Cybersecurity Risks in the Litigation Supply Chain: How to Solve the New Problem

9TH GICLI ANNUAL MEETING | NOVEMBER 15-17
INDIAN WELLS, CALIFORNIA

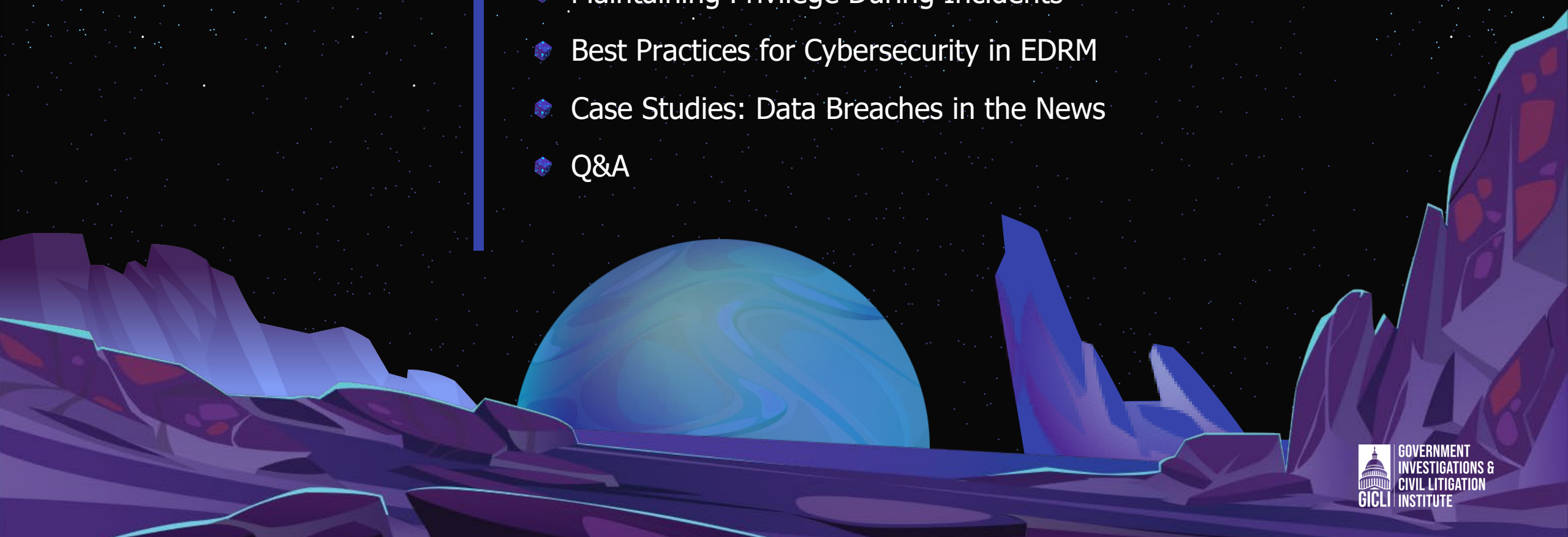
Navigating the CYBERSECURITY COSMOS

Cybersecurity Risks in the Litigation Supply Chain: How to Solve the New Problem

AGENDA

Plotting a Course

- Panel Members & Introduction
- Understanding the Litigation/Regulatory Investigation Supply Chain
- Diving Deeper: Info Security in the EDRM Model
- Maintaining Privilege During Incidents
- Best Practices for Cybersecurity in EDRM
- Case Studies: Data Breaches in the News
- Q&A

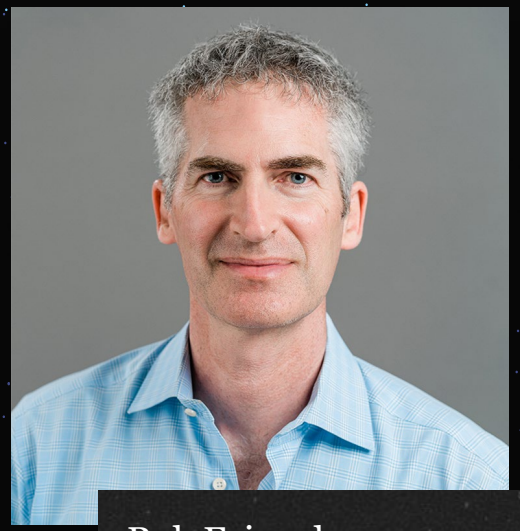


GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

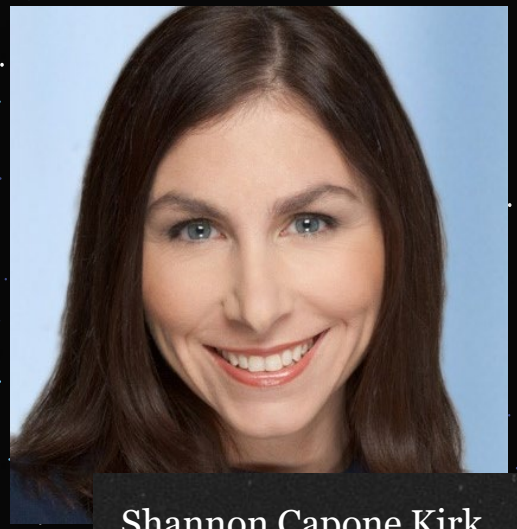
PANELISTS

Meet the Crew

Moderated by:



Rob Feigenbaum
President & CEO, Prevail Legal



Shannon Capone Kirk
Ropes & Gray LLP

Kelly Clay
GSK

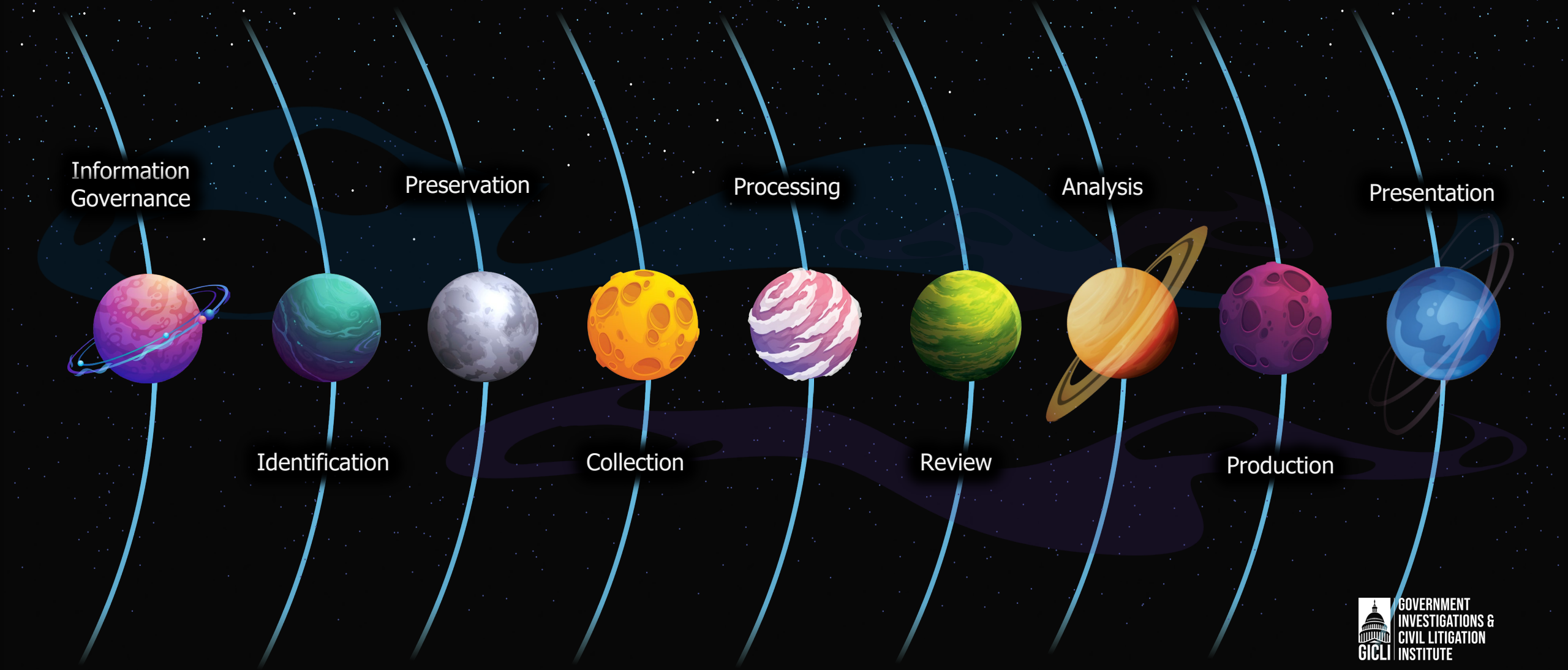
Myomi Coad
AvalonBay Communities

Martin Susec
Nationwide Mutual Insurance

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

EDRM

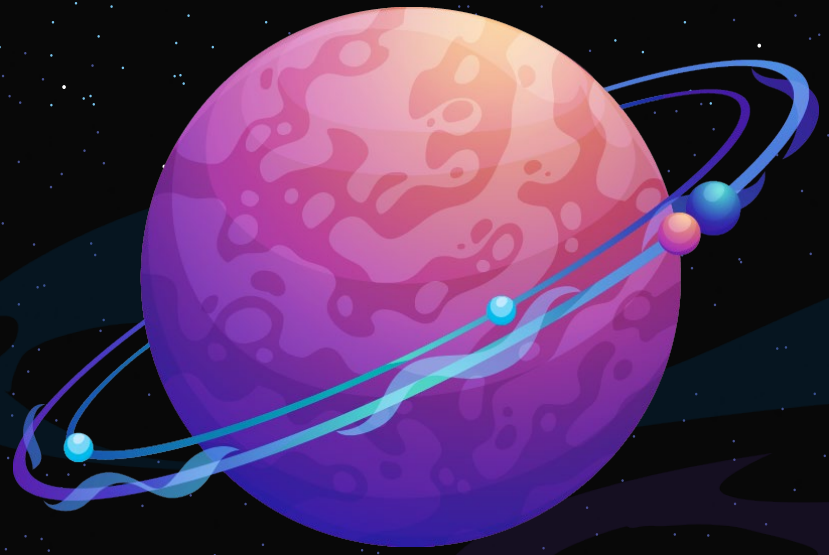
Understanding the Litigation/Regulatory Investigation Supply Chain



GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 1:

INFORMATION GOVERNANCE

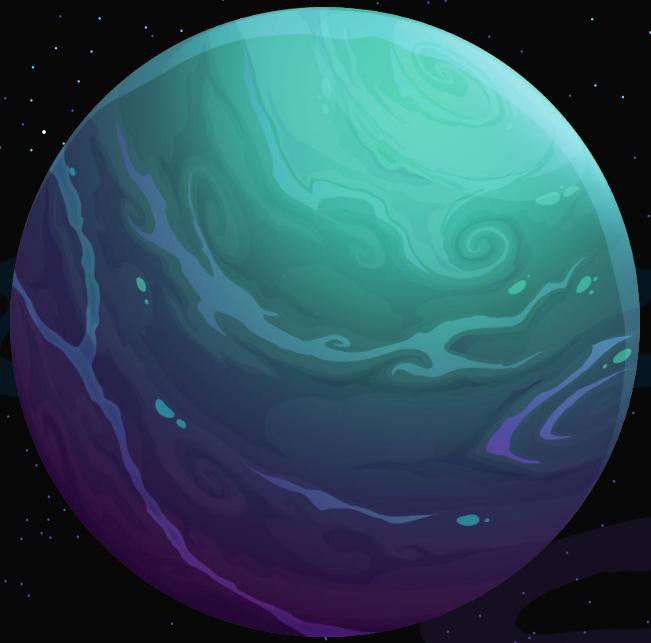


- Manage information securely
- Respect privacy interests
- Enforce information risk management policy
- Establish use of document management system
- Incorporate AI

GICLI | GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 2:

IDENTIFICATION



- Collect litigation-relevant information
- Utilize internal identification tools
- Consider specialized discovery products
- Protection staging space(s)

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 3:

PRESERVATION

- Use electronic data preservation tools
- Implement data holds
- Replicate data if necessary
- Store data securely

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 4:

COLLECTION

- Automate collection processes, minimize disruptions
- Ensure forensic integrity
- Document collection methods and sources
- Emphasize scalability

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 5:

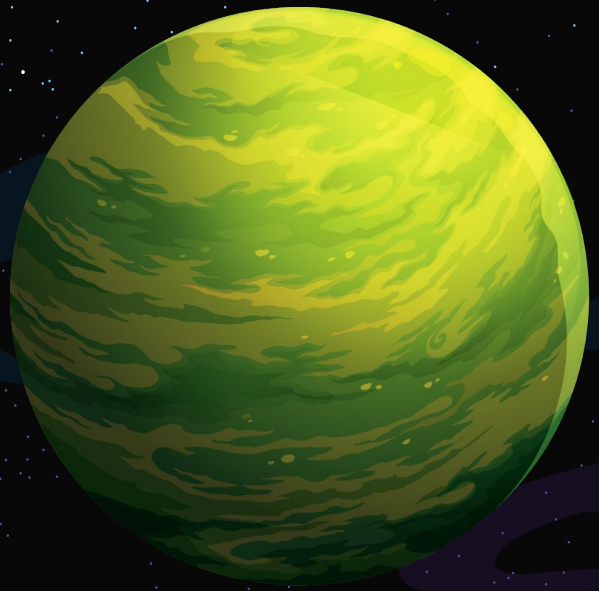
PROCESSING

- Filter and deduplicate data
- Standardize data formats
- Maintain data integrity and chain of custody
- Manage encrypted and password protected data

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 6:

REVIEW

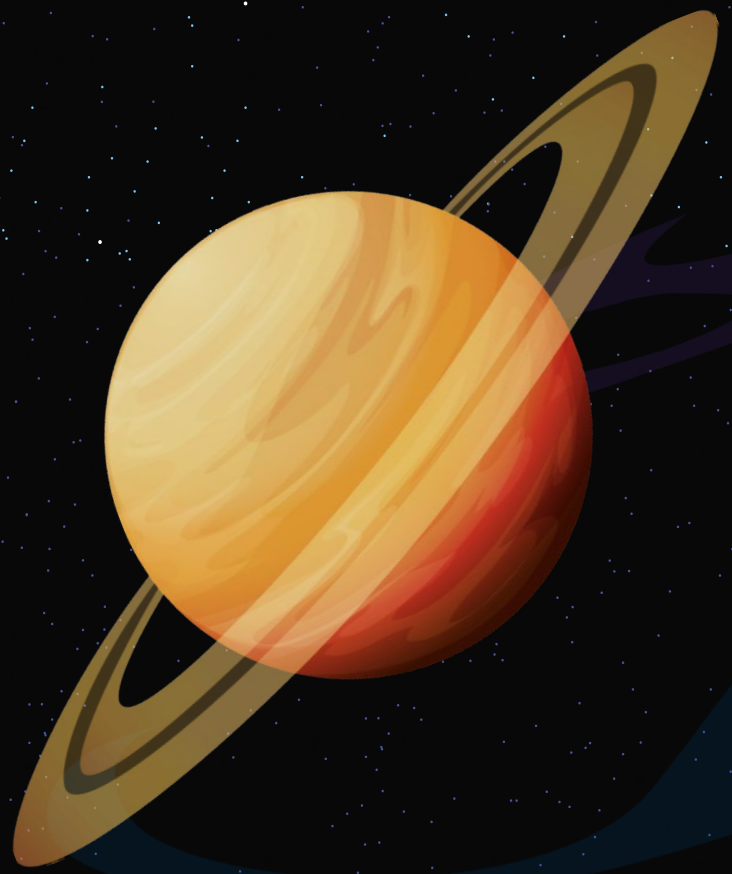


- Employ advanced analytics and eDiscovery tools
- Use TAR or predictive coding
- Train reviewers on case details and review protocols
- Establish quality control measures

GICLI | GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 7:

ANALYSIS



- Identify patterns, trends, relationships within data
- Utilize threading and clustering
- Analyze key players, domains, communication patterns
- Visualize data insights

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 8:

PRODUCTION

- Standardize document formats
- Verify redactions
- Guard privileged data
- Adhere to production protocols

GICLI | GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

STAGE 9:

PRESENTATION

- Use dynamic presentation tools for courtroom/trial displays
- Organize evidence in a logical and persuasive manner
- Create compelling visuals like charts, timelines, graphs
- Ensure sensitive data is only revealed as required

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

EDRM

Role of Information Management and Security

- Determine data's post-case fate: retain, return, or destroy
- Monitor data for ongoing obligations or possible appeals
- Ensure secure deletion of data if necessary
- Document decisions and actions taken for compliance

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE

PROTECTING OUR SPACE

Courts have looked at certain facts in deciding the production of, for example, cybersecurity incident reports, such as:

- Including language in retainer agreements showing that the third party will perform work for litigation purposes.
- Limiting disclosure of the report to the legal team and their agents. Meaning, consider not sharing the same report with regulators and accountants.
- Whether the scope of work under the agreement with outside counsel was no different from the scope of work for incident response services set out in the prior agreement.
- Whether the vendor would have created the same report in the ordinary course of business regardless of the litigation.

PROTECTING OUR SPACE

Courts have refused to protect certain company materials from being disclosed in legal cases when the company couldn't prove that these materials were specifically for legal advice or in preparation for a potential lawsuit.

BEST PRACTICES

- Identify all cyber assets
- Secure network infrastructure
- Review systems and other hardware
- Enable firewalls
- Update systems regularly
- Audit user access
- Enhance password security
- Consider physical security

CASE STUDIES

MOVEit Cyberattacks

THE BIGGEST DATA THEFT OF 2023

ATTACK VECTOR:
Zero-day exploit in MOVEit Transfer tool

SCOPE:
Over 2,000 Organizations Affected;
88.8% from the US

INDIVIDUALS IMPACTED:
Data of over 62 MILLION people

FEDERAL BREACHES:
Several U.S. federal agencies experienced intrusions

SEC RULES:
Companies must disclose cyber incidents within 4 days

INDUSTRIES IMPACTED:

- Healthcare
- Entertainment & Electronics
- Education
  (50,000 students, 890 Schools Impacted)
- Government Program Administration
  (8-11 million people Impacted)
- HR & Payroll Services
  (Including clients in Broadcasting & Media, Aviation, and others)

LEGAL ACTIONS INCLUDE
CLASS ACTION LAWSUITS AGAINST:

- Information Tech & Services
- Financial Services
- Software Development Services

GoAnywhere Cyberattacks

FEBRUARY 2023

ATTACK VECTOR:
Zero-day vulnerability in Fortra's GoAnywhere MFT

SCOPE:
Over 130 Companies Affected

GOVERNMENT BREACHES:
City of Toronto, Tasmanian Govt.

MAJOR VICTIMS IN:

- Energy
- Hospitality & Gaming
- Municipal Government
- State Government
- Retail & Consumer Goods
- Banking & Financial Services
- Airlines & Travel Rewards
- Data Management & Security
- Investment & Economic Development
- Pension & Retirement Fund Management

QUESTIONS & ANSWERS

GICLI GOVERNMENT INVESTIGATIONS & CIVIL LITIGATION INSTITUTE