

INFORMATION PAPER

The M365[®] eDiscovery Paradox

Practical Issues and Considerations for eDiscovery Practitioners
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Introduction

The current state of Microsoft's premiere enterprise eDiscovery platform, known since April 19, 2022, as "Microsoft Purview eDiscovery (Premium),"¹ presents organizations with new opportunities and an unexpected dichotomy. Although new possibilities exist to more tightly control and effectively assess data at the earliest stages of legal and investigative matters, they come with unanticipated challenges for which many organizations are not adequately prepared.

This article will discuss the issues and considerations organizations and eDiscovery practitioners should consider when using eDiscovery (Premium) in real-world scenarios.

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Why is the Technology so Significant?

In a nutshell, eDiscovery (Premium) represents a paradigm shift for corporate eDiscovery and left-side Electronic Discovery Reference Model™ (EDRM) activities, particularly for smaller organizations that lack the dedicated technical specialists that typically support them. As a result, enterprises of vastly differing sizes have direct access to robust eDiscovery technology within their existing technology stack for the first time.

No third-party technology is required to make use of it, many organizations already possess it as a result of their larger Microsoft 365 (M365) subscription, and they have already addressed the cost as part of the general IT budget.²

Further, it provides these capabilities at the earliest stages of an eDiscovery or investigation matter, as opposed to far later in the process, when downstream technologies most commonly come into play.

Who Does the Work?

The issue at the heart of this “paradox” is who performs the hands-on work in the M365 tenant environment, from legal hold to collection to analysis to export. Several recurring themes have emerged in the course of assisting a number of different organizations in addressing this question.

It’s Microsoft Technology, IT Should Handle It

This conclusion has been almost universal for nearly the entire history of enterprise Information Technology (IT). Microsoft provides the technology that underpins a significant portion of most organization’s IT needs. Hence, it stands to reason that the information technology professionals that manage nearly all other aspects of Microsoft technology would also assume this responsibility.

However, asking your Microsoft Azure AD administrator, or network security specialist or virtualization engineer to answer the following questions might prove insightful:

- How does eDiscovery (Premium) align with the EDRM?
- What export format options are available for Microsoft Teams messaging content?
- What would you recommend for an ECA workflow to achieve improved volume reduction?
- Does the condensed directory structure export include all required fields for direct Relativity® import? And that includes a DAT plus doc images, right?

This Work is Performed in Support of Legal Matters, so the Legal Team Should Handle It

For an IT team already stretched thin with user support requests, security audits, threat monitoring, and enterprise messaging system administration – sorry. Our plate is full. This work supports legal matters, so legal should handle it. We'll set you up with the appropriate permissions, and then you're on your own.

This represents the opposite perspective on the situation and also includes valid points.

However, consider asking your corporate or litigation paralegal, whose current responsibilities include the maintenance of corporate regulatory filings, reviewing draft discovery requests, and interviewing witnesses regarding employment matters and workers' compensation accidents, the following questions:



- *What experience do you have in the defensible collection of Electronically Stored Information (ESI) for use as evidence in state and federal courts?*
- *Does that experience include data collection of enterprise messaging platform content and other emerging data types?*
- *Can you explain the appropriate data storage locations for M365's primary workloads?*
- *Are you comfortable working with a low-transparency technology that provides no immediate end-user support with practitioner-level eDiscovery expertise?*

What Qualifications Are Needed for Your Personnel?

Absent the largest organizations, which can justify the specialized personnel and expertise to address these challenges, these questions likely expose significant knowledge and skills gaps, regardless of operational control by legal or IT. This brings us to the epicenter of the paradox this article seeks to address.

Yes, the technology is robust and can be leveraged to achieve new levels of efficiency and flexibility. However, it also operates on the unstated assumptions that the users:

- Already have extensive expertise as an administrator of a major eDiscovery platform (sorry – DIY SaaS solutions don't count here).
- Already have deep operational and technical expertise in all EDRM stages, from information governance through analysis.
- Already have a strong background in all major M365 workloads, including the intricacies of storage locations for all applicable content types and their unique categories of metadata.
- Already have the innate ability to identify and navigate gaps in functionality on-the-fly, and provide solutions under the pressure of real-world projects.

Ready to get started?

Does Training Offer a Viable Solution?

Yes. But within reason and subject to realistic expectations.

As is probably evident if you have made it this far in the article, there is a very real learning curve involved here. Thus, individuals with applicable or transferrable skills will experience a smoother transition than those without. However, at the same time, those same individuals may experience the most significant cognitive dissonance during the process.

What's also true is that virtually anyone attempting a transition to Microsoft-centric eDiscovery technology – eDiscovery technical expert or not – will be affected by this learning curve. Translation – no one who walks into the Microsoft ecosystem cold and instantly functions at the level they are accustomed to.

That said, via the aforementioned realistic expectations, we have achieved an enviable record of success in working with personnel put forth by various organizations and a wide range of expectations to meet their desired objectives. The length and steepness of the learning curve that must be negotiated to arrive there varies.

What Are Some Specific Barriers to Getting Up to Speed in eDiscovery (Premium)?

Among others are:

- A Microsoft-centric terminology that often deviates significantly from the accepted industry vernacular.
- A continually-evolving technology framework with complex new data types.
- A UI experience that differs considerably from other platforms and is deceptive in its "simplicity."
- A general lack of transparency in both process and technology within the eDiscovery toolset.
- Capabilities gaps in key areas of the EDRM that require advanced workflow planning.

Conclusion

Microsoft's Purview eDiscovery (Premium) platform offers organizations a significant opportunity to expand their in-house capabilities with sophisticated tools at the earliest stages of eDiscovery and investigative matters. However, success depends on careful planning and a clear understanding of the challenges involved.

References:

¹ <https://learn.microsoft.com/en-us/microsoft-365/compliance/overview-ediscovery-20?view=o365-worldwide>. Microsoft Purview eDiscovery (Premium) is also commonly referred to as "Premium eDiscovery," "Premium" or "eDP."

² This is a general statement, with the specific understanding that Premium eDiscovery's capabilities are made available via either an E5 license or an E3 license with the Compliance or eDiscovery and Audit add-on, which is required for each subject custodian added to a Premium eDiscovery case.

Learn More. Today.

[Contact us today](#) to learn more about our Microsoft 365 capabilities and how we can help assess, augment, accelerate, and support your cyber, data, and legal discovery operations.

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