



“Intelligently solving business problems with innovative eDiscovery”

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About AIIM

AIIM has been an advocate and supporter of information professionals for nearly 70 years. The association mission is to ensure that information professionals understand the current and future challenges of managing information assets in an era of social, mobile, cloud and big data. AIIM builds on a strong heritage of research and member service. Today, AIIM is a global, non-profit organization that provides independent research, education and certification programs to information professionals. AIIM represents the entire information management community: practitioners, technology suppliers, integrators and consultants. AIIM runs a series of training programs, and provides industry certification, including the Certified Information Professional.

<http://www.aiim.org/Training>

About the author

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Introduction

Electronically stored information (ESI) is growing at an exponential rate. Information is being stored on corporate servers, laptops, shared network drives, smartphones, tablets and even extending beyond the corporate walls to cloud repositories like Dropbox, Box and other storage media both sanctioned and unsanctioned by the corporation. This growth in information and expanded use of storage services is creating an environment that AIIM President John Mancini refers to as the “Digital Landfill”, a growing area of digital storage that is uncontrolled, managed by individual users, in hope of finding information when it is needed. Even when products like SharePoint have been implemented to get control over the uncontrolled, the result is typically the creation of a “Digital Dumpster”, due to the lack of governance over the information and use of the technology.

As information professionals involved in the eDiscovery process, you are required to work with legal counsel and produce electronic information for use in civil litigation. A major part of this process is searching for and finding all relevant documents, and content related to the case. The operative word here being finding, and that includes audio files, video, files and even emails. So where do you begin your search and where do you look to find it all? What process is in place and what steps will you take to ensure you have found everything? Do you search your network servers, individual PCs, Smartphones, PDAs and removable storage devices like thumb drives or is it all of the above?

Documented cases have shown it is all of the above and that if you do not comply with the request, the fines and costs levied could be significant. The key is to plan for it and design your ECM environment in a way that it supports eDiscovery, linking content repositories and line-of-business systems with eDiscovery platforms to shorten the eDiscovery cycle, improve consistency and accuracy, and decrease the overall processing time.

In this paper we present the various elements related to litigation discovery and preservation, supplemented with AIIM Research data, taking the reader on a journey depicting the importance and benefits of using the cloud.

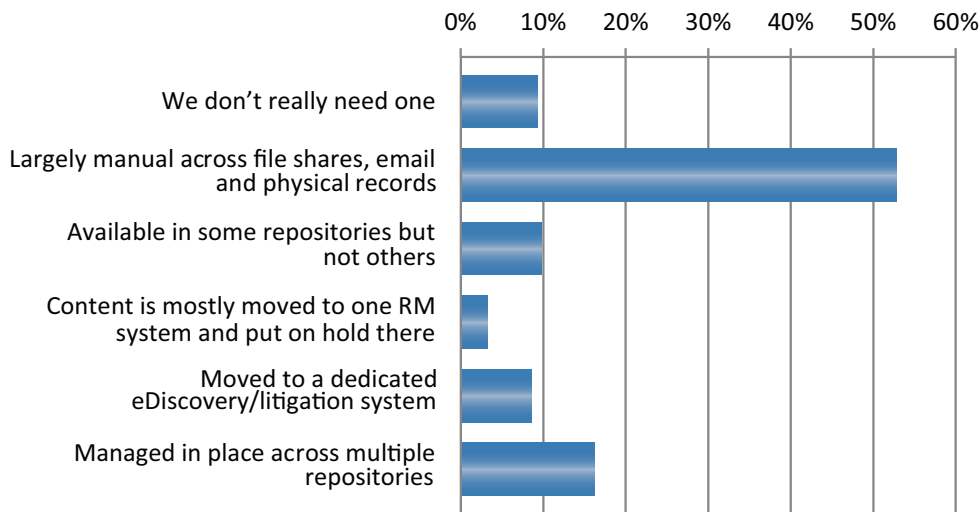
The Challenge of Legal/Litigation Hold

Imagine that your organization has been notified of pending litigation and legal counsel has issued a notification of legal or litigation hold of all content related to the case. How much effort will be required to locate, identify, and preserve all of the requested information? Is your process automated or reliant upon the human factor to follow eDiscovery instructions? Do they know where to look and to look everywhere?

Disconnected repositories for different content types such as email, create their own problems when it comes to implementing legal discovery processes to find requested information. This issue is extended beyond search in the application of legal or litigation holds, to ensure compliance with the hold order and prevent discoverable content being deleted, even when it has reached the legitimate the end-of-retention period process.

AIIM Research finds that 53% of our respondents are reliant on ad hoc manual processes for searching and applying legal hold. 9% are able to move content to a dedicated e-discovery or litigation system, and 16% are able to use manage-in-place methods across multiple repositories (Figure 1). Of course, this is all based on actually having defined and communicated discovery processes in place.

Figure 1. How effective is your legal hold mechanism?¹



In many organizations, there may be an official process but having the process alone is not enough, you must ensure that the process is being followed and information is not being inadvertently destroyed.

So the question here is how do you as an information professional, and your organization prepare for eDiscovery? To begin, there are four basic steps you can take to put your organization in a more defensible position in support of eDiscovery.

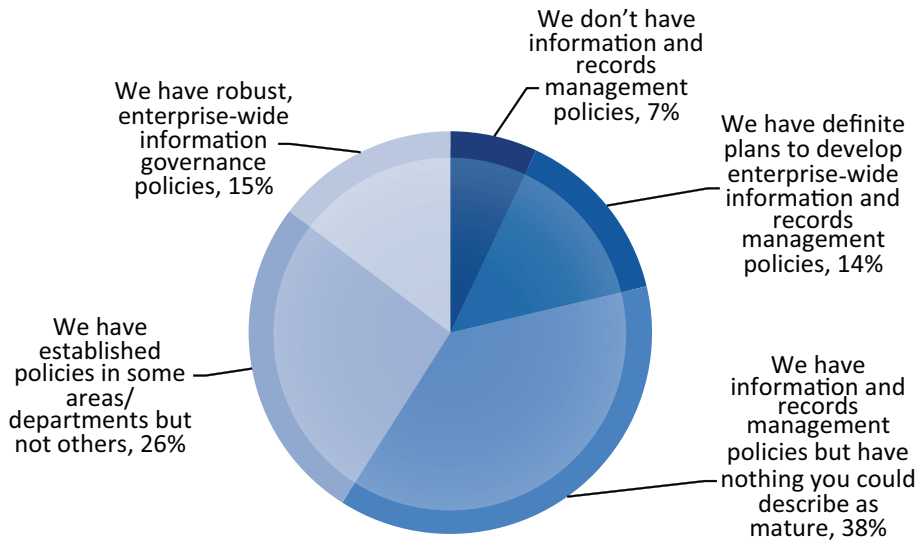
Governance Matters

While technology could be brought into question as part of litigation, it is inevitably the way technology is used, the supporting processes around technology use, and information management practices that have the greatest impact in determining litigation outcomes. This is where the information professional plays an important role to ensure efficient, consistent, and accurate information collection is achieved and preserved in times of litigation and eDiscovery. The importance of what to keep, where to keep it, how it is managed, how long it is retained, and how it is disposed of, are all areas of concern and defensibility. Here, consistent practices can mean the difference between a win and a loss, which in some countries could translate to prison terms for improper information management practices.

This requires corporations to invest in information governance (IG) and appropriate use policies surrounding various technologies that include mobile devices, cloud services, and even social media. There must be policies and procedures addressing the information lifecycle from creation through disposition with a solid understanding of the information landscape. There must be definition given to effectively identify information of a business value. This is an area of focus and certainly an opportunity for improvement for many organizations.

AIIM Research finds that only 15% of respondents feel they have robust enterprise-wide IG policies in place. Twenty-eight percent indicate they have departmental or geographic variations to their policies and 38% feel they are still some distance from a comfortable level of IG maturity. While it may seem unusual in today's business world, 21% indicate they have no records management policies in place at all, which includes 12% of the largest organizations (Figure 2).

Figure 2. How mature are your information governance and records management policies?



From a technology perspective, usage policies must be developed and employees educated on the appropriate use of corporate and for employee-owned devices and applications. Information governance policies help organizations prepare for and meet the demands of litigation and regulatory compliance, and for meeting preservation obligations. Intelligent information governance focuses on the whole of the organization, is coupled with intelligent preservation practices including people, process, and technology ensuring corporations have clear view of where information resides, how it is used, lifecycle requirements, and can avoid inadvertent spoliation.

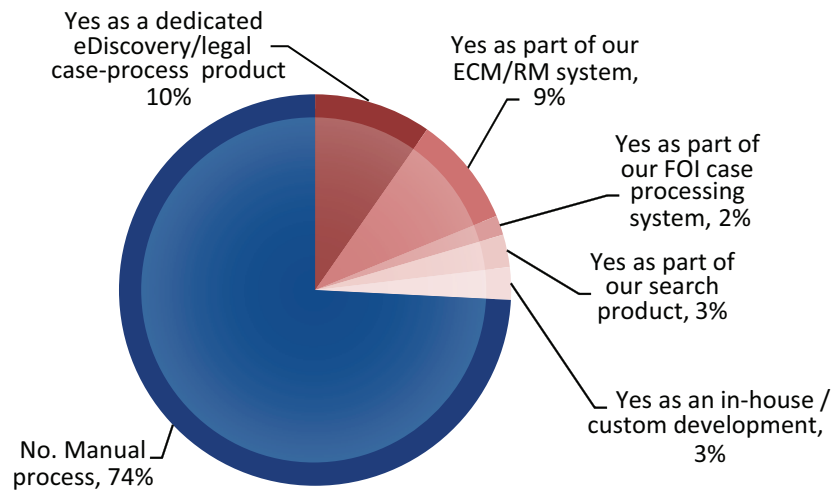
The Proof is in the Process

Defensible and intelligent preservation processes are key in preparing a defensible position. Corporations must be able to demonstrate consistency, efficiency, and accuracy in ways that establish a position of “good faith” in their preservation efforts. In terms of how ECM can support this, capturing content at the first touch-point, and bringing it under corporate control and governance is key. Taking it to the next level is to automate the classification process as part of capture to ensure consistency and accuracy.

The legal discovery process goes beyond mere search and hold. An essential part of the discovery process requires distillation of the collected materials and review processes to identify and select only those materials deemed relevant to the request and case. This is the province of dedicated e-discovery products. While some ECM/RM systems offer specific modules to address this type of workflow, 74% of organizations rely on a manual process to manage discovery (Figure 3).

This indicates a need and opportunity for the design, development, implementation and continuous improvement of the ECM environment combined with intelligent preservation processes positions an organization as more repeatable, demonstrable, and defensible.

Figure 3. Do you have an e-discovery or litigation module or product to manage the downstream process?²



Developing a process of intelligent preservation takes into consideration, three important components. These are:

- Develop a preservation strategy and plan to ensure a consistent approach to information preservation that defines and specifies the preservation process trigger. The strategy and plan must also address the definition and user education in relation to the term and scope of a hold, the method of communication and tools of notification of the need for preservation, and the procedure of releasing the hold.
- Ensuring process integrity is essential in addressing challenges of consistency, completeness, and accuracy. Organizational monitoring and the use of audit trails enable response tracking, adherence to preservation requirements, and reminder notifications that the organization is still in a hold mode, ensuring that there are no occurrences of inadvertent spoliation and that the preservation process is defensible.
- Corporate culture plays an important part of ensuring the organization remains aware of the need and importance of each role, in relation to litigation preservation. This requires an investment in regular training in the governance and processes, building “culture of compliance.” The corporate mind set must be one of awareness that eDiscovery and preservation are an essential operational aspect of the business and that each person will be trained and expected to maintain certain levels of activity in support of preservation efforts. The goal being of ensuring employee buy-in and developing an eDiscovery and preservation team mentality.

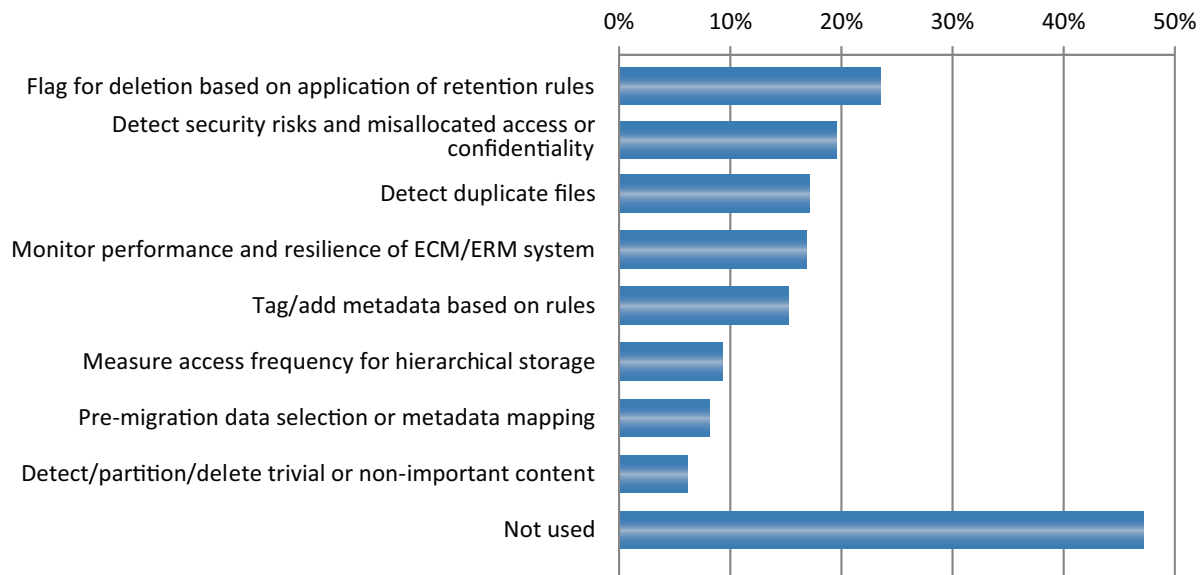
Positioning to Negotiate

While the opposing parties in litigation might appear to be warring factions, the reality is that negotiation and compromise are vital for both parties. The ability to negotiate a reasonable scope of discovery helps lower costs, and mitigates risk. Presentment of a solid and defensible preservation plan demonstrating good faith support and enhance a position of strength in the negotiation phase.

When opposing parties cooperate, and demonstrate they are meeting their duty to preserve, the result can be greater flexibility in what, how, and when ESI is collected and presented. In these cases, the court will have confidence the information is broadly preserved, will likely allow limited collection efforts to proceed and expand if further discovery is necessary. As a result, the costs are lowered, effort decreased, and strain in the organization is minimized.

This is where a solid ECM environment, designed with support for eDiscovery provides great benefit. Many organizations find that the bulk of information stored within their repositories is ROT (Redundant, Outdated, and Trivial) information. The more ROT in an organization, the greater the effort to find, sort, and select the requested information, which includes metadata. The goal here for ECM, is to decrease ROT to sort through resulting in more efficient information management practices, established processes with assigned roles and responsibilities, and auditability to prove information and process integrity. AIIM Research finds that organizations are turning to automation as a way to eliminate ROT, and correct metadata (Figure 4).

Figure 4. Do you use automated or batch agents to perform any of the following functions?³



ROT removal can recover considerable amounts of storage space, which in itself speeds up and improves search. Accurate and consistent content type-classification and correctly set metadata are essential in determining and managing retention periods for content and records, provided there are policies in place. If sensitive content is detected, it can be tagged for a higher access level and even encrypted or redacted for enhanced security.

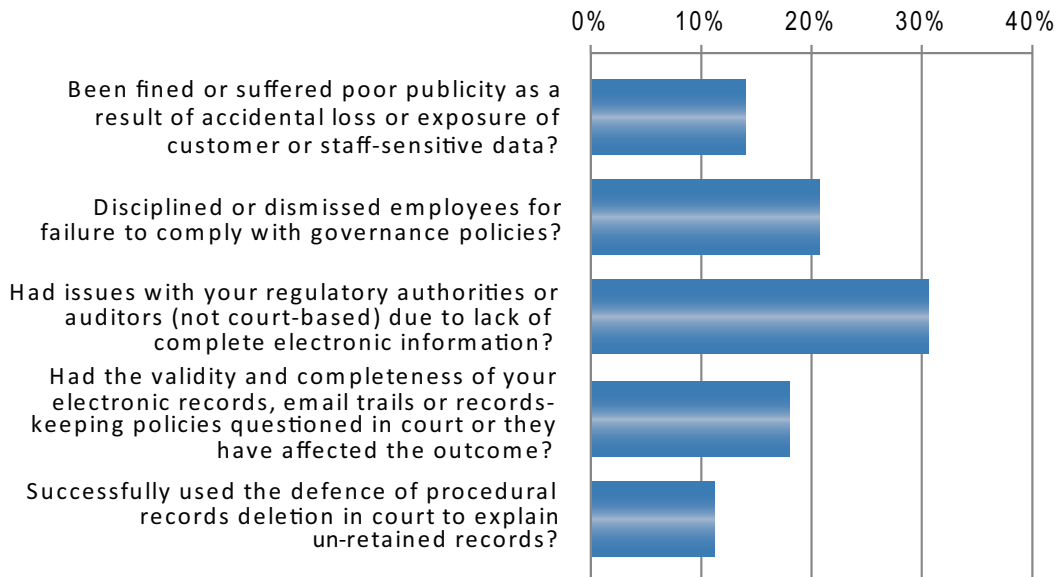
More is not Always Better

Intelligent eDiscovery and preservation focuses on collecting and producing only the information that is needed, at the time it is needed. The eDiscovery and preservation process should be focused, targeting specifically defined information sets and nothing more. Corporations should sharpen their focus and eDiscovery efforts, saving the “preserve everything” tactic for ESI that is truly at risk of spoliation.

A targeted focus on a smaller subset of the total corpus of information is a more effective approach, unless there is suspicion of spoliation of information that could be involved. Working as a cross functional team comprised of the legal team, subject matter experts, and employees with knowledge of the situation and information, sharpen the search and collection effort to only the most logical places, custodians and information types. This focus turns attention on the merits of the case, addressing potential disputes more quickly while reducing litigation costs.

The importance of protecting information and not presenting more than required is also represented in the need for maintained compliance with regulatory, and industry guidelines. AIIM Research finds there can be additional consequences if too much information is disclosed as shown in Figure 5. For 31% there were issues due to a lack of completeness in the information and for 21% disciplinary actions were taken against employees for a lack of compliance with governance policies. 14% cite that they were fined or suffered poor publicity due to accidental loss or exposure of sensitive data. 14% cite that they were fined or suffered poor publicity due to accidental loss or exposure of sensitive data.

Figure 5. In the past 3 years, has your organization ¹:



Conclusion and Recommendations

Many organizations lack focus and do not understand the benefit and advantage they gain through optimization of their information management practices in relation to litigation support. In many cases, you will find at minimum, duplicate files – or even up to hundreds of files with the same titles – residing in the vast silos of storage strewn about the enterprise. These not only cost you in the area of systems administration, they also put you at risk and increase your eDiscovery costs when required to find and present information related to an audit or litigation. Someone has to sift through the mountain of content to determine relevance, produce it and present it to the courts or auditors.

Get control over your content, identify what information has business value and manage it properly. Information that is redundant, out of date, or trivial – referred to as ROT – should be removed from your repositories. Leverage technology to support your content management practices in ways that enable you to find the information you need, when you need it and position your organization to be defensible when it comes time to face the Judge. Discovery, data collection and preservation technologies and cloud use, optimize operations and collaborative efforts related to legal or litigation hold.

Organizations with a detailed preservation plan can minimize cost through efficiency, while mitigating risk with a timely and reasonable response to a preservation duty.

As an IM professional or business leader, you should consider the following:

- Document key processes and related content to identify content types, chain of custody, ownership, and locations
- Evaluate current technologies that support both the ECM environment and eDiscovery processes to improve search, find, and preservation of key information collections
- Assess the needs and requirements to fully support litigation efforts by forming a cross functional team that includes legal counsel, business managers, and front-line employees
- Include the user community early in the project to solicit their feedback on policies, processes, and technologies to gain early adoption
- Make this a practice rather than a project and establish an on-going assessment for continuous improvement by periodically reviewing, soliciting feedback, and implementing new ways of addressing eDiscovery

References:

- 1 AIIM Industry Watch titled “Automating Information Governance – assuring compliance”
- 2 AIIM Industry Watch titled “Search and Discovery – exploiting knowledge, minimizing risk”
- 3 AIIM Industry Watch titled “Information Governance – records, risks, and retention in the litigation age”

Note: AIIM Industry Watch reports can be found at www.aiim.org/research

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About Zapproved Inc.

Founded in 2008 in Portland, Ore., Zapproved Inc. is a pioneer in developing cloud-hosted software for corporate legal departments. The Z-Discovery Platform returns power to in-house corporate legal teams and helps them navigate electronic discovery with minimal risk and cost, and it sets new standards for scalability and intuitive design. The company's flagship product, Legal Hold Pro, is widely adopted by Fortune 500 and Global 2000 corporations and has earned recognition in the 2014 and 2015 Best of the National Law Journal and the 2013 and 2014 Best of Legal Times. Zapproved was recognized in the 2014 Inc. 500 as one of the fastest growing private companies in the U.S. and was named as a "vendor to watch" in the 2015 Gartner Magic Quadrant for E-Discovery.

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