Organizations today are faced with an unprecedented amount of data. According to a 2014 study by International Data Corporation, the size of the "digital universe" is doubling every two years, and by 2020, will reach 44 trillion gigabytes - nearly as many bits as there are stars in the sky. This exponential growth in electronically stored information (ESI) represents a significant challenge for companies and their counsel as they work to respond to litigation and investigations requiring digital information to be preserved, analyzed and produced.

Certainly, the changes impacting e-discovery are not limited to the volume of electronic data. Rapid technological advancements, increasing global business operations, the use of mobile devices and social media, are all underscored by changing legal and regulatory requirements to significantly impact how digital information is managed. Combined, these developments put pressure on organizations and their counsel to increase the efficacy of their e-discovery processes to improve outcomes and control costs.

Taking the pulse of e-discovery to identify key challenges and opportunities impacting corporations in the year ahead, the inaugural Inside E-Discovery Survey by BDO Consulting examined the opinions and insights of 100 senior in-house counsel at leading corporations throughout the U.S. regarding the state of e-discovery.

The survey found that corporate counsel see a significant need for improvement when it comes to handling and managing e-discovery, giving internal and external resources a combined grade of 6.5 out of 10 for overall effectiveness. As sweeping changes continue to impact the e-discovery market, in-house counsel recognize that the status quo will not suffice.

"E-Discovery is a growing problem for us, and one that we must address as soon as possible to both reduce our costs and potential exposure."

– INSIDE E-DISCOVERY SURVEY PARTICIPANT, EXECUTIVE VICE PRESIDENT & CHIEF LEGAL OFFICER
When evaluating the factors that are critical to e-discovery management, the largest percentage of corporate counsel (48.4 percent) rank understanding the universe of potentially responsive evidence early in the case as the most important, followed by predicting the total cost of e-discovery (15.6 percent) and reducing e-discovery review fees (14.1 percent). Another 12.5 percent report the ability to use previously collected and processed ESI for other matters as the most important factor, which points to a logical desire among in-house counsel to achieve cost efficiencies by reusing prior work product.

Recognizing the need for improvement, corporate counsel are making a number of changes to their e-discovery approach in response to increasing market demands. In the past year, nearly one in three (31.4 percent) have implemented new guidelines or policies to streamline and improve their response to litigation. Another one in four (25.5 percent) say they have adopted tools and technologies, and 15.7 percent say they have hired an outside vendor.

Changes in Managing E-Discovery

<table>
<thead>
<tr>
<th>Change Description</th>
<th>Percent of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implemented New Guidelines and Policies</td>
<td>31.4%</td>
</tr>
<tr>
<td>Adopted Tools and Technologies</td>
<td>25.5%</td>
</tr>
<tr>
<td>Hired Outside Vendor</td>
<td>15.7%</td>
</tr>
<tr>
<td>Analyzed Current Systems</td>
<td>11.8%</td>
</tr>
<tr>
<td>Added In-house Resources</td>
<td>11.8%</td>
</tr>
<tr>
<td>Utilized Cloud-based Storage</td>
<td>3.8%</td>
</tr>
</tbody>
</table>

“Big Data poses a significant challenge for organizations when it comes to managing e-discovery. As the volume and variety of electronically stored information increases, it becomes more difficult and more costly to identify potentially responsive evidence. Corporate counsel are looking for ways to decrease data volumes, increase efficiencies and reduce costs to adjust to this Big Data landscape.”

— STEPHANIE GIAMMARCO, FORENSIC TECHNOLOGY SERVICES PRACTICE LEADER WITH BDO CONSULTING
MANAGING MOBILE & SOCIAL NETWORKING DATA AND COST ARE KEY E-DISCOVERY CHALLENGES

When asked about the key challenges that lay ahead with regards to e-discovery management, the largest percentage of in-house counsel (22.5 percent) say managing mobile and social networking data is the number one issue they will face in the near future, followed by cost control, which was ranked by 17.5 percent of survey respondents as the issue that will have the greatest impact on their organization.

“With the rise of mobile devices and use of social sites in the workplace, corporations must consider the nuances of preserving, extracting and analyzing new and emerging types of electronically stored information. The policies and protocols established by organizations and their legal counsel today to preserve and collect mobile or social electronic evidence will be critical in litigation and investigations moving forward.”

— WILLIAM WILKINSON, FORENSIC TECHNOLOGY SERVICES PRACTICE LEADER WITH BDO UK

New regulations were also identified as a key issue, with 15 percent of respondents saying it is their most significant forward-looking challenge. This concern corresponds with the pending updates to the Federal Rules of Civil Procedure. While the proposed amendments to the rules are unlikely to go into effect before December 2015, in-house counsel are closely monitoring the recommendations for changes to determine how they could impact their e-discovery processes going forward.

When it comes to managing cross-border e-discovery, “data privacy and security laws” were identified by 66.7 percent of corporate counsel as the greatest challenge they face when navigating multinational litigation and investigations. Access, communication barriers and coordination also emerged as key challenges, with each being cited by 11.1 percent of respondents.

“Multinational, multi-jurisdictional and multi-lingual data collection and review are becoming increasingly complex. Corporations must understand cultural norms, data privacy laws and foreign language nuances to effectively navigate international investigations and manage e-discovery engagements.”

— GLENN POMERANTZ, GLOBAL FORENSICS PRACTICE LEADER WITH BDO CONSULTING
NEW TOOLS & TECHNOLOGIES HAVE POTENTIAL TO SHAPE THE FUTURE OF E-DISCOVERY

Despite making changes in the past year to control costs and better respond to the increasing demands of e-discovery, few corporate counsel feel they are ahead of the curve when it comes to responding to the key challenges. Only 5.4 percent identify their organization as an “early adopter” when it comes to a willingness to adopt new tools and technologies, and a majority (55.4 percent) classify their company as a “late adopter.” Correspondingly, only 17.6 percent of in-house counsel currently use customized customer portals to view and track project statistics, and only 16.2 percent use data visualization techniques to assist in priority processing or review.

Most Organizations Late Adopters
Relative to your peers, how would you classify your organization’s willingness to adopt new tools and technologies?

- **55.4%** Late Adopters
- **39.2%** Mainstream
- **5.4%** Early Adopters

OTHER MAJOR FINDINGS FROM THE INSIDE E-DISCOVERY SURVEY BY BDO CONSULTING

E-discovery spending is expected to rise with 43.2 percent of corporate counsel predicting e-discovery spend will increase within the next year, while a mere 6.2 percent expect it to decrease. In-house counsel who expect e-discovery spending to increase predict it will rise by an average of 15.5 percent during the next 12 months. Half (50.6 percent) expect their total spending on e-discovery to stay the same during the year ahead.

E-Discovery Spending Expectations
Do you expect your total spending on e-discovery to increase, decrease or stay the same next year?

- **50.6%** Stay the Same
- **43.2%** Increase
- **6.2%** Decrease

While many companies are using technology to identify and collect potentially responsive information, the full potential of new and emerging tools is not yet being realized. We expect the next few years will show further adoption of advanced tools and techniques, such as computer assisted review, data analytics and data visualization, which will not only reduce e-discovery costs, but also increase efficiency and better inform litigation and investigative strategies, as well as information governance policies and procedures.

— KAREN SCHULER, FORENSIC TECHNOLOGY SERVICES EXECUTIVE WITH BDO CONSULTING
Quality is paramount in e-discovery, and we know that in-house counsel are focused on mitigating the risks and costs associated with not getting it ‘right’. As the sector evolves, corporations continue to seek out providers that they trust to deliver comprehensive, defensible and reliable e-discovery services.

— Stephanie Giammarco, Forensic Technology Services Practice Leader with BDO Consulting

**OTHER MAJOR FINDINGS FROM THE INSIDE E-DISCOVERY SURVEY BY BDO CONSULTING (CONTINUED)**

Corporate counsel look for quality at the right cost when selecting e-discovery providers with 47.6 percent ranking quality as the most important factor, followed by 23.8 percent ranking cost as most important. Further highlighting their focus on these two factors specifically, 68.3 percent select quality and 58.7 percent select cost as among the top two considerations when evaluating e-discovery providers.

Other factors influencing in-house counsel’s selection of e-discovery providers include predictive or flat-fee pricing (11.1 percent), full electronic discovery reference model (EDRM) services, including information governance (6.3 percent) and global coverage (4.8 percent).

Companies are primarily using their internal legal departments and outside law firms to manage e-discovery, with a majority (89.4 percent) of corporate counsel using their internal team, followed by law firms (71.2 percent), pure-play vendors (42.4 percent), consulting firms (28.8 percent) and LPOs (18.2 percent). The allocation of e-discovery budgets follows suit, with respondents indicating that 41.3 percent of their e-discovery budget is spent on internal resources and 30.8 percent on law firms.

Legal departments devote one in 10 professionals to e-discovery management, on average, with each individual dedicating an average of 10.9 hours to e-discovery per week. More than half of companies (54.3 percent) designate a single individual to be accountable for e-discovery.

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**Importance of Factors When Hiring E-Discovery Providers**

Percent of Respondents Ranking Factor Most Important

<table>
<thead>
<tr>
<th>Factor</th>
<th>Percent</th>
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<tbody>
<tr>
<td>Quality</td>
<td>47.6%</td>
</tr>
<tr>
<td>Total Cost</td>
<td>23.8%</td>
</tr>
<tr>
<td>Predictive or Flat Fee Pricing</td>
<td>11.1%</td>
</tr>
<tr>
<td>Full EDRM Services, incl. Information Governance</td>
<td>6.3%</td>
</tr>
<tr>
<td>Global Coverage</td>
<td>4.8%</td>
</tr>
<tr>
<td>Being Part of a Large Corporation</td>
<td>3.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Additional Factors Included in Ranking</th>
<th>Percent See as Most Important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnaround Time</td>
<td>1.6%</td>
</tr>
<tr>
<td>Reputable Brand Name</td>
<td>1.6%</td>
</tr>
<tr>
<td>Consulting Services</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

Note: Chart does not add up to 100%. Responses smaller than 4% excluded.
THE INSIDE E-DISCOVERY SURVEY BY BDO CONSULTING is a national survey conducted by BTI Consulting Group, an independent and impartial research firm. BTI surveyed 100 senior in-house counsel at leading corporations throughout the U.S. to collect their insights for BDO Consulting’s inaugural study.

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