Where's the Innovation in Production? – Let's Start With ENF

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How often do attorneys come to you with a disk they just received from opposing counsel? The dialog goes something like this:

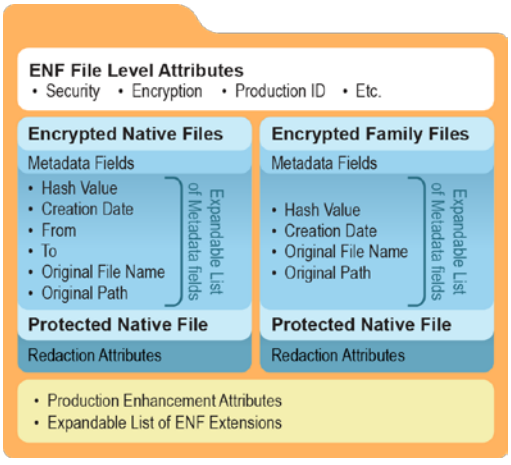
> *What's on this disk? It looks like a bunch of random images – I asked for a production.*
> *…Did they provide a load file?*
> *Huh, what's a load file?*
> *…We need it to make sense of the images.*
> *…The load file also has metadata.*
> *…That's all needed to load into a document review platform.*
> *…So you can look at the documents.*
> *But, we don't have a document review platform – now what?*

How we arrived at this stage of life, where two files (load and image file) are better than one is a history lesson that includes the early days of fax transmittals and analog phone lines. "*Group IV fax*" is a term often bandied about, but few understand why faxes have anything to do with document productions these days.

What do you guys do and why is eDiscovery so expensive? That's another common question to litigation support people.

> Well, we have to take the original files and then you see we convert them into this pseudo-print rendition of the original native file to give them to the opposing counsel. We often use single page TIF image files (e.g., one for each page as if the native file was printed out) and then we include something to tell which images go together to form the document. Since we don't give the native file, we have to include the metadata (data about the data) that was in the native file; but isn't anymore because now they are fax images.

Huh? Are you kidding me? Can't you just give them the native file? Oh, no, we couldn't do that. That would be too easy. And, there's not enough security around a native file.



Is there a solution to all this; an answer to all this mumbo-jumbo of eDiscovery? Yes, and it is ENF. That stands for "Encapsulated Native File" and is a new, emerging standard being authored by the EDRM organization (www.edrm.net) for producing documents in eDiscovery.

The concept of ENF is to take the original native file and place it inside an electronic container that includes the security required for legal production. ENF puts the native file inside an electronic envelope (or red rope folder if you will) along with other key information and wraps it all in multiple security layers to prevent alteration.

ENF does that, much like Adobe has done with PDF files. PDF files are another form of production and many have adopted them as a standard production format. However, PDFs do not include the common (or custom) metadata provided in a document production. And, PDF rendering of native files can be problematic just like TIF rendering of native files can be problematic.

The philosophy of ENF is to keep the native file intact as long as possible in the eDiscovery chain of custody. This reduces the cost of eDiscovery dramatically and provides the best possible rendering of the original file – because it is the original file. ENF is a new standard, designed specifically for the legal profession – and does not rely on historical technology created for analog telephone lines. The digital age of eDiscovery demands a more sophisticated delivery format, a faster delivery format, a less expensive delivery format, and a more secure delivery format.

The ENF standard is based on a simple XML structure and includes extensions for vendors to add functionality beyond the basics. A simple viewer (viewENF) is being defined which will have the ability to extend its features with plug-ins provided by vendors and others. Because core viewer technology is expensive to develop, the viewENF tool will inherit viewer technologies already present on the computer it is run on. So, if a user already owns a copy of say QuickViewPlus; viewENF will reach out and use it. The same with other viewer technologies such as Outside-In, FreeViewer, Google Docs, etc. The day may come when a vendor sees the true benefits of ENF and develops a core viewer technology specifically designed for legal production purposes.

Are there challenges with a new standard? Yes. But, I have confidence they are temporary roadblocks and not permanent sink holes. I'll illustrate a couple of examples. An email, in its native format can contain attachments and in some instances the attachment is privileged but the parent email is not. If we produce the native email as ENF, the viewer would need to suppress the attachment while viewing the parent. To some, that is a big security issue. To me, as my first programming mentor once said, it's just code. Can we instead produce "normalized native files" where privileged children are removed? Sounds like a child abandonment problem right? Does that alter the original file? Is that spoliation? It will need some thought and design. We call this the "funky family" situation.

Another issue relates to hidden content. Word, PowerPoint, Excel, and other file formats can contain content not normally accessible to the human eye. We run into this problem all the time in litigation support and have to make allowances for it when producing to TIF or PDF. How will hidden data be managed by an ENF viewer? Another temporary roadblock – but it wouldn't be fun if it was easy.

An ENF file is a stand-alone file. It is a single file for a single document. The ENF can live outside the production collection; and can be taken to a deposition or court for viewing. And, most importantly, it does not require sophisticated and expensive document review platforms. Although ENFs can be loaded into them. EDRM is striving to make ENF an open standard and provide a basic viewer, much like the Adobe PDF Reader.

Will ENF survive? We will see.

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