2011 Information Retention and eDiscovery Survey

INDIA FINDINGS

Symantec™

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Introduction

While enterprises worldwide are managing an ever-rising tide of information from an increasing number of sources, they are also subject to more litigation than ever – with adversaries seeking access to documentation they might find relevant to their cases. This phenomenon has driven the adoption of formal information retention and eDiscovery practices among more and more companies.

Symantec's 2011 Information Retention and eDiscovery Survey, conducted in May and June of this year, sought to uncover the critical issues in this important and growing area of information management. It also aimed to determine the best practices used to address them. Because legal departments of companies are inevitably involved in meeting discovery requests, the survey included legal representatives in addition to IT professionals within the 2,000 companies that participated in the research.

One surprising finding was that email is no longer the most commonly requested records companies must produce. Both structured and unstructured information sources outranked email. Notably, too, is the rise in demands for access to social media and mobile phone text messages.

While managing all this information so discovery requests can be fulfilled quickly and easily requires a formal information retention and eDiscovery program, the actual implementation of such programs varied widely among companies surveyed. In fact, nearly half of respondents don't have any information retention programs at all.

The downside of not having one? First, productivity costs can be huge. On average, respondents said they had to respond to legal, compliance or regulatory requests for electronically stored information 63 times in the past year. To find this information, IT staff needed 66 hours on average. That's more than 4,000 hours per year or the equivalent of two person-years.

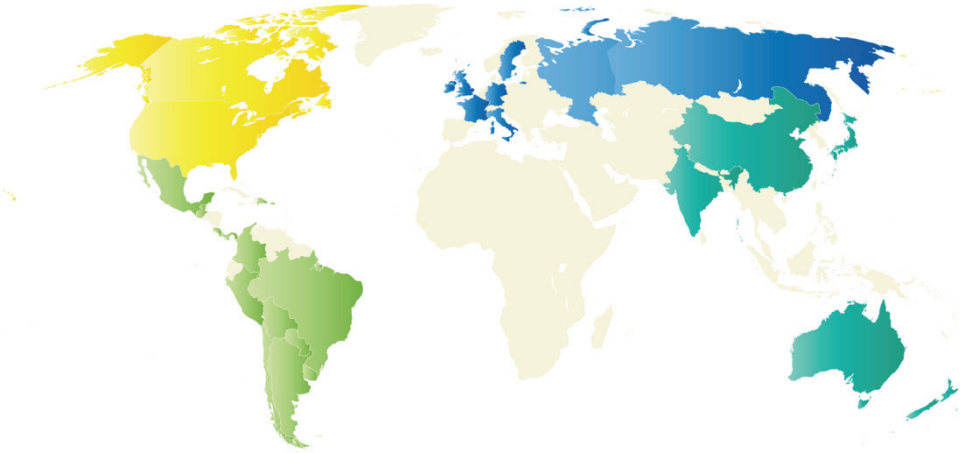
Second, companies with the best information retention and eDiscovery practices can respond much faster and with greater success to eDiscovery requests. As a result, they reported being much less subject to court sanctions, compromised legal positions and fines.

We invite you to read the entire report, which offers greater detail on our three key findings plus five recommendations about implementing a successful information retention and eDiscovery program. The relevant data behind our findings is also available. For more information about any of this report's contents, please contact your Symantec representative or visit **www.symantec.com**.

Methodology

Symantec commissioned Applied Research to conduct the Information Retention and eDiscovery Survey in June and July 2011. They contacted 2,000 global enterprises across a variety of industries with a minimum of 1,000 employees, with 100 enterprises in India. Respondents consisted of both a member of IT management and a representative from a responding company's legal department.

The poll has a reliability of 95% confidence with +/- 9.8% margin of error.



North America	
United States	250
Canada	250

Latin America	
Brazil	75
Mexico	75
Argentina	25
Colombia	25
Chile	15
Costa Rica	5
Domincan Republic	4
Guatemala	4
Panama	4
Peru	4
Puerto Rico	4
Uruguay	4
Bolivia	3
Paraguay	3

EMEA	
France	100
Germany	100
Italy	100
Russia	100
Sweden	100
United Kingdom	100

APJ	
China	200
Australia	100
India	100
Japan	100
Singapore	100
New Zealand	50

Finding 1

There is more to eDiscovery than email

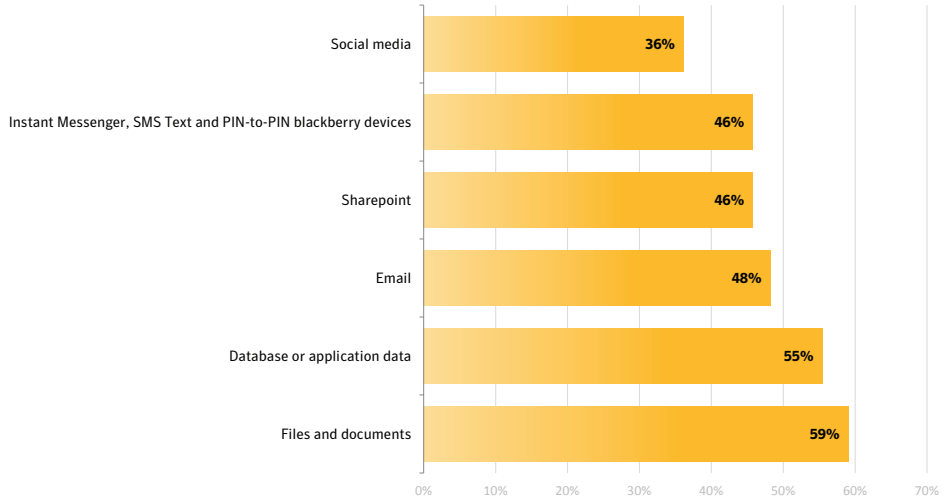
Just when enterprises are coming to terms with the need to store email records for eDiscovery needs, the requirements are changing. Following a similar trend in personal electronic communications, business interactions are now occurring in a large number of ways other than email, such as text, instant messaging or social media. What's more, information contained in structured forms such as database records and in unstructured forms such as document files are subject to eDiscovery requests. Industry regulators are aware of this and are changing records requests accordingly.

We asked survey respondents about the documents that most frequently constitute their eDiscovery requests. Their answer was surprising: email, once the most requested documentation, now ranked third. In fact, 59 percent of respondents said that files and documents were most often requested, followed by 55 percent citing database or application data. Behind these two documentation sources 48 percent said email is their most common information request.

In addition to these specific files that businesses are frequently required to produce, social media records are more commonly being requested, as well. This includes corporate posts on Facebook, Twitter, LinkedIn and blogs. Beyond that, instant messages and mobile phone text messages are being subject to review.

More than Email

How Frequently are the following documents requested in conjunction with a legal, compliance or regulatory request for electronically stored information?. *(Often/Almost always)*



Email, once the most requested documentation is now ranked third after:

- **Files and Documents**
- **Database and Application data**

New technology records are now more commonly being requested

- **Major social media networks**
- **Instant Messaging**
- **Phone texts**

Finding 2

Wide variations in information retention practices

Information retention policies vary as much as the businesses that practice them. For example, archival practices range from having no policy at all, to having employees manage them manually, to implementing specialized archival software that can automate and centralize management of an information retention and eDiscovery function.

The survey evaluated how well enterprises follow best practices such as implementing a formal information retention plan, automating legal holds and using a formal archiving tool. Organizations were then divided into three tiers, each representing the extent of their information retention programs and quality of their practices.

Among the top-tier companies, which closely followed best practices, 49 percent globally have a formal retention plan in place, compared to just 27 percent of lower-tier organizations. Among Indian enterprises, 20 percent have a plan in place.

Globally, 62 percent of top-tier companies also implement legal holds using an automated archiving system, matched by only 38 percent of lower-tier businesses. Thirty-nine percent of Indian enterprises report that they use an automated system.

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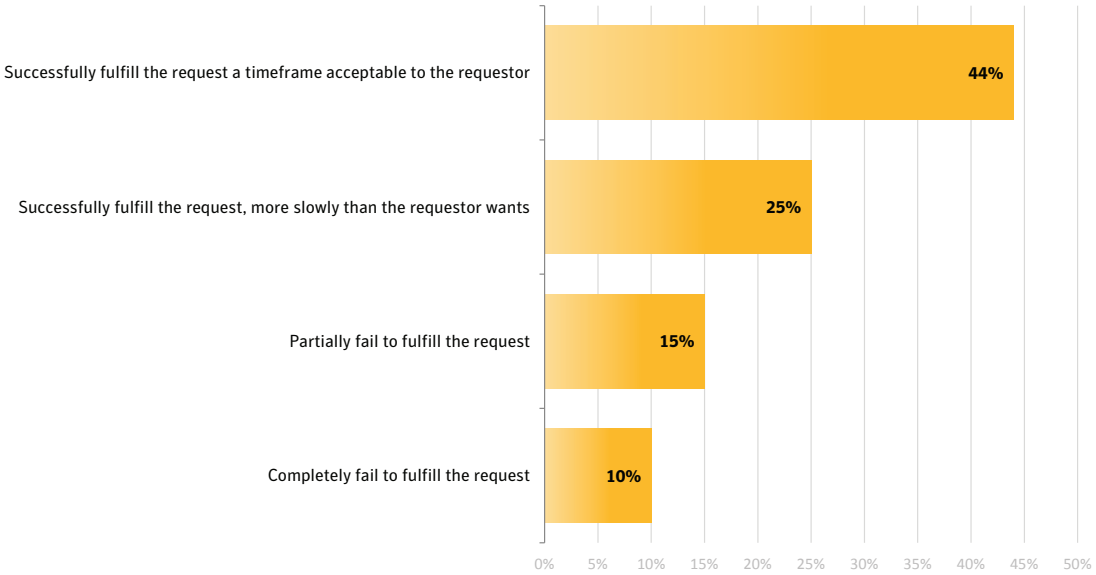
**Top Tier and Bottom Tier are based on Global data*

Top Tier Companies Have Better Information Protection Practices

When asked to respond to a legal, compliance or regulatory request for electronically stored information, what percentage of the time do you do each of the following? *(Medians shown)*



81% Top tier enterprises are **81% more likely** to have a retention plan in place.

63% **63% more likely** to implement the automation of legal holds

50% **50% more likely** to use a formal archiving tool, and much less likely to follow poor information management practices

Finding 2 *continued from page 10*

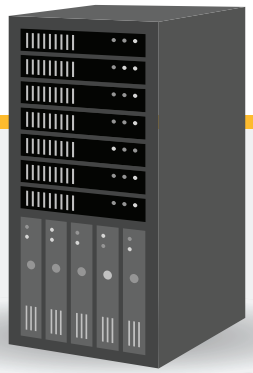
Wide variations in information retention practices

Formal archiving tools are also more widely used by the top-tier companies than by low-tier companies, at a rate of 42 percent to 28 percent, with 34 percent of respondents in India reporting they use these tools. Organizations following best practices were also much less likely to follow poor information management practices, such as performing legal holds in their backup systems.

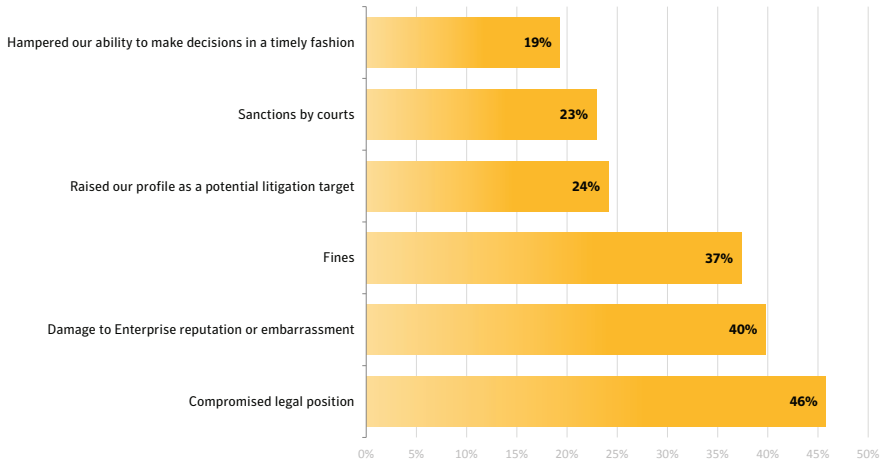
When facing legal issues requiring an eDiscovery response, the survey revealed that the enterprises best able to comply with an eDiscovery order are those that have taken the initiative to implement information retention policies.

On the other hand, the survey found that nearly half of respondents do not have an information retention plan in place. Twenty-eight percent are only discussing how to do so, while 19 percent have no plan to do so. When asked why they don't have information retention programs, respondents indicated the top reasons are: too costly (47 percent); lack of need (37 percent); nobody has been chartered with that responsibility (32 percent); don't have time (32 percent); and lack of expertise (32 percent).

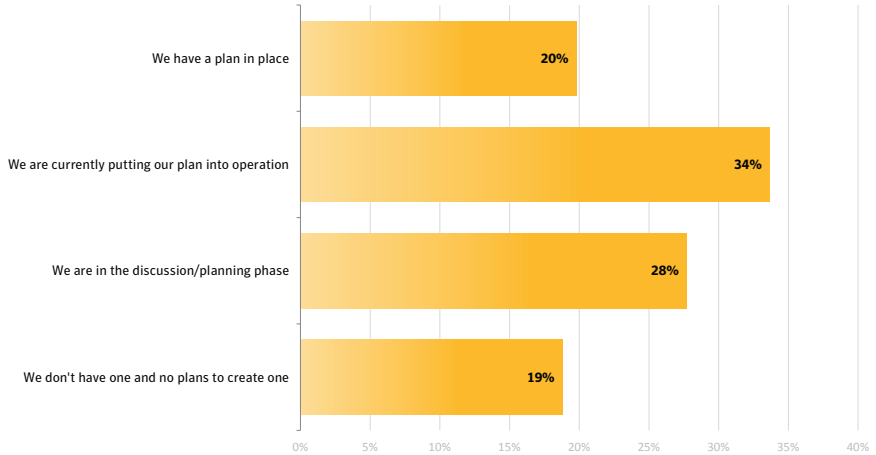
Defined Retention Policy makes response to eDiscovery easier.



In those cases where you were either late, partially or completely unsuccessful, which of the following consequences did you experience as a result?



What is the status of your formal retention plan?



54% **54% of companies in India** currently have a plan or are in the process of implementing a defined information retention policy

Finding 3

Companies employing best practices fare dramatically better

When industry regulators or legal representatives request electronic information, it's important to produce the information quickly in order to avoid the appearance of noncompliance and to prevent delays and complications in legal proceedings.

By taking a proactive approach to information retention and eDiscovery, top-tier organizations see two important benefits. First, it allows them to save time and money gained by responding more quickly to eDiscovery demands. Respondents using best practices reported a five-day response time and boasted a 70 percent success rate at filling requests. Organizations in the lower tier, however, needed an average of 14 days, and only successfully responded to the request 30 percent of the time. Enterprises in India average 10 days and a success rate of 44 percent.

In addition to up-front financial and time savings, organizations are also are more likely to receive a favorable outcome in legal proceedings. Globally, survey respondents from these top-tier companies indicated that they suffered fewer negative consequences than companies that lack a formal information retention policy. In fact, they were sanctioned by the courts only 9 percent of the time, compared to a rate of 40 percent among lower-tier businesses. Enterprises in India suffered sanctions 23 percent of the time.

Even when they were late or unsuccessful at meeting eDiscovery requests, they found themselves in a compromised legal position in only 25 percent of cases, as opposed to 47 percent of the less-prepared businesses. The average among respondents in India was 46 percent.

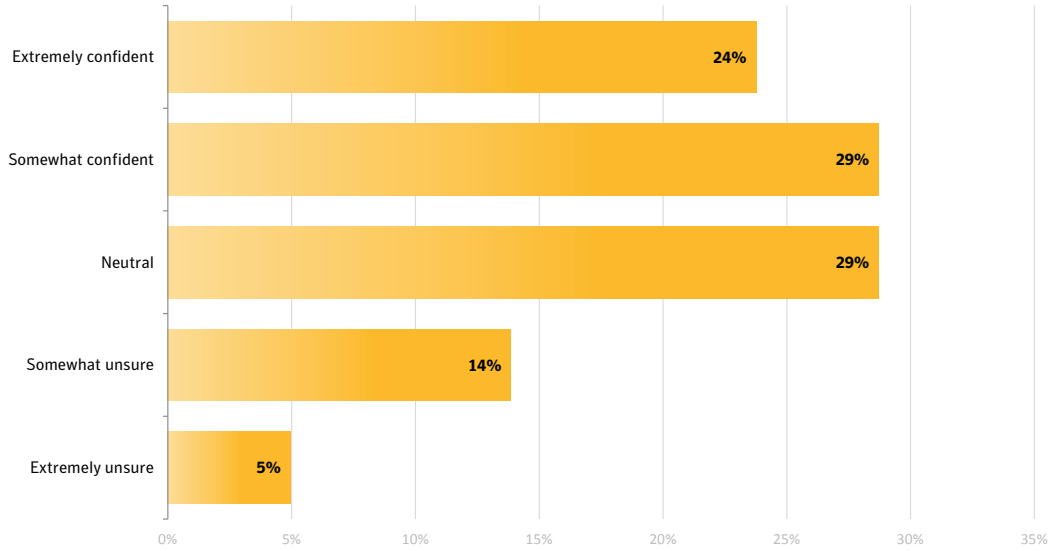
...lead to superior outcomes.

64% Top tier companies have a **64% faster** response to eDiscovery requests

Top-tier practices...

- Formal Retention Plan
- Automated Legal Holds
- Formal Archiving Tool
- Reduced Legal Holds
- Clear Archiving Policies

How would you rate your preparedness to responding to a legal, compliance or regulatory request for electronically stored information?



2.3x **2.3x success rate** for eDiscovery requests leading to fewer issues

45% **45% less likely** to disclose too much information leading to compromised litigation position

Key Recommendations

For those enterprises that concede their information governance could be improved, taking the needed steps isn't always simple. A prioritized plan of action is needed, but creating the optimal plan can seem overwhelming and result in taking insufficient action or, worse, doing nothing. Based upon the survey results Symantec recommends a straightforward action plan to solve the most common information governance problems:

Recommendations

Create and implement a records and information management (RIM) program. Get started with a formal plan as soon as possible, and then refine it accordingly to address specific laws and regulations governing the retention and availability of information. Without a formal plan it is difficult to know when – and what – to delete, which drives over-retention and creates additional risk.

Periodically delete electronically stored information (ESI) according to your RIM program. Globally, most organizations (79 percent) believe that a proper information retention plan should allow them to delete information. Yet, 20 percent of organizations still retain archived data forever. This means that a large percentage of organizations are not correctly deploying the archive to minimize data through expiry and by implementing document retention policies. Delete according to your information retention plan to reduce storage, litigation exposure and eDiscovery costs.

Use backup for recovery, archiving for discovery. The survey found approximately 40 percent of organizations worldwide keep data on their backup tapes infinitely and use those backup tapes for their legal hold process. This exposes them to the costly and dangerous proposition of restoration in the event of litigation. Backup is intended for recovery purposes, and 30-60 days is the longest data should be backed up. Files should then be automatically archived or deleted. Using backup only for disaster recovery enables an organization to delete older backup sets within months instead of years.

Deploy advanced legal hold processes and solutions to minimize the risk of non-compliance. The preservation step of the litigation process is fraught with risks due to the potential of spoliation sanctions, which are often levied after the loss or inadvertent deletion of ESI. The safest strategy is to deploy next generation legal hold applications to better communicate the importance of a given legal hold notice, track acknowledgement and periodically issue reminders to affected custodians. Leveraging software here is particularly critical since legal holds can encompass thousands of custodians and span many years, both of which stress manual solutions.

Conduct litigation readiness exercises to determine exposure areas and formulate a prioritized remediation plan. It is critical for organizations to assess their current state of preparedness to determine how well they can safely and efficiently respond to an eDiscovery request or governmental inquiry. By taking a long term approach and leveraging industry best practices (along the EDRM spectrum), companies are in a much better position to withstand challenges to their internal processes and avoid negative consequences. For example, top-tier companies throughout the world were 78 percent less likely to be sanctioned by the courts and 47 percent less likely to have their legal position unnecessarily compromised.

Prepare for eDiscovery and governmental inquires by casting a wider ESI net, including social media, cloud data, instant messaging and structured data systems. eDiscovery is no longer primarily limited to email. Identify where all electronically stored information resides company-wide so that these sources do not go unrecognized. Once these sources of potentially responsive ESI are accounted for, the right eDiscovery tools need to be deployed so that these disparate types of ESI can be defensibly collected and processed for review in a singular auditable environment.