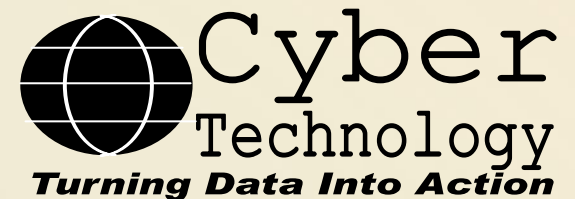


# E-Discovery

The Next Frontier in Data  
Management



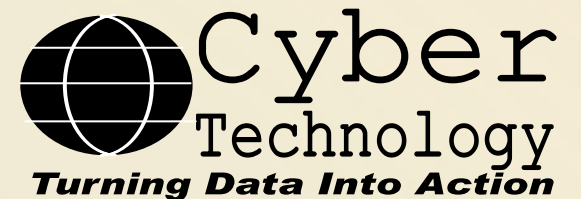
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# Digital Age

- Technology is Pervasive in Society and Business
  - Communications: Chat, VoIP, Voice Mail, Email, Cell Phones, Blogs, Websites
  - Personal Organization: Calendars, Address Books, Journals, Online Group Calendars,
  - Personal Entertainment: Audio/Video Players, Web Surfing, Gaming Devices,
  - Document Storage: Financial Statements, Intellectual Property, Corporate Strategy, etc.
  - Average of 5 digital devices per person

# Impact of Technology

- The Volume of Information is Growing Exponentially
- Increasingly Difficult to Protect Intellectual Property
- Increased Network and Security Risks
- Exponential Growth In Corporate Fraud
  - Kroll Study:
    - 80% of Companies Experienced Significant Fraud
    - Large Business Averaged more than \$1M Loss

# Recent Developments

- Federal Rules of Procedure (Dec 2006)
  - Updated to Include ESI
- Columbia Pictures Indus. v. Bunnell et al. (C.D. Cal. May 29, 2007)
  - Volatile Memory Discoverable
- Lorraine v Markel (May 4, 2007)
  - Must Authenticate Extracted Documents
  - Collection Process, Hosting, and Extraction Processes

# Native is Coming

(Whether You Like It or Not)

- *Williams v Sprint/United Management Co.* (September 29, 2005)
  - Documents must be produced in their native format.
  - Sanctions for Altering Metadata
- *Treppel v. Biovail Corp.* S.D.N.Y (Feb 6, 2006)
  - Court ordered native production.
- *In re Priceline.Com Inc., Sec. Litigation (D. Conn 2005)*
  - Ordered Production in Tiff or PDF
  - Ordered preservation in native format

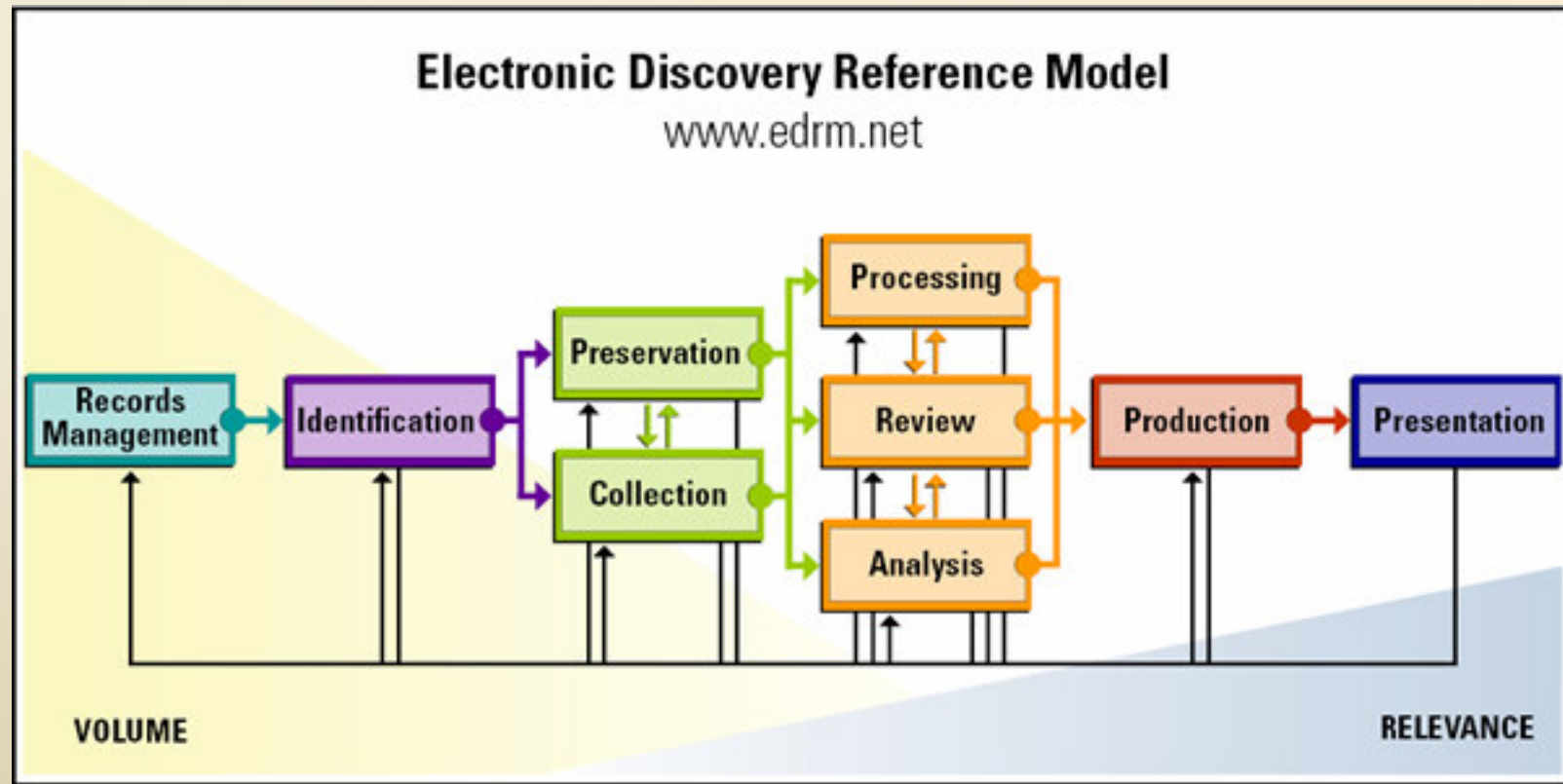
# Sanctions Cases

- *U.S. v Philip Morris (2004)*
  - \$2.75 Million in Sanctions
  - Key Officers not Allowed to Testify
- *In Re Prudential Ins. Co. Sales Practices Litigation (1997).*
  - \$1 Million
  - No Hold on Litigation Documents
  - Willful Destruction not Required
- *In Re Merrill Lynch, Pierce, Fenner & Smith (March 2006)*
  - \$2.5 Million
  - Systemic Failure in E-Mail Production.

# Impact of New Rules

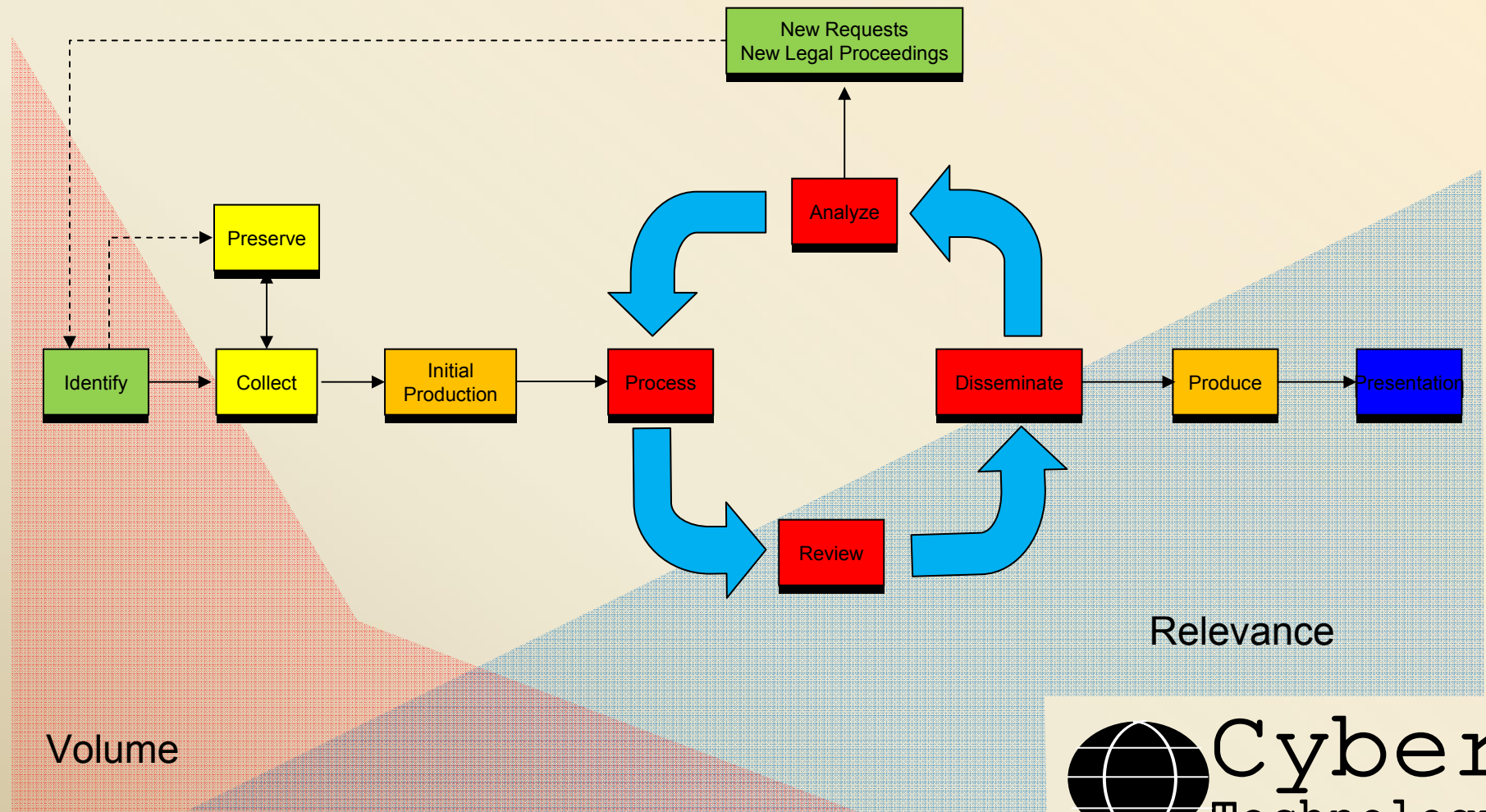
- Hide the Ball Tactics No Longer Viable
- Sanctions In Cases Where ESI is not properly preserved.
- Sanctions in Cases Where Discovery Falls Short
- Evidence Inadmissible in Situations Where it is not Authenticated or Produced in Context
- Sanctions if Evidence is Changed in Production or Preservation.

# The Traditional e-Discovery Model



Source: Socha Consulting, LLC.  
www.edrm.net

# New Frontier Model



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# Impact on E-Discovery

- Forensic Grade Tools and Processes
- Collection and Processing Personnel are Possibly Subject to Expert Witness Rules
- Use Enterprise Tools and Techniques for Enterprise Level Problems
- Pressure to Minimize Cost

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