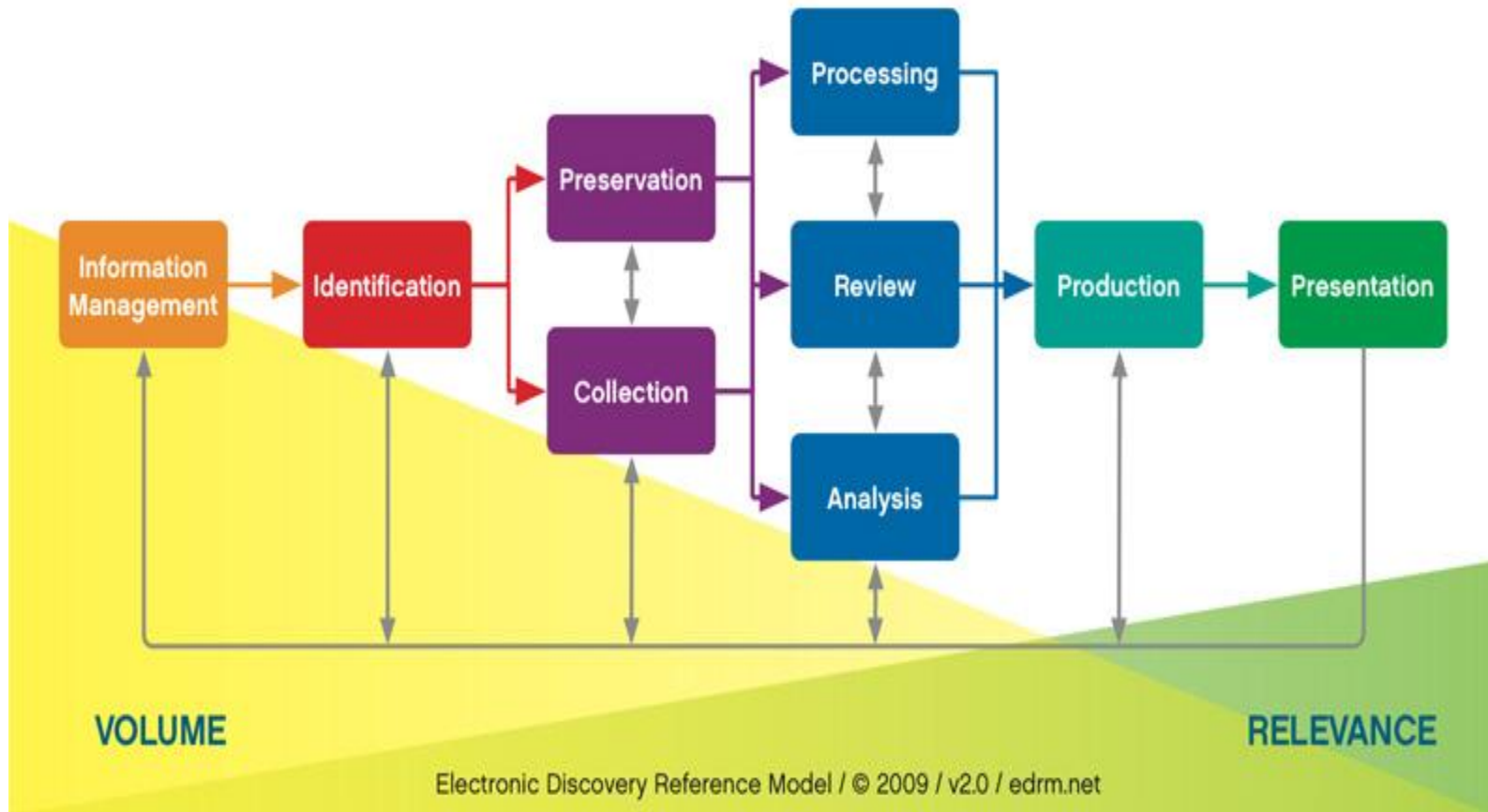


Cross Border Discovery: Considerations, Challenges, and Consequences

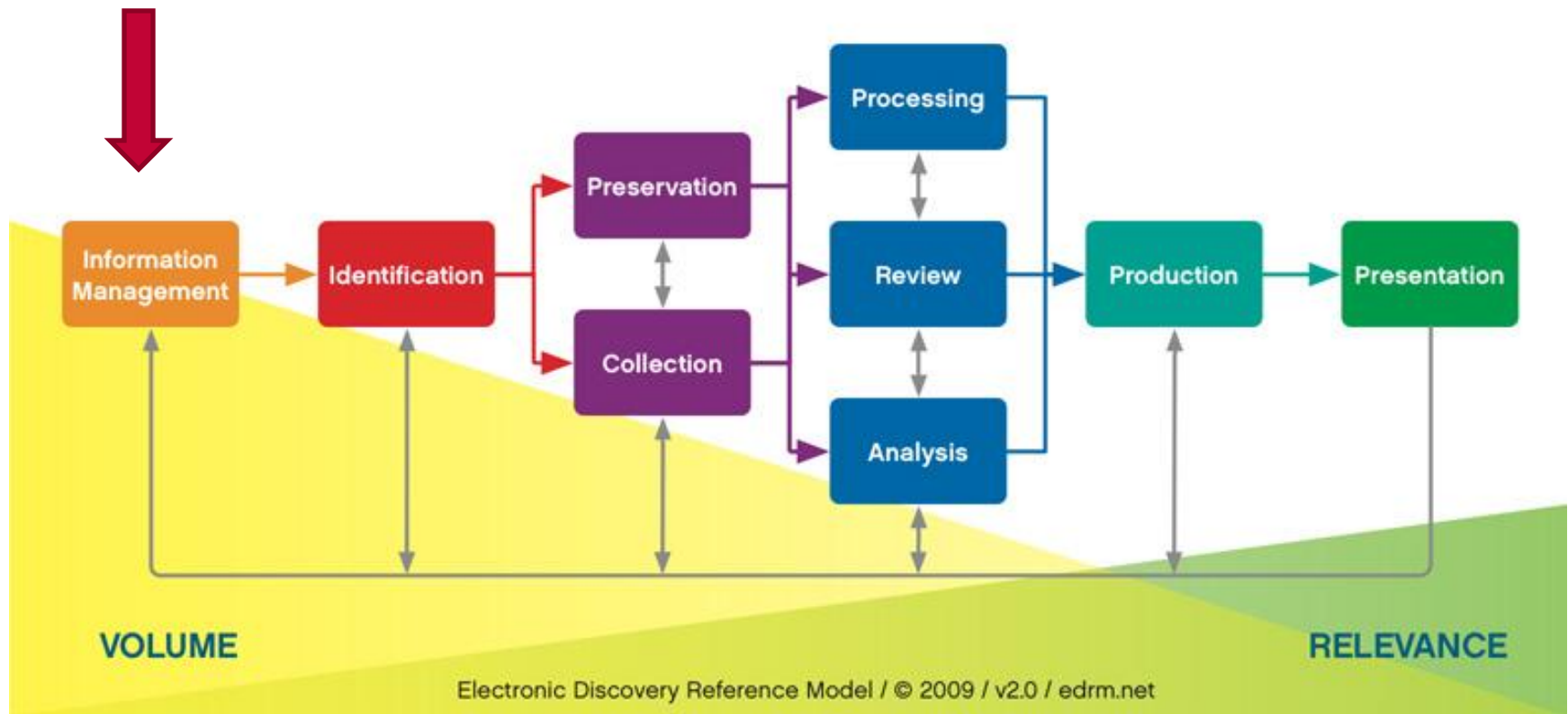
*Rudy Perrino, Partner
Fulbright & Jaworski L.L.P.
555 S. Flower Street, 41st Floor
Los Angeles, CA 90042
(213) 892-9209*

FULBRIGHT
& Jaworski L.L.P.
Attorneys at Law

Electronic Discovery Reference Model



Electronic Discovery Reference Model



Information Management

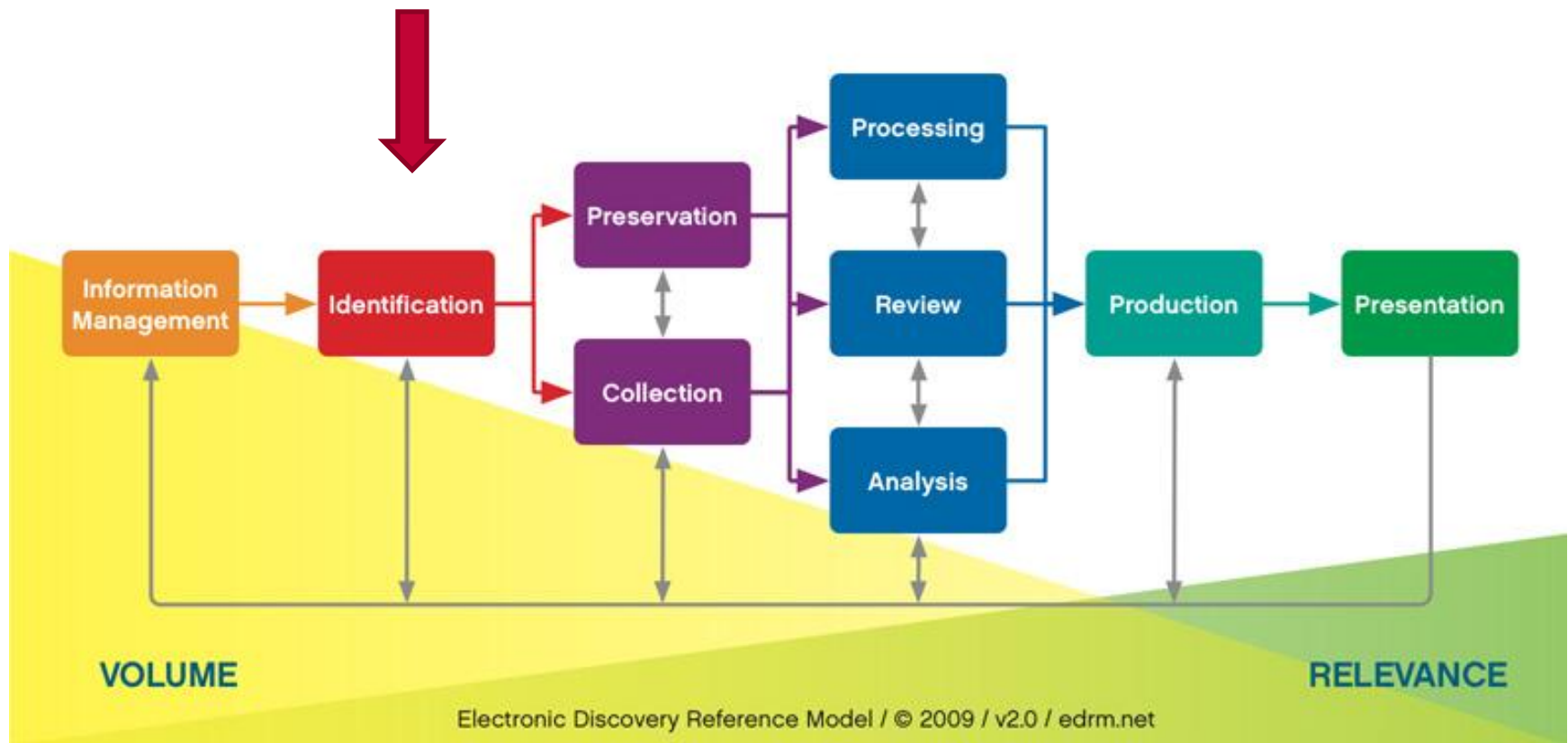
◆ *Records Management Programs*

- Need to have a defensible program in place
- Ideally designed and implemented when litigation is not pending

Information Management -- Cross-Border Challenges

- ◆ *Documentation requirements vary across jurisdictions and can present unique challenges when dealing with foreign jurisdictions*
- ◆ *Management systems vary across borders*
- ◆ *Cultural attitudes and norms affect the way in which policies are applied*

Electronic Discovery Reference Model



Identification

- ◆ *Identification and selection of custodians and other data sources is critical first step in discovery process*
- ◆ *Before going through identification and selection of custodians, meet and confer with the propounding party to attempt to limit the breadth and depth of the requests*

Identification (continued)

- ◆ *Once scope of discovery has been adequately defined, need to identify:*
 - Custodians
 - Computer systems
 - Forms
 - Accessibility
 - Retention and destruction policies

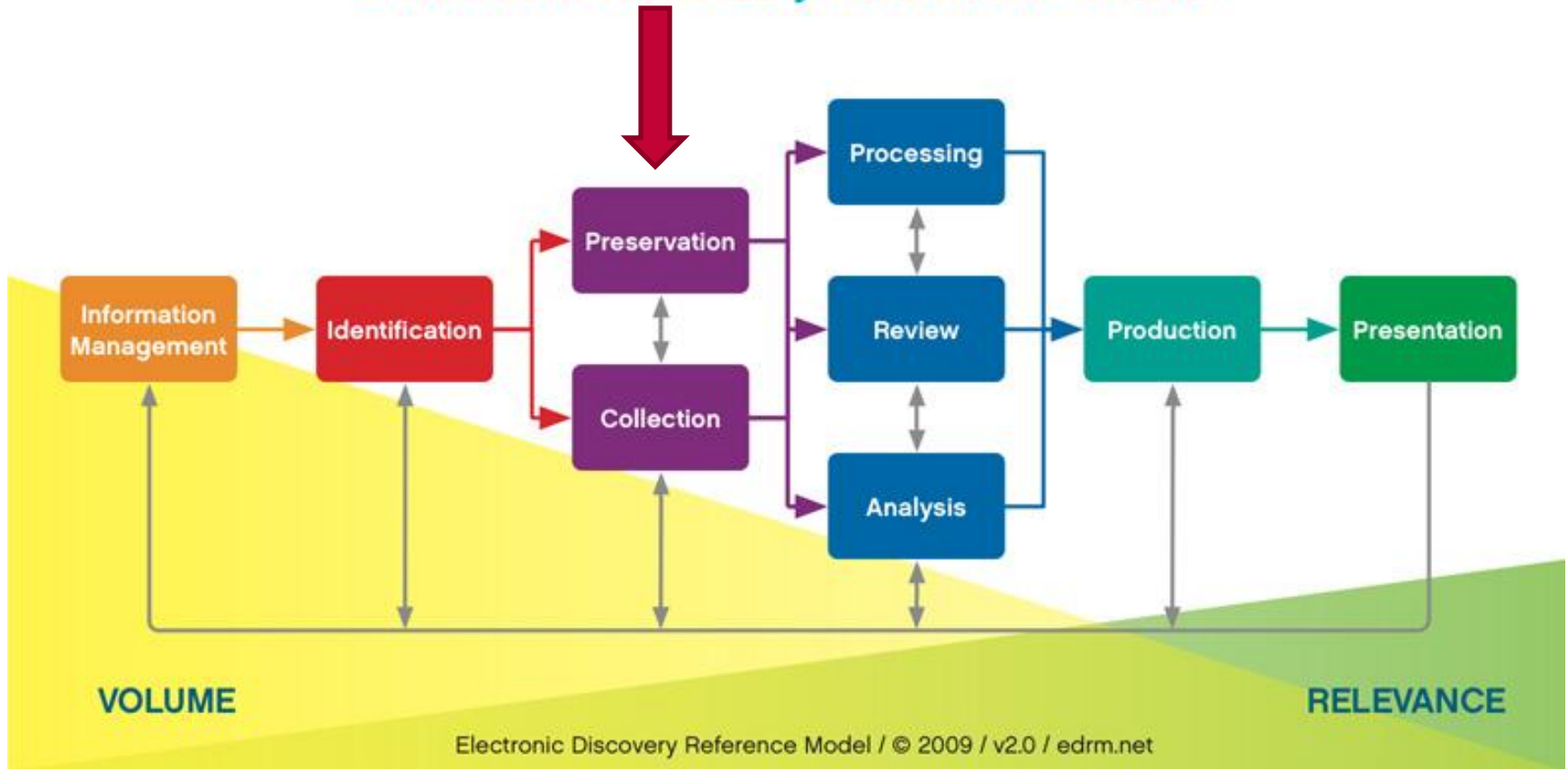
Identification (continued)

- ◆ *Each of these areas presents unique issues when addressed across borders:*
 - Custodians have different:
 - ◆ Language barriers
 - ◆ Cultural barriers

Identification (continued)

- Computer systems across borders have issues with
 - ◆ Compatibility
 - ◆ Cultural expectations in terms of management, accessibility and utilization

Electronic Discovery Reference Model



Preservation/Collection

◆ Litigation holds

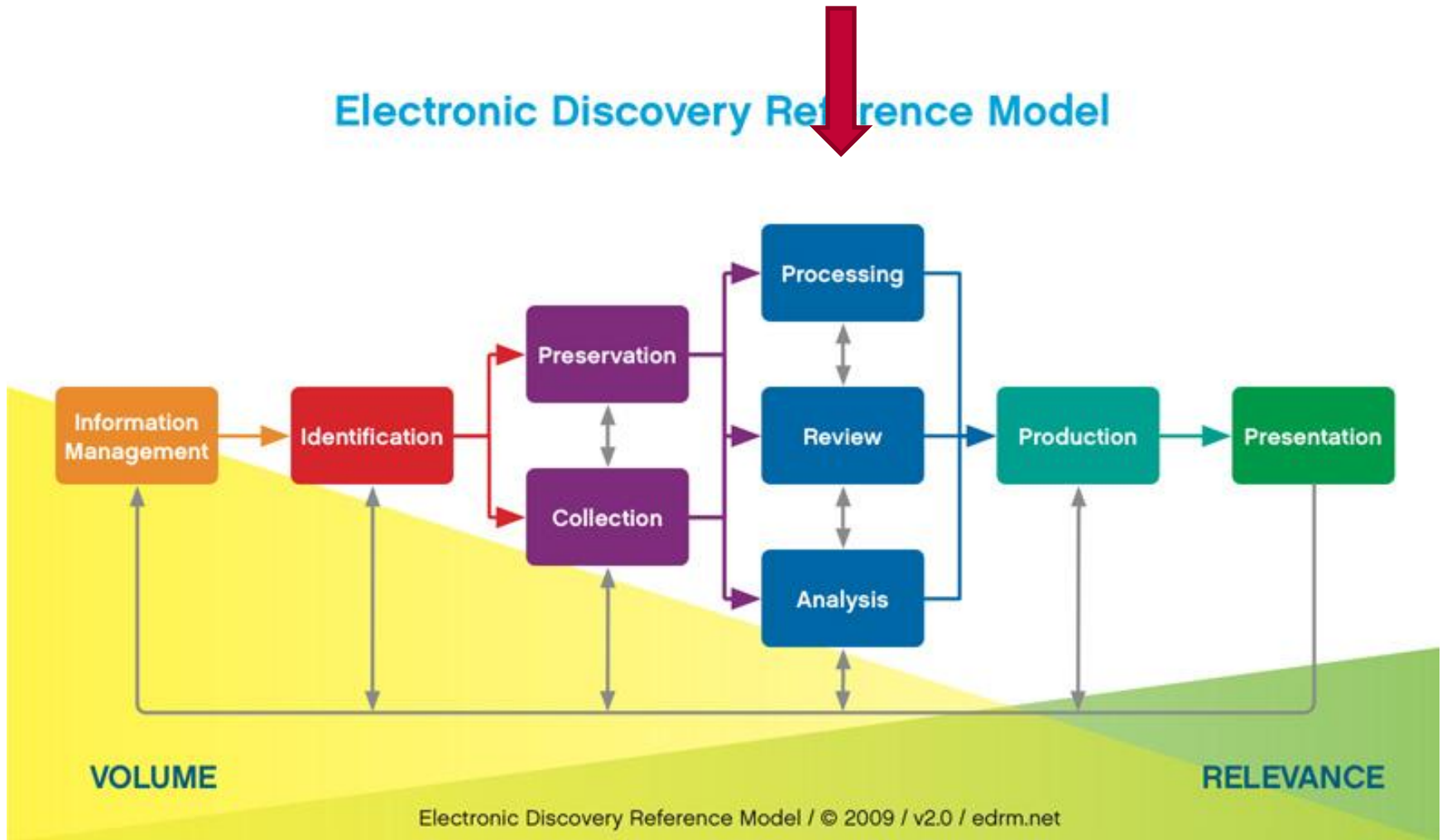
- Issued at the time of or when litigation is reasonably anticipated
- Issued to all potential custodians of documents pertaining to issues in the litigation
- Must necessarily include outside agents of the company

Preservation/Collection

(continued)

- ◆ **Records Management Program Role**
 - All actions must comply with existing Program(s)*
 - Requires Records Management Program to contemplate and deal with discovery requests in advance

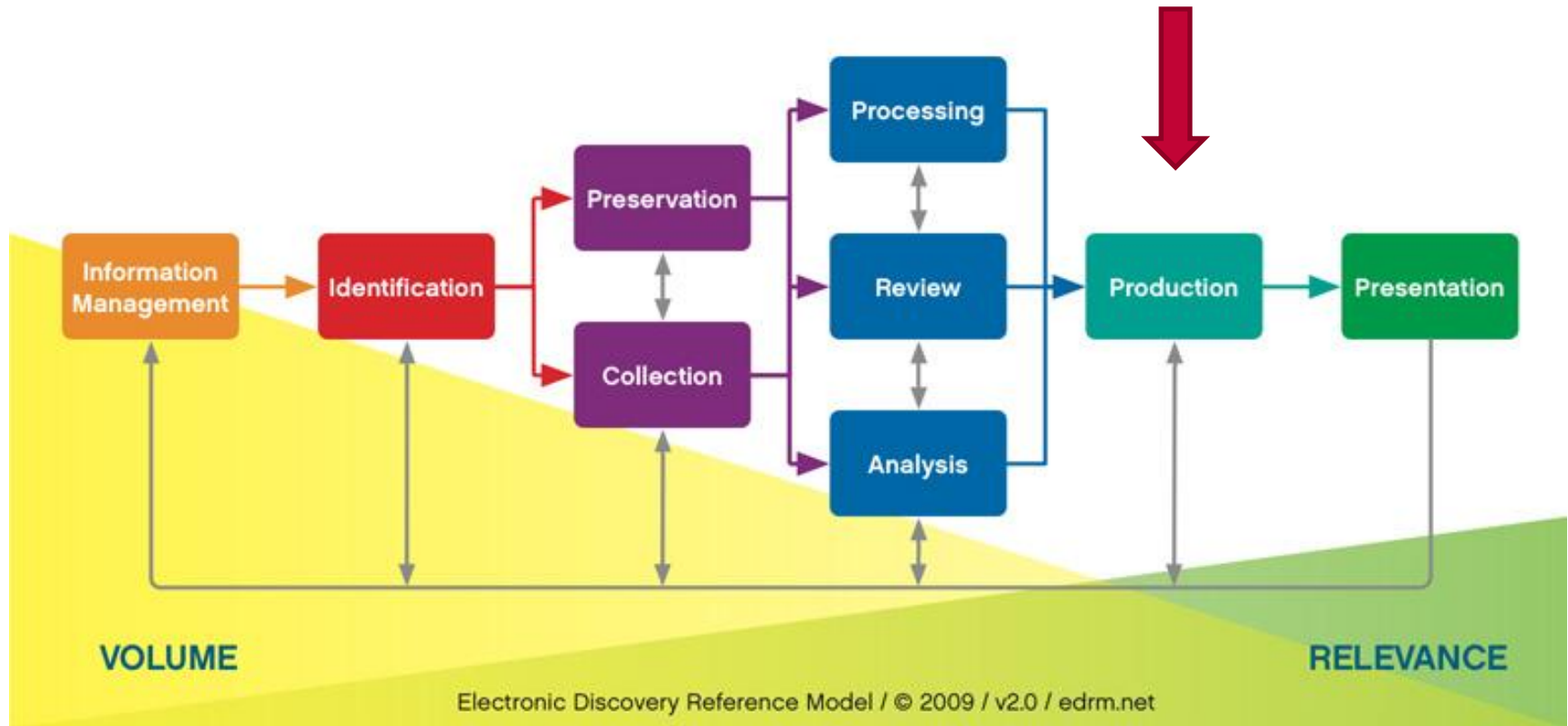
Electronic Discovery Reference Model



Analysis, Review and Processing

- ◆ ***Where this process takes place is important***
 - Cultural and political differences can affect this process, which can bleed over into the litigation process
 - Ability to oversee the process can also affect the outcome
- ◆ ***Source of the documents can affect the outcome of the process***
 - Language and cultural barriers and conflicts

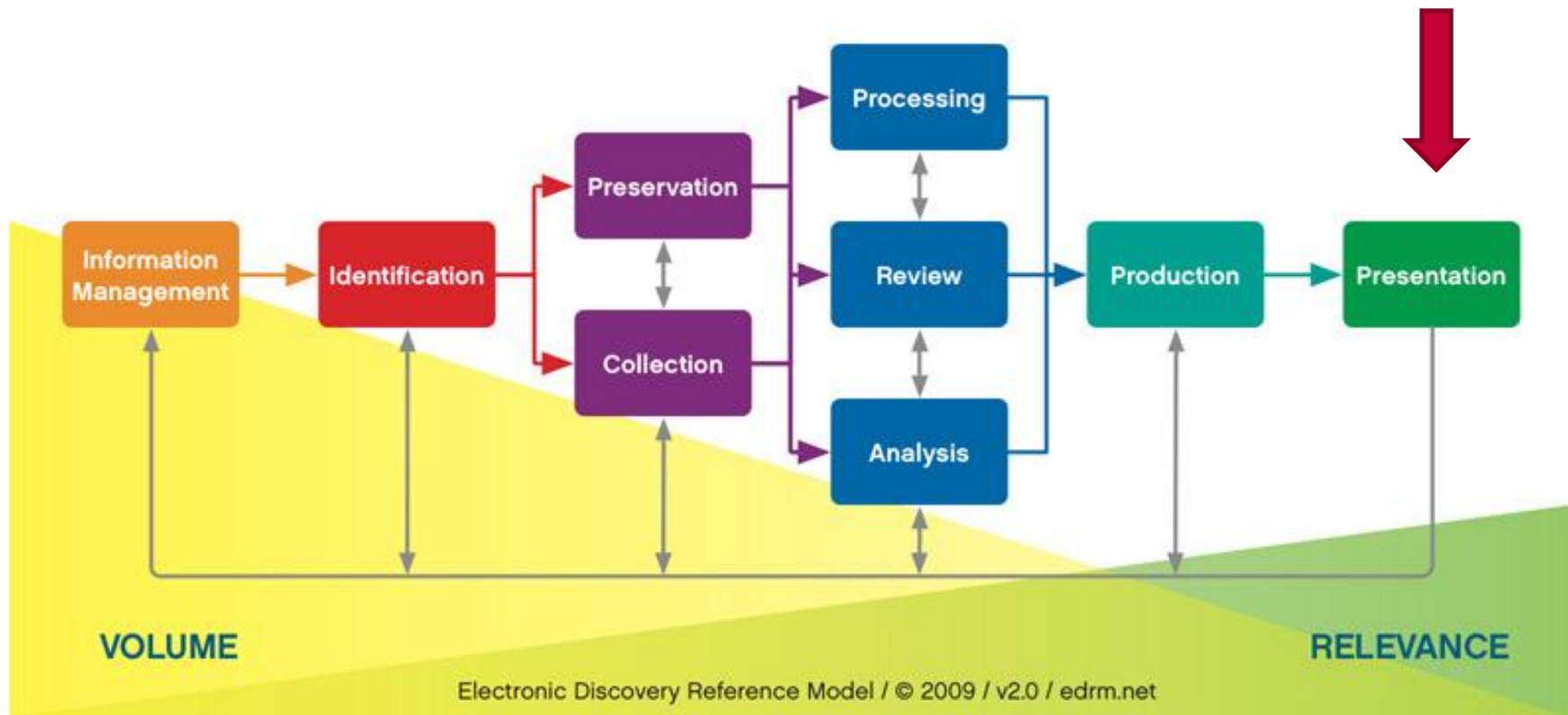
Electronic Discovery Reference Model



Production

- ◆ *Privacy laws and other discovery laws in the jurisdiction where the litigation is pending may conflict with the laws of the country from which the documents emanate*
- ◆ *These prohibitions can have an impact at any point along the EDRM process*
- ◆ *A separate presentation could be made*

Electronic Discovery Reference Model



Presentation

- ◆ *Rules of evidence may be different from jurisdiction to jurisdiction*
- ◆ *Electronic documents still have not been widely accepted as "evidence" around the globe*

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Attorneys at Law