

WHITE PAPER

Corporate eDiscovery Technology Trends 2009: Doing More with Less While Facing Increasing Complexity in eDiscovery

Sponsored by: FTI Technology

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IDC OPINION

This study is a follow-up to IDC's April 2008 study *State of Play: Litigation Readiness of Corporate IT Organizations*. In response to mounting eDiscovery pressures, corporations are starting to adopt best practices. The process of adopting these best practices is an evolution for many corporations and is a function of developments in case law and the emergence of new technologies. Corporations should keep in mind the following when planning the policies, protocols, and IT architecture that enable their retention and eDiscovery activities:

- ☒ **Plan for international eDiscovery.** Policies and protocols must cover both U.S. litigation events that require data collection in international jurisdictions and international litigation events that require data collection in the United States. Corporations should address the inherent conflict between eDiscovery requirements and local privacy regulations.
- ☒ **Plan for eDiscovery involving application databases and transactional systems.** Corporations and their legal counsel must also be prepared to search and analyze content across both structured and unstructured content to get to the narrative that would help them develop the appropriate legal strategy.
- ☒ **Be smart and strategic when planning the acquisition of search and text analytics technologies.** Corporations may need to rethink how they currently prioritize their decision criteria in the acquisition of these technologies. There are also limitations to automation. The 2009 data suggests that corporations recognize these limitations and are able to improve the performance of their search and analytics investments by augmenting them with search experts. As the technologies improve, corporations have opportunities to employ these applications to improve the precision of their preservation protocols.
- ☒ **Keep in mind that there is no one-size-fits-all approach for developing the appropriate information infrastructure for retention management and eDiscovery.** The decision to bring eDiscovery activities in-house is a function of a corporation's process and IT maturity, its resources and capital structure, the appetite of its legal counsel and IT organization to employ third-party service providers, the complexity of the organization's IT environment, and its litigation profile.

EXECUTIVE SUMMARY

This study is a follow-up to IDC's April 2008 study *State of Play: Litigation Readiness of Corporate IT Organizations*. This is the second year that FTI Technology commissioned IDC to survey IT, litigation support, and legal technology operations professionals regarding their experiences with and priorities for their existing or planned technology-enabled eDiscovery investments. A total of 115 panelists participated in the Web survey, a statistically significant sample. Panelists were recruited from United States-based global corporations from the most litigious industries — financial services, manufacturing, energy, life sciences, telecommunications, utilities, and construction — that had at least \$500 million in revenue in 2008. Although several core questions from the 2008 study were asked in this year's study, the 2009 survey focused more on exploring emerging organizational and technology issues.

The 2009 study points to the trends discussed in the following sections.

International eDiscovery Is Becoming More Prevalent

International litigation and eDiscovery is becoming more prevalent. Close to 70% of the panelists indicated that their firm is involved in multinational litigation. The five most frequently mentioned international litigation categories were intellectual property dispute and employee termination (tie), Foreign Corrupt Practices Act (FCPA) investigations and product liability claims (tie), and insurance claims.

Among the most litigious firms and among firms whose average collection volumes are more than 1TB per matter, the five most frequently mentioned categories were intellectual property disputes, product liability claims, FCPA investigations, fraud and anti-money laundering (AML) investigations, and antitrust investigations and second requests.

Corporations had to conduct investigations, preservation, and data collection across the globe. The top 3 regions for global data collections were the European Union member states, Canada, and North Asia, which includes Japan, South Korea, Taiwan, and China.

The survey results suggest that the higher the number of litigation events and the larger the average ESI collection volumes per matter, the higher the likelihood that the firm is involved in an international litigation event.

Corporations are starting to develop and implement the appropriate response protocols.

eDiscovery Collections Involving Application Databases Are on the Rise

In the 2008 study, content from application databases was the 13th most frequently mentioned eDiscovery collection target. In 2009, content from application databases was the most frequently selected source of eDiscovery collections. In general, ERP

applications, most notably Oracle, IBM, and SAP, are the most popular targets of eDiscovery collections.

Among the panelists who indicated that they never had eDiscovery collections involving content from application databases and database archives, more than 67% claimed that their corporation has existing protocols for handling such events.

Corporations Are Leveraging Search and Content Analytics Technologies to Build Their In-House eDiscovery Capabilities

The increasing pressure to do more with less is impacting the eDiscovery capabilities that corporations are building internally. The 2009 study suggests that outside of review and analysis activities, most corporations for now are focusing on activities during the earliest phases of the EDRM. These activities are intended to enable process efficiency, precision, and completeness in the search, retrieval, and analysis of ESI. In addition, they leverage the capabilities of indexing, search, and content analytics technologies. The adoption of early case assessment solutions also appears to be in the earliest phases, as these solutions were the seventh most frequently selected option (42% of respondents).

In the 2008 study, panelists indicated that their top 2 priorities were to develop best practices for identifying, preserving, and collecting data in response to a litigation event and to implement enterprise search and eDiscovery support in their primary applications and archival systems.

The 2009 results indicate that corporations remain in the early stages of executing their 2008 priorities. Only 29% of the panelists are starting to standardize their tools, while 71% of the panelists are using multiple search and analytics applications and methods to address their information retrieval challenges.

Despite vendor claims to the contrary, the majority of the panelists indicated that scale remains a problem during their search and information retrieval activities. Close to 68% of the panelists reported that they have run into limitations or obstacles in their search methods.

To address the obstacles/limitations of their current information retrieval methods, 70% of the panelists indicated that they have employed information retrieval experts to help them use their search and content analytics tools more effectively.

Corporations Are Employing Multiple Sourcing Strategies Using Both In-House and Third-Party eDiscovery Vendors

In-House eDiscovery Priorities: Shifts in Preference for Service Delivery

Companies continue to invest in core technologies to automate the management of ESI for retention and legal hold obligations. eRecords management, collaborative applications (SharePoint/Team Rooms), document management, legal hold

automation and management applications, and message archiving solutions are the top 5 investment priorities in the next 6 to 12 months. The 2009 data also suggests very healthy demand for collaborative applications and enterprise search. Demand for early case assessment and document review platforms among corporations remains in a relatively nascent state. Less than 18% of the panelists had plans to invest in these technologies in the next 12 months.

There are some notable shifts in the preferred service delivery models across the enabling technologies. The 2009 study suggests that more corporations are open to third-party hosted and hybrid delivery models for file archiving, document management, and early case assessment applications. Corporations are also indicating an increased preference for conducting forensics and document reviews internally.

Overall mean scores suggest that corporations are satisfied with the performance of their eDiscovery investments. Customer satisfaction mean scores ranged from 3.7 (for image archiving) to 4.5 (for enterprise search).

Litigation Type Influences the Decision to Conduct In-House eDiscovery

Corporations are starting to coalesce and build internal capabilities around specific litigation matter categories. In 2009, the top 2 litigation matter categories where eDiscovery and reviews will be done in-house are employee termination/HR disputes and intellectual property disputes. For more complex matters such as FCPA, fraud, and AML investigations; class action lawsuits; and joint defense, there remains a preference to employ the services of third-party experts in some capacity. There are also notable trends across company size and industry bands. For example, corporations with more than \$2.5 billion in annual revenue are more likely to have internal capabilities for legacy tape/media processing and migration and for ESI custodian search and identification. Also, corporations from the energy, life sciences, and construction industries appear to be the most aggressive when it comes to building out in-house eDiscovery capabilities. Interestingly, corporations from the finance and manufacturing industries are the least aggressive when it comes to building out eDiscovery capabilities.

Judicious Use of Third-Party eDiscovery Providers

Although corporations are investing in building up their internal eDiscovery capabilities, they continue to employ third-party eDiscovery service providers. In 2009, 43% of the panelists indicated that they process 51% to 100% of the collection in-house before it is sent to their third-party litigation support service providers and outside counsel. Also, 60% of the panelists indicated that they use third-party services during eDiscovery. The most frequently mentioned services were computer forensics; litigation support; hosted content archiving; tape extraction, restoration, and migration; and legal technology consulting.

The Pressure to Do More with Less Increases

The 2009 survey results suggest that the average number of litigation events experienced by corporations per year is rising. In 2009, the proportion of panelists that had more than 100 litigation events in the past 12 months rose from 27% in 2008 to 46% in 2009, a 19-point increase. At the same time, average volumes of data collected per litigation matter were much larger compared with those of the prior year. The proportion of panelists whose average ESI collection per matter was larger than 2.5TB increased 18 points from 19% of panelists in the 2008 study to 37% of panelists in the 2009 study. While ESI volumes are growing, eDiscovery budgets are either flat (36%) or declining (42%). In 2009, 45% of the panelists said their total eDiscovery budget is less than \$100 million, while 46% indicated their budget is greater than \$100 million. These pressures are compelling organizations to adopt best practices, develop technical protocols to automate key processes, and take a more strategic approach to the acquisition of the enabling technologies.

CONSIDERATIONS AND CONCLUSIONS

In response to mounting eDiscovery pressures, corporations are starting to adopt best practices. The process of adopting these best practices is an evolution for many corporations and is a function of developments in case law and the emergence of new technologies. Corporations should keep in mind the following when planning the policies, protocols, and IT architecture that enable their retention and eDiscovery activities:

- ☒ **Plan for international eDiscovery.** Policies and protocols must cover both U.S. litigation events that require data collection in international jurisdictions and international litigation events that require data collection in the United States. Here, corporations should consider policies and protocols that would address some of the inherent conflict between eDiscovery requirements and local privacy regulations.
- ☒ **Plan for eDiscovery involving application databases and transactional systems.** Corporations and their legal counsel must also be prepared to search and analyze content across both structured and unstructured content in order to get to the narrative that would help them develop the appropriate legal strategy. Legally preserving and collecting data from application databases and transactional systems requires a different set of data management expertise compared with that needed for conducting eDiscovery involving semistructured and unstructured content. eDiscovery involving legacy and custom application databases poses unique challenges for most organizations. Corporations and their legal counsel should plan for such events accordingly.
- ☒ **Be smart and strategic when planning the acquisition of search and text analytics technologies.** Corporations may need to rethink how they currently prioritize their decision criteria in the acquisition of these technologies. There are also limitations to automation. The 2009 data suggests that corporations recognize these limitations and are able to improve the performance of their search and analytics investments by augmenting them with search experts. As collection sizes increase and as the technologies improve, corporations have opportunities to employ these applications (in conjunction with search experts and legal counsel) to improve the precision of their preservation protocols.

- ☒ **Keep in mind that there is no one-size-fits-all approach for developing the appropriate information infrastructure for retention management and eDiscovery.** The decision to bring eDiscovery activities in-house is a function of a corporation's process and IT maturity, its resources and capital structure, the appetite of its legal counsel and IT organization to employ third-party service providers, the complexity of the organization's IT environment, and its litigation profile. The activities that corporations are most likely to bring in-house primarily address repeatable manual processes. These activities allow corporations to:
 - ☒ Ensure consistency in their legal response and strategy to specific classes of litigation matters.
 - ☒ Ensure consistency in their preservation and collection protocols to specific classes of litigation matters. These protocols must be legally defensible and mitigate potential spoliation issues.
 - ☒ Realize both process and IT operational efficiencies through the automation of manual repeatable processes.

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IN THIS WHITE PAPER

This study is a follow-up to IDC's April 2008 FTI Technology–sponsored survey *State of Play: Litigation Readiness of Corporate IT Organizations*. This annual study examines the current and future challenges and technology priorities of corporate IT professionals around information management for compliance and legal discovery. The 2009 study kept some of the core questions from the 2008 survey; however, a significant majority of the questions focused on the most pressing issues as well as emerging issues.

Methodology

This IDC study examines the results of quantitative research on current and future adoption of litigation response and readiness technology-enabled solutions from the perspective of the IT professional.

A total of 115 panelists participated in the Web survey, a statistically significant sample. Panel members were recruited from corporations with at least \$500 million in annual revenue in 2008 in the following sectors: banking, insurance, financial services, manufacturing, life sciences, energy and natural resources, utilities, telecommunications (including broadcasting and media), and construction. To qualify for the survey, these corporations had to have ongoing or planned technology-enabled initiatives around legal discovery. In addition, panelists had to be responsible for making, influencing, architecting, developing requirements for, or implementing technology solutions associated with their eDiscovery program.

Note: Demographic survey data is provided in the Supplementary Data section of this document.

SITUATION OVERVIEW

This is the second year that FTI Technology commissioned IDC to survey IT, litigation support, and legal technology operations professionals regarding their experiences with and priorities for their existing or planned technology-enabled eDiscovery investments.

A total of 115 panelists participated in the Web survey, a statistically significant sample. Their inclusion is based on the business organizations to which they belong and their organization's intentions and priorities around technology-enabled eDiscovery initiatives.

Panelists were recruited from United States–based global corporations from the most litigious industries — financial services, manufacturing, energy, life sciences, telecommunications, utilities, and construction — that had at least \$500 million in revenue in 2008.

In terms of the panelists' qualifications in influencing their organization's IT purchase decision, qualified panelists had to be responsible for making, influencing, architecting, or implementing technology solutions associated with their firm's litigation readiness and eDiscovery programs.

What Is New in This Year's Study?

Although several core questions from the 2008 study were included in this year's study, the survey focused more on exploring emerging organizational and technology issues. Some of the new areas explored in the 2009 survey include:

- International eDiscovery
- Preservation and collection involving structured data from application databases
- Use of search and text analytics solutions for eDiscovery
- Sourcing strategies around in-house eDiscovery activities
- Role of external counsel in the selection and purchase of eDiscovery solutions

(The subsequent sections highlight the key takeaways from the 2009 study.)

The Pressure to Do More with Less Increases

The confluence of the rise in the number of litigation events, increases in average ESI collection volumes per matter, and budget constraints is increasing the pressure on corporations to do more with less. The 2009 survey results suggest that the average number of litigation events experienced by corporations per year is rising (see Table 1). The panelists also indicated that average volumes of data collected per litigation matter are much larger than those of 2008 (see Table 2). At the same time, the panelists indicated that their budgets for litigation events are flat or declining in 2009 (see Figure 1). In 2009, 45% of the panelists said their total eDiscovery budget is less than \$100 million, while 46% indicated their budget is greater than \$100 million (see Figure 26 and Table 5 in the Supplementary Data section).

TABLE 1

Comparison of Total Number of Litigation Events in the Past 12 Months, 2008 Versus 2009 (% of Respondents)

Number of Litigation Events	2008 (n = 118)	2009 (n = 115)	Delta
1 to 99	68.6	45.2	-23.4
100 to 499	13.6	15.7	2.1
500 to 999	6.8	15.7	8.9
1,000+	6.8	14.8	8.0
Don't know	4.2	5.2	1.0
None	0	3.5	3.5

Source: IDC, 2008 and 2009

Comparing the 2008 report with the 2009 study revealed the following trends:

- ☒ In the 2008 study, 69% of the panelists had between 1 and 99 litigation events in 12 months, while 27% of the panelists reported more than 100 litigation events.
- ☒ In 2009, the proportion of panelists that had fewer than 100 litigation events fell to 45%, while 46% of the panelists experienced more than 100 litigation events.
- ☒ In 2009, corporations with over \$1 billion in annual revenue are more likely to report having over 100 litigation events per year.
- ☒ In 2009, 44% of the panelists said that their largest matter involves between 1TB and 5TB of ESI, while 18% said that their largest matter collects more than 5TB of data. Corporations with more than 500 litigation events in the past 12 months are most likely to say that a matter involved more than 5TB of ESI.

TABLE 2

Comparison of Average Volumes of ESI Collected per Litigation Matter, 2008 Versus 2009 (% of Respondents)

Average volumes of ESI collection	2008 (n = 118)	2009 (n = 115)	Delta
Less than 100GB	1	8	7
101GB to 500GB	11	16	5
501GB to 999GB	35	19	-16
1TB to 2.5TB	23	15	-8
2.51TB to 5TB	12	19	7
5.1TB to 10TB	3	17	13
More than 10TB	4	2	-2
Don't know	11	5	-6

Source: IDC, 2008 and 2009

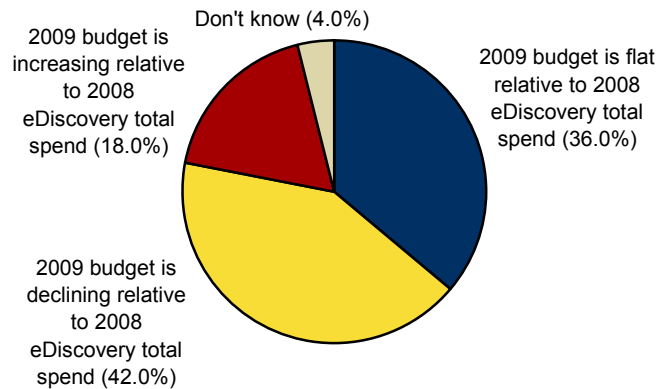
Readers should note the bifurcation in the average ESI collection sizes. Comparing the 2008 report with the 2009 study revealed the following trends:

- ☒ In the 2008 study, approximately 47% of the panelists indicated that average collection volume per legal matter was less than 1TB, 38% reported average collection volumes in the range of 1TB to 10TB per matter, 4% said collection per matter was more than 10TB, and 11% did not know the average collection size.

- ☒ In the 2009 study, the proportion of panelists with less than 1TB of ESI collected per matter dropped to 43% of the population, while the percentage of panelists whose collections per matter ranged from 1TB to 10TB rose to 51%.
- ☒ The proportion of panelists who noted average collection volumes of 1TB to 2.5TB per matter dropped from 23% of the panelists in 2008 to 15% in 2009. At the same time, the percentage of panelists who reported collections of 2.51TB to 5TB per matter rose from 12% in 2008 to 19% in 2009.
- ☒ Panelists with average collections of 5.1TB to more than 10TB per matter made up 19% of the sample population in 2009, an increase of close to 13% from 2008.
- ☒ 42% of the panelists said that their largest matters range from 2.51TB to 10TB.
- ☒ 85% of the panelists indicated that their firm's largest matter took at least two years to resolve, where:
 - ☐ 22% said the largest matter took one to two years to resolve.
 - ☐ 29% said resolution took two to five years.
 - ☐ 20% said resolution took five to seven years.
 - ☐ 15% said resolution took seven to ten years.

FIGURE 1

2009 eDiscovery Budgets: Pressure to Do More with Less Rises



Base = all respondents

Source: IDC, 2009

In 2009, 42% of the panelists said their budgets are declining relative to 2008, while 36% said that their eDiscovery budgets remain at 2008 levels.

- Budget trends appear to be broadly dispersed across company revenue bands (see Figure 26 and Table 5 in the Supplementary Data section of this document).
 - 12% of the panelists reported that eDiscovery budgets are less than \$10 million.
 - 33% said budgets range from \$11 million to \$100 million.
 - 36% of the panelists had budgets in the range of \$101 million to \$200 million.
 - 10% of the panelists had over \$200 million budgeted for eDiscovery. Only 9% of the panelists did not know their firm's annual eDiscovery budgets.
- Corporations that experienced fewer than 100 litigation events in the past year are more likely to have eDiscovery budgets that are below \$100 million.
- Corporations with more than 500 litigation events in the past 12 months and have more than 5TB of ESI collections per matter are most likely to have eDiscovery budgets above \$200 million.

This pressure to do more with less is impacting the eDiscovery capabilities that corporations are building internally, as well as their preferred technology architecture and service delivery models. (eDiscovery capabilities and sourcing strategies are discussed in greater detail in later sections of this document.)

International eDiscovery Is Becoming More Prevalent

International litigation and eDiscovery is becoming more prevalent (see Figure 2). Close to 70% of the panelists indicated that their firm is involved in multinational litigation. The higher the number of litigation events and the larger the average ESI collection volumes per matter, the higher the likelihood that the firm is involved in an international litigation event.

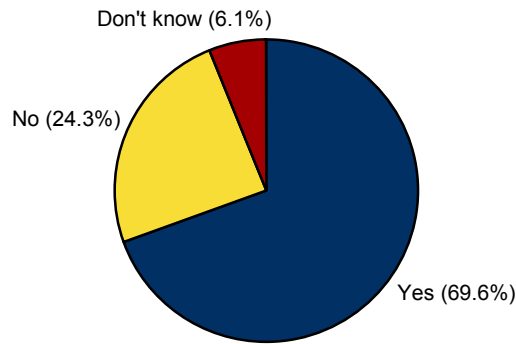
- Overall, the five most frequently mentioned international litigation categories were intellectual property dispute and employee termination (tie), FCPA investigations and product liability claims (tie), and insurance claims (see Figure 3). The less frequently mentioned classes of litigation events were class action lawsuits and joint defense.
 - Among the most litigious firms and among firms whose average collection volumes are more than 1TB per matter, the five most frequently mentioned categories were intellectual property disputes, product liability claims, FCPA investigations, fraud and AML investigations, and antitrust investigations and second requests.
 - Corporations with over \$2.5 billion in annual revenue were more likely to indicate that they are involved in fraud, AML, and antitrust investigations.

- ❑ A high proportion of panelists from the construction industry indicated that their firms are involved in fraud, AML, and antitrust investigations.
- ❑ Corporations from financial services, telecom, construction, energy, and life sciences were most likely to report their involvement in FCPA investigations.
- ☑ Corporations had to conduct investigations, preservation, and data collection across the globe. The top 3 regions for global data collections were the European Union, Canada, and Northern Asia, which includes Japan, South Korea, Taiwan, and China (see Figure 4). Data collection in non-EU member states, Eastern Europe and Russia, Southeast Asia, and Central Asia were less frequently mentioned.
- ☑ Corporations (86% of the respondents) are starting to develop and implement the appropriate response protocols (see Figure 5).

FIGURE 2

International Litigation

Q. *Has your company been involved multinational litigation in the past 12 months?*



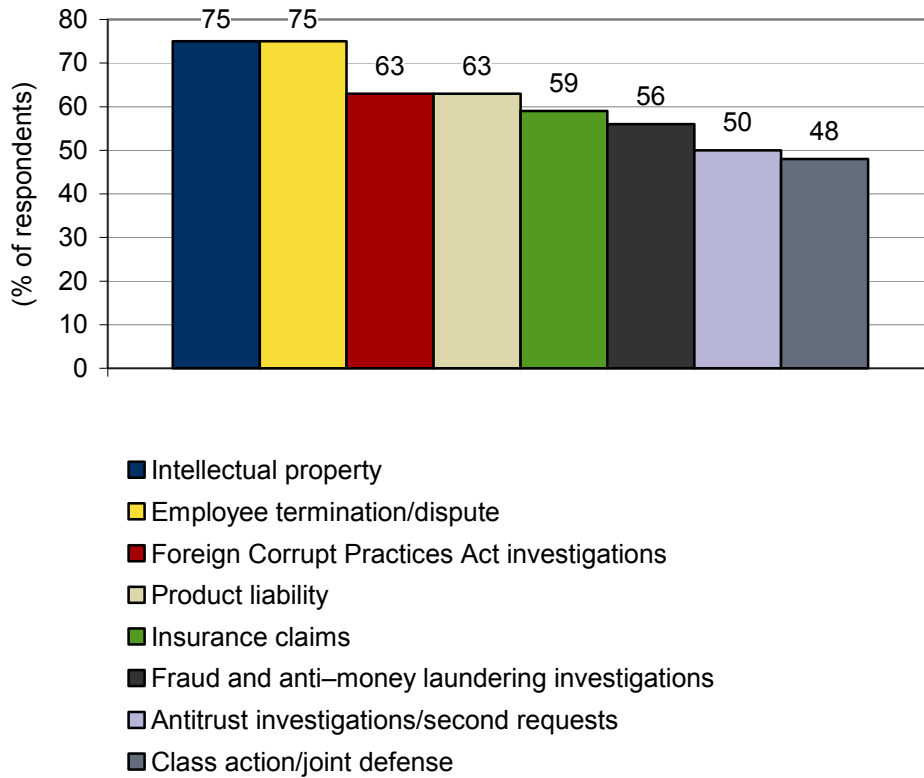
n = 115

Base = all respondents

Source: IDC, 2009

FIGURE 3

Types of International Litigation: Top 5 Responses



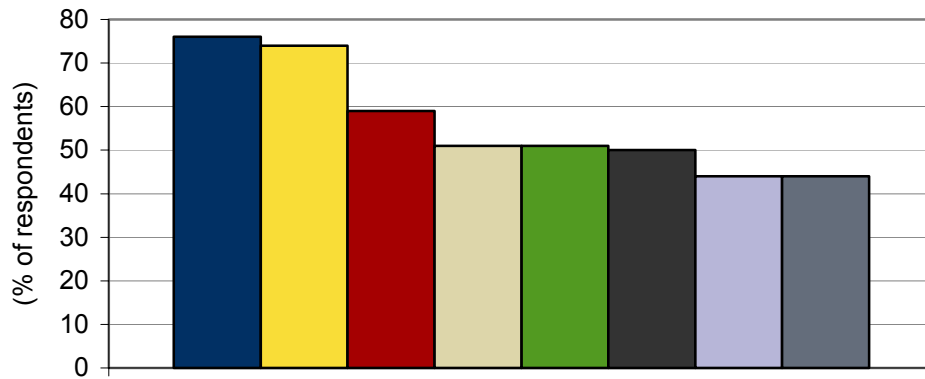
n = 115

Base = all respondents

Source: IDC, 2009

FIGURE 4

International eDiscovery Data Collections: Top 8 Regions



- EU-member European locales
- Canada
- Northern Asia (Japan, South Korea, China, Taiwan)
- Mexico and South America
- Central America
- Australia and New Zealand
- Middle East and Africa
- Eastern Europe and Russia

n = 115

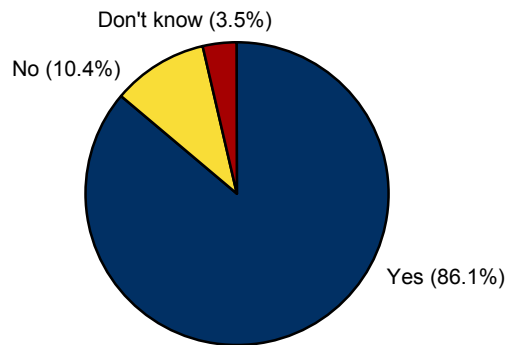
Base = all respondents

Source: IDC, 2009

FIGURE 5

Response Protocols for eDiscovery

Q. *Does your firm have existing protocols for responding to and managing international eDiscovery and collections?*



n = 115

Base = all respondents

Source: IDC, 2009

eDiscovery Collections Involving Application Databases Are on the Rise

The 2009 study suggests that shared server files, desktops, laptops and mobile media devices, and database archives remains among the top 5 sources of data collections for litigation events (see Table 3). However, the results of the survey also point to the rise in eDiscovery collections involving primary data in application databases:

- ☒ In the 2008 study, content from application databases ranked seventh among the top 10 eDiscovery collection targets. In 2009, content from application databases and database archives ranked first among the most common eDiscovery collection targets (see Table 3).
- ☒ ERP applications, most notably Oracle, IBM, and SAP, are the most popular targets of eDiscovery collections (see Figures 6 and 7). In financial services, life sciences, and energy, PeopleSoft applications are the most likely eDiscovery target sources.
- ☒ Among the panelists who indicated that they never had eDiscovery collections involving content from application databases and database archives, more than 67% claimed that their corporation has existing protocols for handling such events (see Figure 8).

TABLE 3

Comparison of Top eDiscovery Collection Targets, 2008 Versus 2009 (% of Respondents)

Data Sources	2008 (n = 118)	2009 (n = 115)
ERP/ERM/HR/CRM/financial applications/databases	48.0	55
Shared files/NFS/CIFS file systems	66.0	54
Laptops/desktops/mobile media/BlackBerry	63.0	49
Database archives (archived application database-generated content)	70.5	47
Check image archives	48.4	44
Records management system	70.0	43
Backup tapes	66.3	43
Email gateway/messaging appliance/message servers	60.0	43
Document management/content management system/imaging applications	50.0	43
Removable storage (disk/USB)	40.0	40
File archives	75.8	38
Message archives (email and IM)	56.8	38
Collaborative applications (SharePoint, Live Meeting, WebEx, Groove, etc.)	39.0	38
Paper-based records and document archives	65.3	37
Security event/incident logs* (new)		37
Corporate intranet/portals	57.0	36
Web 2.0 content (corporate blogs, wikis, RSS feeds)	26.0	30
Production/efax/print image archives	41.1	30
Transaction logs* (new)		28
Medical images/PACS/electronic health records systems archives	41.1	27
Voice archives	31.6	27

TABLE 3

Comparison of Top eDiscovery Collection Targets, 2008 Versus 2009 (% of Respondents)

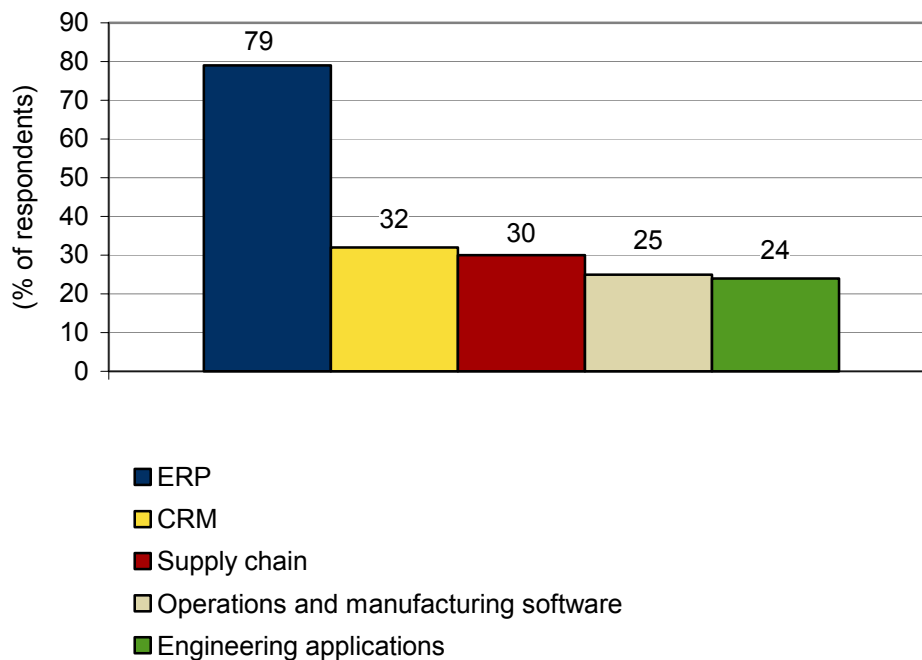
Data Sources	2008 (n = 118)	2009 (n = 115)
Video broadcast/video surveillance archives/tapes	42.1	26
Failed hard drives	18.9	24
Instrumentation readings/reports	32.0	23
Legacy custom applications	27.0	22

Source: IDC, 2008 and 2009

FIGURE 6

Frequently Targeted Database Applications

Q. When your firm had a litigation event involving data from ERP/HR/CRM/financial application databases, what were the top 2 types of functional applications involved?



n = 63

Base = respondents who said primary data was collected from ERP/HR/CRM/financial application databases

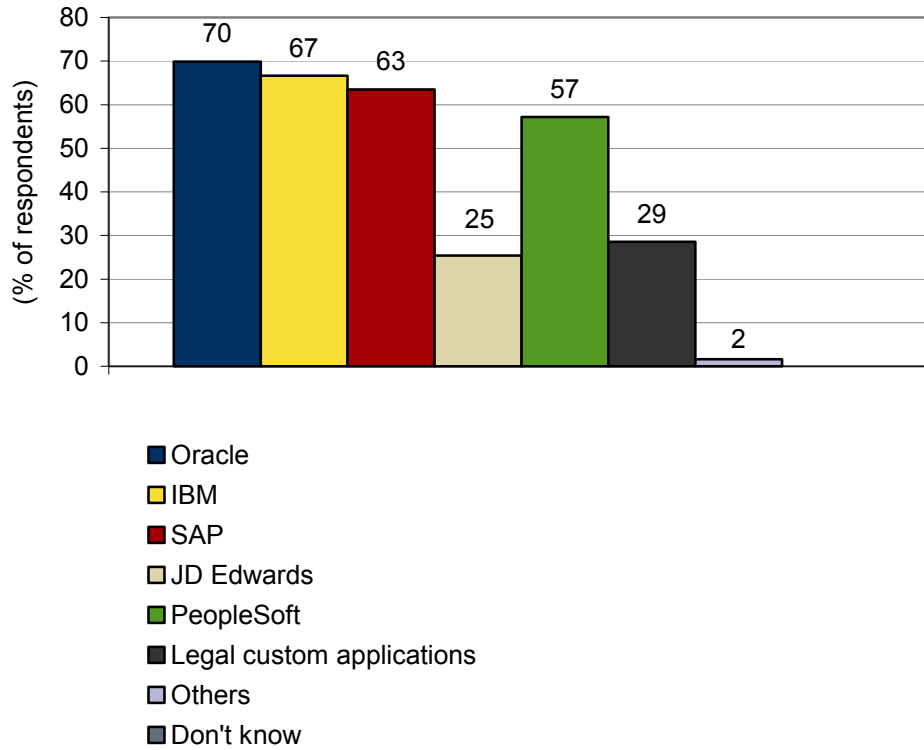
Note: Use caution when interpreting small sample sizes (n < 100).

Source: IDC, 2009

FIGURE 7

Frequently Targeted Application Database Vendor Applications

Q. *When your firm had a litigation event involving data from ERP/HR/CRM/financial application databases, what were the types of vendor applications involved?*



n = 63

Base = respondents who said primary data was collected from ERP/HR/CRM/financial application databases

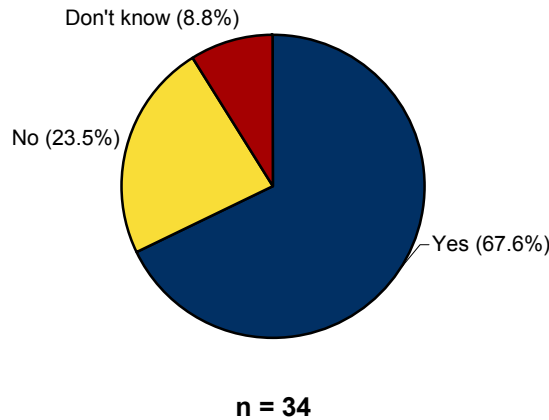
Note: Use caution when interpreting small sample sizes (n < 100).

Source: IDC, 2009

FIGURE 8

Existence of eDiscovery Collection Protocols for Application Databases

Q. *If your company never had to collect and produce ESI from application databases, does your company have an existing protocol for handling data should the need arise?*



Base = respondents who said firm never had to collect from application databases but have existing protocols for responding to and managing international eDiscovery and collections

Note: Use caution when interpreting small sample sizes (n < 100).

Source: IDC, 2009

Corporations Are Leveraging Search and Content Analytics Technologies to Build Their In-House eDiscovery Capabilities

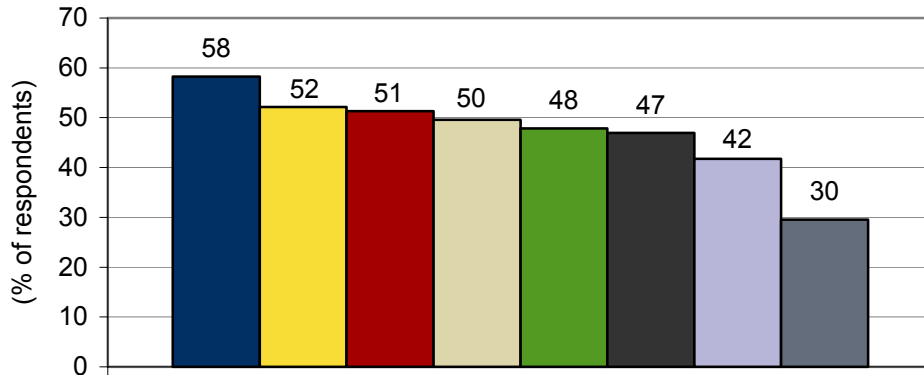
The increasing pressure to do more with less is impacting the eDiscovery capabilities that corporations are bringing in-house. The 2009 study suggests that outside of review and analysis activities, most corporations for now are focusing on activities during the earliest phases of the EDRM. These activities are intended to enable process efficiency, precision, and completeness in the search, retrieval, and analysis of ESI.

- ☒ In 2009, the top 5 activities are tape and legacy media preservation, restoration, and content migration; ESI preservation; review and analysis; ESI collection; and ESI and custodian search and identification (see Figure 9).
- ☒ The adoption of early case assessment solutions also appears to be in the earliest phases (see Figure 9).
- ☒ Each of these activities leverage the capabilities of indexing, search, and content analytics technologies to improve precision and recall in the search for relevant information across large data volumes.

FIGURE 9

Shoring Up In-House eDiscovery Capabilities: Top 8 Priorities

Q. Select the eDiscovery activities/processes that your company handles internally.



- Tape/legacy media preservation, cataloging, restoration, content migration
- ESI preservation
- Review and analysis
- ESI collection
- ESI and custodian search and identification
- Deduplication, processing, and culling
- Early case assessment
- Forensic collection

n = 115

Base = all respondents

Source: IDC, 2009

Looking Under the Hood of Search and Content Analytics

In the 2008 study, panelists indicated that their top 2 priorities were to develop best practices for identifying, preserving, and collecting data in response to a litigation event and to implement enterprise search and eDiscovery support in their primary applications and archival systems.

The 2009 results indicate that corporations remain in the early stages of executing their 2008 priorities:

- ☒ Less than one-third of companies have standardized their protocols for search, identification, preservation, and collection of ESI. Only 29% of the panelists are starting to standardize their tools; while 71% of the panelists are using multiple search and analytics applications and methods to address their information retrieval challenges (see Figure 10).

- ☒ Companies in the \$500 million to \$1 billion revenue size band and in the greater than \$2.5 billion revenue size band are more likely to have intentions to standardize their search methods.
- ☒ A higher proportion of panelists from manufacturing, life sciences, and energy are more likely to standardize on search and analytics applications for information retrieval.

Despite vendor claims to the contrary, the majority of the panelists indicated that scale remains a problem during their search and information retrieval activities (see Figure 11):

- ☒ 68% of the panelists reported that they have run into limitations or obstacles in their search methods.
- ☒ Data suggests that corporations with over \$1 billion in annual revenue and those from telecommunications and construction are more likely to report running into obstacles using their current search methods.

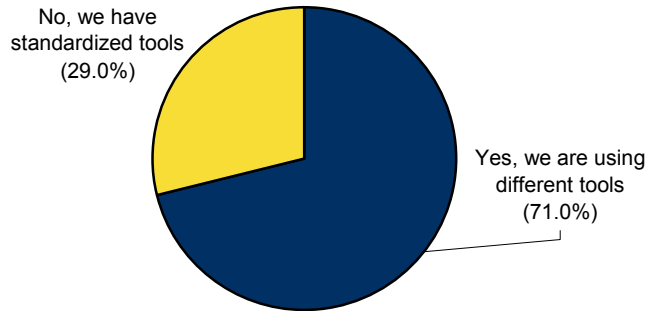
To address the obstacles/limitations of their current information retrieval methods, companies are starting to employ information retrieval experts to help them use their search and content analytics tools more effectively (see Figure 12):

- ☒ 73% of the IT functions said they have hired search experts in conjunction with their use of search and analytics applications.
- ☒ Data suggests that corporations with over \$1 billion in annual revenue and those from the energy, life sciences, telecommunications, and construction sectors are more likely to hire search experts.

FIGURE 10

Absence of Standardization in Search and Content Analytics Applications Inside the Enterprise

Q. *Do you use different search/classification and analytics tools depending on the size and/or type of the matter?*



n = 115

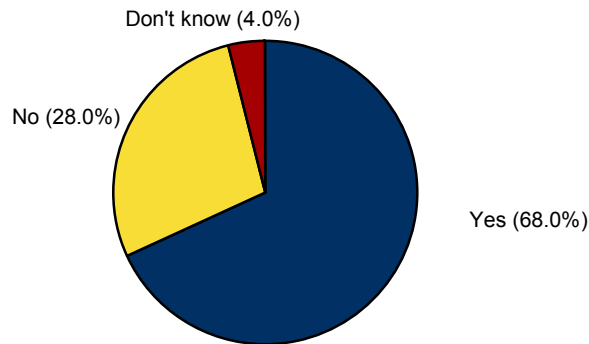
Base = all respondents

Source: IDC, 2009

FIGURE 11

Limitations on Search Methods

Q. *Have you run into limitations or obstacles with certain search methods?*



n = 115

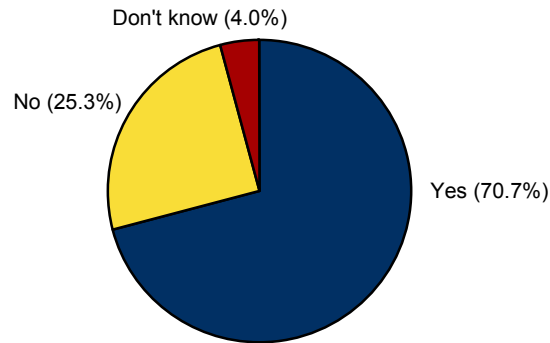
Base = all respondents

Source: IDC, 2009

FIGURE 12

Use of Search Experts

Q. *Do you employ the services or expertise of search experts or information retrieval specialists with your use of search and content analytics applications?*



n = 115

Base = all respondents

Source: IDC, 2009

Corporations Are Employing Multiple Sourcing Strategies Using Both In-House and Third-Party eDiscovery Vendors

Current and Planned Investments for In-House eDiscovery Capabilities

Companies continue to invest in the core technologies to automate the management of ESI for retention and legal hold obligations (see Table 4):

- ☒ eRecords management, collaborative applications (SharePoint/Team Rooms), document management, legal hold automation and management applications, and message archiving are the top 5 investment priorities.
- ☒ The 2009 data also suggests very healthy demand for collaborative applications, enterprise search, early case assessment, and document review platforms in the next 6 to 12 months.

The 2009 study also points to a bifurcation in the preferred delivery models across the enabling technologies:

- ☒ Data points to a shift to third-party hosted and hybrid models for delivering document management (see Figure 13), email archiving (see Figure 14), file archiving (see Figure 15), image archiving (see Figure 16), and early case assessment applications (see Figure 17).
- ☒ Results also indicate an increased preference for conducting forensics (see Figure 18) and document reviews (see Figure 19) internally.

Mean scores suggest that customers' satisfaction with their existing eDiscovery investments are higher than average, with mean scores of 3.7 (for image archiving) or higher. Enterprise search (mean score of 4.5) had the highest customer satisfaction rating among the existing technology investments (see Figure 20).

TABLE 4

In-House eDiscovery Technology Investment Priorities (% of Respondents)

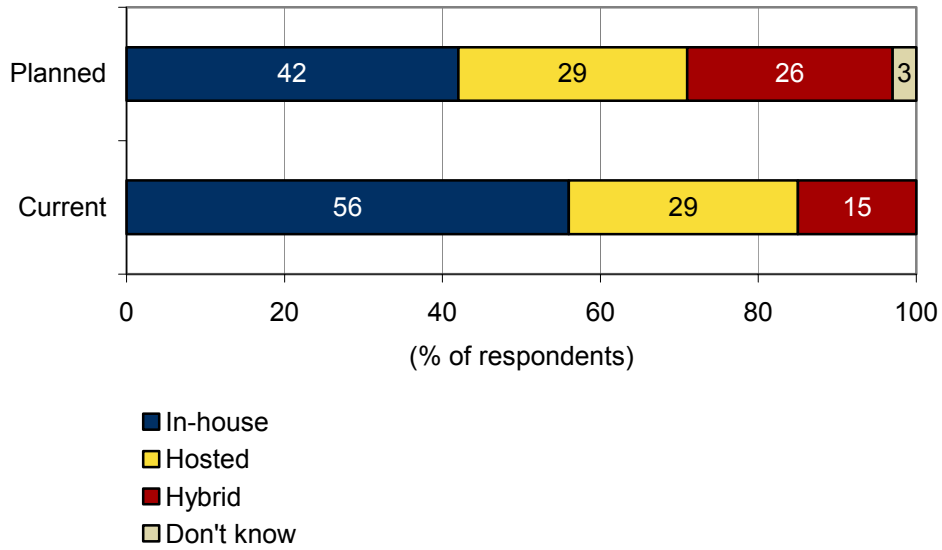
Application	Current	Planned
eRecords management	30	30
Collaborative applications	25	30
Document management/imaging	36	27
Litigation hold management/automation	31	25
Email/IM archiving	35	24
Enterprise search	21	22
DB archiving	29	19
File archiving	22	19
ECA/content analytics software	10	17
Classification/search	8	17
Document review/production	11	15
Image archiving	10	10
Forensics	9	9
Don't know	3	6
Immutable/WORM storage	1	0

n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 13

Bifurcation in Preferred Service Delivery Models: Document Management

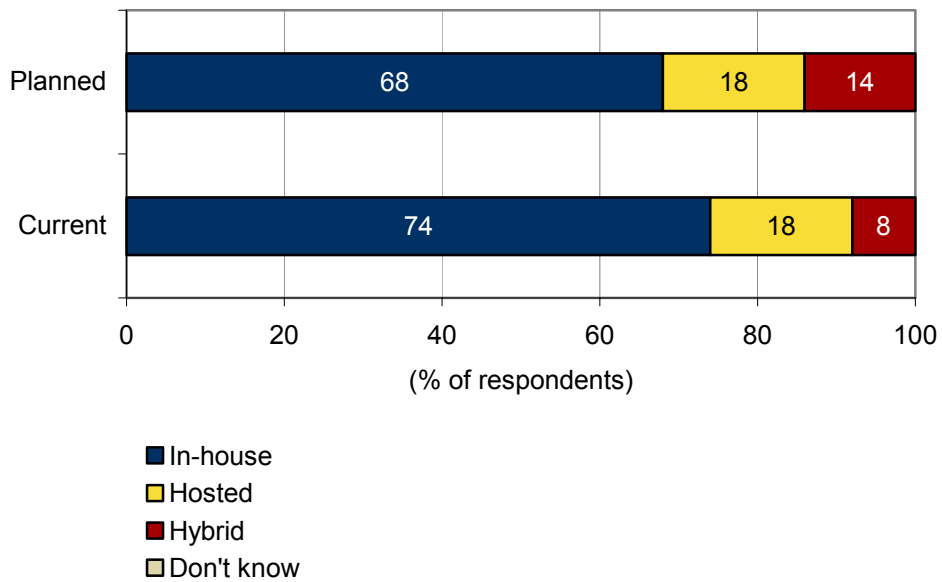


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 14

Bifurcation in Preferred Service Delivery Models: Email Archiving

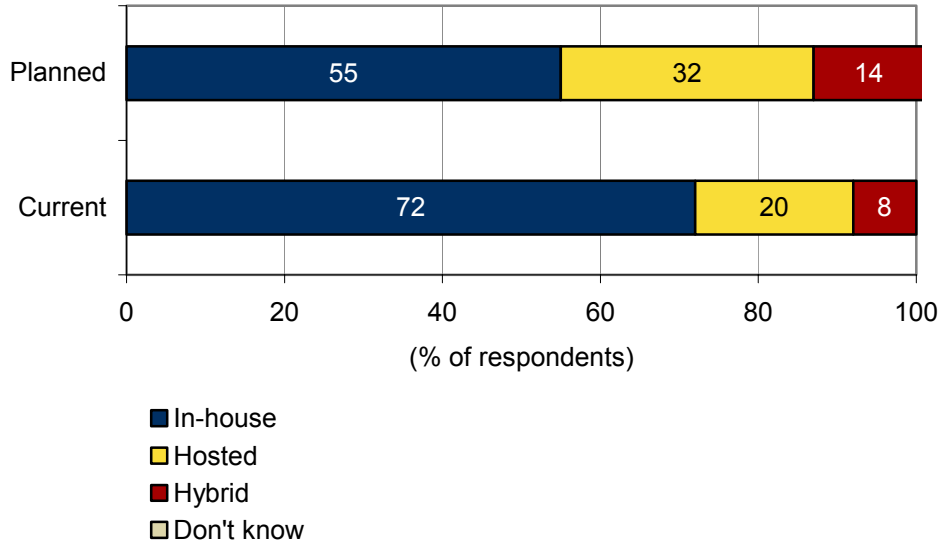


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 15

Bifurcation in Preferred Service Delivery Models: File Archiving

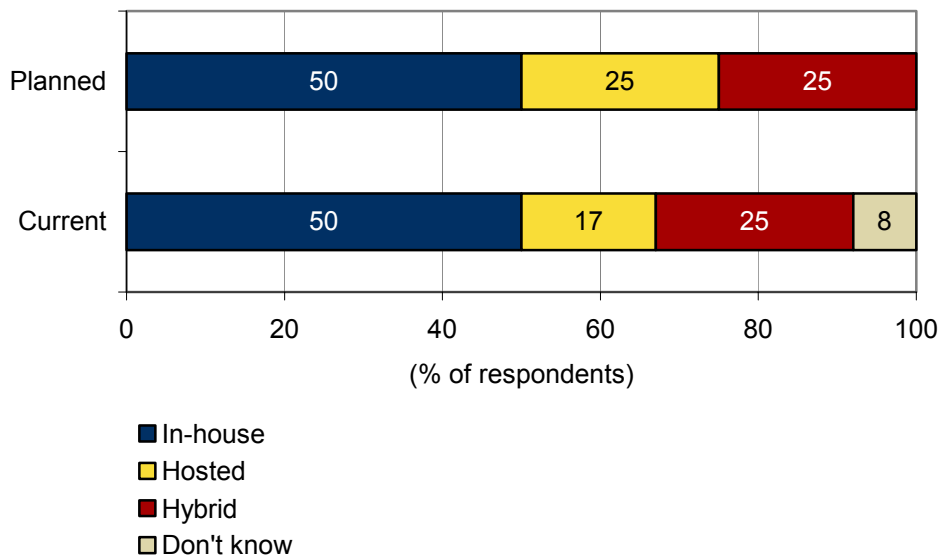


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 16

Bifurcation in Preferred Service Delivery Models: Image Archiving

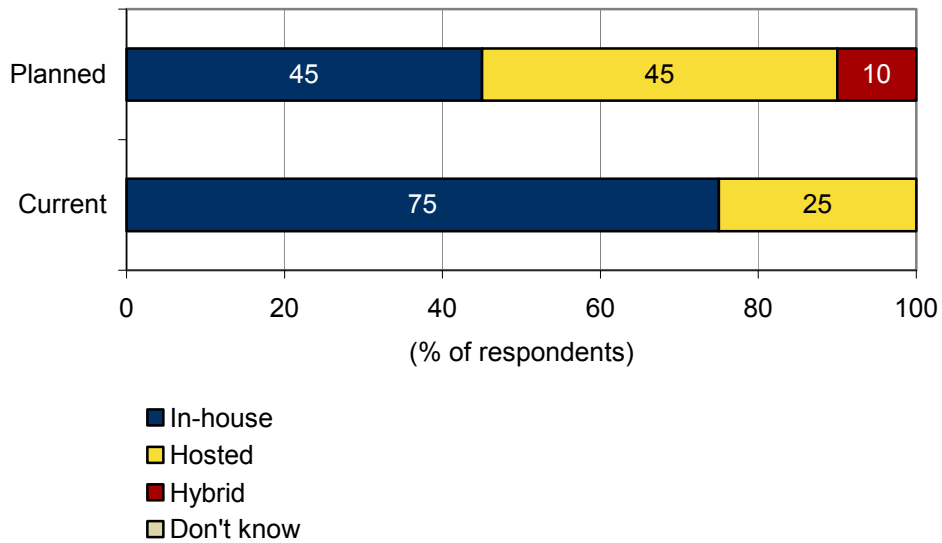


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 17

Bifurcation in Preferred Service Delivery Models: Early Case Assessment

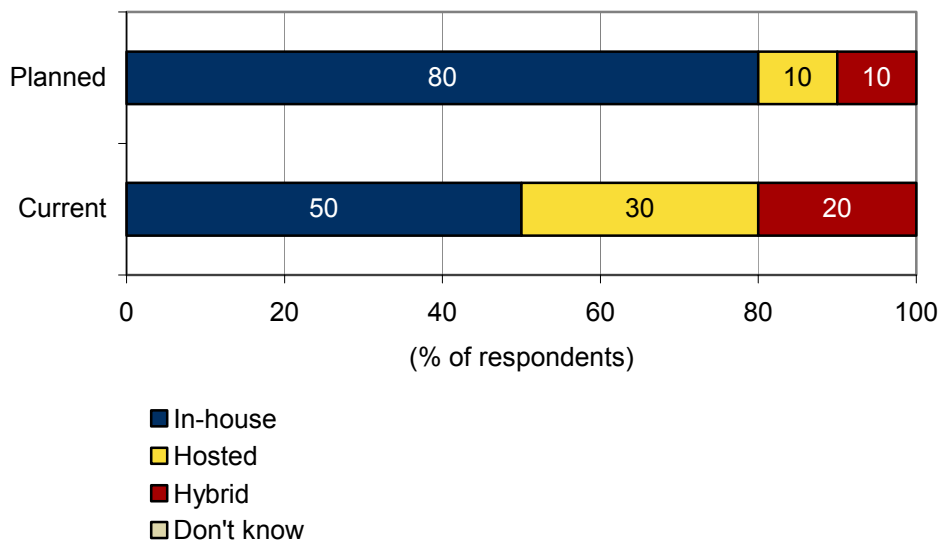


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 18

Bifurcation in Preferred Service Delivery Models: Forensic Applications

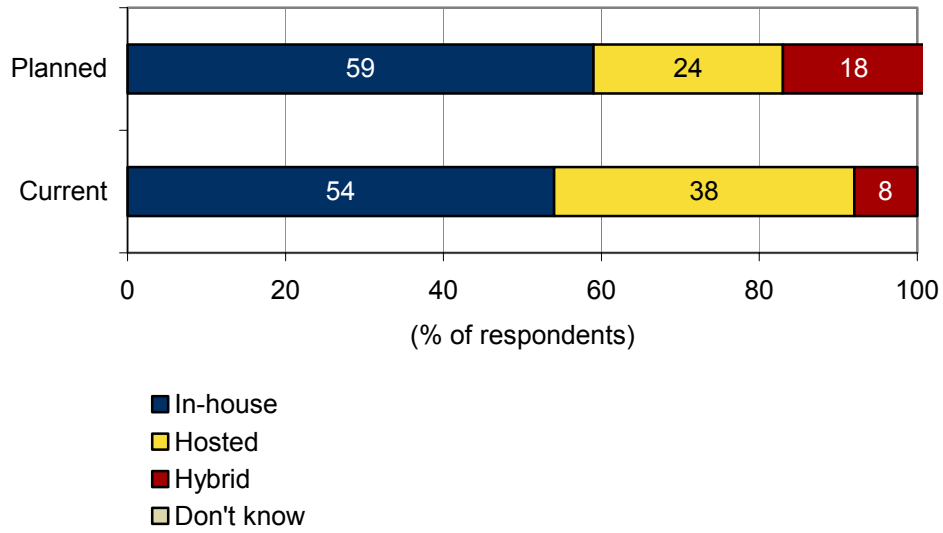


n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 19

Bifurcation in Preferred Service Delivery Models: Document Review Platform



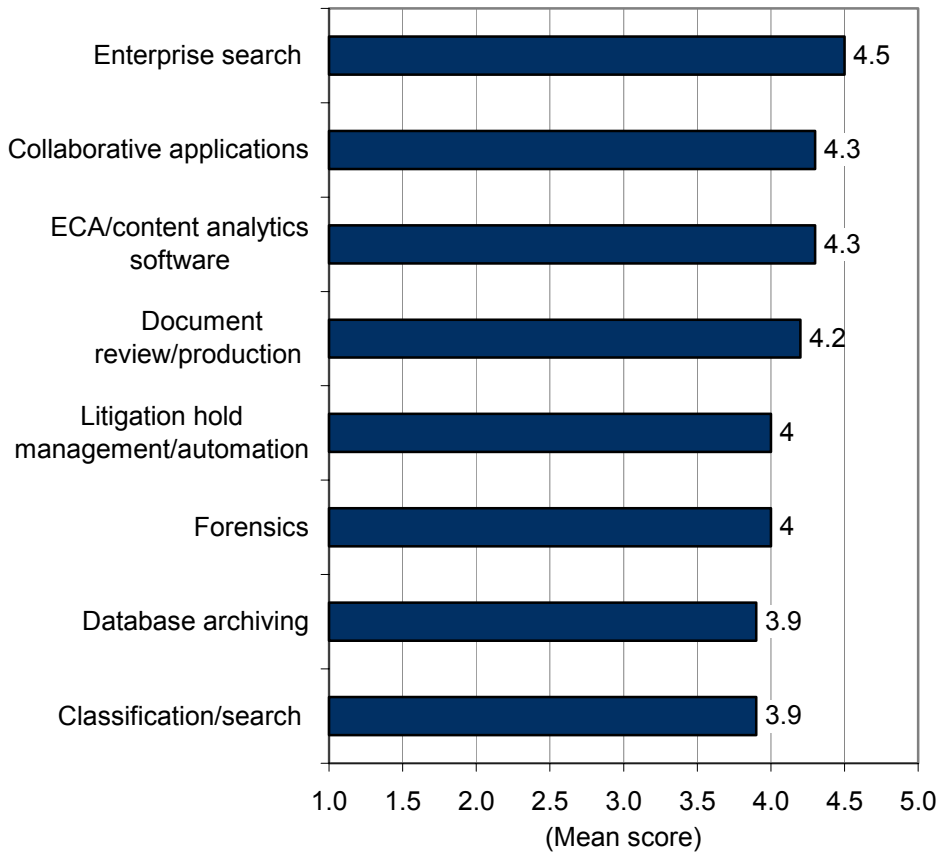
n = 118, 115

Source: IDC, 2008 and 2009

FIGURE 20

User Satisfaction with Existing eDiscovery Applications: Top 8 Mean Scores

Q. *How satisfied are you with how your existing tools or vendors have addressed your eDiscovery initiatives?*



n = 115

Base = all respondents

Note: Respondents were asked to rate their satisfaction with existing eDiscovery applications on a scale of 1 to 5, with 1 being not satisfied at all and 5 being very satisfied.

Source: IDC, 2009

Corporations Continue to Employ Third-Party eDiscovery Services

Although corporations are investing in building up their internal eDiscovery capabilities, they continue to employ third-party eDiscovery service providers. In the 2008 study, 55% of the panelists said that they sent the entire collection to third-party service providers, while 44% of the panelists claimed that they conducted some preculling. Preculled documents include primary data from file shares, desktops/laptops, files and email archives, and collaborative applications (SharePoint and Team Rooms), as well as emails and documents from legacy backup tapes.

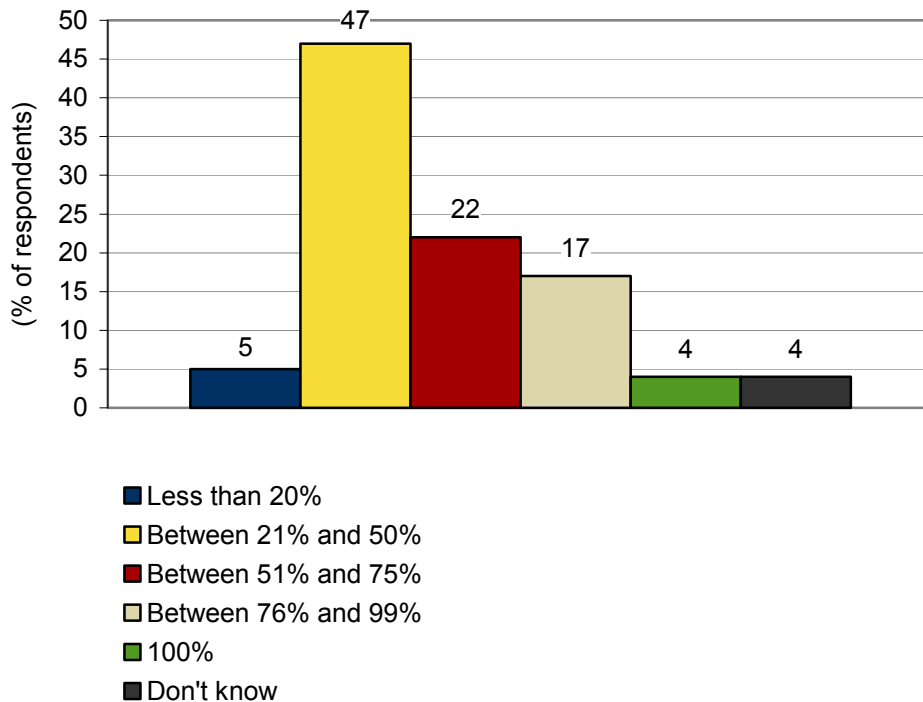
In 2009, 43% of the panelists indicated that they process 51% to 100% of the collection in-house before it is sent to their third-party litigation support service providers and outside counsel (see Figure 21):

- ☒ 28% of panelists from the \$1 billion to \$2.5 billion revenue size band said that they cull and process 51% to 75% of the collection internally before turning it over to third-party service providers.
- ☒ 33% of panelists from the over \$2.5 billion revenue size band claimed that they cull and process 76% to 99% of the collection internally.
- ☒ Corporations from life sciences, energy, telecommunications, and the construction sectors are most likely to say that they process and cull between 51% and 75% of the collection sets.

FIGURE 21

In-House Data Processing and Culling Trends

Q. *How much data (percentage of total collection per matter) is culled and processed in-house before sending to outside counsel or litigation support service provider partners?*



n = 115

Base = all respondents

Source: IDC, 2009

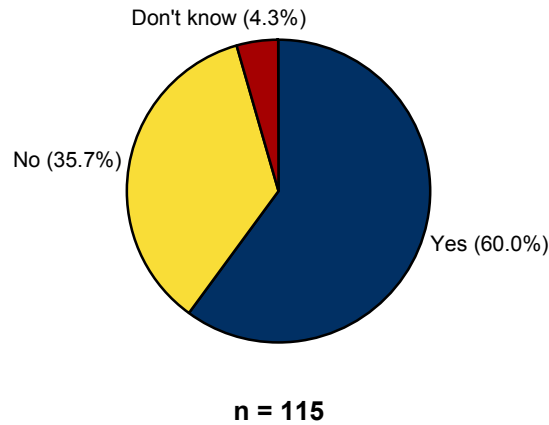
In 2008, 52% of the panelists said that they employed third-party services. In 2009, 60% of the panelists indicated that they use third-party services during eDiscovery (see Figure 22):

- ☒ The most frequently mentioned services were computer forensics; litigation support; hosted content archiving; tape extraction, restoration, and migration; and legal technology consulting.

FIGURE 22

Use of Third-Party Services for eDiscovery

Q. *Do you use third-party service providers during the identification, preservation, and collection of data for legal discovery?*



Base = all respondents

Source: IDC, 2009

Litigation Type Influences the Decision to Conduct In-House eDiscovery

Corporations are starting to coalesce and build internal capabilities around specific litigation matter categories. In 2009, the top 2 litigation matter categories where eDiscovery and reviews will be done in-house are employee termination/HR disputes and intellectual property disputes (see Figure 23).

For more complex matters such as FCPA, fraud, and AML investigations; class action lawsuits; and joint defense, there remains a preference to employ the services of third-party experts in some capacity.

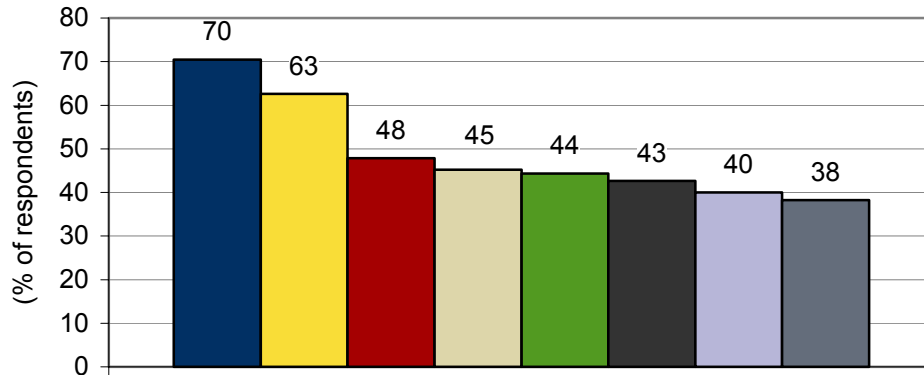
There are notable trends across company size and industry bands:

- ☒ For corporations with more than \$2.5 billion in annual revenue, legacy tape/media processing and migration and ESI custodian search and identification are the top 2 activities where they have built internal capabilities.
- ☒ Except for activities related to review and analysis, corporations from life sciences, energy, and construction are the most aggressive when it comes to bringing more eDiscovery processes in-house.
- ☒ IT functions tend to be more aggressive in their preference to conduct eDiscovery and review internally relative to their legal operations counterparts.
- ☒ Financial services and manufacturing have an interesting profile. Corporations in these sectors rank employee termination and HR disputes as the top litigation matters for which they would conduct eDiscovery and review activities internally. Outside of review and analysis activities, corporations from these sectors appear to be relatively less gung ho about conducting most of the eDiscovery processes themselves.

FIGURE 23

Top 8 Litigation Classes for In-House eDiscovery

Q. Indicate the types of matters where ESI eDiscovery and reviews will be done in-house.



- Employee termination/HR disputes
- Intellectual property
- Product liability
- Foreign Corrupt Practices Act investigations
- Fraud and anti-money laundering investigations
- Antitrust investigations/second requests
- Insurance claims
- Class action

n = 115

Base = all respondents

Source: IDC, 2009

Critical Vendor Selection Criteria

When it comes to selecting a third-party eDiscovery provider, the panelists selected the following as the most important criteria (see Figure 24):

- Pricing model, including service delivery and licensing
- Software features
- Reputation and brand of the vendor
- End-to-end offering
- Scalability of the application

The criteria that were less frequently selected by the panelists include (listed in order of highest to lowest frequency ratings):

- Integration with third-party eDiscovery applications (through out-of-the-box APIs and connectors)
- Industry-specific domain expertise
- Customer support and training
- Long-term viability of the service provider

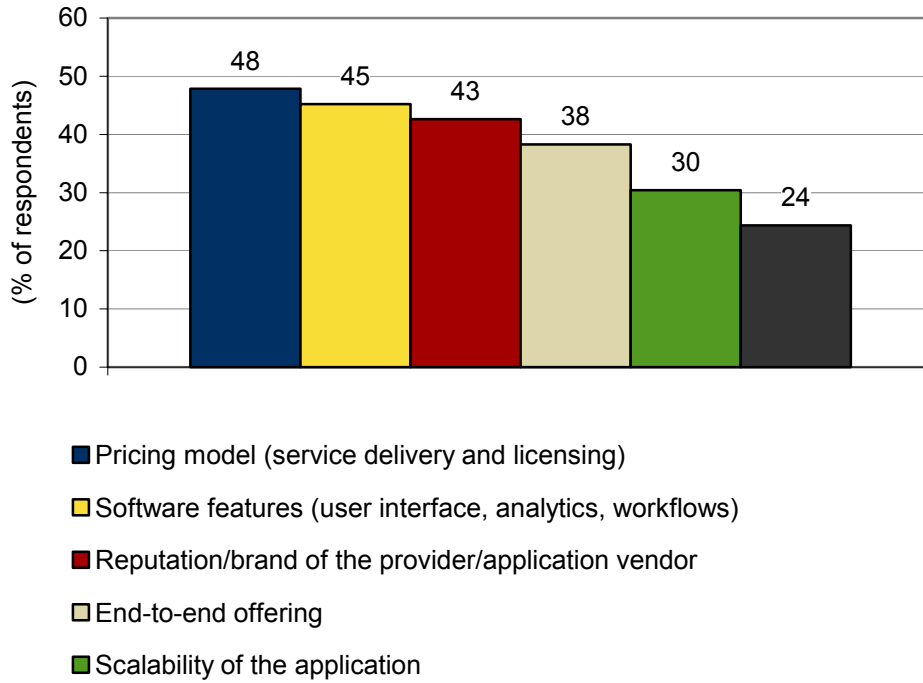
There are also notable differences in how the criteria are prioritized across revenue size bands and industries:

- Among corporations with less than \$1 billion and those with more than \$2.5 billion in 2008 revenue, pricing and licensing was the most critical consideration. For corporations in the \$1 billion to \$2.5 billion revenue band, software features was the most frequently selected criterion.
- Software features is the most frequently mentioned attribute among manufacturing corporations. Corporations in telecommunications and construction note pricing and software features as equally critical.

FIGURE 24

Key Vendor Selection Criteria: Top 5 Mentions

Q. *What are the top 3 key consideration points for selecting an eDiscovery vendor?*



n = 115

Base = all respondents

Source: IDC, 2009

Changing eDiscovery Vendors Midstream

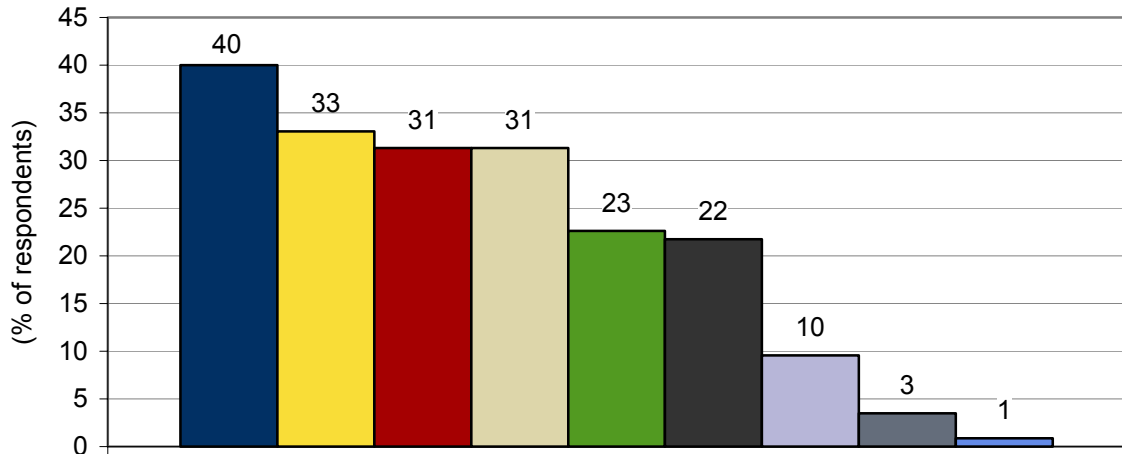
Vendor consolidation, bankruptcies, and general dissatisfaction with the service of the existing eDiscovery provider sometimes compel corporations to change their service providers in the middle of a legal matter. Corporations are also painfully aware of the risks and costs associated with switching vendors in the middle of a matter. Overall, spoliation and data loss and breaking chain of custody are the primary concerns related to switching vendors in the middle of a matter (see Figure 25).

The Sedona Conference Working Group on Best Practices for Document Retention and Production (WG1) Search & Retrieval Sciences team and TREC Legal Track conclude that search and content analytics tools, in combination with the use of subject matter experts and search experts, can greatly enhance the efficacy and precision of the information retrieval and analysis process. The 2009 study suggests that corporations are in the early stages of employing search experts in conjunction with their tools (refer back to Figure 12).

FIGURE 25

Dangers of Changing eDiscovery Vendors Midstream

Q. *If you had to switch eDiscovery vendors in the middle of a matter, what were some of the top 2 concerns or potential pain points?*



- Data loss/spoliation of data during content migration
- Risks associated with breaking chain of custody during migration of content
- Additional costs associated with reindexing, reloading, republishing the data onto new application or platform
- Risks and costs associated with integrating the new application with the company's existing eDiscovery technology investments
- Getting the eDiscovery vendor up to speed on the company's eDiscovery protocols and IT processes
- Losing critical attorney work products during content migration
- Getting the users up to speed on the user interface and workflow of the new application
- Losing the granular security model (managing reviewer's rights, permissions, access to files, folders) during the data migration process
- Others

n = 115

Base = all respondents

Source: IDC, 2009

FUTURE OUTLOOK AND RECOMMENDATIONS

Litigant corporations today are starting to develop best practices to make their information management protocols more agile to litigation events. These practices include:

- ☒ Having a well-defined information management and retention program
- ☒ Defining policies and enforcing protocols for managing the business process workflows and the management of relevant ESI to fulfill litigation hold obligations
- ☒ Having an eDiscovery response team

The process of adopting these best practices is an evolution for many corporations and is a function of developments in case law and the emergence of new technologies!

Corporations Must Plan for eDiscovery Involving Application Databases and Transactional Systems

The initiatives in the 2008 study focused on unstructured content, primarily from emails and documents that proliferate in the primary and archival stores. In 2009, 55% of panelists indicated that they have done data collections involving application databases. The increase in regulatory oversight and the introduction of new regulations portend a rise in eDiscovery and government audits involving application databases and database archives. eDiscovery involving data in application databases and transactional systems has implications for application performance and IT operations in general. Legally preserving and collecting data from application databases and transactional systems requires a different set of data management expertise compared with that needed for conducting eDiscovery involving semistructured and unstructured content. A corporation's IT organization and legal functions should plan for such disruptions accordingly. Corporations and their legal counsel must also be prepared to search and analyze content across both structured and unstructured content to get to the narrative that would help them develop the appropriate legal strategy.

Corporations Must Plan for International eDiscovery

International eDiscovery also appears to be more common. Close to 70% of the panelists said that they have been involved in multinational litigation in the past 12 months. Globalization, an increasingly mobile employee population, and the adoption of new technologies such as "cloud computing" are making corporate information infrastructures more porous. Multinational eDiscovery, Foreign Corrupt Practices Act, anti-money laundering, and antitrust investigations are expected to remain active in the next 12 to 18 months. Therefore, corporations should plan for these events. Policies and protocols must cover both U.S. litigation events that require data collection in international jurisdictions and international litigation events that require data collection in the United States. Here, corporations should consider policies and

protocols that would address some of the inherent conflict between eDiscovery requirements and local privacy regulations. These decisions should take into account a corporation's information infrastructure and IT operational requirements early on.

Corporations Must Be Smart and Strategic When Planning the Acquisition of Search and Text Analytics Technologies

The 2009 study indicates that budgets are either flat (36%) or declining (42%) relative to 2008. During this period, average ESI collection volumes per matter are growing. Developments in case law are also compelling corporations to not rely solely on legal counsel to develop keyword search terms. Corporations have been employing search and content analytics technologies to help them find and retrieve the relevant ESI and to craft the appropriate legal response. The 2009 study concludes that many of these corporations appear to be using multiple tools and haven't standardized their search protocols. IDC opines that these situations are the result of knee-jerk reactions and lack of planning. As shown in the 2009 study, price, software features, and brand were the top 3 criteria in the vendor selection of eDiscovery technologies. But the problems that arise from these investments appear to be the inability of the applications to scale as data volumes rise and the integration effort required to migrate content (in a legally defensible manner) across content repositories and eDiscovery applications. Corporations may need to rethink how they currently prioritize their decision criteria in the acquisition of these technologies.

There are also limitations to automation. The 2009 data suggests that corporations recognize these limitations and are able to improve the performance of their search and analytics investments by augmenting them with search experts. The majority of these tools today are employed after collection. But as collection sizes increase and as the technologies improve, corporations have opportunities to employ these applications (in conjunction with the search experts and legal counsel) to improve the precision of their preservation protocols. The more sophisticated organizations may even find themselves in a position to take advantage of these technologies and search experts to automate a defensible information retention and data reduction strategy.

IDC forecasts that data volume will increase at a compound annual growth rate of 60% from 2008 to 2012. Manual disposition and retention of ESI becomes very unwieldy under this scenario. Utilizing the expertise of search and information retrieval specialists in conjunction with search and text analytics applications to automate data retention and disposition presents opportunities to reduce the volume of compliant and eDiscovery-intensive data early on.

There Is No One-Size-Fits-All Approach for Developing the Appropriate Information Infrastructure for Retention Management and eDiscovery

The pressure to do more with less is also impacting corporations' information infrastructure and the eDiscovery activities they are conducting in-house. The

decision to bring eDiscovery activities in-house is a function of a corporation's process and IT maturity, its resources and capital structure, the appetite of its legal counsel and IT organization to employ third-party service providers, the complexity of the organization's IT environment, and its litigation profile. The activities that corporations are most likely to bring in-house primarily address repeatable manual processes. These activities allow corporations to:

- ☒ Ensure consistency in their legal response and strategy to specific classes of litigation matters.
- ☒ Ensure consistency in their preservation and collection protocols to specific classes of litigation matters. These protocols must be legally defensible and mitigate potential spoliation issues.
- ☒ Realize both process and IT operational efficiencies through the automation of manual repeatable processes.

LEARN MORE

- ☒ *State of Play: Litigation Readiness of Corporate IT Organizations* (IDC study sponsored by FTI Technology, April 2008)

SUPPLEMENTARY DATA

Demographic Data

Figures 26–30 present the demographics for the panelists who participated in this study.

Figure 26 illustrates the distribution of participants by annual company revenue.

Figure 27 shows the distribution of participants by vertical industry.

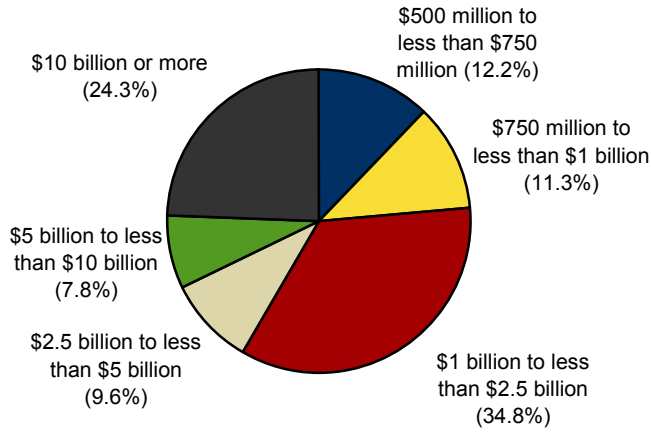
Figure 28 shows the distribution of participants by total number of litigation events the corporation experienced in the past 12 months.

Figure 29 shows the distribution of the survey panelists by the average volumes of data collected per litigation matter.

Figure 30 shows the panelists by title.

FIGURE 26

Panelists by Annual Company Revenue (2008)



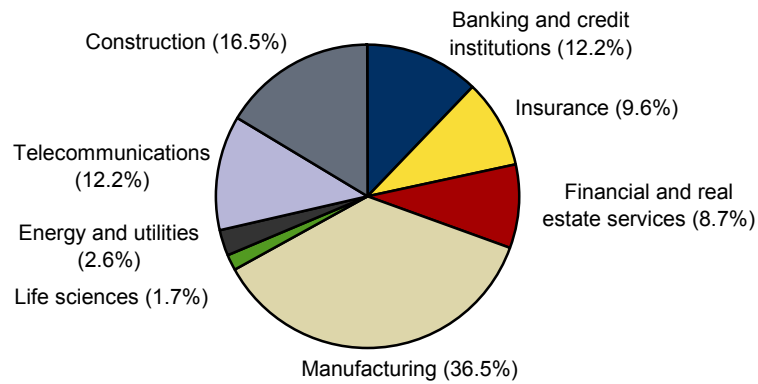
n = 115

Base = all respondents

Source: IDC, 2009

FIGURE 27

Panelists by Vertical Industry



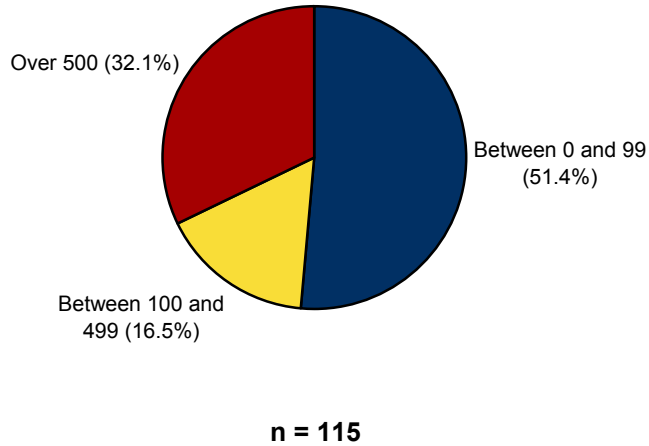
n = 115

Base = all respondents

Source: IDC, 2009

FIGURE 28

Panelists by Total Number of Litigation Events in the Past 12 Months

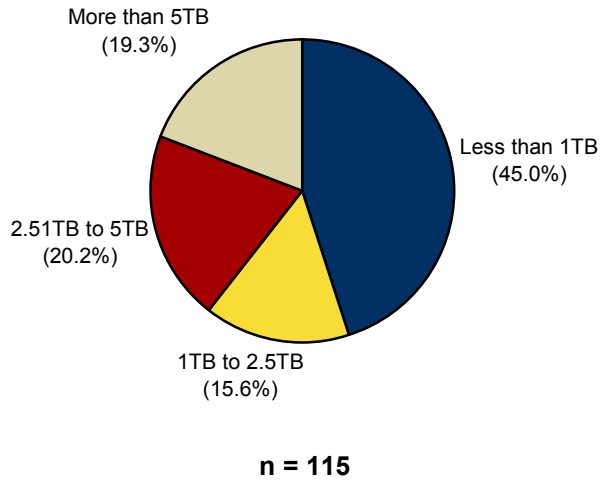


Base = all respondents

Source: IDC, 2009

FIGURE 29

Panelists by Average Collection Volumes per Litigation Matter

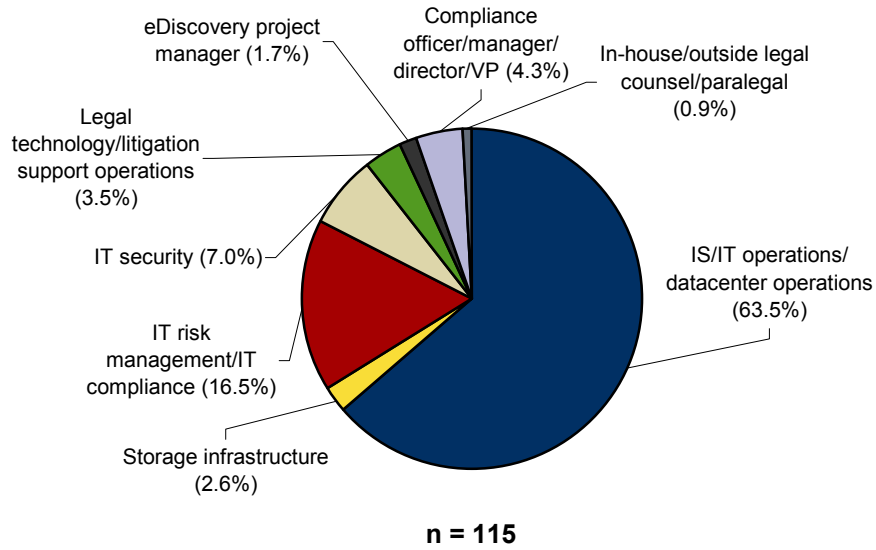


Base = all respondents

Source: IDC, 2009

FIGURE 30

Panelists by Title



Base = all respondents
Source: IDC, 2009

Role of Legal Counsel

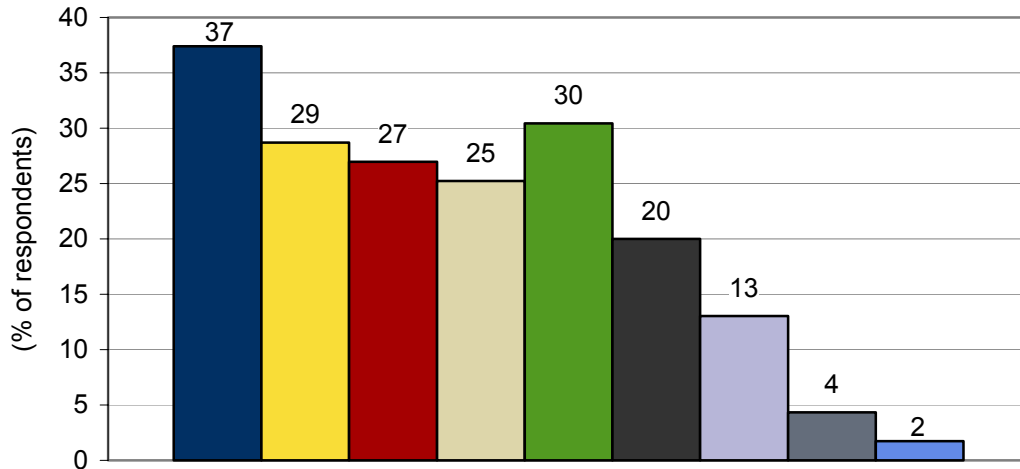
Figure 31 illustrates the IT organization's perception of the role of external legal counsel in the corporation's eDiscovery program.

Figure 32 indicates the IT organization's perception of the functions or roles that are ultimately responsible for the corporation's eDiscovery program.

FIGURE 31

Role of Legal Counsel

Q. *What is the role of your law firm? Outside of legal advice, select the top 2 functions of your outside law firm during the acquisition of eDiscovery solutions.*



- Advise on the creation of policies and protocols for information retention, legal hold responses, legal hold ESI management
- Provide the business process and user interface requirements
- Identify and create shortlist of potential solutions on behalf of client
- Build the business case for the acquisition of the technology
- Conduct due diligence on eDiscovery solutions on behalf of the client
- Participate and provide feedback on the technology evaluation process
- Manage the eDiscovery vendor relationships (including contract negotiations) on behalf of the client
- None of the above
- Don't know

n = 115

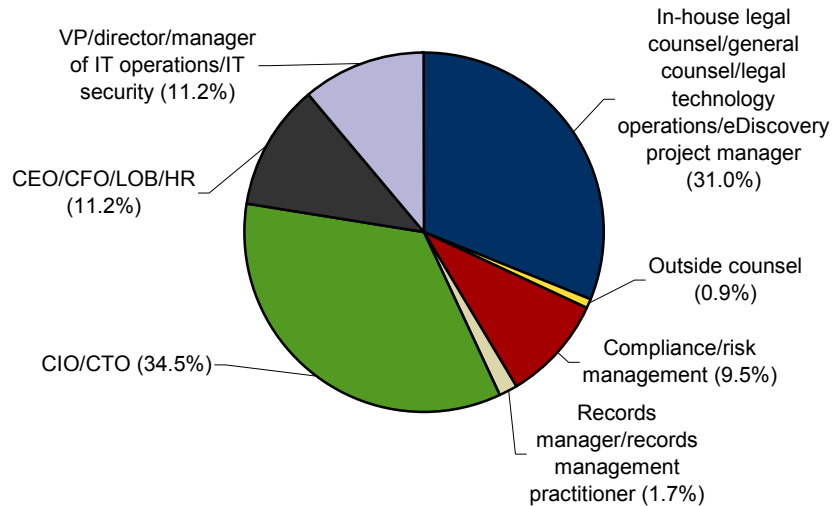
Base = all respondents

Source: IDC, 2009

FIGURE 32

eDiscovery Owner

Q. *To your knowledge, who is ultimately accountable for the eDiscovery process in your organization?*



n = 115

Base = all respondents

Source: IDC, 2009

eDiscovery Budgets, 2009

Table 5 shows the distribution of the panelists according to their 2009 total eDiscovery budgets. Figure 33 illustrates the distribution of responses in graphical format.

TABLE 5

Total eDiscovery Budget, 2009

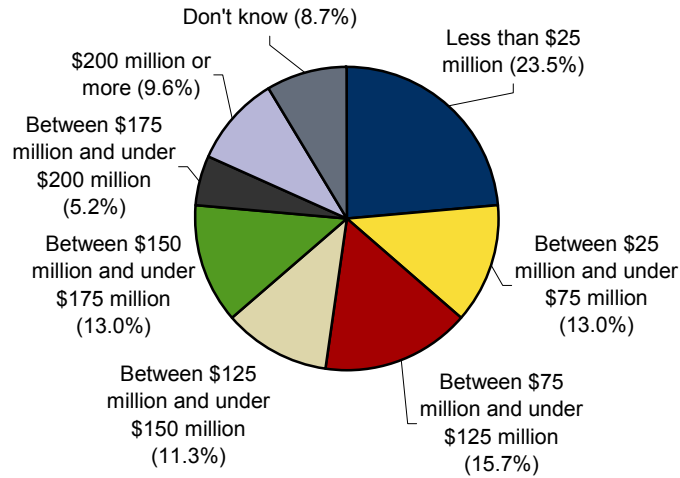
Budget Range	% of Panelists
Less than \$10 million	12
Between \$10 million and under \$25 million	11
Between \$25 million and under \$50 million	5
Between \$50 million and under \$75 million	8
Between \$75 million and under \$100 million	9
Between \$100 million and under \$125 million	7
Between \$125 million and under \$150 million	11
Between \$150 million and under \$175 million	13
Between \$175 million and under \$200 million	5
\$200 million or more	10
Don't know	9

n = 115

Source: IDC 2009

FIGURE 33

Total eDiscovery Budget, 2009



n = 115

Base = all respondents

Source: IDC, 2009

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