FROM THE AUTHORS

The world is a different place than it was five years ago when we published the first edition of this book. When we wrote the first edition, Zubulake v. UBS Warburg had just been penned by Hon. Shira A. Scheindlin, and, in fact, we literally stopped the presses for the 2004 version of this book to add citations from this seminal e-discovery case. Back then, the amendments to the Federal Rules of Civil Procedure were merely a glimmer in the Advisory Committee’s eye, and certainly no one knew anything about the term “ESI” or “two tiers” and “safe harbor,” which now dominate our vernacular. When we last published this book, we included an editorial summary of every e-discovery case ever published by either a state or federal court. If we were to do that now in 2009, we would need hundreds of pages for the case summaries alone.

In addition to all of these legal developments, e-discovery technology has pressed ahead with advancements we could have never imagined five years ago; it is not only making discovery faster, easier, and less expensive for practitioners and their end-clients, but also is opening the doors of possibility toward a path of substantially reducing the total cost of litigation. Native review and production, concept search, topic review, and e-mail analytics are about to make for standard practice in e-discovery.

While we took chances and made bold predictions in our first text, we were thrilled to discover—through the process of writing this updated edition—that the vast majority of our predictions came true. Emboldened by that fact, we embarked on this new edition, aimed at bringing lawyers up to speed on the sweeping changes in law and technology in the last five years, and again making bold predictions about the future in the hope that we will help lawyers embrace the future and bring unprecedented efficiency and accuracy to the representation of their clients in discovery matters large and small.
Changes to the legal technologies landscape are not the only differences we have witnessed since the last time we sat down to write this book. Professionally and personally, our worlds are in very different places from five years ago. We both are in different positions at Kroll Ontrack, the company for which we have great affection and to which we have each dedicated eight years of our legal careers. We both also welcomed new additions to our individual families, Ethan, joining Jon and Sophia in the Nimsger family, and Isabel, joining Ben in the Lange family.

With all of this change, however, much has stayed the same. The corporate workplace continues to generate electronic communications and documents at a breakneck pace, and the legal community has embraced the use of technology to make attorneys, litigation support professionals, paralegals, and other members of the legal team more effective in preserving, collecting, searching, reviewing, and producing the ever-expanding body of ESI.

So with all of this as a backdrop, we present you with an updated book focused on what every lawyer—and other legal professionals too—needs to know about e-evidence and discovery now. Like in our first edition, we bring to you practical tips and best practices advice to make your professional responsibilities related to ESI easier. We personally, as well as Kroll Ontrack, support the continued maturation of the computer forensics and electronic discovery industries, and the edification of all the individuals who take part in the litigation consulting and support system. We are extremely proud to assist in the education of attorneys, litigation support professionals, paralegals, law students, professors and others. As such, we have authored this book pro bono for the ABA. Neither we nor Kroll Ontrack will receive any compensation for the time and effort spent to create this resource, other than a handful of free copies of the book to distribute to family and friends.

Our hope is that you will find the pages to follow educational and helpful with the technical and legal ESI challenges you face in the coming days.

Best,

Kristin and Michele