

Intelligent Preservation

A New Strategy to Proactively Lower Litigation Costs While Protecting Your Reputation



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The costs of e-discovery are mind-blowing. Despite the technologists who announce advancements in storage, search and retrieval software to help drive down the unit costs, the frequency and sheer volume of e-discovery pushes costs in the opposite direction. With the ever burgeoning amount of data that is being created and retained each and every day, despite our best efforts to “govern” its retention, these costs seem destined to only escalate and further cut into corporate profits.

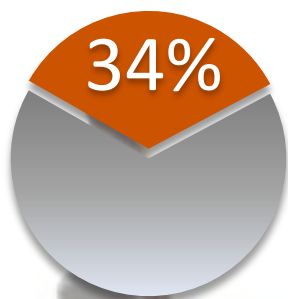
Nowhere are the risks of e-discovery becoming greater than with data preservation. Organizations must take reasonable steps to ensure data is being preserved, yet they readily admit it’s only a matter of time before they will be accused of an inadequate response by opposing counsel. If unable to defend one’s actions, the associated risks include not only court-imposed sanctions and reputational

damage, but also a reduced ability to effectively negotiate a fair and reasonable scope of discovery, argue proportionality and avoid undue burden.

There remains much debate regarding the definition of “reasonableness and good faith” when balanced against the clear need for proportionality. Is the only “safe” approach collecting and sequestering everything that might be potentially relevant?

Traditionally, organizations facing e-discovery responded by identifying key players, collecting all of their data, using technology to reduce and cull irrelevant data as best they could, and hiring rooms full of attorneys to review the remaining emails and files. Even with the best of technologies, a typical custodian yields \$15,000-\$100,000 in discovery costs.

Litigation costs impact profitability



Litigation costs of Fortune 100 as percentage of corporate profits¹

Discovery expense is a majority of cost



Cost of discovery as percentage of total litigation costs²

E-discovery drives up expense



Average cost of collecting, reviewing and producing data

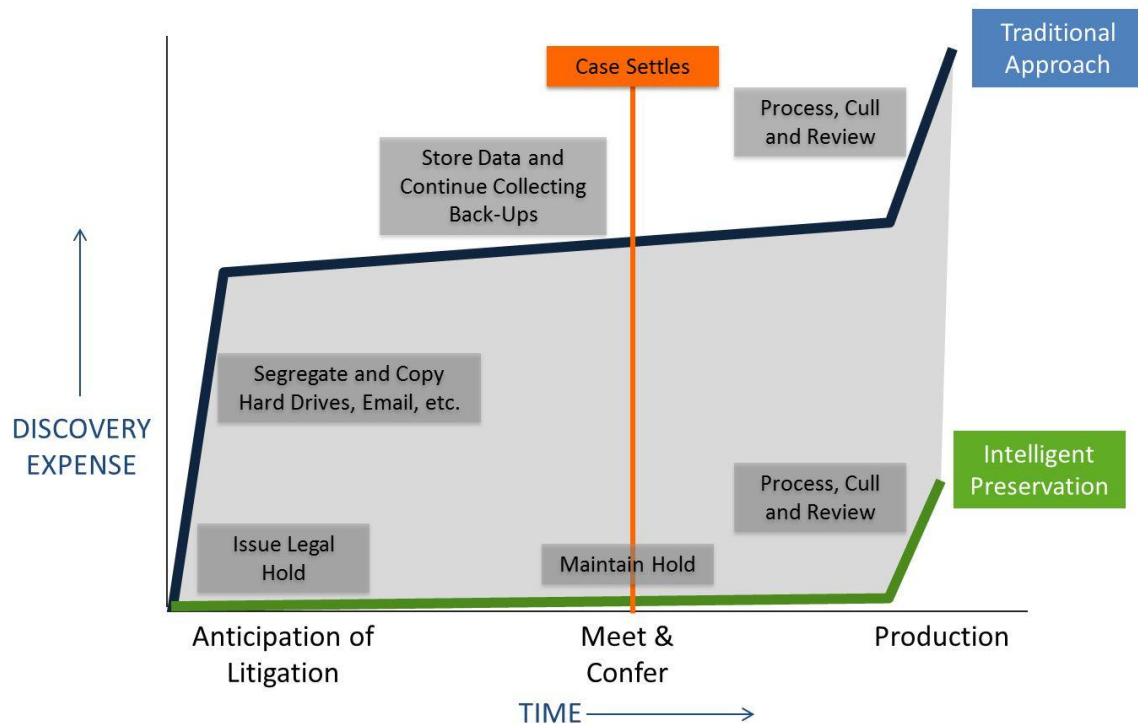
But the data is almost never used!



Percent of data that is produced for possible use in litigation³

(1) Henry, John B., “Fortune 500: The Total Cost of Litigation,” The Metropolitan Corporate Counsel, February 2008, p.28; (2) “Data and Discovery Cost Control,” CGOC, Spring 2009; (3) Minutes of the Mini-Conference on Preservation and Sanctions, Dallas, Texas, September 9, 2011.

Intelligent Preservation Strategy Allows You to Preserve Immediately, Collect (and Spend) Only When Necessary



According to Fortune 100 legal teams presenting at the Discovery Subcommittee of the Advisory Committee on Civil Rules on Sept. 9, 2011, the motivation to “save everything” is based on **“reputational fear of being sanctioned, or even accused of spoliation.”** They argued that it is the only way to avoid spoliation sanctions later in litigation.

Traditionally, this has been the only

approach of the E-Discovery Industry. Scores of vendors are driving companies to purchase,

install, and train staff on systems that will lock-down every piece of relevant data (in spite of the fact this is increasingly impossible), review and de-dupe it, and produce it. Once such a system is in place, the legal team is obliged

to use it to justify the investment which creates a vicious and expensive cycle.

“We are overdoing it by 90 percent”

Fortune 100 General Counsel’s at Dallas Mini-Conference,

Intelligent Preservation Strategy Reduces Effort, Cost – and Risk

There is a better way: **Intelligent Preservation.** Start with the fundamentals, and use them to your advantage. In doing so, you keep your preservation response reasonable, in good faith, and proportional to the risks and exposure of a given case.

The foundation of Intelligent Preservation is a sound legal hold notification process. This

need not be a complex or overwhelming task. The standard is not perfection as Judge Scheindlin pointed out in *Pension Committee*, but reasonableness and good faith coupled with competency.

The following six elements have become imperatives to meet higher standards of preservation, mitigate the increasing risk of

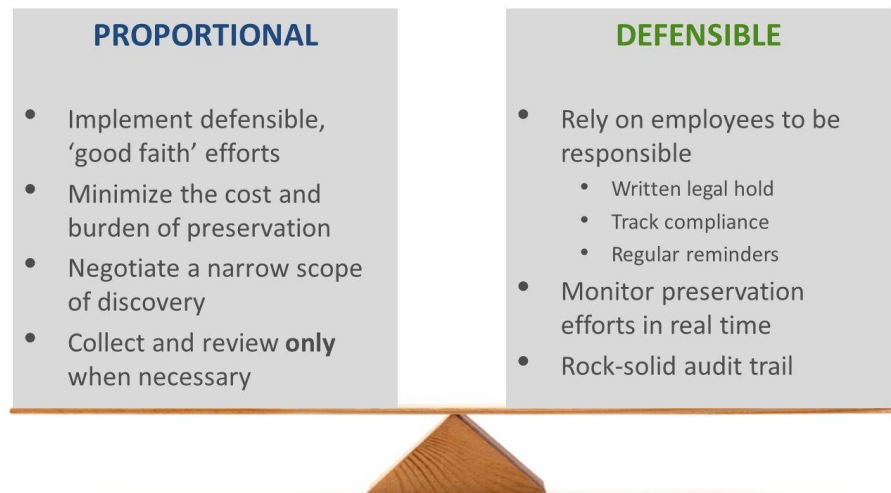
costly sanctions, and better prepare for adversaries that can challenge an opponent's preservation efforts when a flawed legal hold becomes a shortcut to victory:

- Proportional and cost-effective response
- Ability to act immediately following a triggering event
- Visibility of the custodians and real-time tracking of compliance
- Detailed audit trail of actions
- Process automation for repeatability and cost-efficiency
- Strong internal communications to reinforce the importance of the preservation process

Adopting **Intelligent Preservation** means that data is kept in a routine manner of business immediately when litigation can be anticipated. It provides a defensible audit trail to demonstrate thorough, repeatable, good faith efforts to preserve. It includes routine follow-up and reminders, giving you the

confidence to defend your actions when challenged (and keep the discussions focused on the merits of the case). Such confidence provides for negotiating the scope of discovery from a position of strength and avoiding additional electronic discovery expenses until they become necessary.

The result will be lower discovery cost and mitigated risk, without self-imposed monetary sanctions. Intelligent preservation allows you to take control by having visibility and analytics to enable a 'preserve-in-place' strategy so data will be available when it is needed – and not a moment sooner – resulting in a stronger bottom line.



Why Legal Hold Pro is Your Smartest E-Discovery Investment

Investing in a tool like Legal Hold Pro allows you to have Intelligent Preservation in a timely and extremely cost-effective manner. Because Legal Hold Pro can be implemented in a day, you'll immediately start getting returns on your investment. By employing best practices, you mitigate risk of inadvertent spoliation and increase your ability to effectively negotiate fair and reasonable scope of discovery, facilitating both proportionality and collaboration.

You collect, process, review and produce only that which is necessary. With automation, you save countless hours that can be

immediately applied to more important and impactful tasks. With a common database of legal holds, you can effectively evolve away from a "preserve everything forever" mentality and start managing tasks like employee departures or disposing legacy data with ease.

You develop a knowledge repository that can inform other e-discovery readiness initiatives, be it investing in improved information governance or education and training. And with confidence, you keep the focus on the merits of the case and not on discovery about discovery.

Legal Hold Pro™ To learn more about Legal Hold Pro, visit legalholdpro.com or call 888.376.0666
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