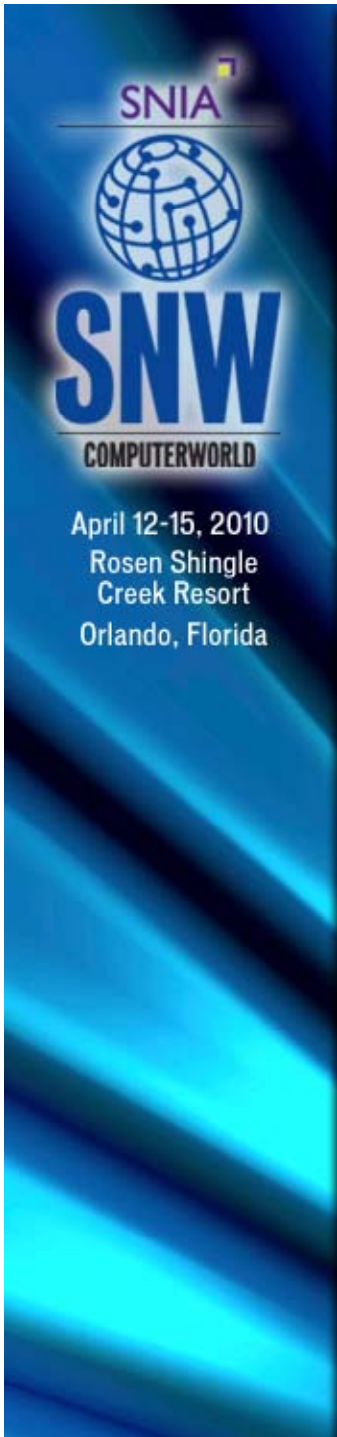
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Litigation Readiness Response Plan






Head Start

- Don't Bank on an E-Discovery "Magic Box"
- Attention to Detail
 - Document what you do
 - Do what you document
- Break radio silence
 - Bridge communication gap between Business Leadership, IT and Legal Counsel
 - Transparency
- Know Your ESI
 - "What you got"
 - "Why you got it"
 - "How long you going to keep it"

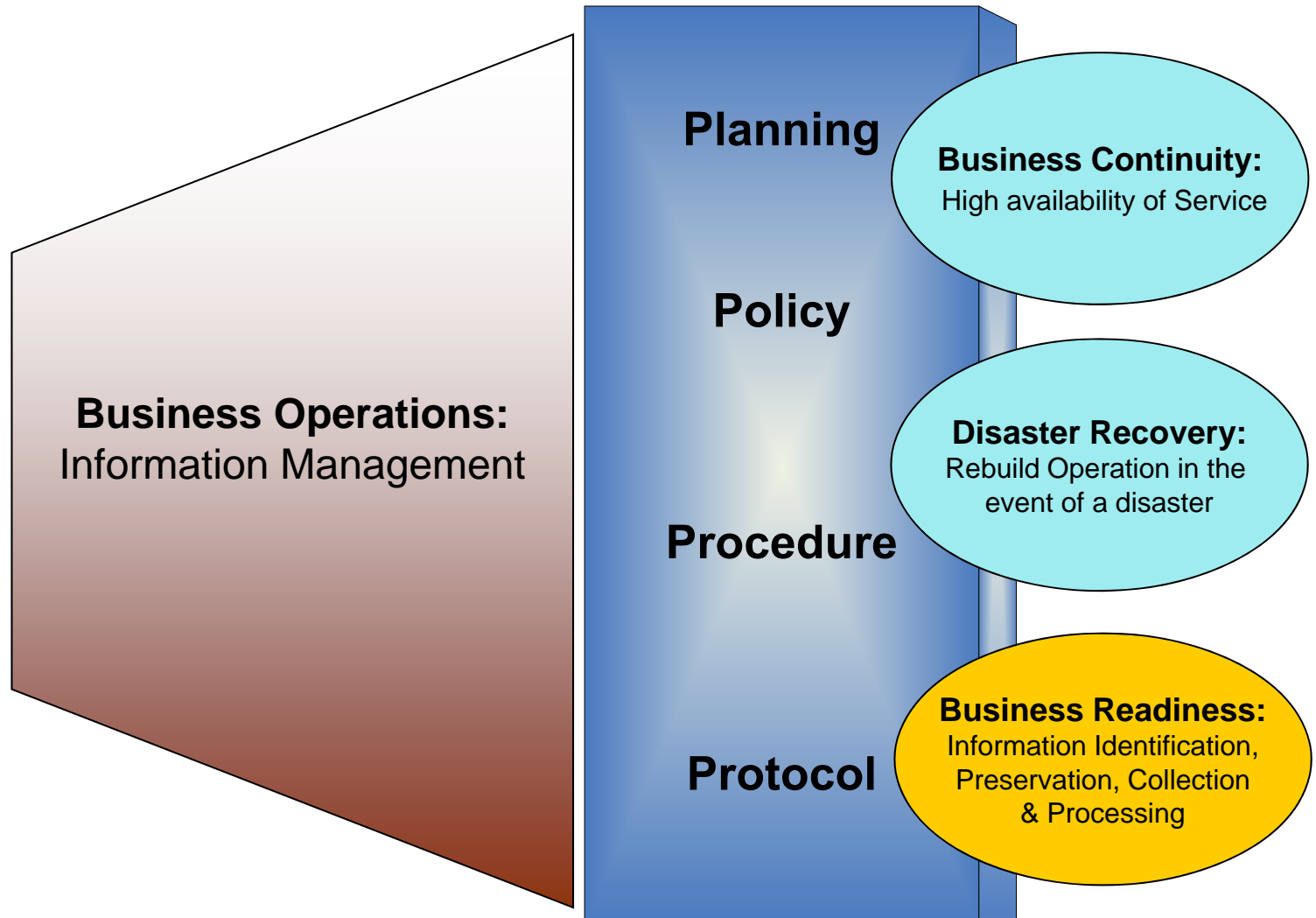
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“Business Readiness” should be a piece of the plan too...



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