KEY STRATEGIES TO IMPROVE THE PERFORMANCE OF E-DISCOVERY TEAMS

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More than 80% of organizations have adopted eDiscovery tools to help with legal matters. However, they have just adopted the technology basics for identifying and classifying documents and communications by hand. Companies need to look at advanced technologies for classifying documents if they want to improve their productivity and reduce costs.

Astoundingly, less than a third of organizations have purchased software to help with the legal hold process.

Whether facing a legal matter, or trying to better understand the impact of business change on existing contracts, organizations still struggle with how to get the most from their eDiscovery technology. Based on results from Aberdeen's research, the time and cost of eDiscovery processes continue to be issues for organizations. Furthermore, organizations have largely not yet adopted the latest eDiscovery technology. To help reduce costs and time spent in the discovery process, we recommend that organizations begin adopting the following technologies:

▶ Technology-assisted review

▶ Legal hold management solutions

▶ Use of direct connectors to applications

Adopting these technologies will help groups drive down costs, be less reliant on IT for assistance, and enable them to be more consistent in marking documents and communication for further review.

When examining the business pressures organizations face, the most common issues relate to manual processes. Organizations cite time and costs as the two biggest pressures they face (Figure 1, next page). This indicates organizations rely too heavily on people, resulting in the process taking too long, which increases costs.

Furthermore, relying heavily on people introduces the potential for inconsistency in the approach to tagging documents for further review. Not only does involving people directly increase costs because of hiring outside staff, but they also contribute to consistency problems, increasing

work for others. For legal matters that require reviewing large numbers of email, instant messages, and documents, this will be especially true. The people hired will likely not be as familiar with a given organization's or industry's vernacular, which can result in inconsistently flagging documents for further review. Flagging too many documents hampers productivity; flagging too few increases risk.

> Organizations are 50% more likely to have an on-premises eDiscovery solution than a cloud-based one.

Figure 1: Top Business Pressures Related to eDiscovery
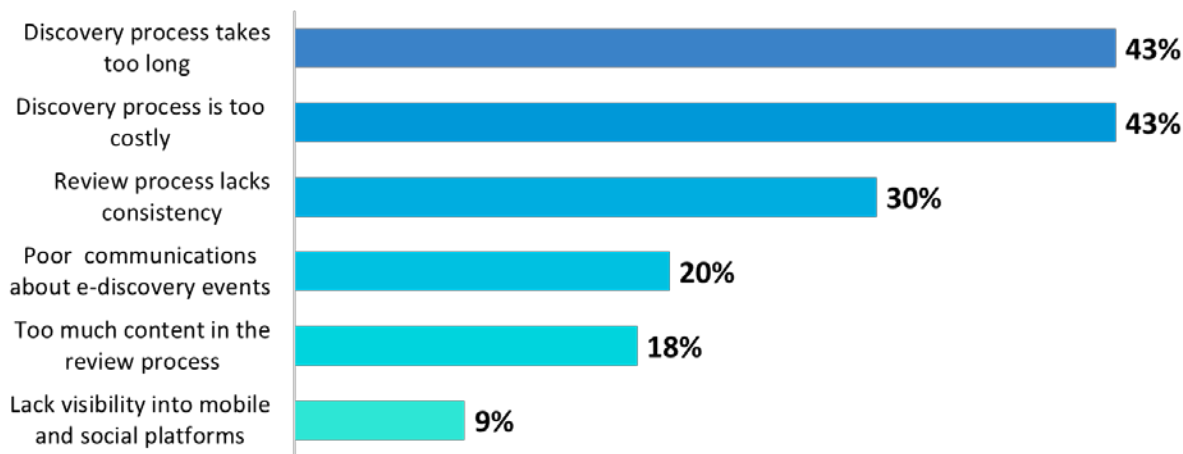
% of Respondents n = 56, Source: Aberdeen August 2017

In terms of technology adoption, 82% of companies surveyed use an eDiscovery solution. Organizations are 50% more likely to use an on-premises solution than a cloud-based one (see Figure 2, next page). Document preparation tools, which include capabilities such as Bates numbering, redaction, and tagging, also have strong adoption. They closely serve the discovery process, enabling organizations to organize documents and communications associated with legal matters, so it isn't surprising there is a strong correlation between the adoption of these capabilities and a core eDiscovery solution.
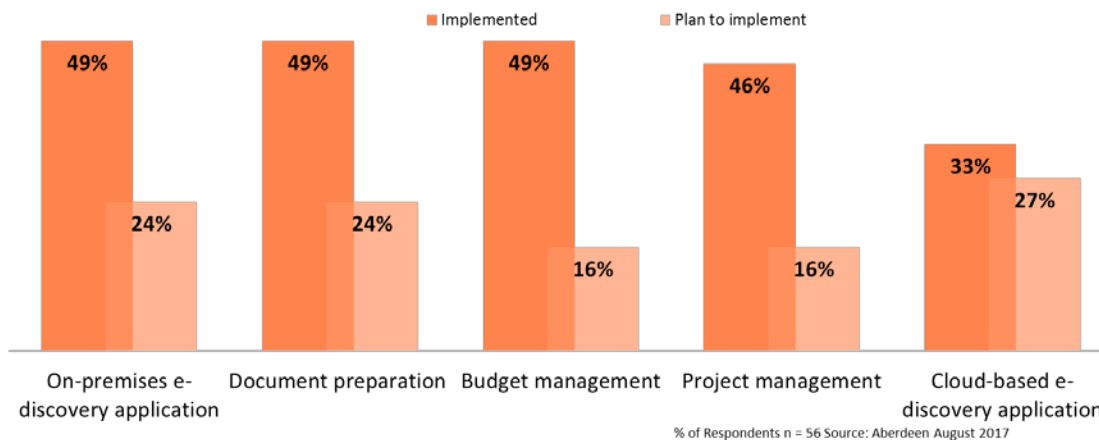
While companies have embraced ancillary functions, such as budget and project management, they have not yet begun to embrace capabilities that will speed the discovery and review process.

Interestingly, companies are not planning a dramatic migration to the cloud. Companies are planning to implement both on-premises and cloud-based eDiscovery applications in roughly equal numbers. While cloud-based solutions simplify involving outside counsel and contractors in the eDiscovery process, companies likely have and will continue to take a conservative approach because of data sensitivity concerns.

Organizations have adopted budget and project management tools to help manage the costs and timeline of their eDiscovery events. While they are not core to the task of finding and classifying discoverable documents and communications, these capabilities do ensure that legal departments and outside counsel make key deadlines related to their legal cases and have a handle on how much the review and classification of documents and communications costs. Organizations that leverage these tools will have a better handle on how far along in the discovery process they are, how much it is costing, and when it will be completed.

Figure 2: Core eDiscovery Capabilities in Use

82% of organizations currently use eDiscovery technology, but they have not yet began migrating to the Cloud and likely will not soon. While 33% of organizations have implemented a cloud-based solution, organizations plan to implement on-premises and cloud-based technologies in nearly equal numbers — 24% and 27%, respectively.

Implemented   Plan to implement

	Implemented	Plan to implement
On-premises e-discovery application	49%	24%
Document preparation	49%	24%
Budget management	49%	16%
Project management	46%	16%
Cloud-based e-discovery application	33%	27%

% of Respondents n = 56 Source: Aberdeen August 2017

However, companies have not yet begun to embrace more advanced technologies that help automate many eDiscovery tasks; just 29% of organizations have adopted technology-assisted review. This technology allows organizations to train and then optimize an algorithm that will allow the eDiscovery application to identify relevant documents on its own. The continuous learning comes from subject matter experts reviewing and reclassifying documents over time to tune the algorithm.

The same holds true for legal hold management — just 29% of organizations have software tools to notify employees of legal hold and to

prevent the loss of data that should be subject to eDiscovery. While many organizations have strict archival processes, legal hold management tools help organizations prevent spoliation of evidence — meaning the withholding, alteration, or destruction of evidence related to a legal proceeding. This includes situations where the spoliation of evidence is done either purposefully or accidentally.
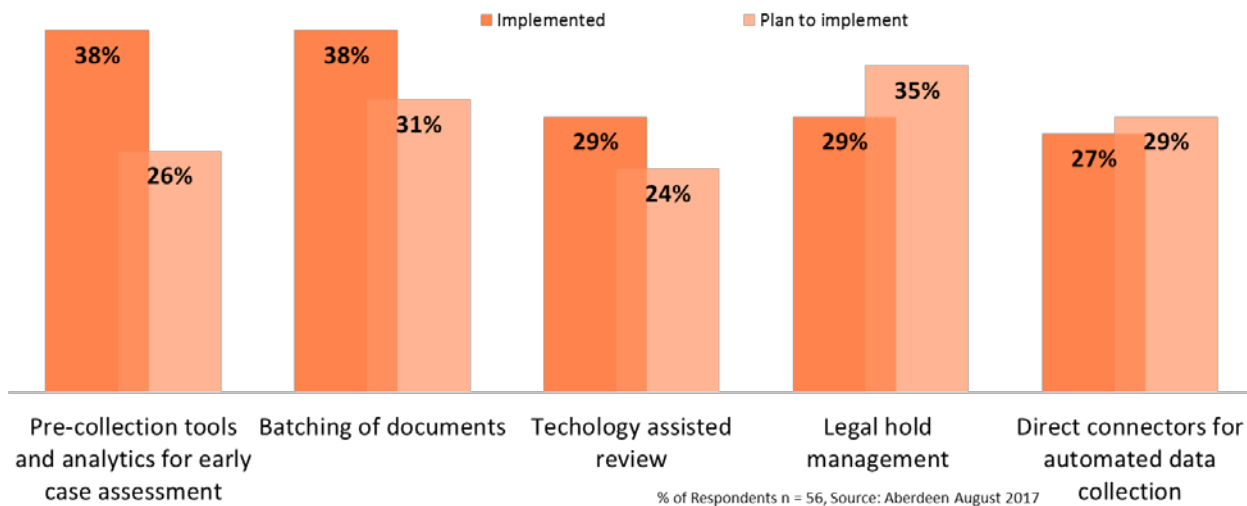
Since spoliation of evidence can result in fines or criminal prosecution, companies need processes that ensure information is preserved and that routine tasks that could destroy information (i.e., overwriting tape backup or reissuing a laptop to a new employee) do not happen.

Finally, only 27% of companies employ direct connectors to key systems to automate the collection of data, such as content management applications and communications systems. Direct connectors can help speed up the collection of relevant data — a crucial early step in the discovery process. Direct connectors allow the legal team to directly search for and access data, rather than relying on IT staff to export data from relevant systems and then import it into the eDiscovery platform. This provides two benefits: it allows the legal team to adjust the scope of their discovery efforts on the fly, and reduces the risk that miscommunications in a data request could result in the inadvertent failure to provide a complete data set.

Organizations tend to be less dependent on IT in areas that have strong relationships with the legal organization. For example, the contracts database is the area where organizations are least likely to always need help from the IT organization to access data. In fact, they are 52% less likely to be completely dependent on IT, versus requiring only occasional help from IT to access relevant data. In the case of human resources data, legal staff are 40% less likely to be completely dependent on IT when it comes to accessing relevant data.

> 47% of organizations use their eDiscovery platform for proactive legal review, even when not subject to litigation or a legal matter.

Figure 3: eDiscovery Technologies with Low Adoption Levels

Implemented / **Plan to implement**

- Pre-collection tools and analytics for early case assessment: 38%, 26%
- Batching of documents: 38%, 31%
- Techology assisted review: 29%, 24%
- Legal hold management: 29%, 35%
- Direct connectors for automated data collection: 27%, 29%

% of Respondents n = 56, Source: Aberdeen August 2017

In addition, having these connectors give legal teams greater freedom to be proactive in researching the impact of business change for organizations — 47% of organizations use their eDiscovery platform for proactive legal review, even when not subject to litigation or a legal matter.

Interestingly, eDiscovery technology is something that organizations would prefer not to use, because the primary use case is in response to legal action. But rather than hoping never to use the software, organizations can instead use it proactively to assess how changing terms and conditions in contracts with customers and suppliers will impact the business. Ideally, this will enable an organization to assess how changing pricing or payment terms will impact business metrics — such as which customers will end up paying less due to a price decrease, or how much the number of days sales outstanding will change as a result.

Organizations depend most heavily on IT assistance in four areas outside the usual purview of the chief legal officer:

▶ End-user email

▶ Instant messaging and group messaging

▶ Mobile device information

▶ Line-of-business applications

Figure 4: Accessing eDiscovery Information Generally Requires IT Assistance

Applications Requiring IT Assistance

% of Respondents n = 56, Source: Aberdeen August 2017
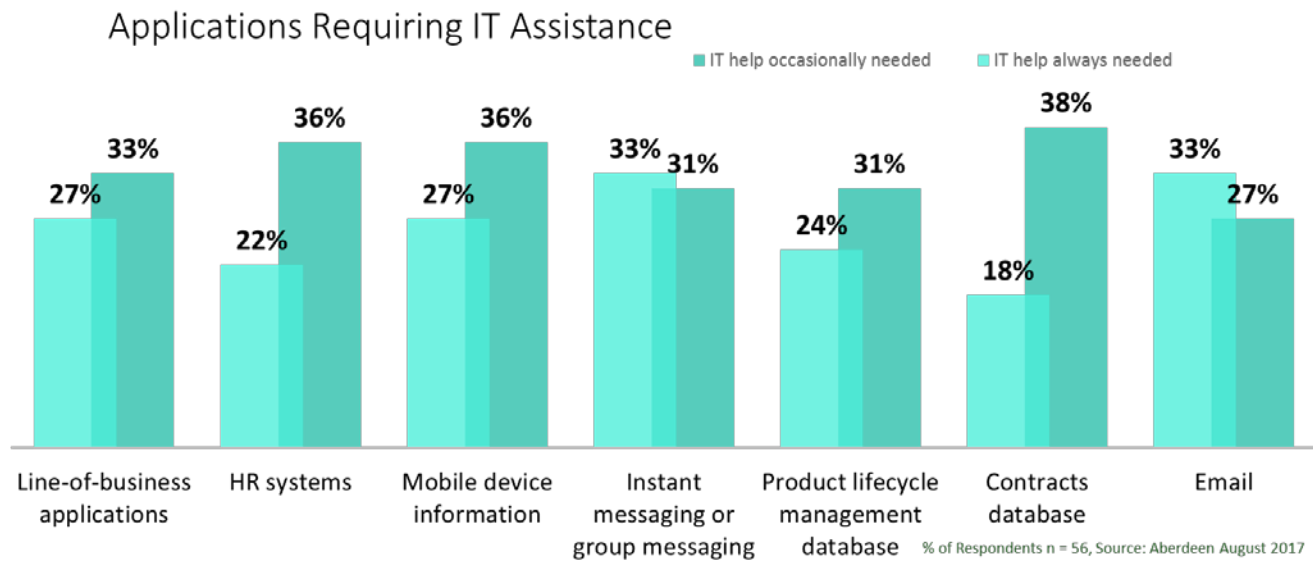
While it isn't surprising that organizations need help from IT to collect data in these areas, the fact that organizations are more likely to always need help from IT to collect email and instant messaging information is problematic. This is where most of the relevant information will likely reside when a legal matter comes up. While legal teams have slightly better access to information in product lifecycle management applications than communications applications, having this access is critical for managing liability associated with product safety and product recalls. However, organizations shouldn't neglect other key line of business systems. In particular, organizations should look at providing access to both sales automation and customer service applications, since they also encompass key communications processes and customer-facing documentation.

We recommend organizations currently assessing eDiscovery solutions take the follow steps:

▶ Evaluate technology-assisted review technology. There are a few different technology-assisted review methods, including active and passive learning and predictive coding, that can help

organizations speed up the classification of documents and communications.

▶ Assess legal hold management solutions. Legal hold management is critical to ensuring the preservation of key information. Organizations should be evaluating and implementing legal hold management capabilities as part of their eDiscovery initiatives. It helps mitigate risk associated with legal matters.

▶ Integrate eDiscovery software with critical applications. Legal teams often must rely on the IT organization to get datasets for review. By integrating directly with core applications that encompass customer communications, product information as well as contracts, companies can reduce the time taken to initiate the discovery process, as well as reduce the risk that data batch loaded into the eDiscovery system is incomplete.

▶ Use eDiscovery software for initiatives not related to litigation and legal matters: it can help organizations explore the particulars of business relationships with customers and partners that will allow them to understand the impact of business change. By reviewing documents in contracts databases and other systems, legal teams can assist the company and understand the impact of changing terms and conditions and pricing on business relationships.

▶ Evaluate cloud or hybrid solutions to simplify onboarding. Companies primarily use on-premises eDiscovery solutions. By evaluating cloud and hybrid solutions, they gain the flexibility to provide secure access for outside counsel and contractors that help with the legal review process.

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