

## ITEM 9.05 | COLLECTION AND REVIEW OF ESI

After counsel and litigants are satisfied the ESI has been preserved from destruction, and often as part of those efforts, the potentially relevant ESI should then be carefully collected. This requires copying of the computer files in a manner that does not alter or delete relevant information, which typically includes the metadata in or associated with the ESI (such as file name). Self-collection by the custodians themselves may be a dangerous practice in some circumstances due to their technical limitations and increased risk of accidental or intentional deletion of electronic evidence.<sup>67</sup> They are, for instance, quite likely to unintentionally change a computer file's metadata since opening a file, or simple copying of a file, will usually change many metadata fields. These altered metadata fields may prove of importance to the case. They are also likely to have a wrong understanding of what documents might be relevant for discovery purposes, typically adopting an over-narrow construction or otherwise not understanding the meaning of legal relevance. Also, as mentioned, keyword search based collection is hazardous, and should be avoided unless necessary in small cases for proportionality purposes to reduce the expense of review.<sup>68</sup> When keywords are used, they should be carefully tested in advance to evaluate efficacy and multiple refinements should be considered, typically Boolean logic combinations (and, or, but not, within a certain number of words, etc) and parametric limitations (keywords in specific fields of a document, as opposed to anywhere).

After collection, the ESI is typically processed to eliminate redundant duplicates and prepare the ESI for viewing. Full horizontal deduplication across all custodians is now typically used in all matters. The ESI is then searched for relevancy, and the smaller subset of potentially relevant ESI is then reviewed for final relevancy determinations as well as for privilege and confidentiality. Only after this review is production made to the requesting party.

*Trial Lawyers Section of the Florida Bar  
Conference of Circuit Court Judges  
Conference of County Court Judges*



### Footnotes

<sup>67</sup> *National Day Laborer Organizing Network et al. v. United States Immigration and Customs Enforcement Agency, et al.*, 2012 U.S. Dist. Lexis 97863 (SDNY, July 13, 2012) (J. Scheindlin).

<sup>68</sup> See n. 41 supra.

