

ESI HANDBOOK

2011 EDITION

SOURCES, TECHNOLOGY, AND PROCESS



ADAM I. COHEN • G. EDWARD KALBAUGH



Wolters Kluwer
Law & Business

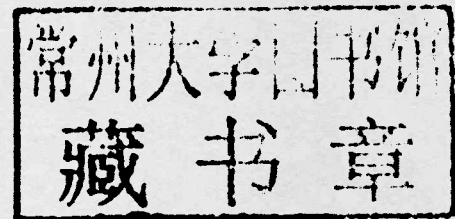
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ESI HANDBOOK: Sources, Technology and Process

by Adam I. Cohen and G. Edward Kalbaugh

ESI Handbook: Sources, Technology and Process, is a unique resource that focuses on information technology, especially as it relates to electronic discovery of electronically stored information under the amendments to the Federal Rules of Civil Procedure adopted in December of 2006. It is designed to provide non-technical litigators, judges, other practitioners, and corporate e-Discovery teams with a practical guide to the information systems infrastructure and the various technology components that support electronic discovery as sources of ESI.

Highlights of the 2011 Edition

The 2011 Edition of *ESI Handbook: Sources, Technology and Process*, clarifies and updates various chapters in line with new and emerging technology expands the scope of the treatise to provide essential new information, including:

- Several new cases and protocols have been added to the section on Computer Inspection Protocols (Appendix 8).
- A new section has been added to the appendices that examines and outlines several Discovery Protocols from actual cases (Appendix 9).

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Adam I. Cohen is a senior managing director in the New York office of FTI's Technology Consulting practice. Mr. Cohen is a nationally recognized expert in electronic discovery and electronic information management policy issues. Mr. Cohen advises on planning and implementation issues associated with every phase of electronic discovery in litigations and investigations as well as electronic information management policies and practices, including, for example, proactive litigation readiness and regulatory compliance, complying with electronic preservation obligations and avoiding spoliation sanctions, crafting and responding to discovery requests targeting electronic information, and cost containment strategies.

Prior to joining FTI, Mr. Cohen was a litigation partner at Weil, Gotshal & Manges, LLP, where he represented major corporate clients in complex litigation involving computer and Internet-related issues. He is co-author (with Weil partner David J. Lender) of the treatise *Electronic Discovery: Law and Practice* (Aspen Publishers), which already has been cited as authority in several landmark electronic discovery opinions by federal courts.

Mr. Cohen is co-chair of the Electronic Discovery committee of the New York State Bar Association's Federal and Commercial Litigation Section, a member of the Advisory Board of the Georgetown Law Center E-Discovery Institute, and a member of the board of Volunteer Lawyers for the Arts. He is admitted to practice in the courts of the State of New York, as well as the United States District Courts for the Southern and Eastern Districts of New York. He holds a B.A. from Wesleyan University and a J.D. from Duke University School of Law.

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We would also like to thank Adam's former partners at the law firm Weil, Gotshal & Manges LLP for supporting Adam's journey down the path of eDiscovery enlightenment, and in particular David Lender, the leader of the firm's electronic discovery practice and Adam's co-author on the legal treatise *Electronic Discovery: Law and Practice*, for his continued professional collaboration and friendship.

Adam would especially like to thank his family—his parents for instilling academic discipline, intellectual curiosity and a love of books, and his wife, Lori, and children, Zachary, Charlotte and Logan, for their continued love and support for his professional pursuits.

Edward would especially like to thank his wife Christine for her continuous support and encouragement, and Richard Hershman, Senior Managing Director of FTI's Global Insurance Practice for his professional insights, counsel and friendship.

FOREWORD

In 2004, Adam Cohen and David Lender co-authored the book, *Electronic Discovery: Law and Practice*, as a guide for litigators involved in e-discovery.

The book focused on the details of case law to illustrate the practical application of real-world e-discovery, primarily under U.S. federal law.

The book has been cited in several major decisions and federal court opinions. It has had several major supplements and remains without peer as an authoritative case law treatise on the subject.

This new book, *ESI Handbook: Sources, Technology and Process*, expands on chapter 9 of the original by focusing on information technology, especially as it relates to electronic discovery of electronically stored information under the amendments to the Federal Rules of Civil Procedure adopted in December 2006.

This book is intended to provide non-technical litigators, judges, other practitioners, and corporate e-Discovery teams with a practical guide to the information systems infrastructure and the various technology components that support electronic discovery as sources of ESI.

DISCLAIMER

This book is intended to provide a broad range of information to inform and educate, and is not intended to offer legal advice. Information in this book is derived from multiple published and unpublished sources, including the authors' personal files, reference books, articles, vendor literature, and Web sites. Accordingly, while the authors believe the statements contained herein are based on accurate and reliable information, they cannot warrant that each topic is complete, up to date, or error free. References to specific vendors are for informational purposes only, and do not imply endorsement by the authors. Any brands, products, or service names are, or may be, trademarks or service marks and are used solely to identify products or services of their respective owners.

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