2017 LEGAL HOLD AND DATA PRESERVATION BENCHMARK REPORT

Insights and analysis on the trends in corporate e-discovery

Edited by Brad Harris
July 2017

ZAPPROVED®

Legal Hold **Pro**®   Data Collect **Pro**®   Digital Discovery **Pro**®

Zapproved conducts surveys to better understand how in-house legal hold and data preservation processes are evolving. Thought leaders apply these insights to solve e-discovery needs of the future.

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FOREWORD

We are proud to present our fourth annual *Legal Hold and Data Preservation Benchmark Report*. The 2017 findings paint a compelling portrait that corporate legal hold and data preservation processes continue to mature at an accelerating rate.

Legal discovery has changed immensely since the groundbreaking *Zubulake v. UBS Warburg* decision less than 15 years ago. Since then, corporate legal teams have evolved beyond merely meeting the Federal Rules of Civil Procedure to leveraging technology to holistically solve in-house e-discovery challenges in a way that delivers bigger and better rewards.

Strong evidence of this shift to a more proactive process follows in these pages. The *2017 Legal Hold and Data Preservation Benchmark Report* represents feedback from corporate legal professionals. Using updated methodology and a more targeted sample than past surveys, we were able to capture more in-depth analysis of process preference, satisfaction and confidence. Companies range from multibillion dollar corporations to small startups, but the trend is clear: in-house automation is on the rise and organizations are reaping the benefits.

It is our pleasure to conduct this research, with the help of Audience Audit, and share these findings with you. This report is just the first in a two-part series. Please look for part two later this year covering the attitudes and trends most relevant to the state and future of e-discovery. I invite you to explore the insights as inspiration for your next step in building greater e-discovery success.
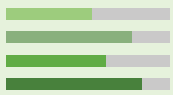
All the best,

Brad Harris
Vice President of Product Strategy at Zapproved

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About Brad Harris

Brad has more than 30 years' experience in the high technology and enterprise software sectors, including assisting Fortune 1000 companies enhance their e-discovery preparedness through technology and process improvement. Brad is a frequent author and speaker on data preservation and e-discovery issues. He has published articles in *National Law Journal*, *Corporate Counsel*, *Metropolitan Corporate Counsel* and *Information Management* and presented at leading industry events, such as LegalTech New York.

Data preservation takes a leap forward with 57 percent now using automation and 93 percent handling part of collections

The 2017 report reveals compelling trends that more in-house corporate legal teams are automating legal hold and data preservation processes. These findings uncover a growing movement to mature processes and bring e-discovery in-house.

KEY INSIGHT

Automated users are significantly more confident in the defensibility of legal hold processes compared to manual users. This trend aligns with the leap in automation and the steady rise of Power Preservers. As the value of automation continues to gain traction, we expect this trend to accelerate.
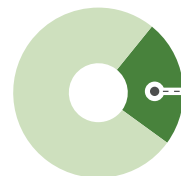
KEY PRESERVATION INDICATORS
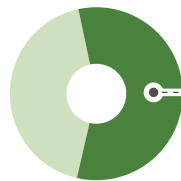
57% AUTOMATE LEGAL HOLDS

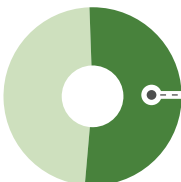More than **11% leap from 46% in 2016**, and consistent year over year growth.
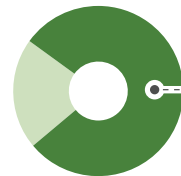
79% OF AUTOMATED USERS HAVE CONFIDENCE IN THEIR PROCESS

Compared to **58%** confidence for manual users.

24% ARE 'POWER PRESERVERS' (6+ LEGAL HOLDS/ MONTH)

**Up 3% since 2016**, and more than 60% overall increase since 2013.

52% TRAIN EMPLOYEES ON LEGAL HOLDS

Drop from 69% in 2016, suggesting increased automated legal hold volume may be impacting training priorities.

33% HAVE HAD TO DEFEND THEIR PROCESS

Overall **trend increase from 22% in 2013**. Suggests that as more litigants understand preservation best practices they are more likely to challenge processes that fail to meet them.
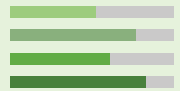
Collections reflect the trend of migrating e-discovery in-house

Automation with trusted software enables teams to create more defensible processes, lower risk, improve workflow efficiency, manage greater volume and more confidently integrate every step of the e-discovery process from preservation and collections to processing and review.
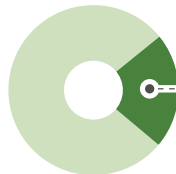
KEY INSIGHT

With automation on the rise, more legal teams are bringing collections into legal hold workflows. Automation processes make it easier for teams to manage matters in-house and to track matters that must be outsourced.
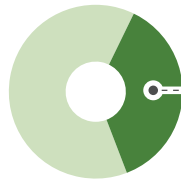
KEY COLLECTIONS INDICATORS
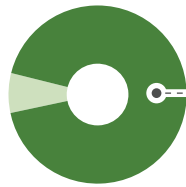
93% MANAGE ALL OR PART OF COLLECTIONS IN-HOUSE
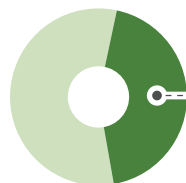
Huge increase from **56% in 2016**.

22% USE OUTSIDE COLLECTIONS EXPERTS

37% COLLECT DATA IN CONJUNCTION WITH LEGAL HOLDS, COMPARED TO 42% IN 2015

Suggests a growing reliance on preserving in place and more effective legal hold practices.
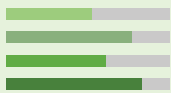
44% RELY ON CUSTODIANS FOR SELF COLLECTION

Up from **37% in 2016.**

METHODOLOGY

Zapproved worked with an independent research organization, Audience Audit, to develop a custom online survey. The survey was fielded in May of 2017, with invitations sent to e-discovery professionals across the United States.

Our survey approach varied from past years by focusing on two areas: legal hold and data preservation processes as well as attitudes of these e-discovery professionals. Participants remained anonymous, and were qualified based on their involvement in the legal hold process; most work in a company legal department.
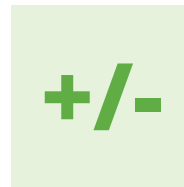
The 2017 benchmark report illustrates the results of the legal hold and data preservation section of the survey. Later this year, we'll release a report that details the attitudes of three primary types of e-discovery professionals and the influence they are having on the future of our industry.

SURVEY LOGISTICS
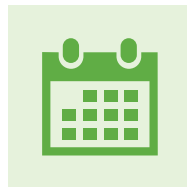
Timeframe
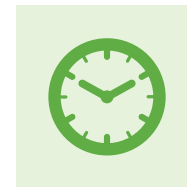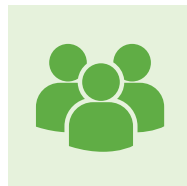May, 2017

Margin of error
+/- 9 %

Minutes to complete
about 15

Sample
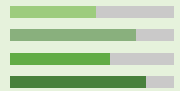Corporate legal professionals (81 percent non-Zapproved customers)

Number of questions
56 (14 benchmark, 34 attitudinal and 8 demographic)

DEMOGRAPHICS

KEY INSIGHT

Hearing primarily from corporate legal staff, rather than a broader mix of legal and other roles, unlocks a deeper understanding of this highly relevant group.

The survey sample included only individuals who are responsible for managing legal hold and data preservation processes. By far, most participants are legal staff at companies representing more than 35 states. Company size varies with most reporting less than two thousand employees and $1 million to $5 billion in revenue.

Participant details

ROLES

75% LEGAL STAFF

Senior and general counsels, vice presidents, legal operations and e-discovery managers, paralegals and litigation support staff
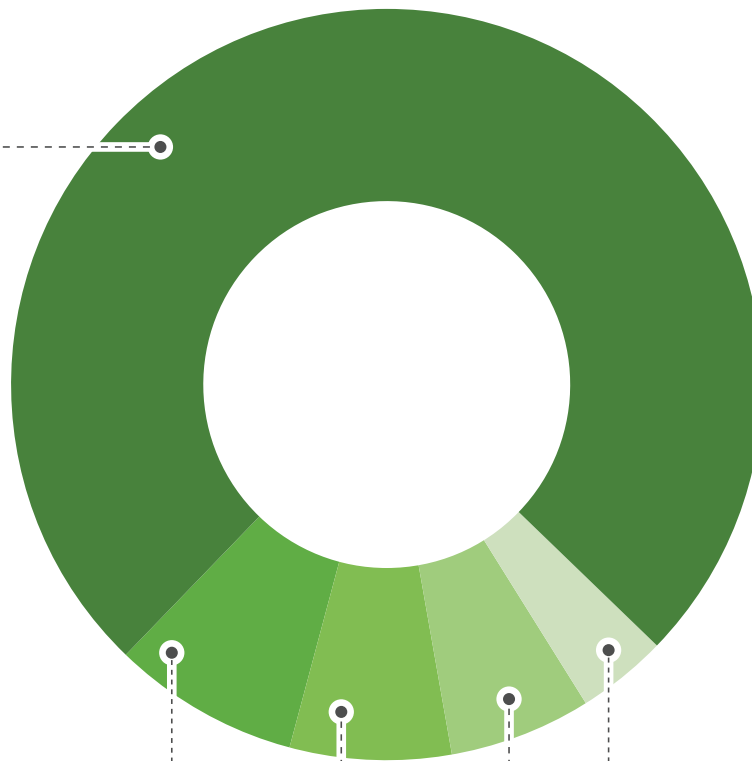
8% OTHER

Human resources managers, procurement specialists, asset managers, project managers and non-legal staff
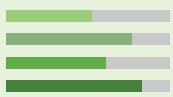
4% COMPLIANCE

Compliance and data analysts, compliance managers and risk management specialists

7% RECORDS MANAGEMENT

Records and contracts administrators, corporate librarians, information governance directors and records managers

6% IT

Legal tech specialists, chief information security officers and technology paralegals
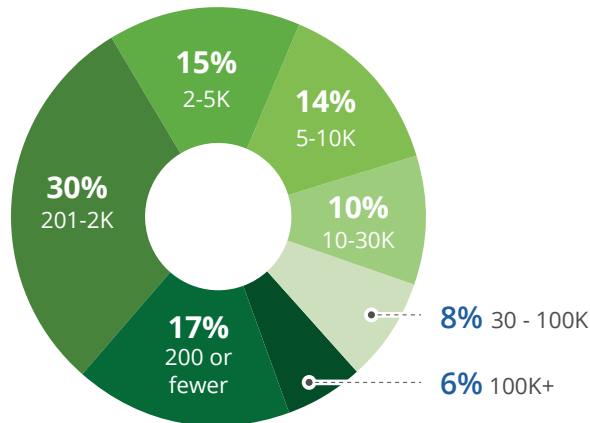
Company information

Participants surveyed represent a cross-section of company sizes. Generally, employee count is proportional to the reported number of attorneys and annual revenue.

NUMBER OF EMPLOYEES

KEY INSIGHT

53 percent of participants work at companies with more than 2,000 employees.

- **15%** 2-5K
- **14%** 5-10K
- **10%** 10-30K
- **8%** 30 - 100K
- **6%** 100K+
- **17%** 200 or fewer
- **30%** 201-2K

NUMBER OF ATTORNEYS

- **38%** 5-50
- **19%** 51-250
- **13%** 250+
- **3%** Not sure
- **27%** 4 or less
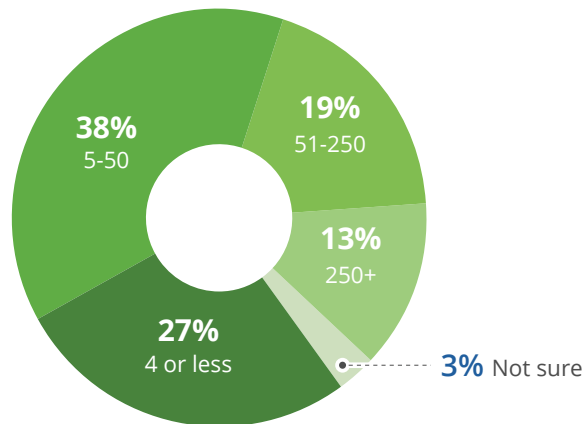
ANNUAL REVENUE

KEY INSIGHT

34 percent of participants are at companies with more than $1 billion in annual revenue.

- **16%** $5 billion or more
- **35%** Not sure
- **18%** $1-$5 billion
- **25%** $1 million - $1 billion
- **7%** $1 million or less

FINDINGS & ANALYSIS

KEY INSIGHT

More organizations are embracing digital tools to take control of legal hold and data preservation.

Legal hold automation has reached a tipping point

The 2017 survey results herald a watershed moment for e-discovery process management. Data reveal a significant leap in automation, with 57 percent of respondents reporting automated solutions, up from 46 percent in 2016.

This evidence strongly suggests that more organizations are embracing digital tools to take control of legal hold and data preservation processes. These teams are maturing out of manual methods in favor of more efficient, secure and intuitive technologies that deliver sustainable value and map to the dynamic needs of a digital economy. In addition, confidence in legal holds by automated users reached 79 percent, a dramatic contrast to the 58 percent confidence reported by manual users.

LEGAL HOLD PROCESS TYPE

37% Manual

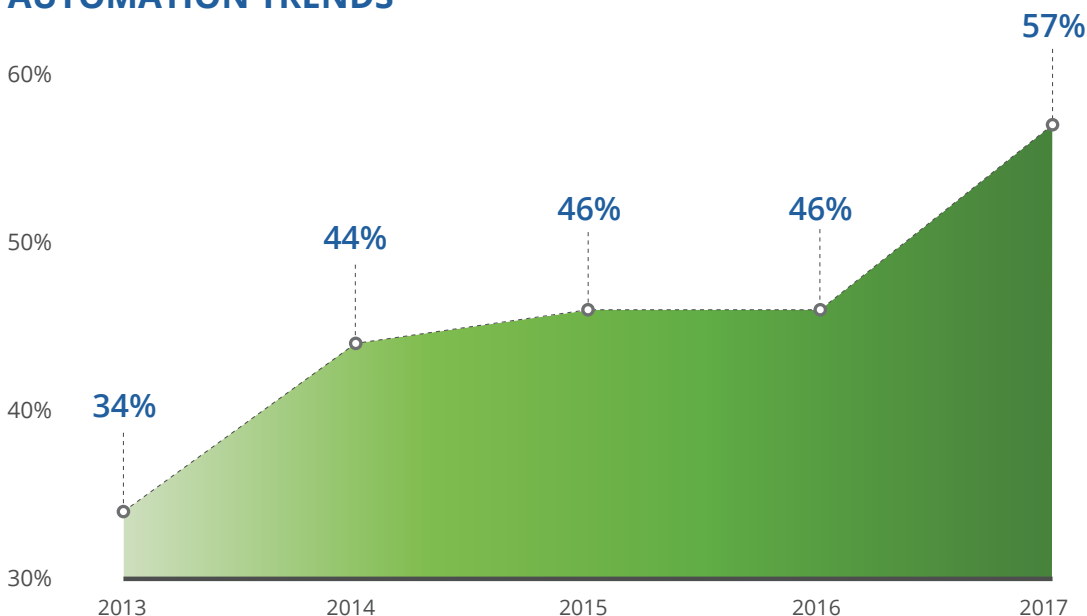**57%** Automated (custom or purchased)
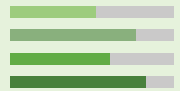
6% No process

1% Other
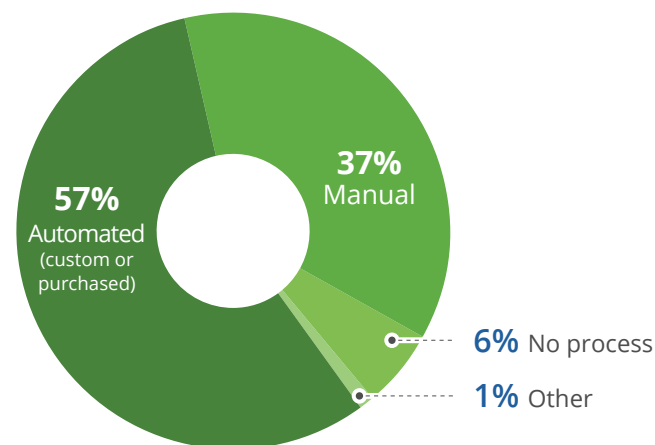
KEY INSIGHT

Year over year, automation adoption continues to accelerate, leaping more than 60 percent overall since 2013.

AUTOMATION TRENDS

Year	Value
2013	34%
2014	44%
2015	46%
2016	46%
2017	57%

LEGAL HOLD PROCESS SATISFACTION

KEY INSIGHT

Automated users have the highest level of satisfaction with their legal hold process.

6% 2% 4% 12% 18% 44% 21% 19% 51% 23%

Least satisfied   Most satisfied

■ Automated ■ Manual
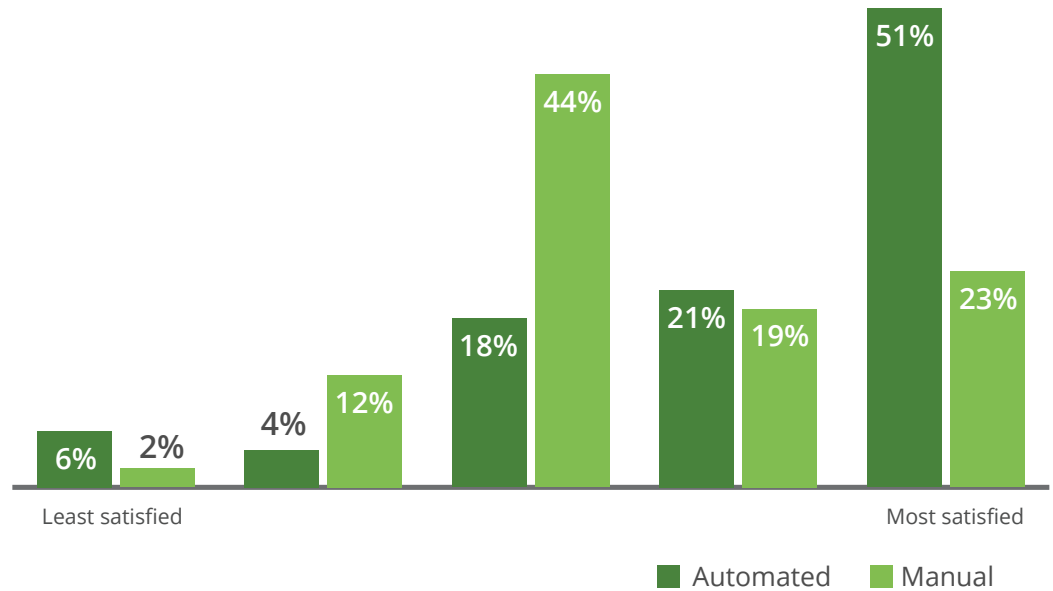
CONFIDENCE IN LEGAL HOLD PROCESS DEFENSIBILITY

KEY INSIGHT

When it comes to defensibility, automated users are 20 percent more confident in their legal hold process.

79% Automated users

58% Manual users

2017 LEGAL HOLD AND DATA PRESERVATION BENCHMARK REPORT
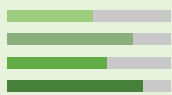
FINDINGS & ANALYSIS
Snapshot of Automation Trends

KEY INSIGHT

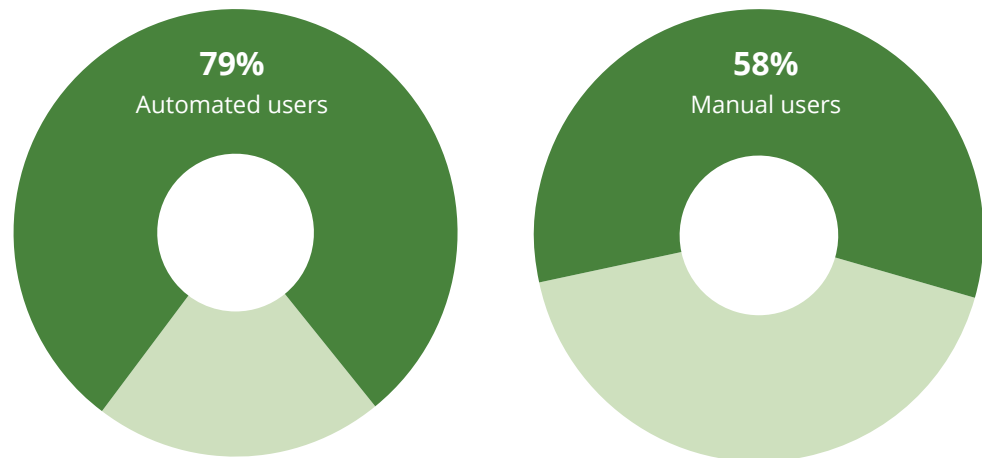This suggests that as more litigants understand preservation best practices, they are more likely to challenge processes that fail to meet them.

LEGAL HOLD PROCESS DEFENSE RATES OVER TIME

How often a team must defend their process during litigation.

KEY INSIGHT

Teams that automate legal holds report better results in meeting best practices standards. This trend suggests that automation empowers teams to more reliably satisfy compliance and workflow demands.
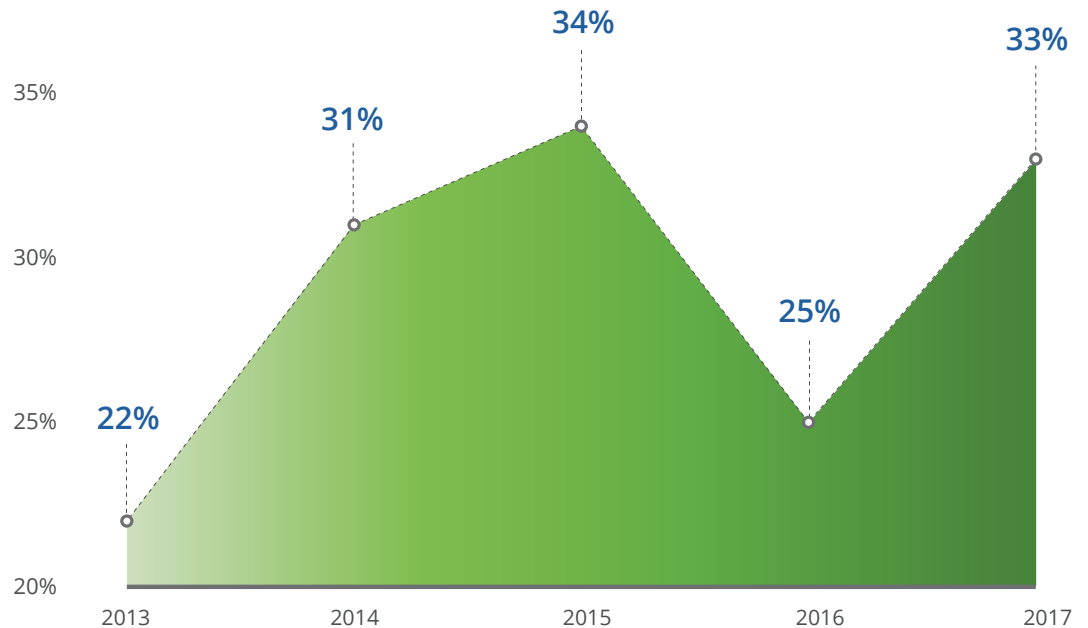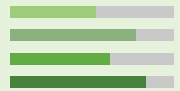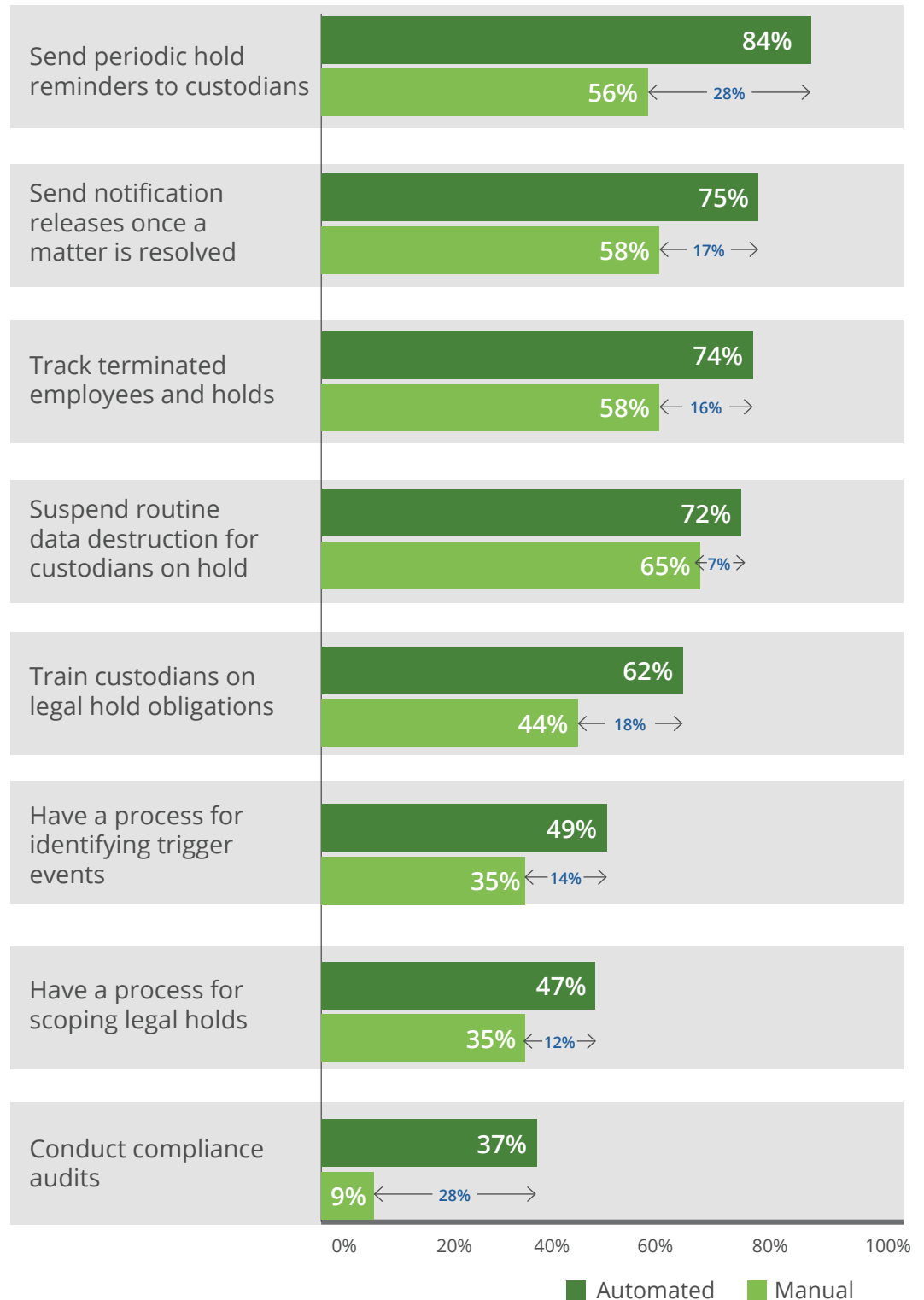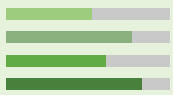
BEST PRACTICES ACHIEVEMENT

In every category surveyed, automated users are significantly more successful in meeting best practices guidelines. Overall, users with automated processes meet the best practices surveyed about 18 percent more often than manual users.

Send periodic hold reminders to custodians
- Automated: 84%
- Manual: 56% ← 28% →

Send notification releases once a matter is resolved
- Automated: 75%
- Manual: 58% ← 17% →

Track terminated employees and holds
- Automated: 74%
- Manual: 58% ← 16% →

Suspend routine data destruction for custodians on hold
- Automated: 72%
- Manual: 65% ←7%→

Train custodians on legal hold obligations
- Automated: 62%
- Manual: 44% ← 18% →

Have a process for identifying trigger events
- Automated: 49%
- Manual: 35% ←14%→

Have a process for scoping legal holds
- Automated: 47%
- Manual: 35% ←12%→

Conduct compliance audits
- Automated: 37%
- Manual: 9% ← 28% →

0% 20% 40% 60% 80% 100%

■ Automated ■ Manual

Power Preservers speak volumes for automation

When it comes to high-volume legal holds, automation is a clear winner. The highest volume users are Power Preservers, at six or more legal holds per month. This group chooses automation 60 percent of the time — and accounts for more than 80 percent of legal holds. The number of these power users is up 3 percent since 2016 and grew overall by more than 60 percent since 2013. In addition, automated users report significantly higher process satisfaction as well as better achievement of all best practices surveyed.
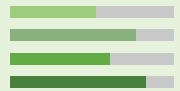
KEY INSIGHT

At six or more holds per month, Power Preservers account for more than 80 percent of all holds.

MONTHLY LEGAL HOLD VOLUME

The number monthly legal holds issued by our sample varied widely. However, almost a quarter of those surveyed said they oversee six or more holds each month, making them Power Preservers.

34%
1-5 holds

24%
6+ holds
(Power Preservers)

34%
Less than 1 hold

8% Not sure
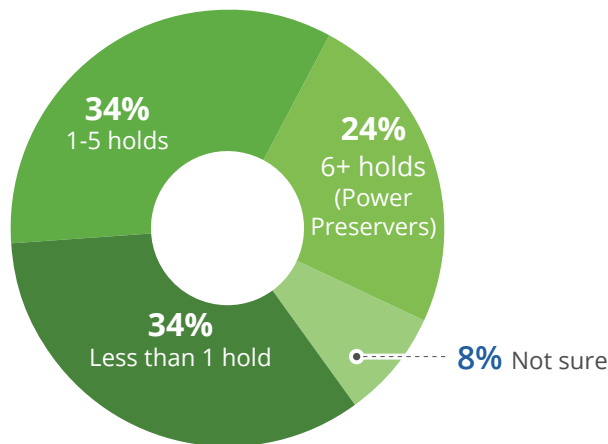
KEY INSIGHT

Power Preservers are accounting for a larger share of the survey sample year over year, indicating an overall increase in legal hold volume.
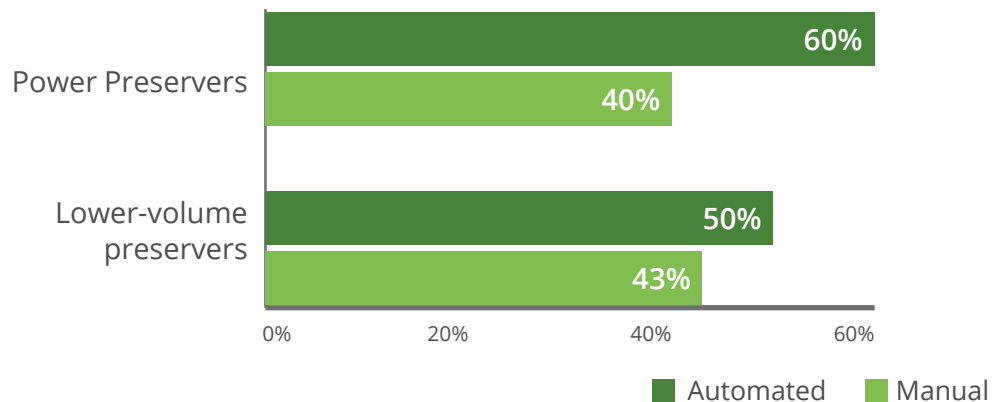
POWER PRESERVER GROWTH OVER TIME

The Power Preserver category has skyrocketed since 2013. This group expanded by 78 percent between 2013 and 2014 and by 14 percent since last year. Total growth since 2013 averages more than 60 percent overall.
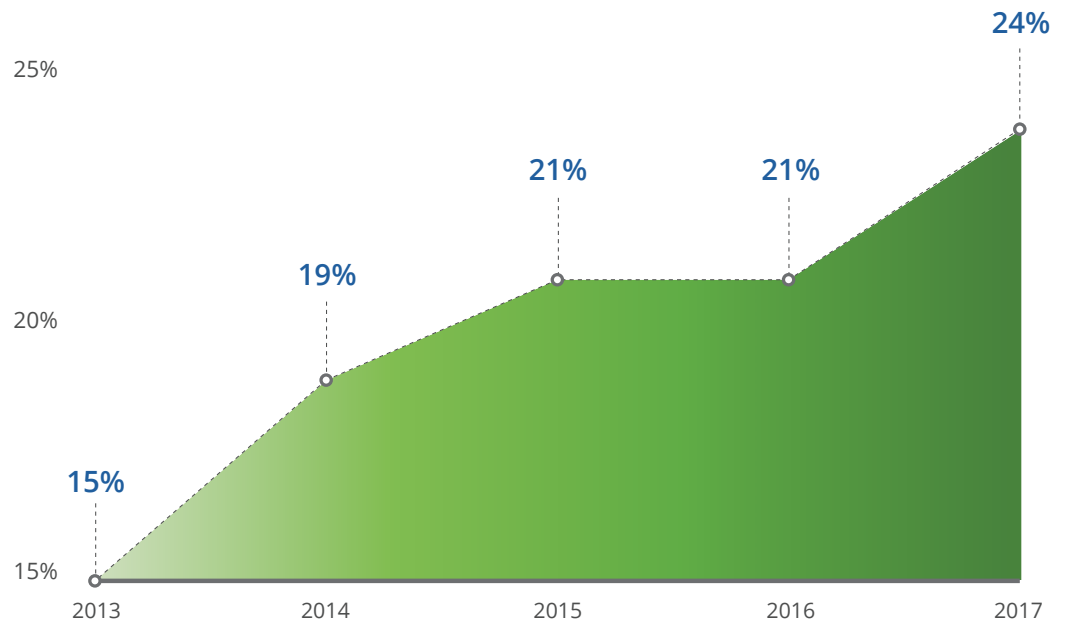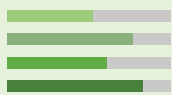

KEY INSIGHT

Automated users are 10 percent more likely to be Power Preservers.

AUTOMATION BY VOLUME

## Rise in legal hold volume contrasts with dip in employee training

The drop off in employee training to 52 percent this year from 69 percent in 2016 is unexpected. It suggests that as companies rely more on automation features they are investing less in employee education. The highly intuitive features of automated processes may be a factor by demanding less training to learn and use. Cutting back on employee training, however, could have a negative impact on custodian compliance down the road. This is a trend to watch.

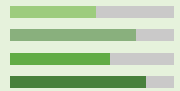### EMPLOYEE TRAINING OVER TIME

KEY INSIGHT

As automated legal holds become more commonplace, companies are relying more on preservation-in-place features to lock down custodian content and investing less in employee education.
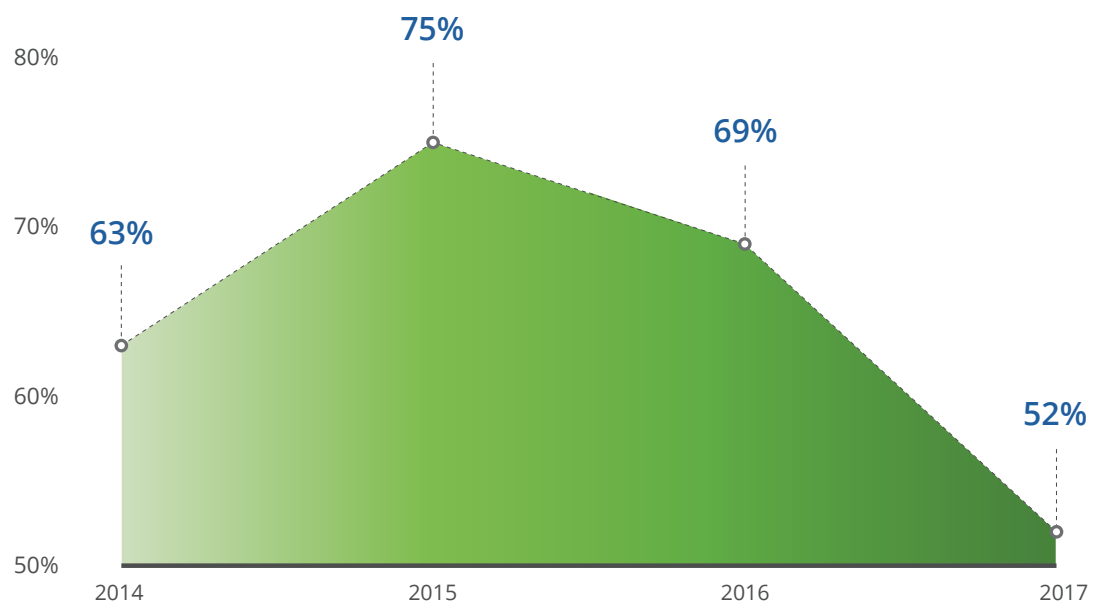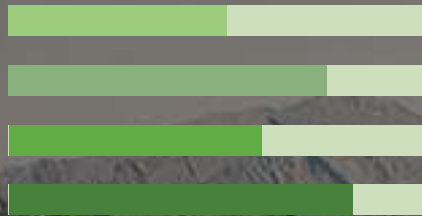
NEXT STEPS

Seize the moment to harness the digital future

The 2017 Legal Hold and Data Preservation Benchmark Report offers a bounty of data. How will you transform these insights into tangible benefits for your company? Here are a few key takeaways to steer you in the right direction.

1   MEASURE CURRENT SOLUTION AGAINST INDUSTRY

Make a close examination of your current processes and analyze them from the point of view how others are doing it. Review this survey and do a self-evaluation of what you do well and any gaps. This will identify key tools or processes that will shore up the preservation and data collection methods.

2   AUDIT. AUDIT. AUDIT.

A robust process that can prove to the court that it was "reasonable and good faith" requires proof. Make sure you are gathering rock-solid records to show who, what and when. Do this regularly to create a clear and reliable audit trail; otherwise your preservation efforts are vulnerable if needed in court.

3   MOVE FROM A CRISIS MINDSET TO A ROUTINE BUSINESS PROCESS

A typical "state of mind" when faced with a trigger event is more akin to a mad scramble than to reasoned, timely and thorough response. While specific litigation events are not predictable, the flow of litigation is. Process and preparedness can make all the difference.

4   COMMIT TO DOING ONE THING BETTER

Just like a New Year's resolution, making positive change requires that the goal be attainable. Rather than making an exhaustive list of "best practices," just pick one or two and see them through. Completing a couple things a time builds momentum for further improvements and grows credibility with management.

5   TRAINING IS KEY

One of the disappointing results from this survey was the drop in employee training. We see numerous corporations that train employees when they join the company that legal holds are important. These companies ensure that employees understand the function of legal holds how to respond in a compliant manner. Employee acknowledgement of litigation holds in these companies regularly exceeds 90 percent.

ABOUT ZAPPROVED®

Zapproved LLC is a pioneering leader in cloud-based e-discovery software for corporate legal and compliance departments. Our suite of intuitive and scalable solutions empowers teams to seamlessly and defensibly initiate legal holds and collect, process and review data with ease. We are also SOC 2® Type 2 certified, the industry's highest rating for data security. With 99% customer retention, we continue to cultivate ridiculously happy customer experiences year after year.

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