

# DISCOVERY EXPECTATIONS

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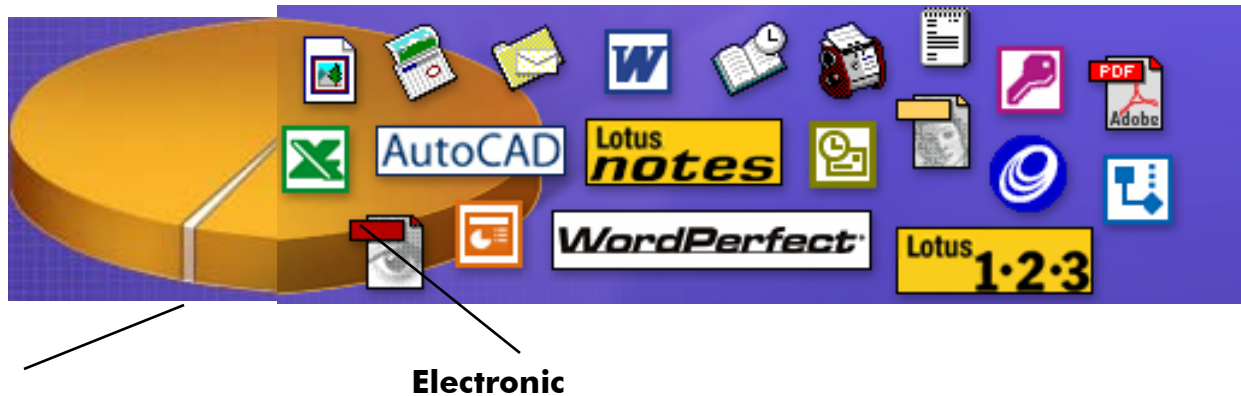
# **DISCOVERY EXPECTATIONS**

- Even the simplest legal controversy is likely to require some discovery.
- Planning ahead and understanding what your lawyer is going to ask you to do is beneficial so you don't feel overwhelmed.

# **DISCOVERY EXPECTATIONS**

- Traditional discovery only required a search for hard copy documents.
- But in the Information Age, discovery requires you to search for and produce electronically-stored information.

# ELECTRONIC DATA



- 99.997% of information created and stored electronically.
- 9.8 billion email messages are sent each day.
- Less than 1/3 of electronic documents ever printed.
- Electronic documents come in a wide variety of file formats.
- Hard drives in stand-alone PCs account for 55% of total data storage each year.
- Hitting “delete” DOES NOT delete the document

# ELECTRONIC DATA

- Don't fear electronic data – not just a field of landmines – may provide the key to winning your case or making an important deal.
- Key consideration is not whether you have to produce electronic data – but how you manage it.

# GROUND RULES?

- Federal courts implemented new provisions on December 1, 2006.
- Ohio state courts do not have similar rules, but could look to federal rules for guiding principles.
- Arbitration – open question. What do the parties agree to do?

# **UNDER THE FEDERAL RULES**

- Key concept: “Electronically stored information”
- Not specifically defined
- Includes information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software

# UNDER THE FEDERAL RULES

- “ESI” clearly includes many different types of electronic data:
  - Word processing, spreadsheet, presentation files
  - Email
  - Internet activity
  - Instant messages
  - Voicemail messages
  - **Metadata**
- Applies to data stored on desktops, laptops, PDAs, BlackBerries, handheld PCs, cell phones, and removable media such as flash drives, CDs, DVDs, etc.

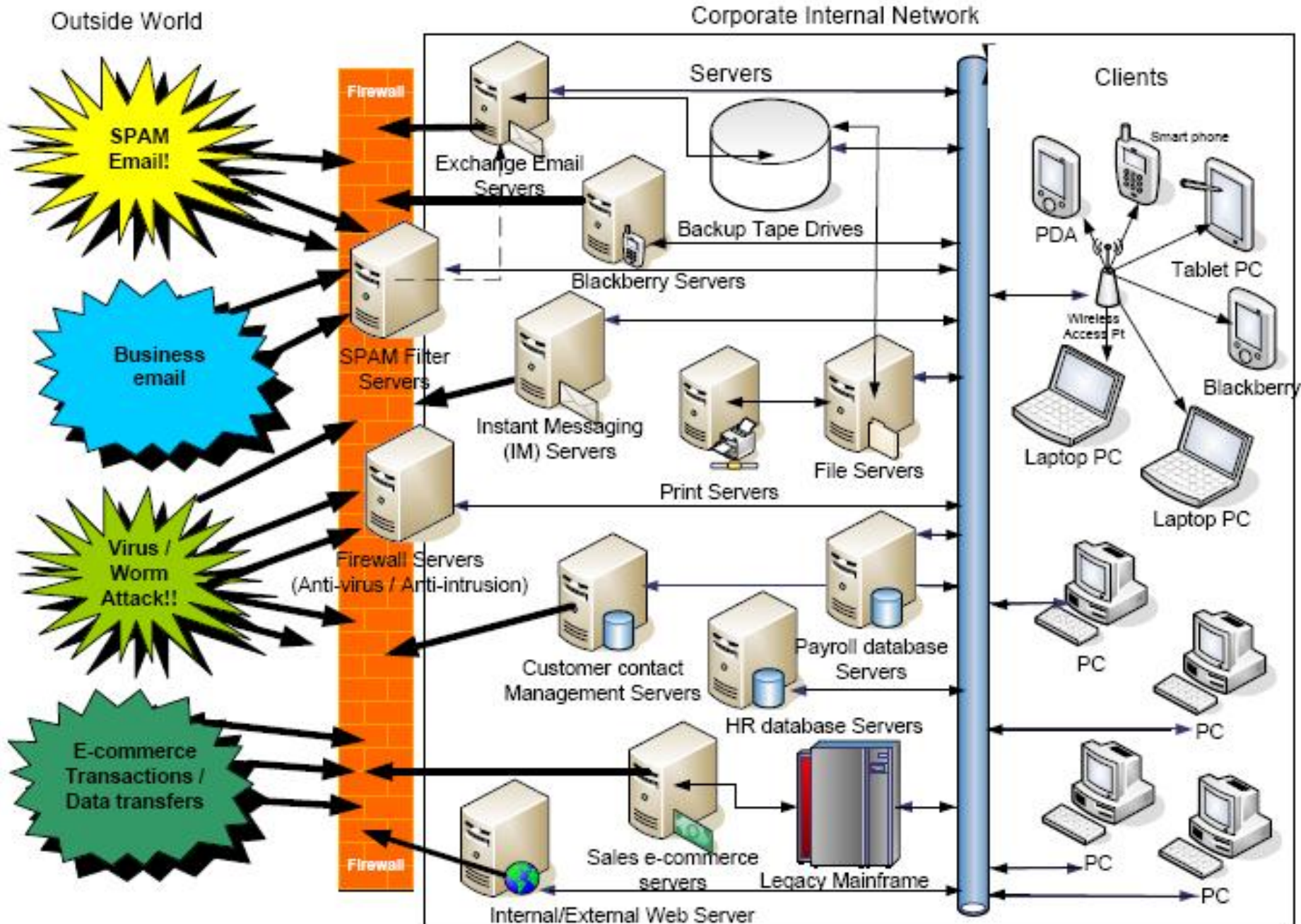
# OVERWHELMING?

- No small undertaking to capture this information.
- Exxon provides a compelling insight:
  - Its employees have **65,000** desktop computers and **30,000** laptop computers.
  - Desktop and laptop computers it now issues to employees can store 40 gigabytes (20 million typewritten pages).
  - Company generates **5.2 million** e-mails **daily**.
  - In the U.S. alone, Exxon's disaster recovery systems generate 121,000 back-up tapes a month (1.45 million back-up tapes per year).

# **GETTING YOURSELF READY**

- **Pre-litigation**
  - **Develop/maintain a records management policy**
  - **Make it understandable**
  - **Identify the routine operation of destruction**
  - **Educate personnel on the policy**
  - **Monitor compliance**
  - **Audit results and consider new technologies/  
infrastructure**
  - **Construct an active map of tech  
resources/network**

# Client Server Architecture Diagram



# GETTING YOURSELF READY

- If you are in litigation or “reasonably anticipating” it
  - Litigation hold issues
  - Identify key personnel for hold as well as responding to retention and production issues
  - Issue periodic reminders in course of litigation
  - Label privileged ESI