

## EXECUTIVE SUMMARY

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### Highlights from the IDC Study State of Play: Litigation Readiness of Corporate IT Organizations

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Vivian Tero  
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## IDC OPINION

IDC surveyed 118 IT executives with the intent to evaluate their knowledge about their firms' current efforts regarding electronic discovery (ediscovery) and regulatory audits, assess the current state of litigation response and readiness initiatives among U.S. businesses, and identify current and planned technology investment priorities in support of litigation response and readiness initiatives. The key takeaways and critical data points are noted in the following sections.

- ☒ IT executives are confident about their current abilities to respond to a litigation event due to their existing investments in records management, archiving, and information retention initiatives. These activities were intended to address some of the amended Federal Rules of Civil Procedure for Electronic Discovery — specifically, Rules 26(b)(2), 34(b), and 37(f) — pertaining to accessibility, production, and spoliation.
- ☒ However, the data from the survey highlights an urgent need for organizations to adopt standardized policies and IT practices for activities related to the identification, preservation, and collection of potentially responsive data. The existence of ad hoc and manual business processes exposes a litigant firm to potential challenges to its litigation hold practices.

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### **IT Executives Are Confident About Their Current Abilities to Respond to a Litigation Event**

Close to 79% of the IT executives in the survey rate their ability to respond to a litigation event as above average (rating of 4 on a scale of 1 to 5) to very well prepared (rating of 5 on a scale of 1 to 5). This confidence is primarily based on existing records management and information retention initiatives. Companies deployed records management, messaging, document management, archiving, and information security solutions to demonstrate the consistent enforcement of their records management and information retention policies. These activities were intended to address some of the amended Federal Rules of Civil Procedure for Electronic Discovery — specifically, Rules 26(b)(2), 34(b), and 37(f) — pertaining to accessibility, production, and spoliation.

## **However, Developments Within Corporate IT Environments Belie This Perception**

The shortened timelines under the amended eDiscovery Rules highlight the importance of having an information infrastructure that can support the massive parallel search, analysis, and retrieval requirements. They also underscore the criticality of automating key processes to enable process and cost efficiencies and to demonstrate auditability and transparency in the legal hold process. The data from the survey highlights an urgent need for organizations to adopt standardized policies and IT practices for activities related to the identification, preservation, and collection of potentially responsive data. The existence of ad hoc and manual business processes exposes a litigant firm to potential challenges to its litigation hold practices. These processes and activities include the following:

### ***Creating Core Response Teams for Identifying Custodians and Scoping the Litigation Event***

Having a core response team facilitates the automation of the discovery scoping activities. It also enhances an organization's ability to predict the costs of a litigation event and enhance its litigation response strategy. The survey data indicates that companies are in the early stages of adopting best practices for scoping the relevant individuals, records owners, and system custodians. Approximately 59% of companies say they have created core response teams, 31% of the sample population say that response teams are created on an ad hoc basis, and almost 9% of the sample population say they are using third-party service providers to facilitate this process.

### ***Automating the Litigation Communications Life Cycle***

A large majority of the sample population (86%) have formalized litigation communication policies. However, there is a need to adopt standardized processes as well as automate and document the communication among stakeholders and custodians. Approximately 55% of the companies surveyed are still in the early stages of automating the litigation communication process. Approximately 29% of the companies in the sample population are primarily using voice communications and in-person notices, while 13% are still using paper-based surveys. There should also be a way to provide continuous and auditable transparency of the hold duties and create linkages that validate custodian attestations with the actual state of the legal hold in the content repositories.

### ***Understanding Existing Capabilities for Enforcing a Legal Hold Across a Myriad of Applications and Content Repositories***

IT professionals need to better understand the language of the compliance and legal discovery functions and be more cognizant of the technology requirements for managing and processing data during a litigation event. This lack of understanding contributes to IT's overconfidence in its IT infrastructure's abilities to support the legal hold process. The survey concludes that the proportion of IT executives who claim their existing applications support automated workflows for enforcing legal holds is unusually high. Consider the following data points:

- ☒ 70 IT executives indicate they have collected potential evidence from their records management applications. Within this group, 89% claim their records management systems support automated workflows for the legal holds and retention process.
- ☒ 54 IT executives say their firm has collected potential evidence from the message archiving applications (for email and IM). Within this group, 91% claim that their existing message archival application automates the legal hold workflows.
- ☒ 80 IT executives say their company collected potential evidence from the application database and the database archiving environments. Within this group, 30% claim the primary application supports automated legal hold workflows, and 65% say their database archiving application automates the legal hold workflows within the database archives.

*(Note: A sample size of less than 100 is not statistically significant but is still worth highlighting because it may be indicative of broader trends.)*

The trends mentioned earlier contradict the findings of broader IDC studies on the archiving and records management markets. IDC finds that current adoption rates for automated litigation holds remain relatively lower than the rates indicated in this survey for the following reasons:

- ☒ Automated support for litigation hold workflows is a relatively new capability for most records management, message archiving, file archiving, and database archiving applications. Vendors started to introduce these capabilities only in mid- to late 2006. A high uptick in adoption is therefore improbable given the current technology refresh and buying cycles.
- ☒ IDC's 2007 *Information Management for Compliance Survey* (n = 226) concludes that 75% of business organizations are still in the policy definition and technology design and evaluation phases.
- ☒ A separate 2007 IDC study on active archiving (n = 660) suggests that 33% of organizations appear to be supporting multiple versions of an archival and content application. These organizations tend to be the most litigious and frequently audited by regulators. To automate the legal hold process, companies would need to rationalize and standardize the core processes and workflows for litigation holds and consolidate the multiple versions, or support federated search. The data indicates that only 24% of the qualified sample population (n = 116) were in the process of doing this, while 37% have plans to do so in the next 6 to 12 months.

## **Supporting eDiscovery in the Structured Content Environments (Application Databases and Database Archives)**

Database archives (f = 74% of the sample population) and application databases (f = 43% of the sample population) are increasingly popular discovery targets. As noted in the previous section, 30% of the qualified sample claim that their primary application supports automated legal hold workflows, and 65% say their database archiving application automates the legal hold workflows within the database archives. IDC's 2007 active archiving study concludes that very few organizations have formalized policies for retaining, searching, and retrieving potentially responsive data and enforcing a litigation hold in these environments, where legal discovery requires litigant companies to maintain referential integrity and context. There is also an opportunity for companies to investigate the use of virtual appliances to support the legal hold, review, analysis, and production of structured content.

### ***Understanding Case Management and Legal Review and Production Applications***

Case management and legal review and production applications are typically utilized by legal practitioners, primarily external legal counsels. Adoption of case management and legal review and production applications within the corporate counsel's office is relatively new, where most of the deployments can be found among serial litigant companies (typically in the Fortune 200). Yet over 60% of the IT executives in this study indicate they have existing deployments of case management and legal review and production software, and approximately 23% indicate their intentions to deploy one within the next 6 to 12 months. The fact that a high proportion of IT executives indicate their current use and deployment plans around these two applications points to areas for further clarification on the uses, capabilities, and applicability of these applications in the enterprise environment.

### ***Leveraging Emerging Search and Content Analytics Applications to Develop Internal eDiscovery Capabilities***

Data from primary content stores and application databases as well as data from content archival systems are the most popular sources of potential evidence. Over 80% of the IT executives surveyed say they have collected evidence from these repositories, and 55% say they have collected data from applications logs. In light of the broad portfolio of content sources and applications that IT organizations have to manage and process in response to a litigation event, companies not only need to standardize and automate processes for managing relevant data but also should seriously consider the use of emerging search and text analytics tools. These efforts could enable the IT function to develop basic internal ediscovery search, preservation, and collection capabilities and realize process and cost efficiencies. Search and content analytics could provide benefits in the following processes:

### **Preculling Data for Relevance**

Almost 55% of companies appear to be sending the entire results set of their initial collection efforts to outside litigation support service providers and outside counsel. These firms have not taken advantage of the potential process and cost savings offered by emerging search and context analytics technologies. These applications are being utilized by some firms (44% of the sample population) to process data for relevance internally prior to sending it to outside counsel and service providers.

### **Conducting Search and Collection in Backup Tapes and Legacy Media**

The data also suggests that many companies have not fully leveraged emerging search and indexing tools that could potentially enable a user to search the content of the backup tapes without conducting a full restore and extraction. Among the 62 companies that collected potential evidence from backup tapes, approximately 38% are conducting full restores or extractions of the content; 30% are cataloging the backup tapes and conducting partial restores to collect critical metadata; 22% take the tapes out of the rotation cycle and hold the tapes in a secure physical location but do not restore, index, or extract content until ordered to produce it; and 3% are using outside service providers to manage and process backup tapes during a litigation event.

## **CONSIDERATIONS AND CONCLUSIONS**

The data suggests that the majority of corporate investments have concentrated on the earliest phases of the electronic discovery reference model (EDRM) — the information management phase. The results of the survey also point to a need for IT organizations and their counterparts in the legal, records management, and compliance functions to do more. The quickened time frames under Rules 16(b) and 26(f) of the revised eDiscovery Rules require that companies have demonstrable and consistent practices for responding to and enforcing a litigation hold across a myriad of applications and content repositories (and across heterogeneous platforms and distributed IT environments).

The absence of formalized best practices in support of these functional processes underscores an urgent need to further educate IT organizations and their legal and compliance counterparts about each others' actions and activities during a litigation event. It also highlights the criticality of doing a better job in understanding the potential dormant liabilities that may arise from their technology decisions in processing and handling the data.

IT organizations appear to be aware of the current weakness in their information infrastructure. The lessons from the prior and existing litigation readiness and response efforts are compelling these firms to revisit and update their existing practices. The survey data concludes that the top 3 near-term priorities are as follows:

- Development of best practices for identifying, preserving, and collecting data in response to a litigation event
- Deployment and implementation of automated records management and retention workflow application
- Deployment and use of search, discovery, and analytics application/appliance for email, file system, message, and file archives

These priorities reflect an expressed intent to do a better job not only in determining the scope of the litigation event but also in having repeatable processes and building IT's internal ediscovery capabilities.

The litigation readiness and response priorities are also influencing the type of technology solutions that organizations plan to deploy in the next 6 to 12 months. The top 3 technology investment priorities are content-aware storage, digital rights management and file-level encryption, and search and content analytics applications. This is all well and good. However, IDC recommends that IT organizations and their legal counterparts take a second look at their current practices and application support for enforcing the legal hold across the various content repositories and applications.

In terms of critical technology attributes, the IT executives in the survey rate encryption, chain of custody audit and reporting, content security/secure messaging, automated retention, and legal hold workflows as the top 5 requirements that they would look for in a litigation response and readiness solution. Several of these critical features are not offered by a single application and require the proper alignment of the content management, storage, and security disciplines.

Corporations that consider support for automated legal hold workflows as a critical requirement are advised to start coalescing their policies and best practices for enforcing, managing, and tracking the legal holds by application and content. Initial efforts should focus on the most popular target sources for ediscovery and audits. Also, enforcing and managing the legal hold involves discrete processes and requires corporations to orchestrate activities across multiple stakeholders. Corporations are advised to identify the discrete areas that would benefit most from process standardization and automation.

The concerns and conclusions drawn from this study are applicable to companies irrespective of size, industry, and number of litigation events. These attributes, however, influence the urgency and speed with which companies have to adopt their information management and litigation readiness initiatives.

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