



Discovery of Inaccessible ESI

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Technology



Risk, Cost, Burden



Identification

Inaccessible

Good Cause

Conditions



Identification

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.

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Burden: Inaccessible

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Limitations of Rule 26(b)(2)(C)

1. Cumulative
2. Duplicative
3. More Convenient Source
4. Previous Opportunity
5. Burden Outweighs Benefit
6. Parties' Resources
7. Importance

7 Factors: Zubulake

1. Specificity
2. More Accessible ESI
3. Failure to Produce Acc'l ESI
4. Likelihood Finding Unique ESI
5. Predictions re Importance ESI
6. Importance of Issues
7. Parties' Resources

Conditions

The court may specify conditions for the discovery.

Conditions

1. Cost Shifting

2. Amount

3. Type

4. Sources

Subpoena



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