

Winning Cases with eDiscovery & Artificial Intelligence



CARLOS A. BARADAT, ESQ.
The Baradat Group



Law Firm & Business IT Consulting
eDiscovery | IT Support | Cybersecurity | Digital Forensics



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TODAY'S AGENDA

eDiscovery

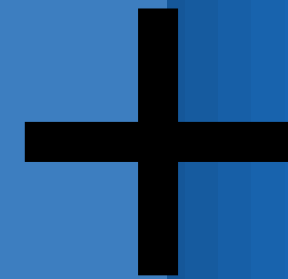
- Early Case Assessment
- Data collection process
- Analysis and review of ESI
- Cost and proportionality



Fundamentals of Artificial Intelligence
How is AI used in legal practice
Tools to consider

Artificial Intelligence

ETHICAL CONSIDERATIONS



DUTY
OF
COMPTENCE

ABA 1.1
FRPC 4-1.1

DUTY
OF
CONFIDENTIALITY

ABA 1.6
FRPC 4-1.6

DUTY TO
SUPERVISE
NON-LAWYERS

ABA 5.3
FRPC 4-5.3

INADVERTENT
DISCLOSURE OF
PRIVILEGED MATERIALS

FLORIDA RULES OF
CIVIL PROCEDURE 1.285

ETHICAL CONSIDERATIONS



DUTY
OF
COMPETENCE

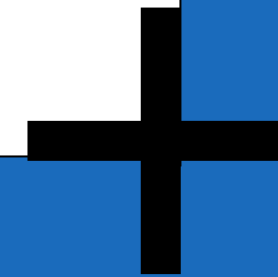
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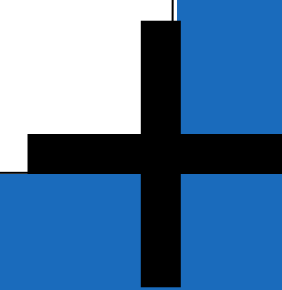
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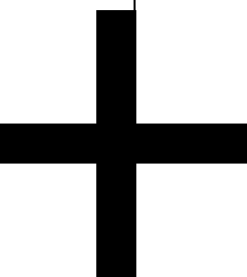
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INADVERTENT
DISCLOSURE OF
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ROLE OF EDISCOVERY & ARTIFICIAL INTELLIGENCE

Role of eDiscovery and Artificial Intelligence in today's law practice, ethical implications.

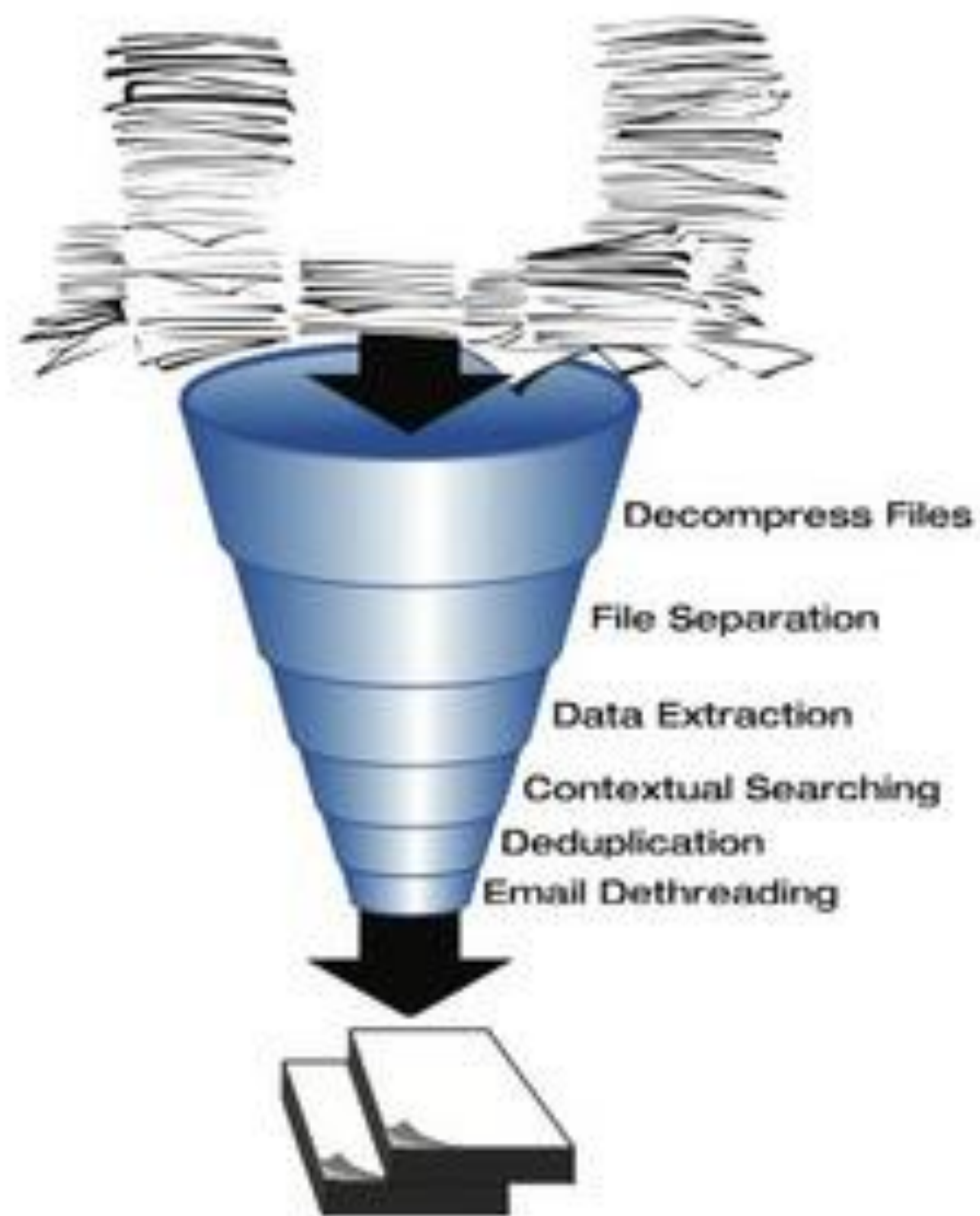


eDiscovery

- Early Case Assessment
- Data collection process
- Analysis and review of ESI
- Cost and proportionality

**HAVE YOU EVER USED
EDISCOVERY SOFTWARE ON
A CASE?**

Before



After

WHAT IS EDISCOVERY?

Electronic discovery is part of the litigation process that includes the collecting, analyzing, reviewing and production of electronically stored information, or ESI.

This ESI may, but is not limited to, emails, documents, presentations, databases, voicemail, audio and video files, social media, and web sites.

EARLY CASE ASSESSMENT & LEGAL HOLDS

ECA refers to estimating risk (cost of time and money) to prosecute or defend a legal case.

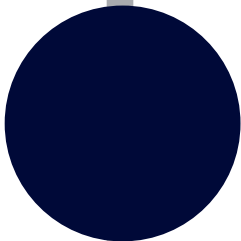


POTENTIAL
LITIGATION

THE LITIGATION
HOLD



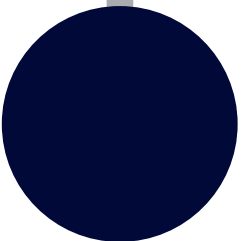
Jan 15th, 2021



Client comes into office.
Case accepted / Agreement signed.
ESI Early Case Assessment. EDiscovery
Client Intake Form.

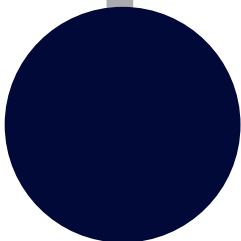
Jan 16th, 2021

(Reasonable anticipation of litigation
League of Women Voters of Fla. v. Detzner,
172 So. 3d 363 (Fla. 2015))



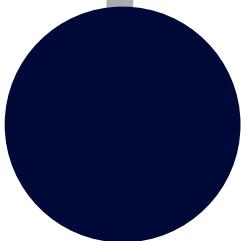
Litigation hold / preservation
letter mailed.

June 22nd, 2021



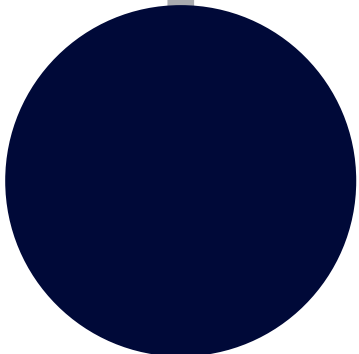
Discovery process
Request for production.

June 27th, 2021



Opposing counsel’s client claims
mobile device(s) dropped in water,
PC had a virus, computers lost in
fire.

August 20th, 2021



Potential “spoliation” claim
for client.

EDISCOVERY & THE CLIENT INTAKE PROCESS



Law Firm & Business IT Consulting
eDiscovery | IT Support | Cybersecurity | Digital Forensics

eDiscovery Client Intake Form

Client Name: _____ Matter No. _____

Opposing Party: _____

Client Device Information

Mobile / Text Communication Device(s)

Cell Phone (How many ____) 1. Yes ☐ No ☐ | Personal ☐ Work ☐ Carrier _____

2. Yes ☐ No ☐ | Personal ☐ Work ☐ Carrier _____

3. Yes ☐ No ☐ | Personal ☐ Work ☐ Carrier _____

Computer Device(s)

Desktop ☐ Laptop ☐ Tablet ☐ Other ☐ _____ Other ☐ _____ Other ☐ _____

1. Type _____ Manufacturer _____ Physical location _____

2. Type _____ Manufacturer _____ Physical location _____

3. Type _____ Manufacturer _____ Physical location _____

4. Type _____ Manufacturer _____ Physical location _____

5. Type _____ Manufacturer _____ Physical location _____

6. Type _____ Manufacturer _____ Physical location _____

Email Account(s)

Gmail ☐ Yahoo! ☐ AOL ☐ Hotmail ☐ Work ☐ Other ☐ _____ Other ☐ _____

1. Email address _____ 2. _____

3. Email Address _____ 4. _____

Social Media Account(s) (Public ☐ Private ☐)

Facebook ☐ Instagram ☐ Pinterest ☐ Twitter ☐ Other ☐ _____ Other ☐ _____

Other/usernames _____

Online Financial / Bank Accounts / Credit Cards

1. _____ 2. _____

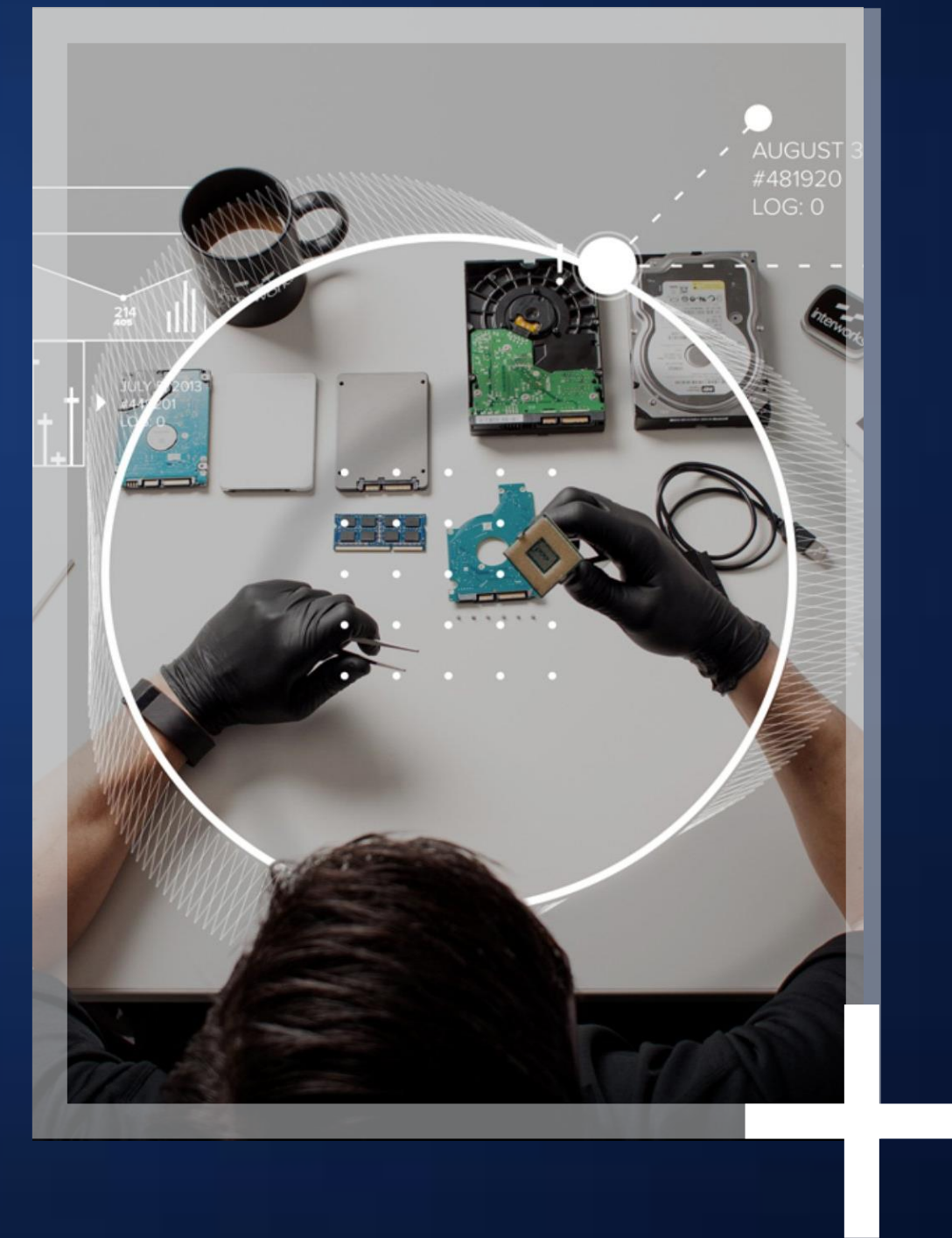
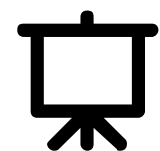
3. _____ 4. _____

5. _____ 6. _____

Cloud Accounts (i.e. iCloud, OneDrive, Google Drive)

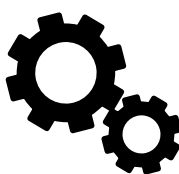
THE COLLECTION PROCESS

Digital information, data location, collection procedures, litigation hold, proportionality.





WHAT IS ESI? (ELECTRONICALLY STORED INFORMATION)



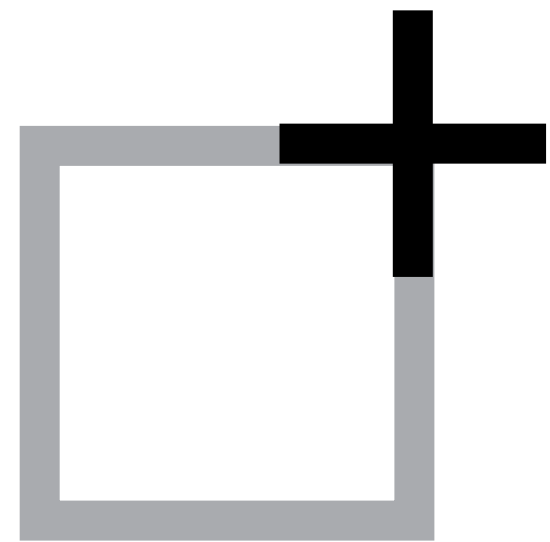
Data is
volatile



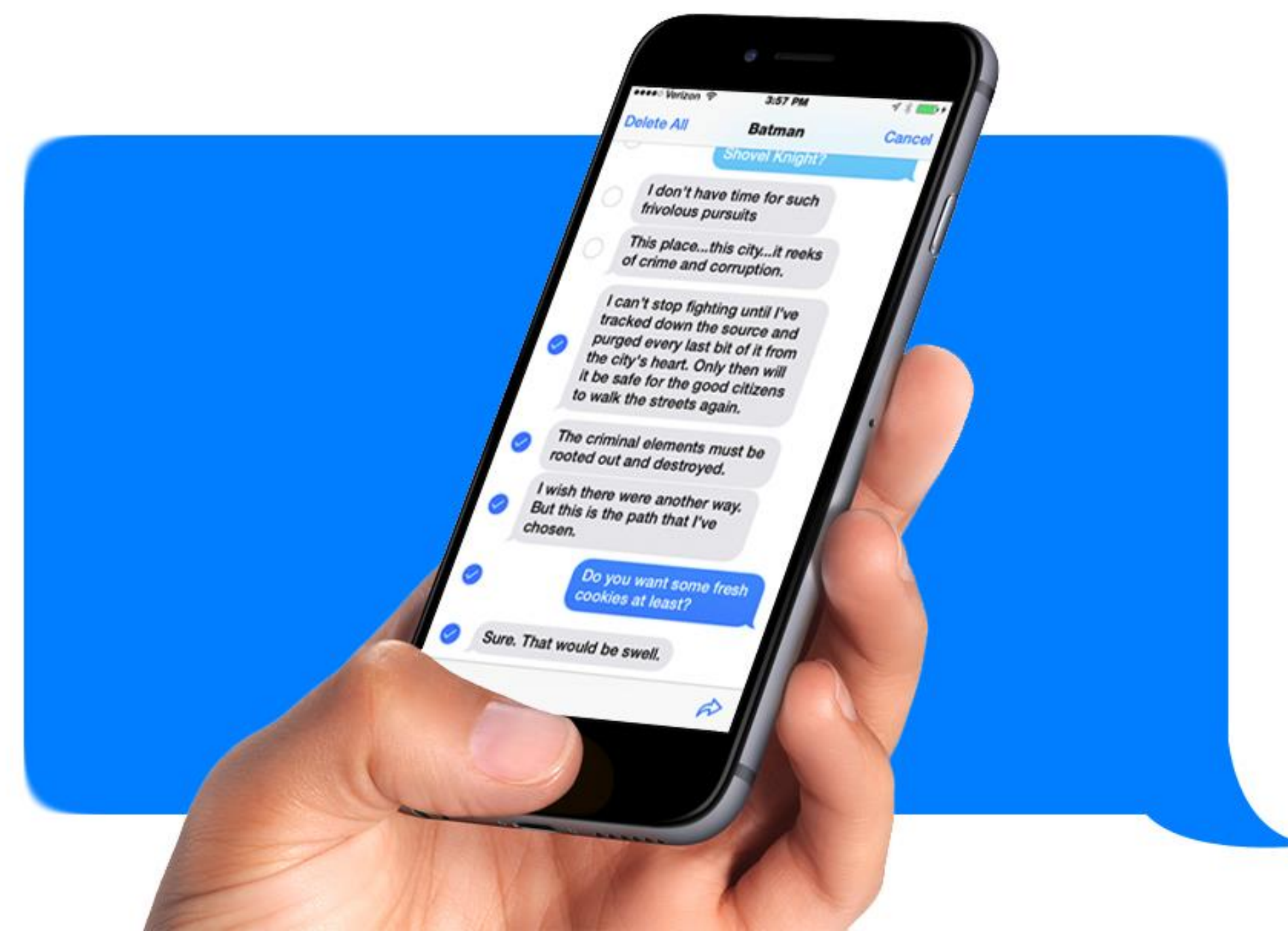
Same data can
be in multiple
places

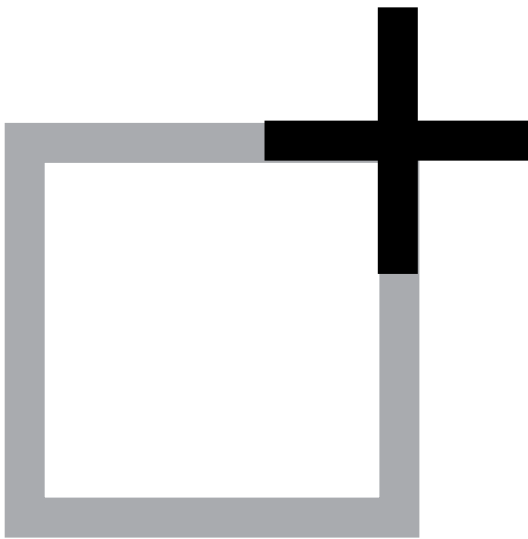


Erased data
may be
recovered



IS IT FORENSICALLY SOUND?





SELF-COLLECTION



FileHomeSend / ReceiveFolderViewADOBE PDFSearchTell me what you want to do

All Mailboxes

Current Mailbox

Scope

Current Folder

Subfolders

All Outlook Items

Include Older Results

Results

From

Subject

Has Attachments

Categorized

Refine

This Week

Sent To

Unread

Flagged

Important

More

Recent Searches

Options

Search Tools

Close Search

Favorites

Conversation History

Thomas.D @

All

Unread

Mentions

purple

Current Mailbox

Current Folder

Subfolders

Current Mailbox

All Mailboxes

FROM

SUBJECT

SENT

Date: Older

Thomas

RE: Solodyn Subpoena - Lotus Notes Data ...

Wed 3/8/2017 9:4..

Search Complete

ESI LOCATION

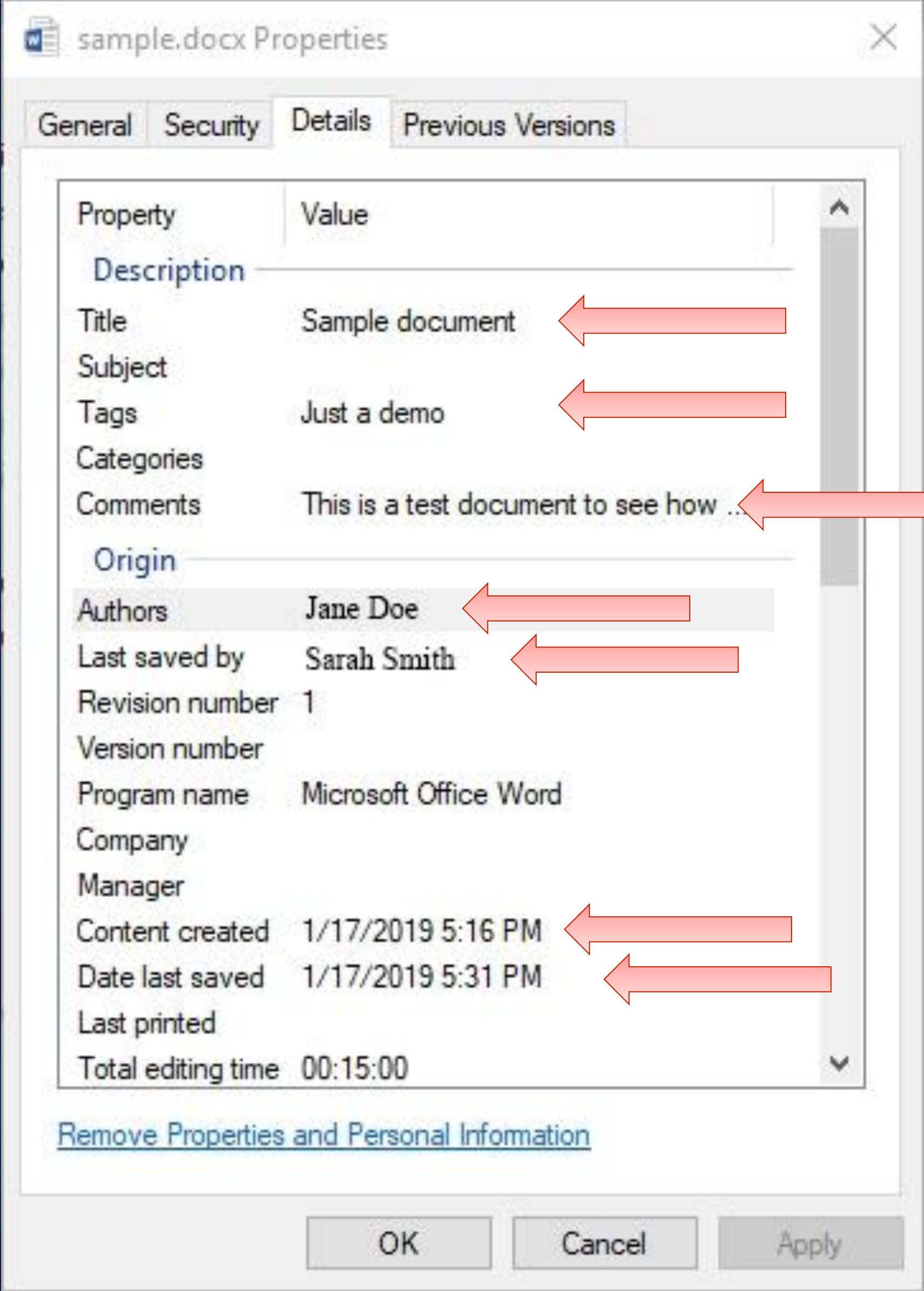
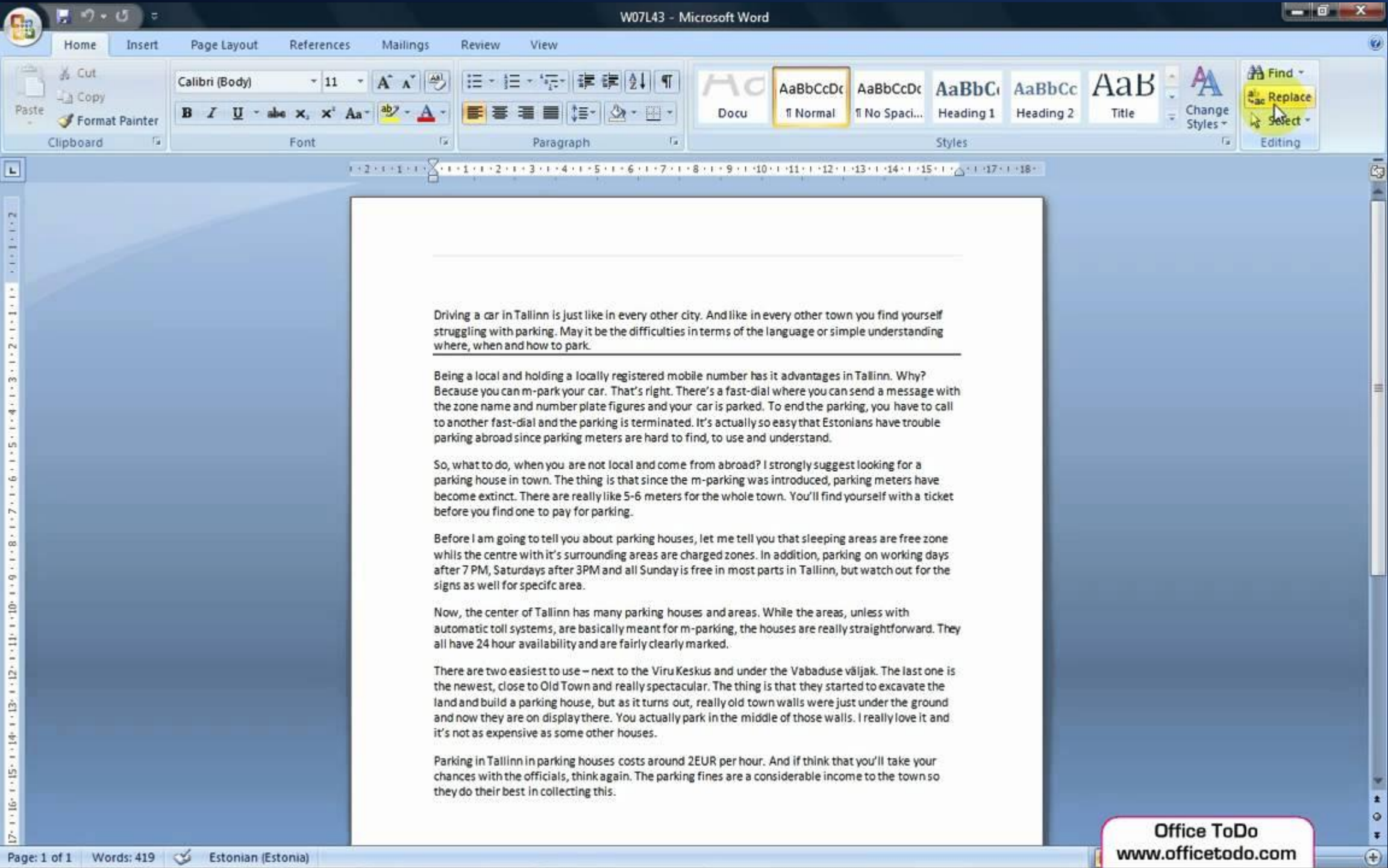
Electronically stored information (ESI) is any information that is created or stored electronically. Rule 34 of the Federal Rules of Civil Procedure (FRCP) doesn't specify all types of ESI but notes that it “*includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations.*” Because of the ever-growing changes in technology, ESI location grows by the day. Additionally, as new technologies are created, new types of data are also generated.





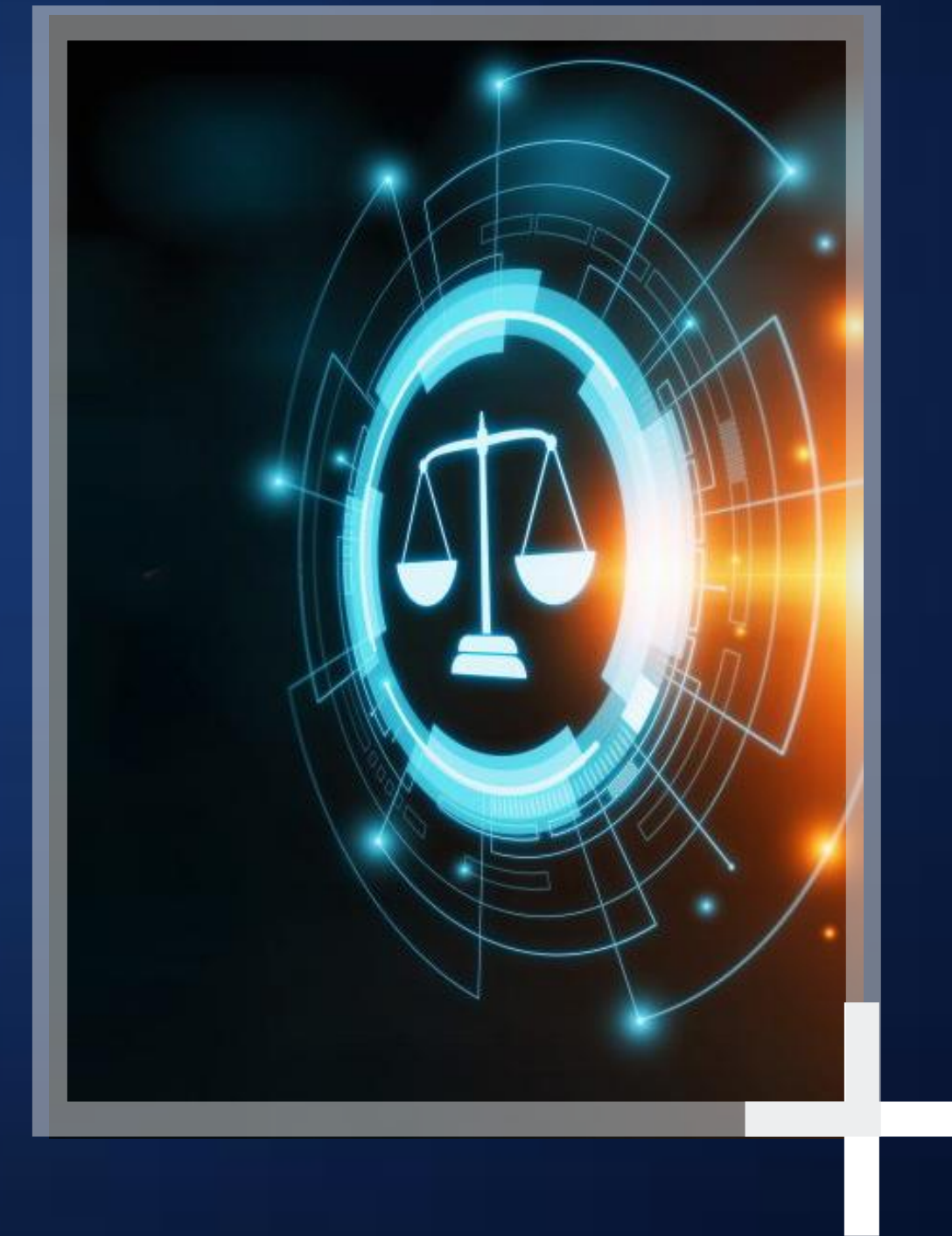
WHAT IS METADATA?

(DATA ABOUT DATA)



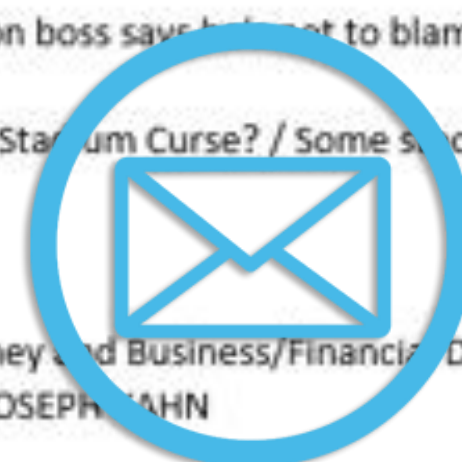
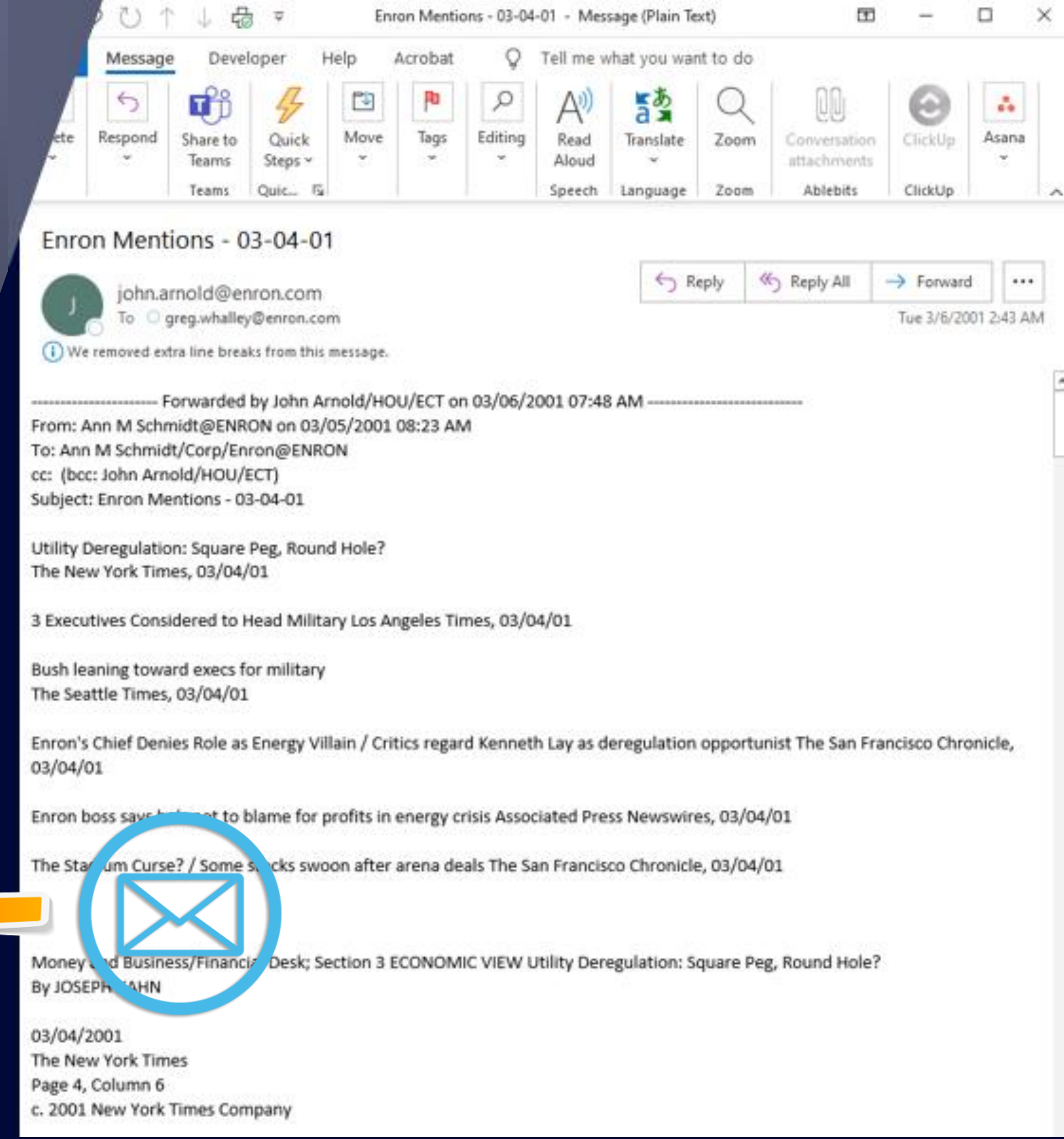
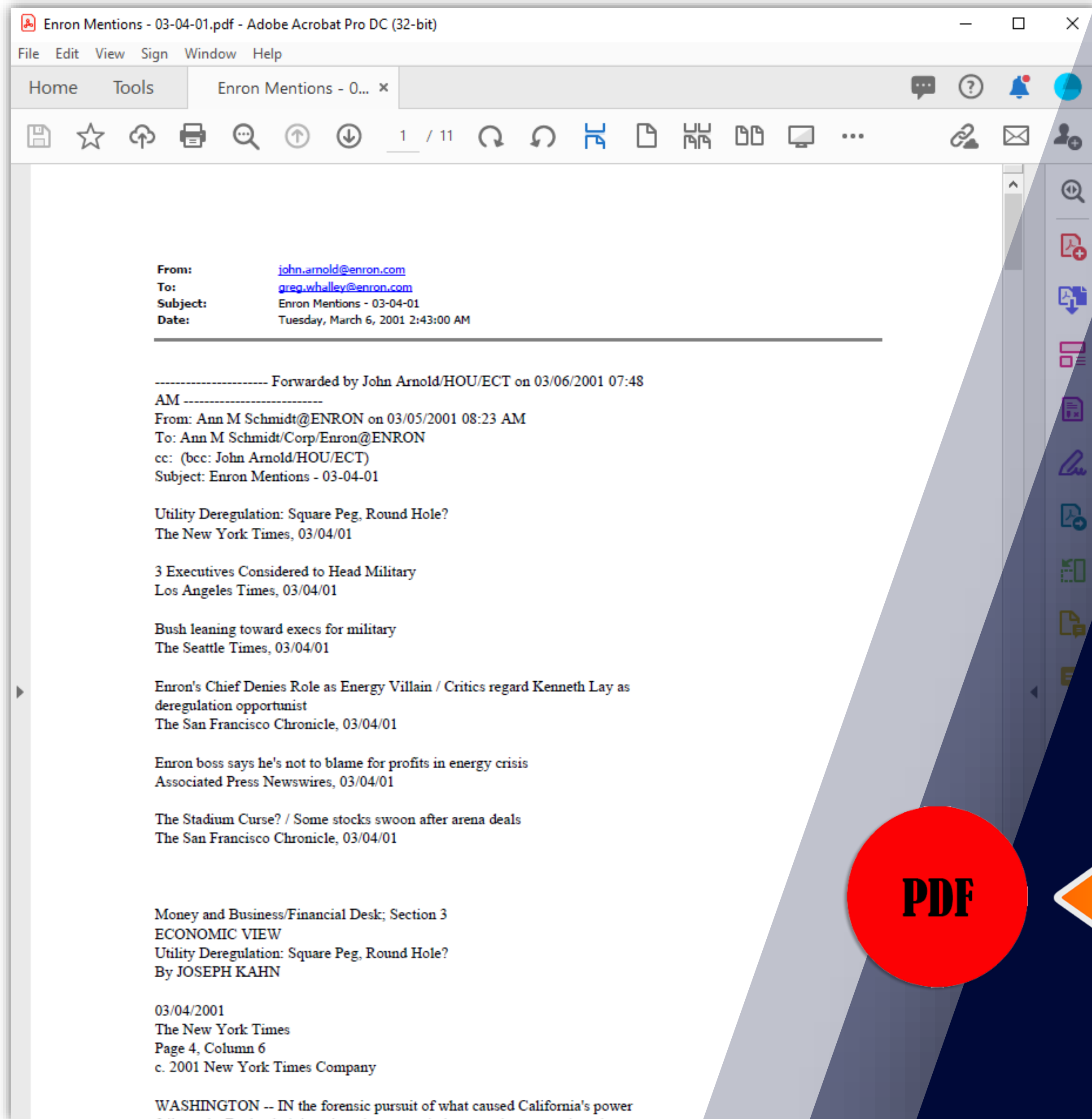
ANALYZING & REVIEWING ESI (ELECTRONICALLY STORED INFORMATION)

Deduplication, parsing data, native files, artificial intelligence (AI), technology assisted review (TAR).



NATIVE FILES

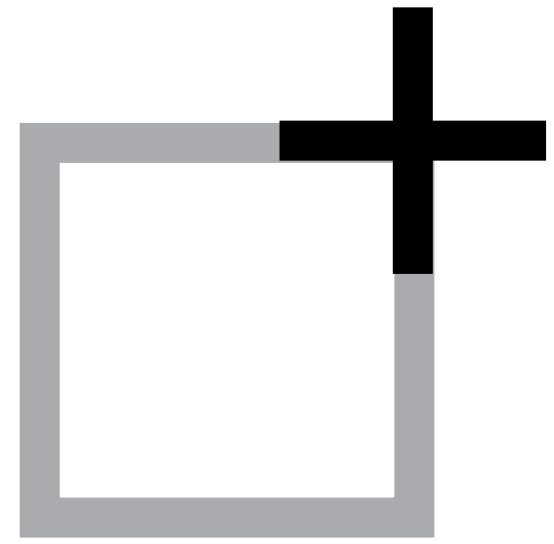
23



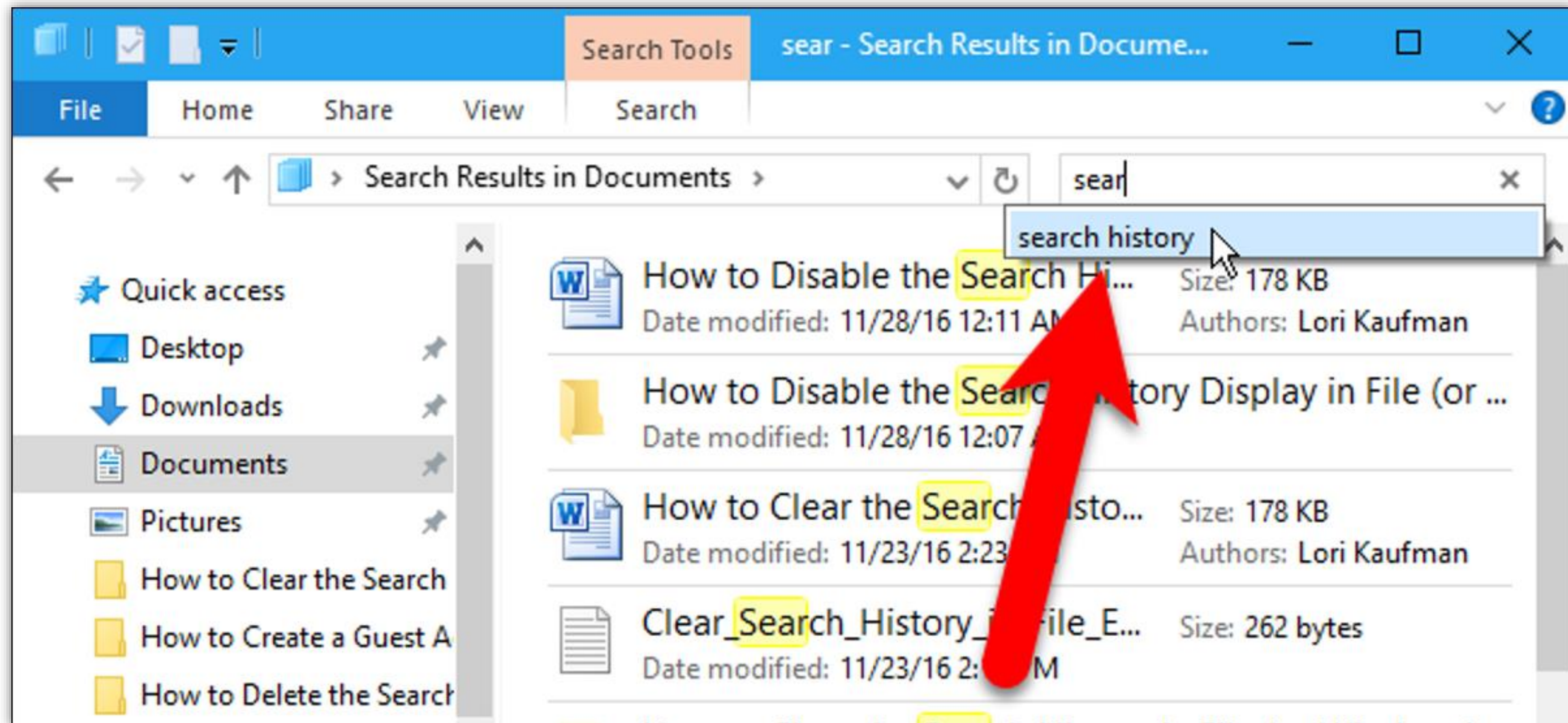


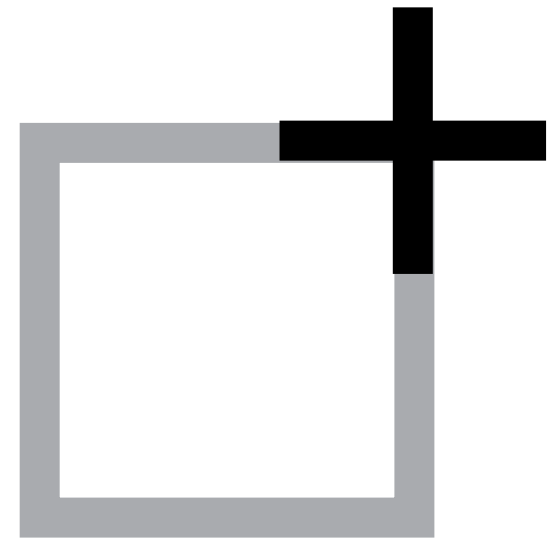
BE CAREFUL WHAT YOU WISH FOR

- A native file is only as good as the software that you have to open it with.
- Proprietary software.

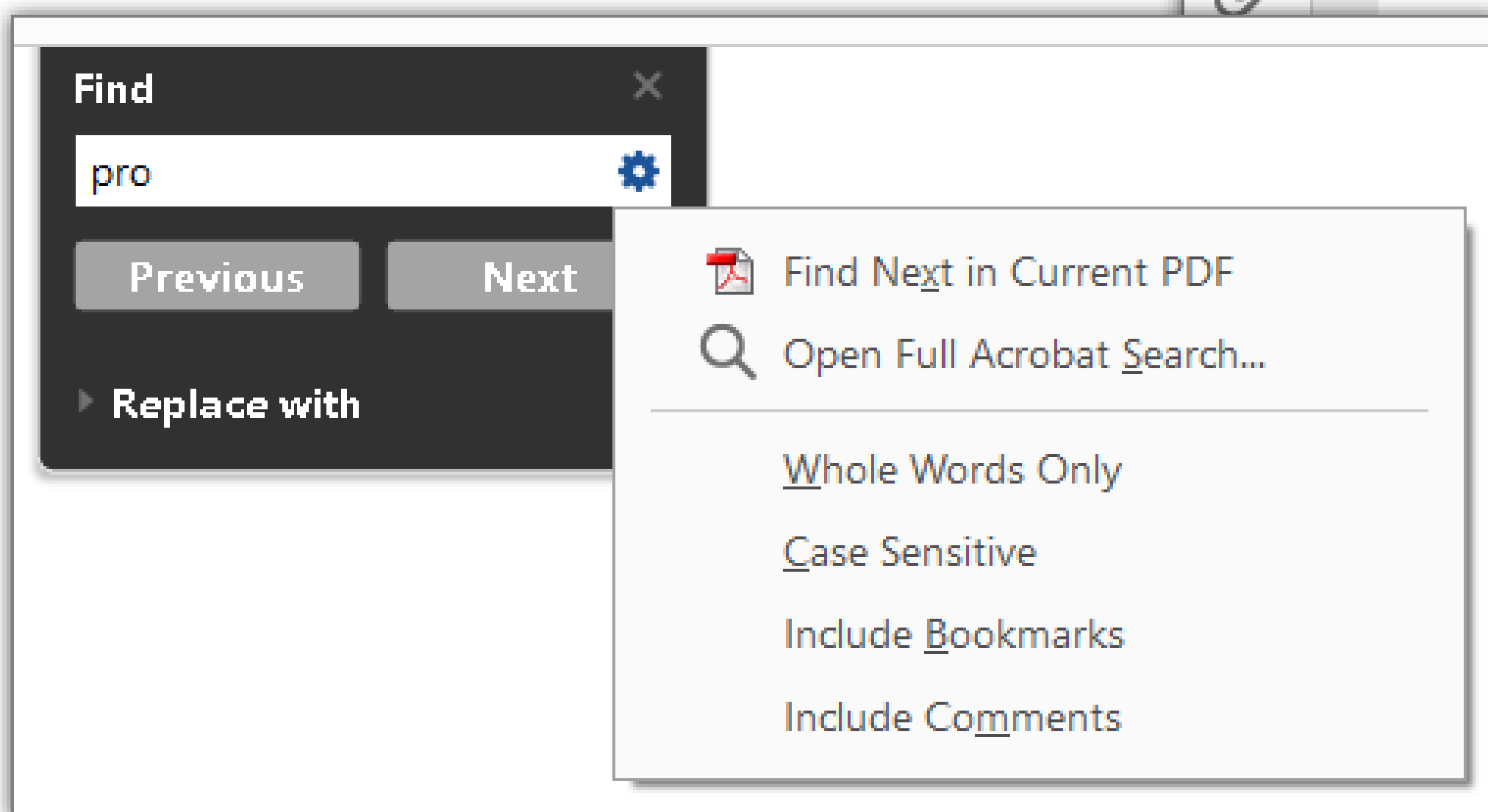
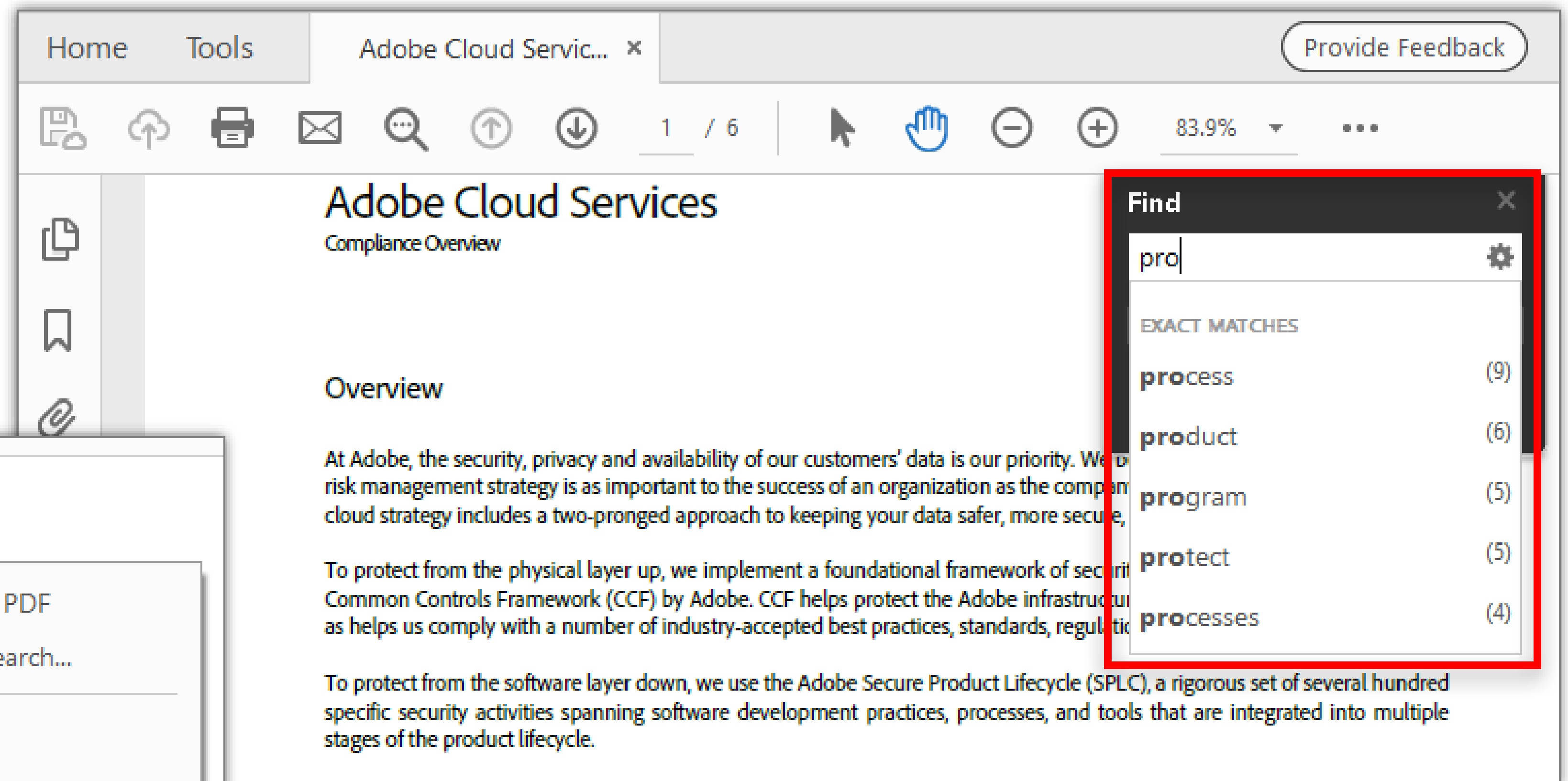


WINDOWS EXPLORER





PDF SEARCHES





EDISCOVERY SOFTWARE

Upload

6 OF 6 ITEMS

Clear All

☒

Sample Data - 395

☒

Sample Data 00170

☒

Sample Data 002383

☒

Sample Data 0035,244

☒

Sample Data - 1,171

☒

EXPERT WITNESS

☒

Sample Data - 2,002

☒

TREASURER

Tag

10 ITEMS

☐

Non-responsive1

☐

Responsive12

☐

Privilege9

☐

Hot0

☐

Confidential6

☐

Has No Tags9,233

☐

Has Notes5

☐

Has Comments3

Document Type

13 ITEMS

☐

Email8,628

☐

Document183

☐

Unknown164

☐

Image155

☐

Spreadsheet57

☐

Presentation26

☐

Database14

☐

CAD13

Custodian/Person

6 ITEMS

☐

John Doe5,314

☐

Jane Doe383

☐

Andy 0

☐

Albert 1,171

☐

Andrew 2,002

☐

Bill 395



EDISCOVERY SOFTWARE



Email From Domain

318 ITEMS

<input type="checkbox"/> enron.com	6,768
<input type="checkbox"/> caiso.com	104
<input type="checkbox"/> mailman.enron.com	88
<input type="checkbox"/> carrfut.com	53
<input type="checkbox"/> amazon.com	31
<input type="checkbox"/> concureworkplace.com	30
<input type="checkbox"/> intcx.com	30
<input type="checkbox"/> multexinvestornetwork.com	29

Document Date

Begin Date

MM/DD/YYYY

End Date

MM/DD/YYYY

Apply date range

Email Recipient Domains

460 ITEMS

<input type="checkbox"/> enron.com	5,669
<input type="checkbox"/> ect.enron.com	777
<input type="checkbox"/> hotmail.com	142
<input type="checkbox"/> caiso.com	95
<input type="checkbox"/> aol.com	72
<input type="checkbox"/> mba2002.hbs.edu	69
<input type="checkbox"/> yahoo.com	66
<input type="checkbox"/> austintx.com	64

QC Tags

39 ITEMS

<input type="checkbox"/> Last Email	8,551
<input type="checkbox"/> Mismatched Extension	5,391
<input type="checkbox"/> Has Duplicate	2,876
<input type="checkbox"/> Has Bcc	535
<input type="checkbox"/> Has No Text	429
<input type="checkbox"/> Not Rendered	346
<input type="checkbox"/> Has No QC Tags	106
<input type="checkbox"/> Potentially Privileged	93

COST & PROPORTIONALITY

Using eDiscovery software and tools, early case assessment, cost.



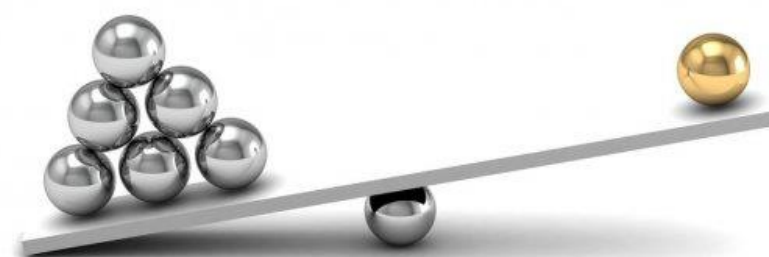
EDISCOVERY COST



- Competitive
- Affordable
- Predictable
- Customizable



PROPORTIONALITY



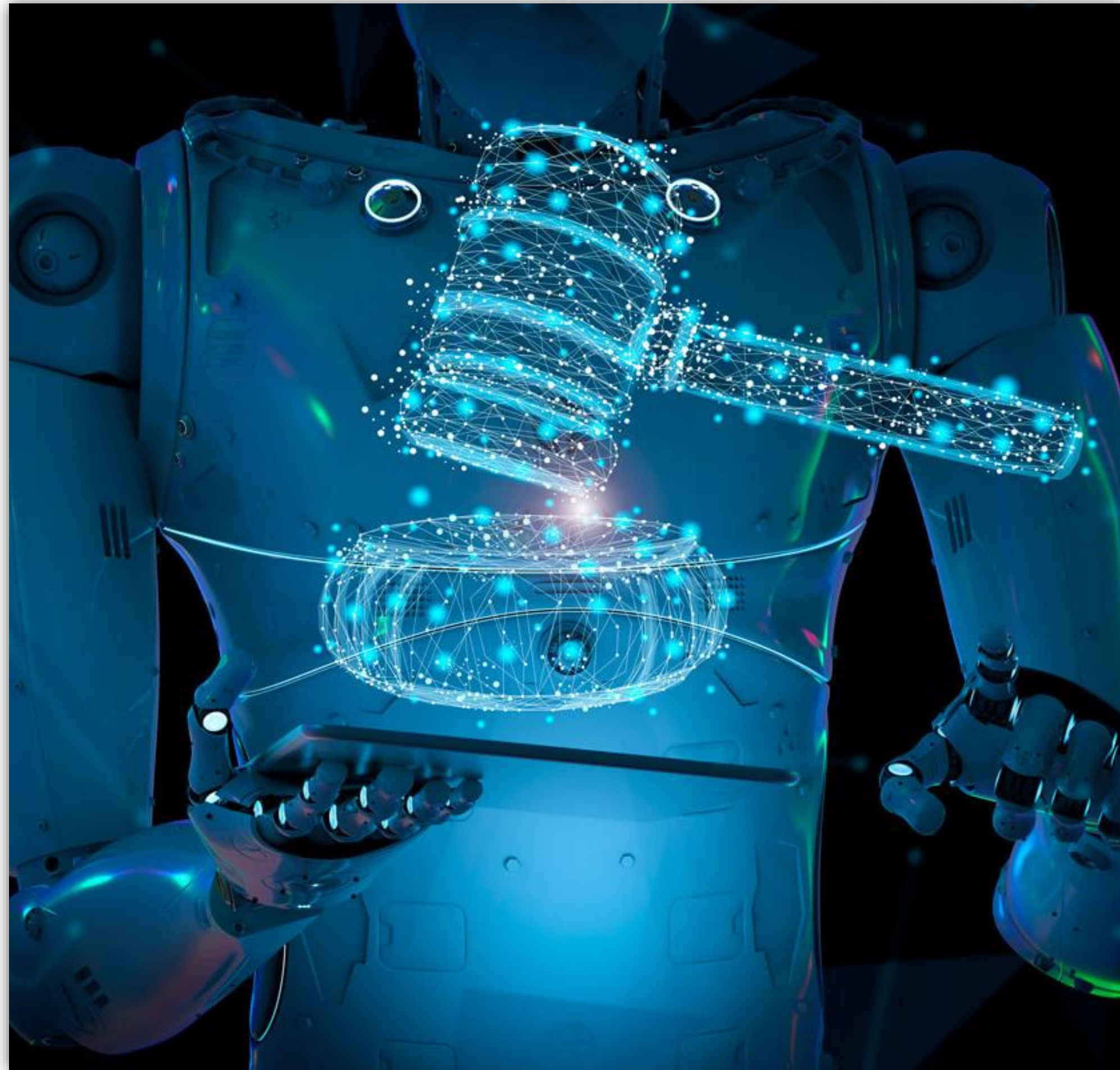
- Importance of the issues
- Amount in controversy
- Parties' access to relevant info.
- Parties' resources
- Importance of the discovery in resolving the issues
- Burden or expense outweighs its likely benefit

- Florida rules expressly provide that ESI is discoverable, but they also require proportionality of expense.
- FLA. R. Civ. P. 1.280(d)(2)(ii)

Artificial Intelligence

- Fundamentals of Artificial Intelligence
- How is AI used in legal practice
- Tools to consider

**HAVE YOU EVER USED
ARTIFICIAL INTELLIGENCE?**



WHAT IS ARTIFICIAL INTELLIGENCE

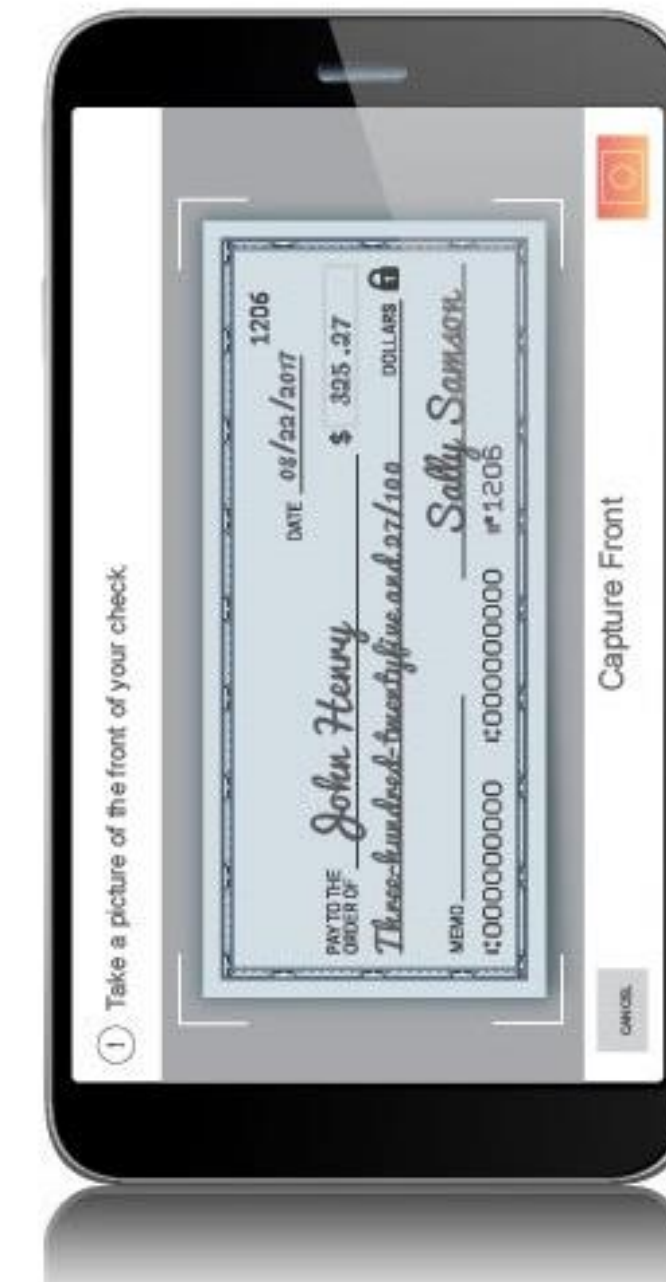
Artificial intelligence (AI) is a wide-ranging branch of computer science concerned with building smart machines capable of performing tasks that typically require human intelligence.

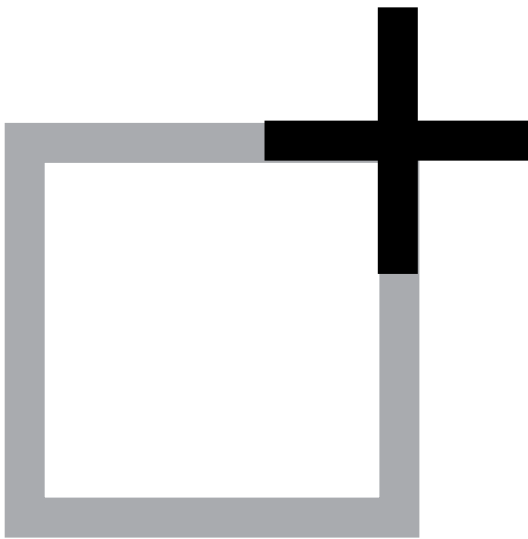
<https://builtin.com/artificial-intelligence>

ARTIFICIAL INTELLIGENCE IS EVERYWHERE



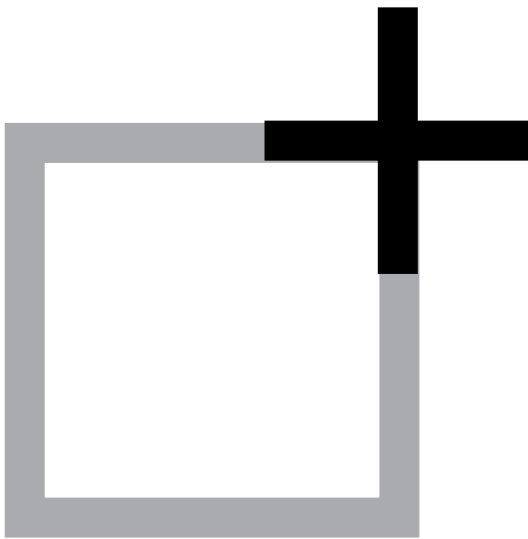
35





FACE RECOGNITION

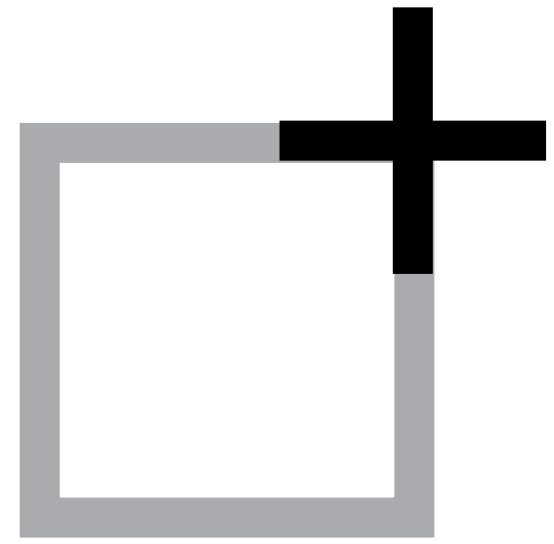




“FUZZY” SEARCHES



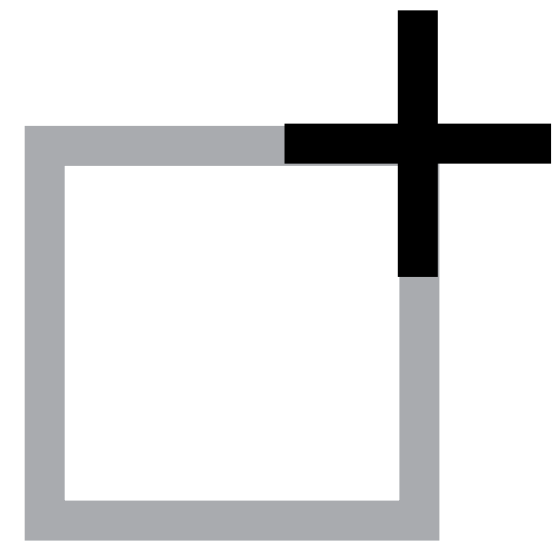
CONNECTORS AND EXPANDERS		
Terms	Explanation	Examples
&	AND	narcotics & warrant
/s	In same sentence	design /s defect
or	OR	attorney or lawyer or counsel attorney lawyer counsel
+s	Preceding within sentence	attorney +s fee
/p	In same paragraph	hearsay /p utterance
""	Phrase	"res ipsa loquitur"
+p	Preceding within paragraph	exception +p non-liability
%	But not	tax taxation % investment
/n	Within n terms of	personal /3 jurisdiction
!	Root expander	object! retrieves: object, objected, objection, objecting
+n	Preceding within n terms of	capital +3 gain
*	Universal character	withdr*w retrieves: withdraw, withdrew
#	Prefix to turn off plurals and equivalents	#damage retrieves: damage does not retrieve: damages



CONTRACT REVIEW

Salesforce, Home Depot & Ebay are already using AI powered contract review services in their day-to-day operations.

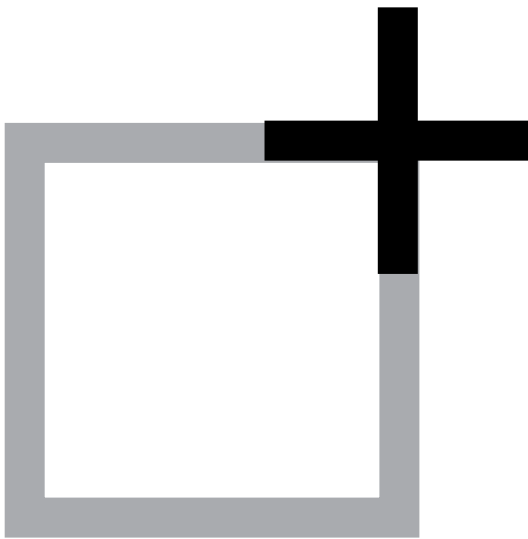




LEGAL RESEARCH

- Ross A.I.
- Bloomberg Points of Law
- Westlaw Edge Citator Improvements
- CARA
- Lex Machina
- Judicata
- Ravel Law
- Fastcase Bad Law Bot

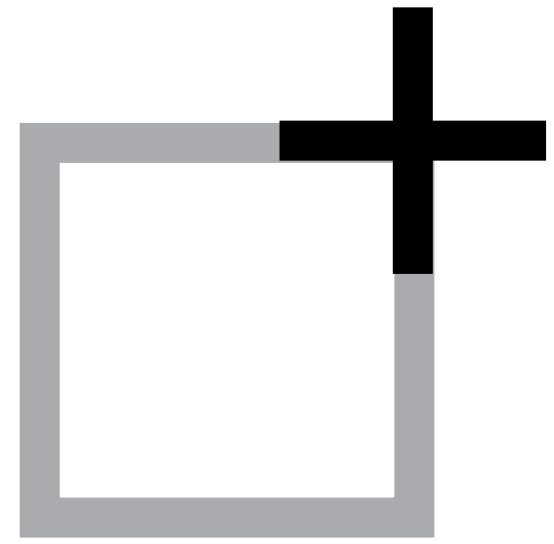




DOCUMENT AUTOMATION

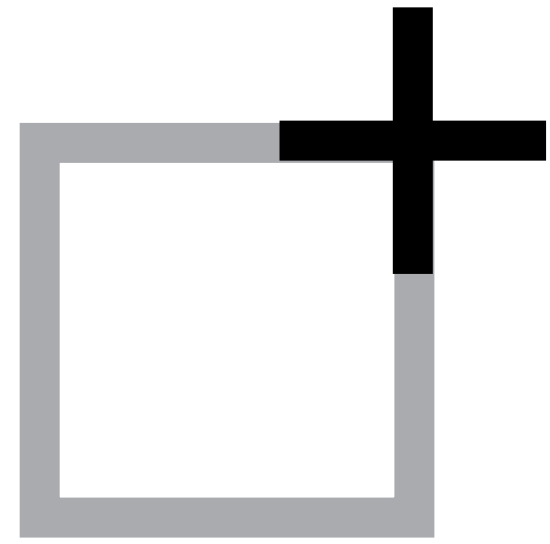
Computer Assisted Review Reference Model





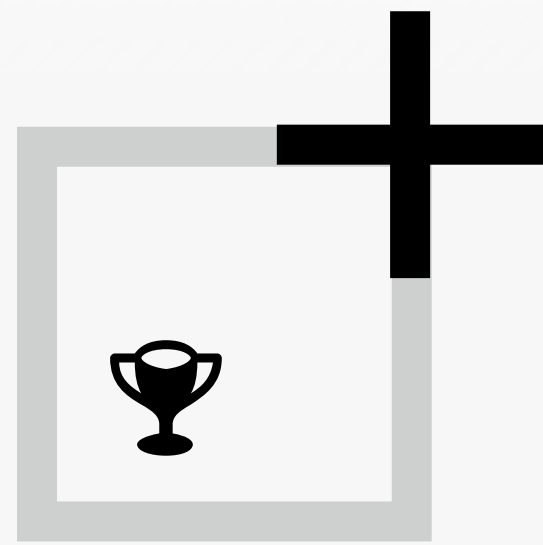
PREDICTION TECHNOLOGY

Will I win this case? Should we settle?



LEGAL INFORMATION VS. LEGAL ADVICE

Learning models to predict the outcomes of pending cases, using as inputs the corpus of relevant precedent and a case's particular fact pattern.



WINNING CASES WITH EDISCOVERY & ARTIFICIAL INTELLIGENCE

ETHICS

Understand the ethical implications.

PRESERVE DATA

Filing a timely litigation hold is key.

DATA LOCATION

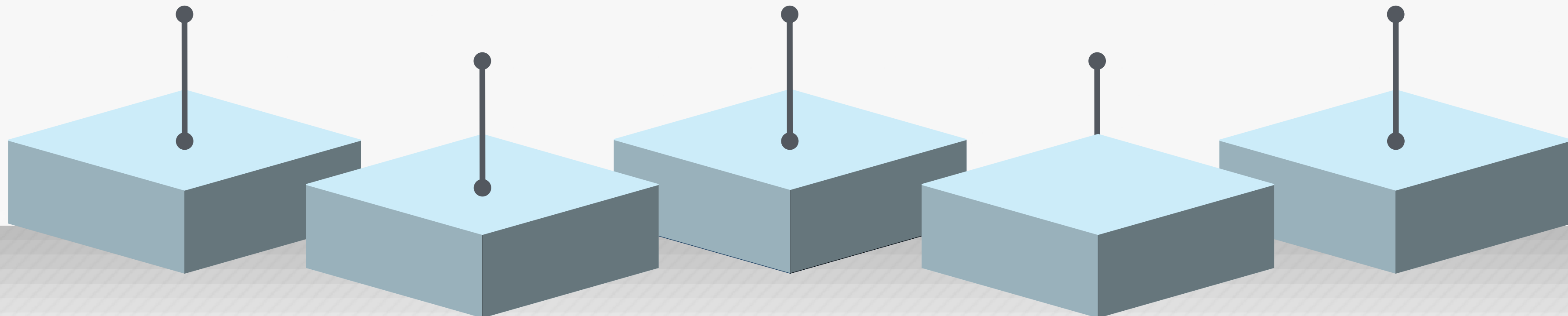
Understand where ESI can be located.

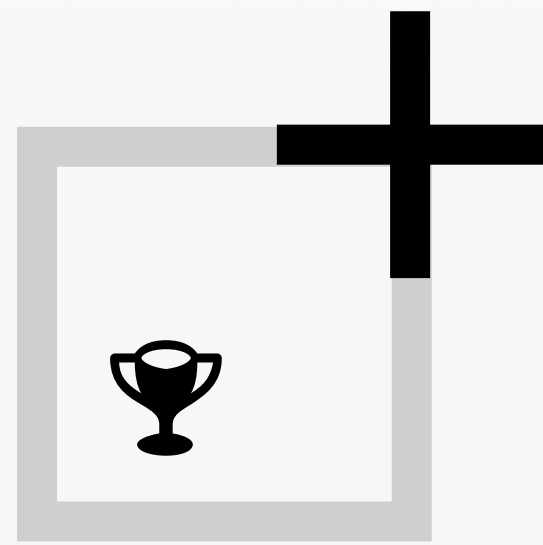
COLLECT DATA

Recognize pitfalls of self-collection.

EDISCOVERY & AI TOOLS

Make use of available technology





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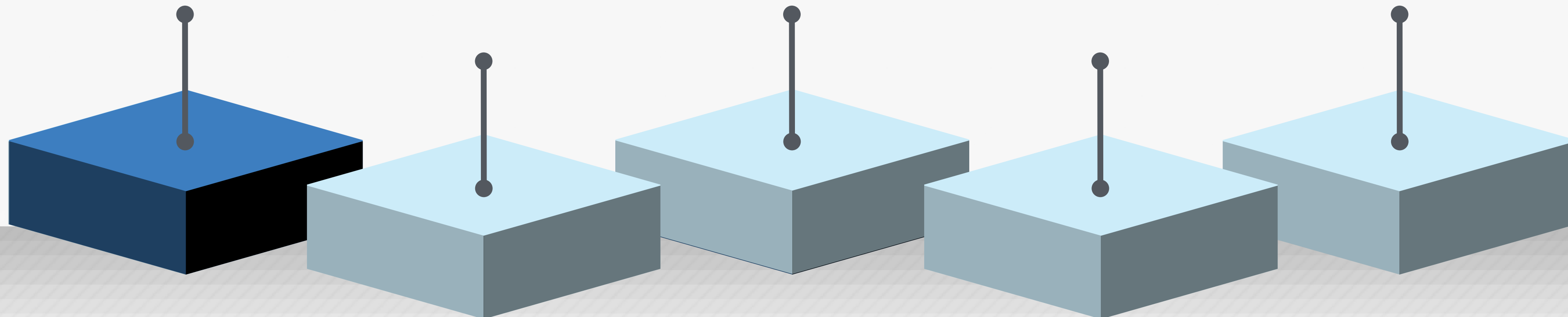
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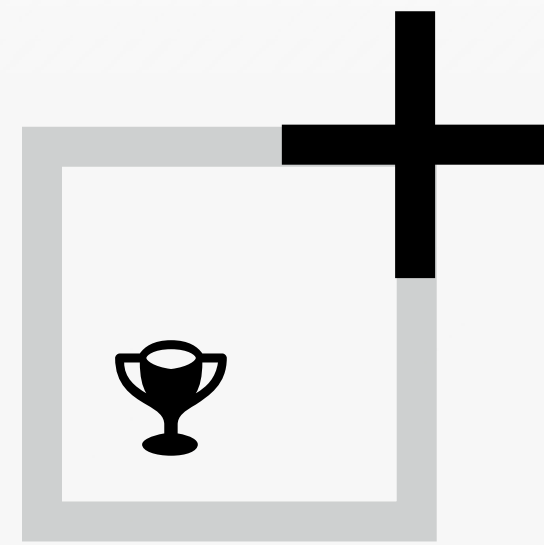
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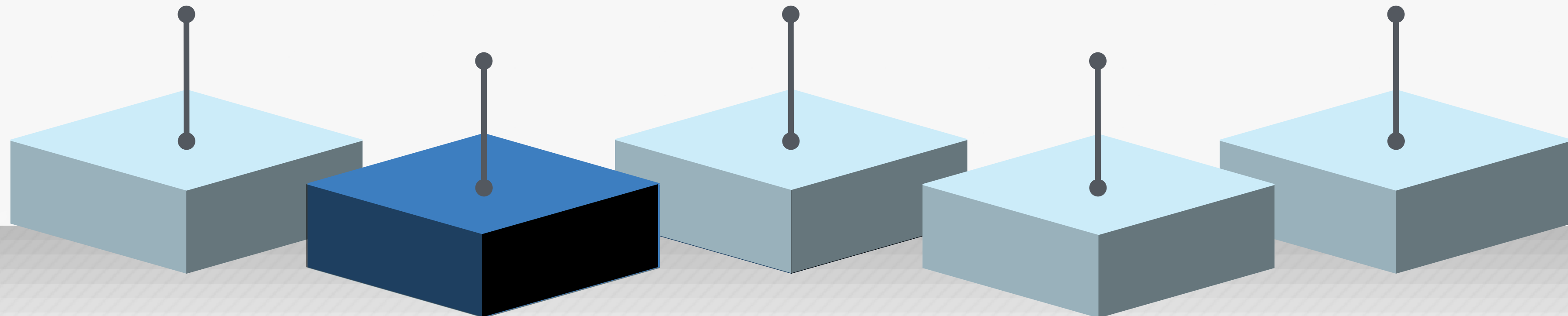
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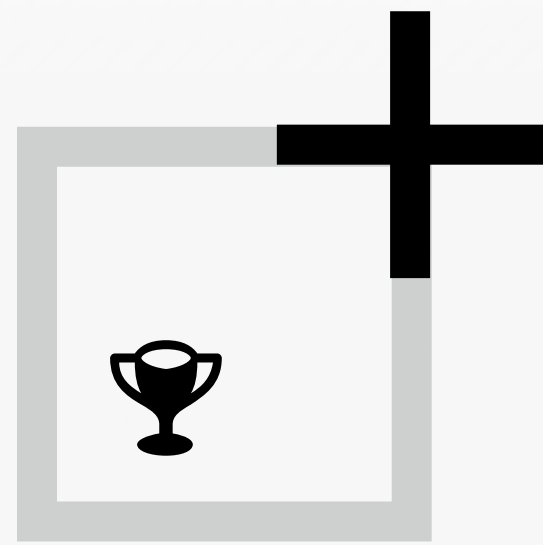
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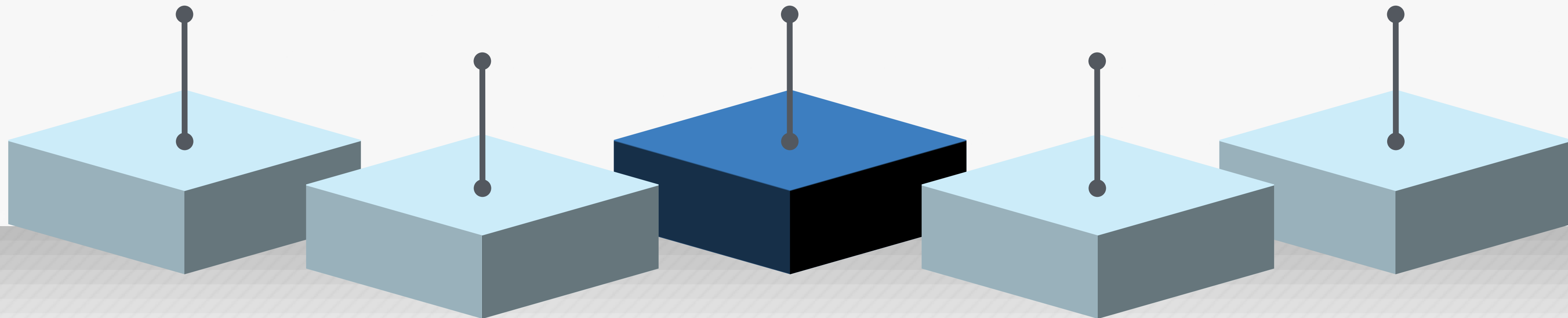
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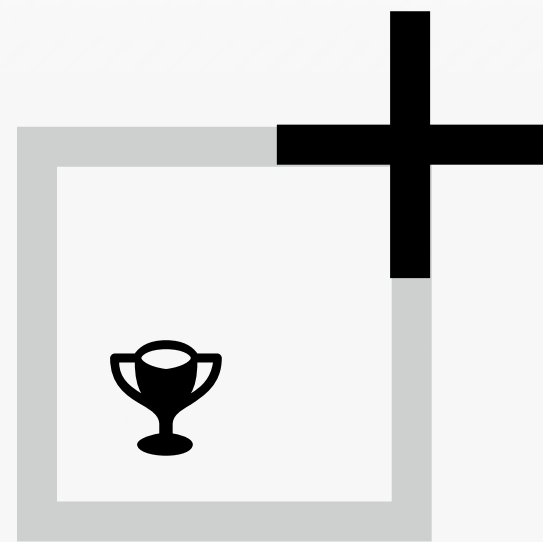
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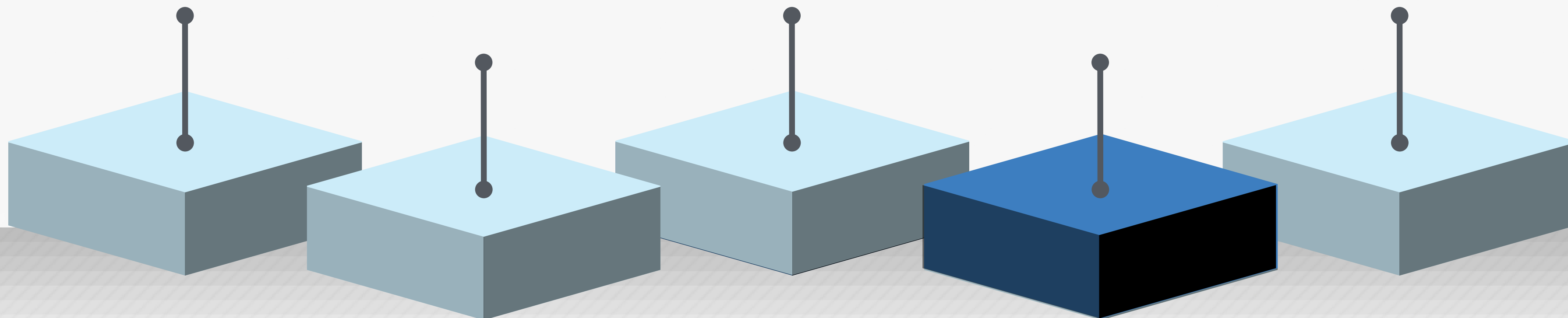
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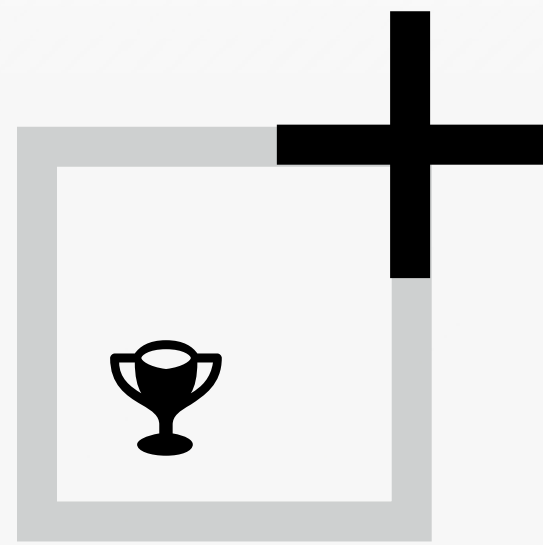
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Recognize pitfalls of self-collection.

EDISCOVERY & AI TOOLS

Make use of available technology





WINNING CASES WITH EDISCOVERY & ARTIFICIAL INTELLIGENCE

ETHICS

Understand the ethical implications.

PRESERVE DATA

Filing a timely litigation hold is key.

DATA LOCATION

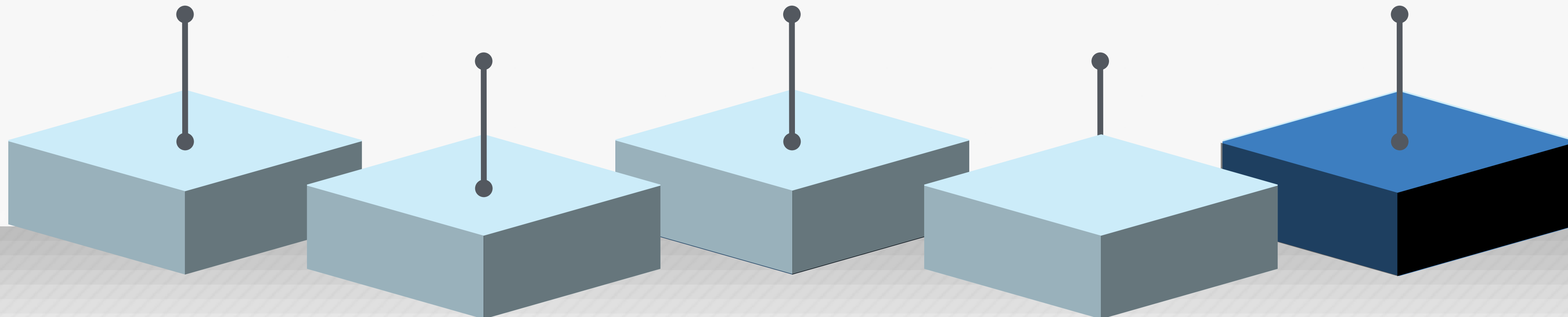
Understand where ESI can be located.

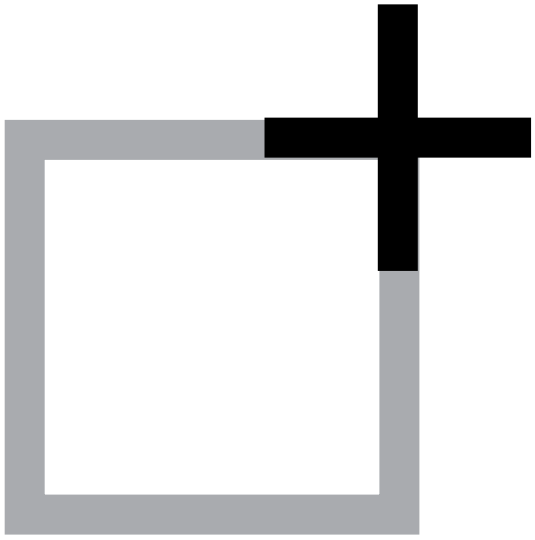
COLLECT DATA

Recognize pitfalls of self-collection.

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*Thank you to our hosts,
LegalFuel & the Florida Bar*

ANY QUESTIONS?



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