



# **INSIDE E-DISCOVERY & BEYOND:**

Navigating  
Legal Digital  
Disruption

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## SURVEY METHODOLOGY

The 2019 *Inside E-Discovery & Beyond Survey* is a national survey conducted by Rabin Research Company, an independent marketing research firm, utilizing Op4G's panel of executives. Rabin Research Company surveyed 100 senior in-house counsel at leading corporations throughout the United States to collect their insights for BDO's fifth annual study. Respondents come from corporations with revenues ranging from \$100 million to more than \$3 billion from a variety of U.S. industries.

### Reference:

- ▶ Lower Middle Market (\$100-\$500M)
- ▶ Upper Middle Market (\$500M-\$1B)
- ▶ Large Organizations (\$1B+)



# Will 2019 Be the Year the Lawyer-bots Invade?

Okay, we won't go that far. But for better or for worse, legal departments are feeling the full forces of digital disruption, to both positive and not-so-positive effects. AI-powered e-discovery tools—where machine learning algorithms scour electronic content to identify the most relevant documents for a case—are quickly gaining momentum despite initial skepticism. And e-discovery advances are just the tip of the innovation iceberg. Automated solutions, such as matter management platforms and intelligent contract review, are enabling in-house counsel to spend less time on manual, soul-grinding work and more time on developing risk mitigation efforts and providing strategic advice to senior management.

Digital disruption also is making legal jobs more complicated. Today's general counsel must advise on the legal and reputational risks of relatively untested waters as regulators struggle to play catch-up. The scope of e-discovery keeps expanding (consider data stored on IoT devices and voice-activated assistants), adding to unresolved questions about the appropriate access to, and use of, an ever-growing body of increasingly personal data. At the same time, legal departments must shoulder new cybersecurity and data privacy responsibilities. They cannot simply be legal specialists, but are expected to be champions of ethics and drivers of economic value.

The demand for a new breed of legal-tech hybrids—attorneys who understand, and can navigate, the intersection of law and technology—is also rising rapidly. Most corporate counsel are looking to build or acquire these skills in one of three ways: augmenting their own internal capabilities, recruiting help from outside counsel or alternative service providers, or pursuing both paths simultaneously.

In this evolving digital risk landscape, the fifth annual *Inside E-Discovery & Beyond* survey by BDO examines the opinions and insights of 100 senior in-house counsel about changes in their approaches to e-discovery, information governance, compliance, data privacy and cybersecurity.

*"Organizations today are experiencing significant disruption on all fronts—regulatory disruption stemming from new geopolitical developments, economic disruption from tumultuous markets and, perhaps most notably, digital disruption from the advent and proliferation of new technologies and business models. To help their organizations brave this new digital world, corporate counsel must embrace digital solutions to fight digital risks and glean new business opportunities."*

**STEPHANIE GIAMMARCO**  
Partner and BDO Technology & Business  
Transformation Services Practice Leader





## Drowning in Data

If there's one undisputable fact, it's that Big Data—the unrelenting increases in the volume, velocity and variety of information—will only keep getting bigger. And while this can certainly be seen as a good thing—data, through the power of analytics, can help legal departments develop winning litigation strategies, mitigate risk, obtain critical insights and more—it can also be a liability.

As data continues to accumulate, keeping it organized and protected through a robust information governance program is imperative. If well-conceived and effectively deployed, information governance can have a positive impact on everything from traditional records management to compliance and risk management, data privacy and cybersecurity, IT governance and overall operational excellence.

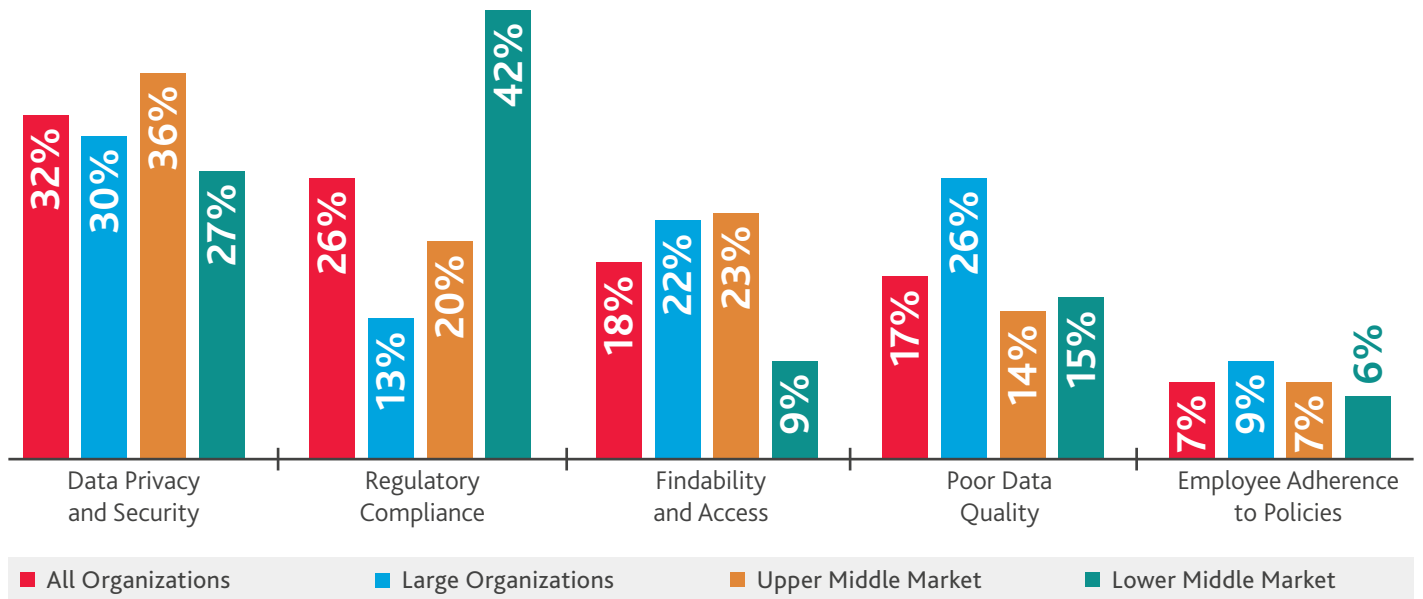
But keeping up isn't easy. The volume of information has exploded in recent years, as have the ways it is created, shared and stored. Today's communication channels include a wide range of social media platforms, instant messaging apps, texts and more, all of which add complexity and challenges. Bring-your-own-device (BYOD) policies continue to blur the lines between employees' professional and personal lives and introduce new questions. How should organizations, for example, shape their governance policies and practices to account for work-related text messages their employees may receive on their BYOD—but still personal—phones?

Meanwhile, the increasing, or at least more fluid, pace at which new people and organizations (i.e. clients, vendors, partners, etc.) are onboarded or replaced further accelerates the flow of information in and out, introducing more opportunities for information mismanagement. Growing supply chains characterized by greater interconnectivity—and in some cases, diminished visibility—compound the complexity of information governance. As information becomes boundary-less, the scope of information governance is expanding beyond enterprise walls.

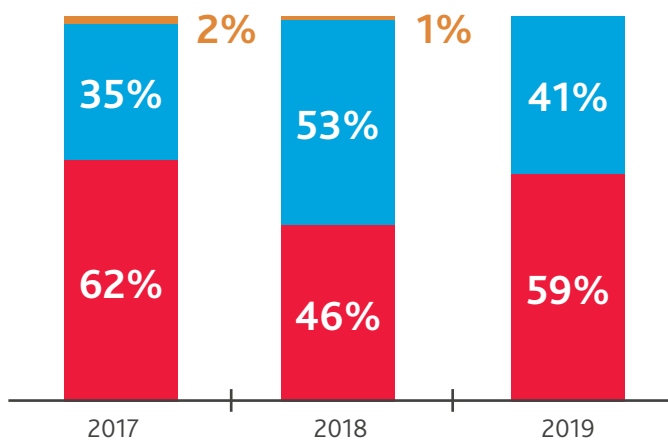
Add to this the nonstop barrage of cyberattacks and regulatory requirements (especially those concerning data privacy), and it's no wonder legal departments are feeling overwhelmed. Corporate counsel cite data privacy and security (32 percent) and regulatory compliance (26 percent) as their top two information management challenges. The order switches for lower middle market organizations, which rank regulatory compliance (42 percent) significantly higher than data privacy and security (27 percent).

What might account for the differences between middle market companies' information governance challenges and those of their larger counterparts? One factor might be more limited resources, which could restrict middle market organizations' ability to hire staff or purchase regulatory compliance systems. Other factors could be an overestimation of their own immunity to data breaches and cyberattacks or the belief that cyberattackers only target large enterprises. While such beliefs have their appeal, they have no basis in reality; lower middle market organizations have a wealth of data that is as valuable to—and as sought after by—malicious actors as the data of their larger peers. Some organizations may also be lured in by a false sense of security after moving to, or operating in, the cloud. To the contrary, placing information in the cloud does not automatically make that data more secure. Without thoroughly examining how well-designed and secure their cloud platforms are, as well as the processes, procedures and controls they have in relation to the cloud, organizations risk failing to implement vital cybersecurity programs or procedures that can withstand increasingly sophisticated attacks.

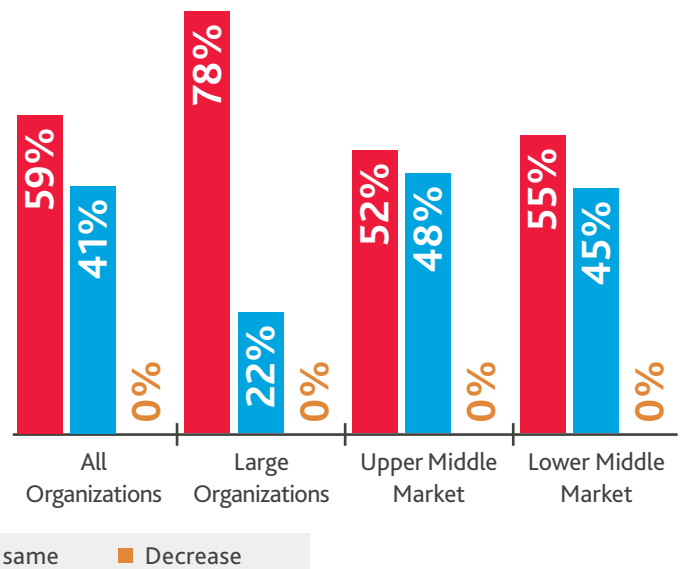
## WHAT IS YOUR ORGANIZATION'S BIGGEST INFORMATION MANAGEMENT CHALLENGE?



The consequences of poor information governance—ranging from costly legal and compliance repercussions to a broader loss of reputation—are dire enough that general counsel have begun to take action: 59 percent plan to increase their information governance spending this year, up from last year's 46 percent. Large organizations, especially, are planning hefty investments (78 percent), perhaps due to the greater volume of information they need to contend with.

HOW WILL YOUR TOTAL SPENDING ON INFORMATION GOVERNANCE CHANGE IN THE NEXT YEAR?  
(ALL ORGANIZATIONS) (2017-2019)

## HOW WILL YOUR TOTAL SPENDING ON INFORMATION GOVERNANCE CHANGE IN THE NEXT YEAR? (2019)

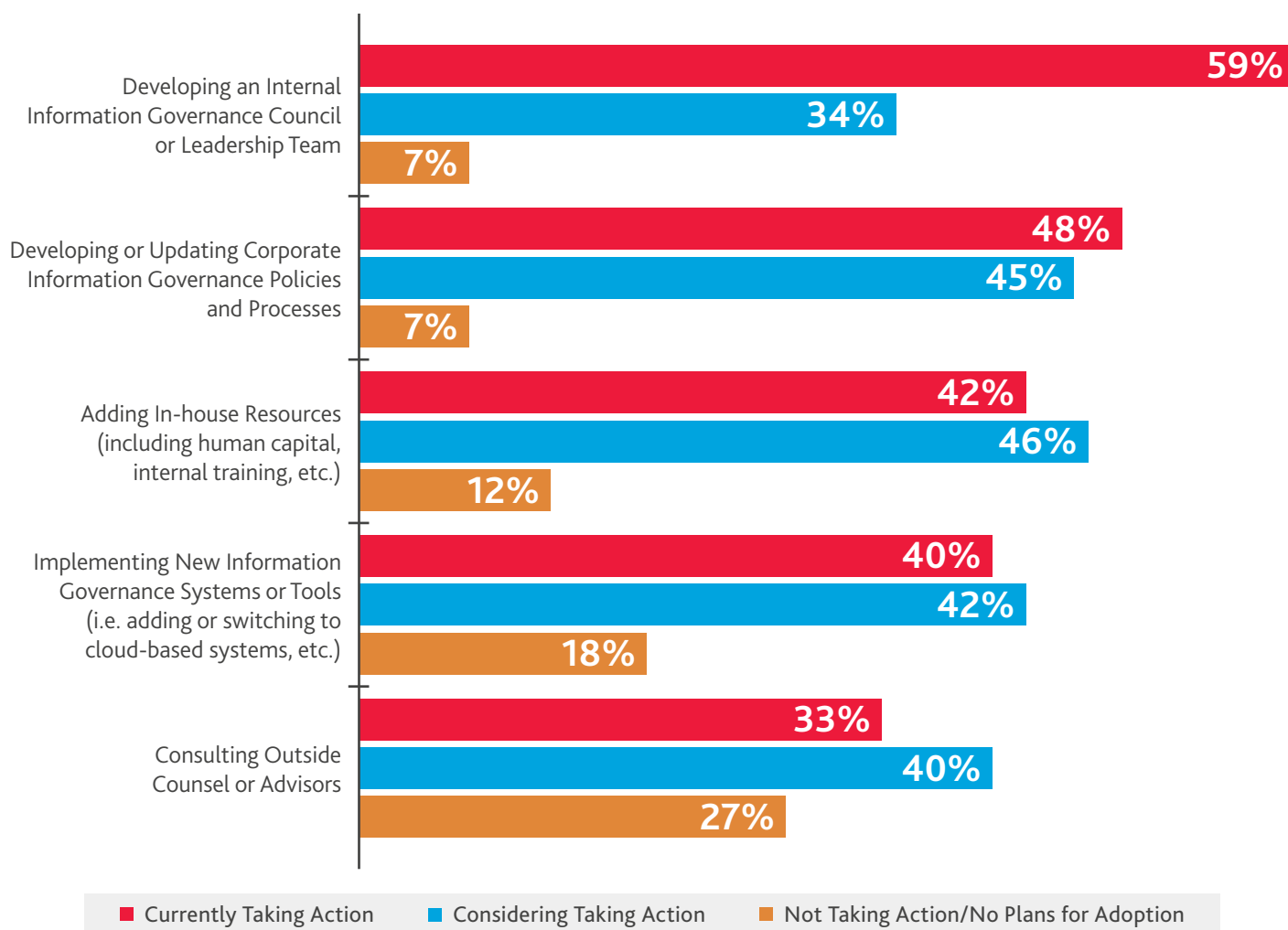


To better govern their information, many in-house legal teams are focusing on leadership and policy: 59 percent are in the process of developing an internal councils or leadership teams, and 48 percent are either developing or updating their information governance policies. Forty-six percent are considering adding in-house resources, and 42 percent, new systems or tools.

Consulting outside counsel or advisors ranks lowest on the list of actions, with only a third of survey participants currently doing so, and 27 percent having no plans to do so in the near future. Most organizations, it appears, are keen on setting the direction of their information governance themselves with minimal external guidance.

Nevertheless, is this wise? While organizations should proactively focus on developing their own information governance strategy, it is by no means an easy endeavor, nor need it be a solo one. Accountability and discipline are key, and external counsel and/or consultants with digital expertise can provide corporate counsel with an outside-in perspective and help them develop their own critical inside-out viewpoint. A collaborative approach can and should drive company ownership, champions, change agents and shifts in skills and talents.

#### IS YOUR ORGANIZATION TAKING (OR CONSIDERING TAKING) ANY OF THE FOLLOWING ACTIONS TO IMPROVE INFORMATION GOVERNANCE? (ALL ORGANIZATIONS)



*"Information governance isn't a one-and-done endeavor. To handle the data deluge, legal departments need to leverage new technologies and update current policies to meet legal and regulatory requirements without being overly restrictive. Once this is in place, they're able to uncover the real opportunity that good information governance can provide—deriving intelligence from rich data troves to strengthen decision-making and ultimately, drive business."*

MARK ANTALIK

Managing Director, BDO Information Management  
and Litigation Readiness Leader



# Investments in E-Discovery & Data Management Ramp Up

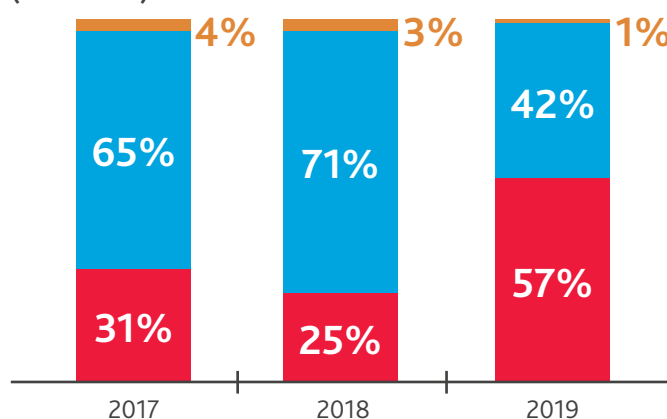
Because good e-discovery and information governance can create a virtuous cycle—with insights from e-discovery helping improve the efficacy of information governance policies and practices, and information governance helping make e-discovery more effective, efficient and inexpensive—many legal departments are investing in both areas.

More than half (57 percent) of corporate counsel plan to increase their total spending on e-discovery next year, more than double the percentage of those surveyed last year (25 percent). Large organizations, especially, are planning substantial e-discovery investments (78 percent).

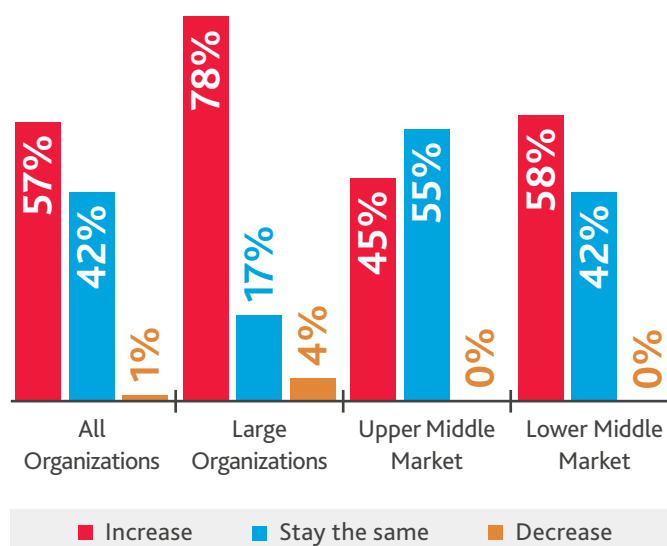
Successful e-discovery depends on multiple factors, and sound data management is crucial. Unfortunately, given the numerous types of data that exist, this can be difficult.

Big Data ranks as the top e-discovery-related issue anticipated to have the greatest business impact on organizations this year, cited by 58 percent of survey participants. Dark data—or information assets collected, processed and stored during regular activities but sitting around unused—ranks second (38 percent), followed by data disposition.

HOW WILL YOUR TOTAL SPENDING ON E-DISCOVERY CHANGE IN THE NEXT YEAR? (ALL ORGANIZATIONS) (2017-2019)



HOW WILL YOUR TOTAL SPENDING ON E-DISCOVERY CHANGE IN THE NEXT YEAR? (2019)



*"Balancing record retention and disposition is tricky. Dispose of too much data—an issue cited by 34 percent of survey participants—and you risk losing valuable content or even spoliating evidence. Preserve redundant, obsolete and trivial (ROT) data, and you risk squandering resources storing and working with content unlikely ever to be of value to you, while making it much harder and expensive to discover what matters most. Organizations need to find a middle ground—one where they can keep data likely to be useful, while also disposing of that with little to no apparent value."*

**GEORGE SOCHA**

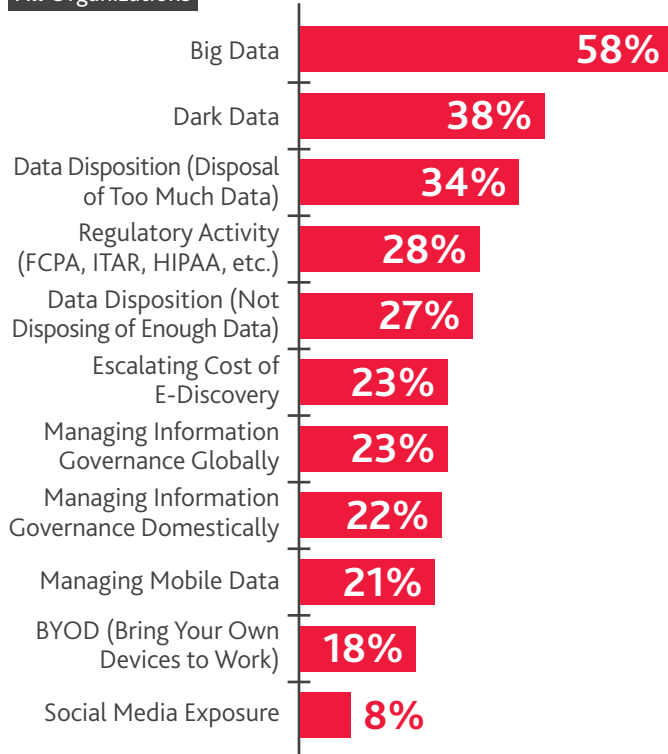
EDRM Co-Founder and Technology & Business Transformation Services Managing Director



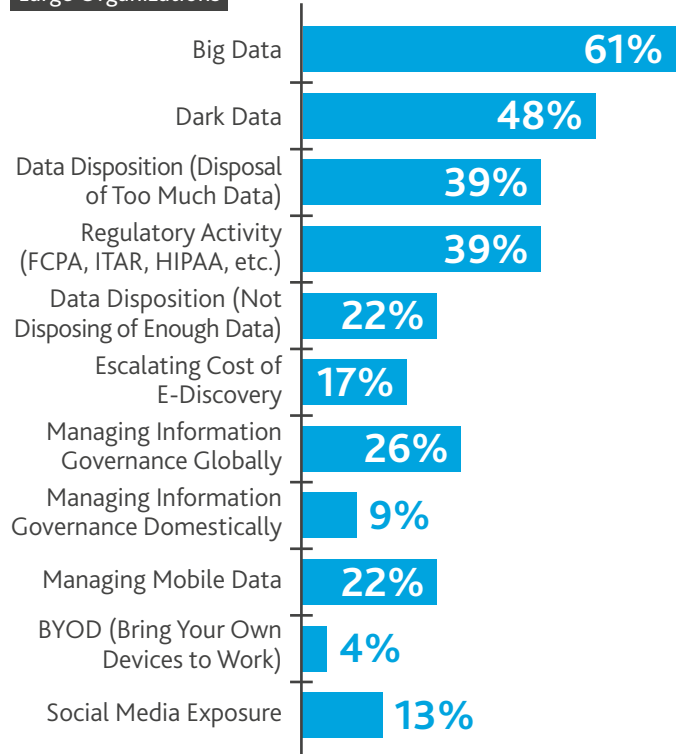


## WHICH 3 E-DISCOVERY-RELATED ISSUES WILL HAVE THE GREATEST BUSINESS IMPACT ON YOUR ORGANIZATION?

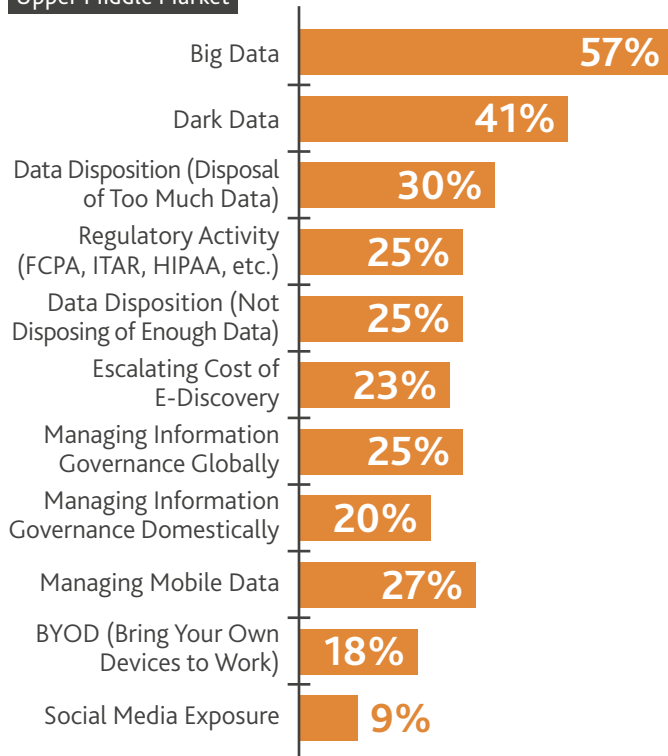
## All Organizations



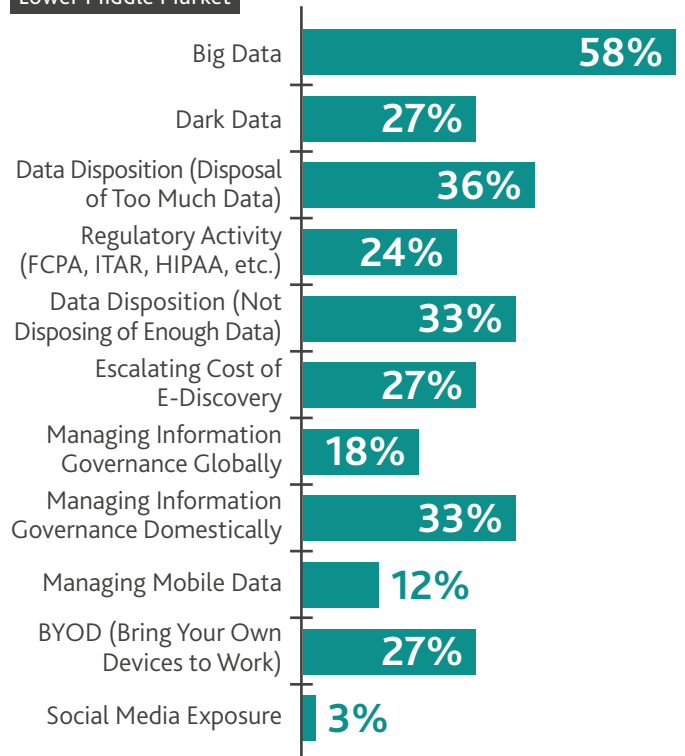
## Large Organizations



## Upper Middle Market



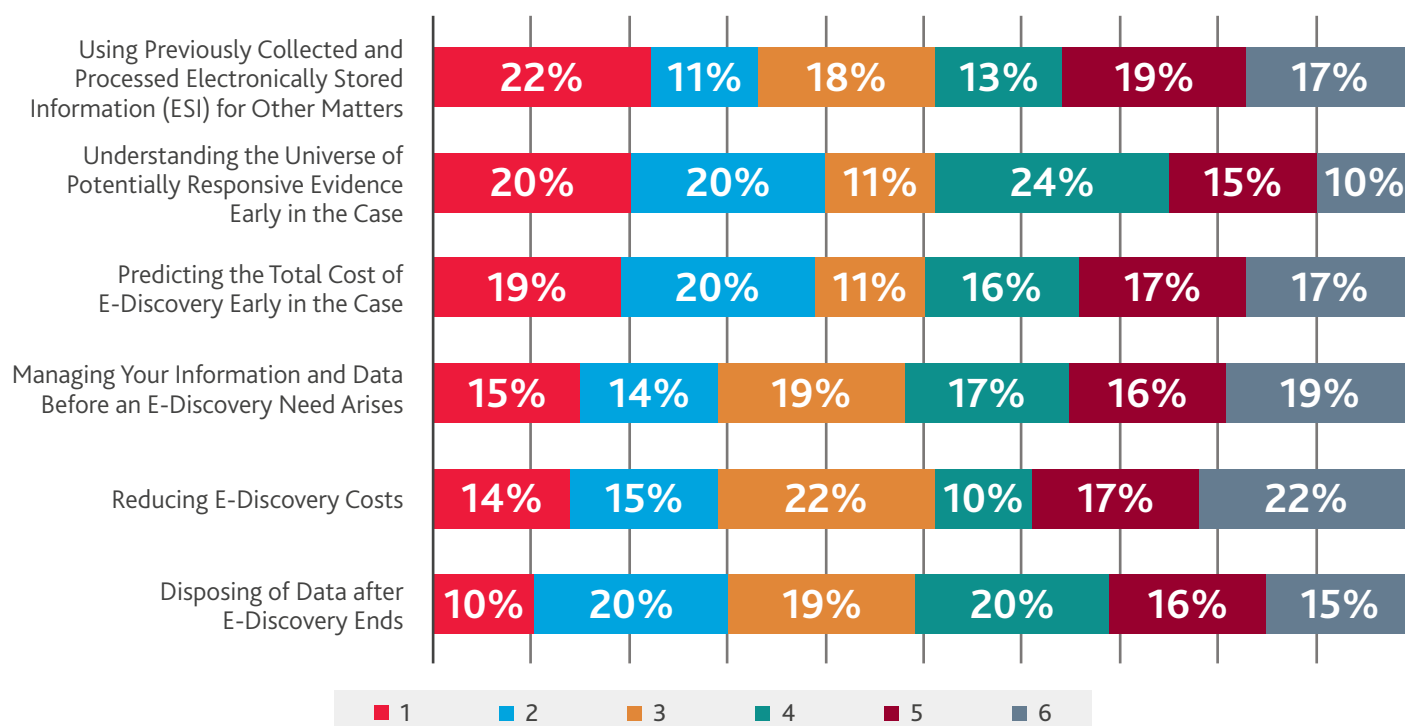
## Lower Middle Market



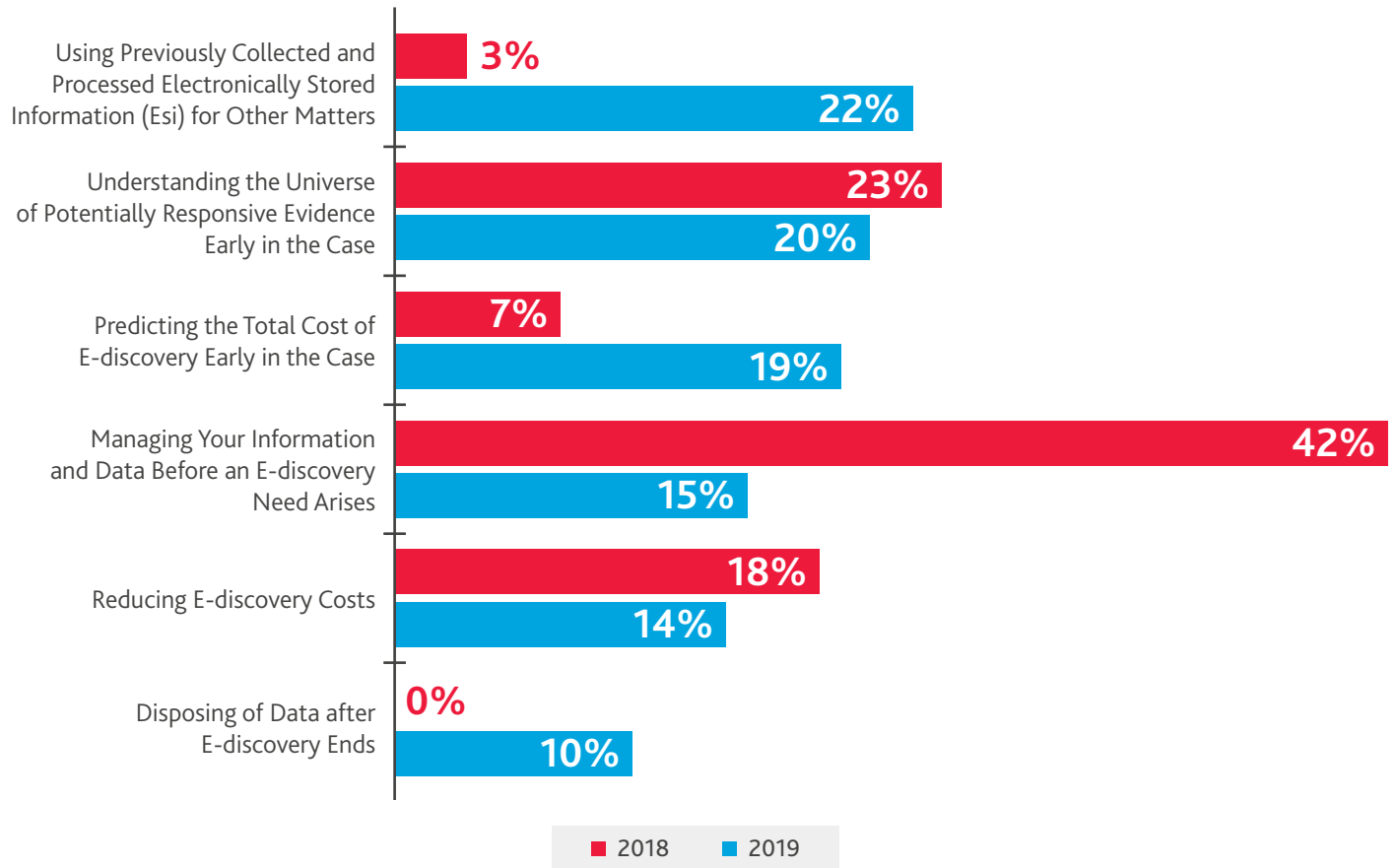
Many factors drive how legal departments manage e-discovery in litigation, with no single factor dominating this year's results. The spread between the most highly ranked factor (using previously collected and processed electronically stored information (ESI) for other matters, cited by 22 percent of respondents) and the lowest factor (disposing of data after e-discovery ends, at 10 percent) was not significant. This sharply contrasts with last year's spread, in which 42 percent of participants cited managing information and data before an e-discovery need arises as their top issue, compared to zero percent for disposing of data after e-discovery ends.

What accounts for the difference between the two years? It could be that in-house counsel are finally getting the message. After years of being told that previously collected and processed data can be reused for other matters, they are finally realizing the cost and time savings resulting from this more effective use of data. Another reason could simply be that organizations' increased investment in information governance policies and procedures is paying off, resulting in significant strides in information access and visibility.

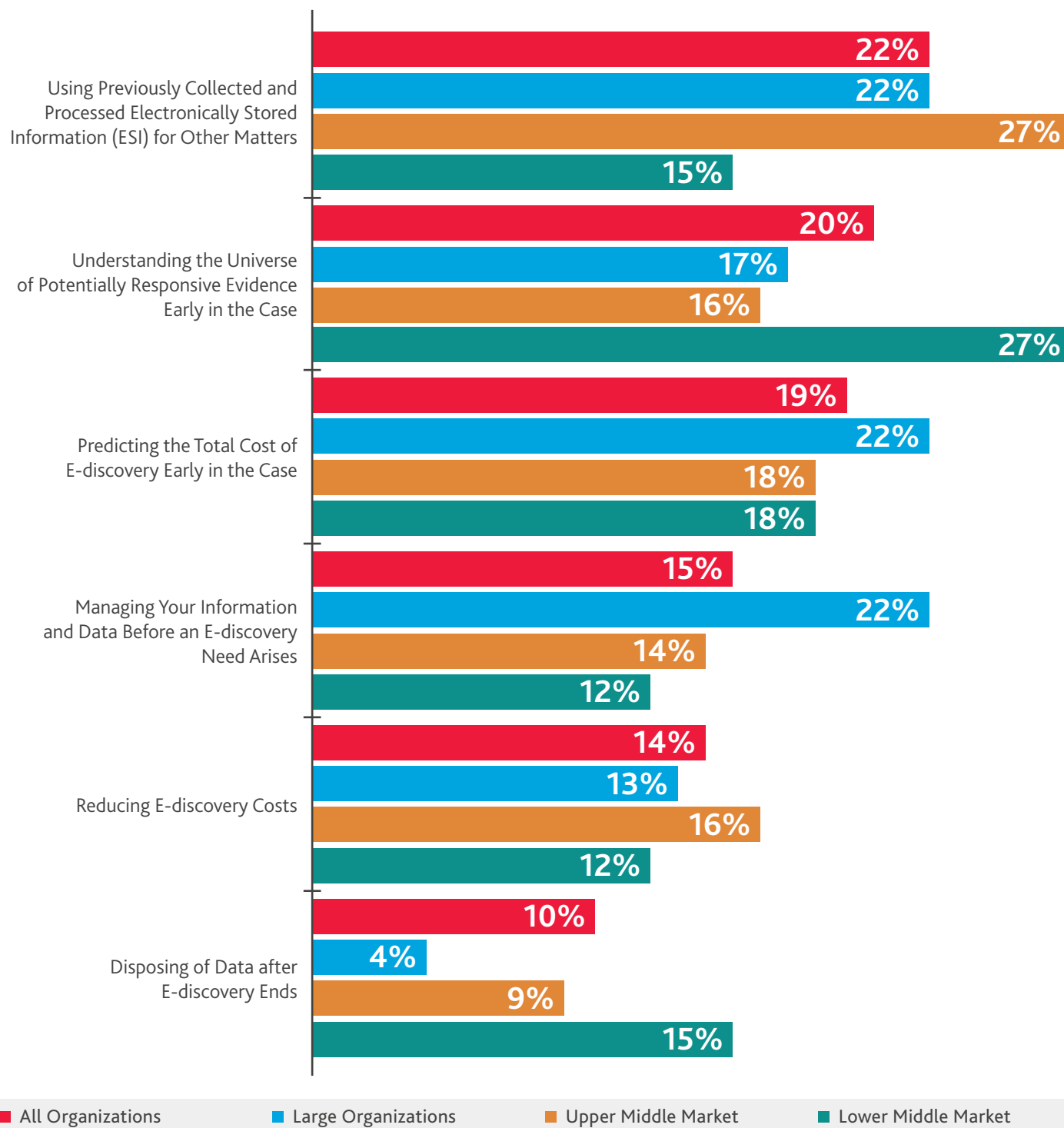
**PLEASE RANK IN ORDER HOW IMPORTANT EACH OF THE FOLLOWING FACTORS IS IN HOW YOU MANAGE E-DISCOVERY IN LITIGATION (ALL ORGANIZATIONS)**



**OF THOSE RANKED, WHAT IS THE MOST IMPORTANT FACTOR FOR MANAGING E-DISCOVERY IN LITIGATION?  
(ALL ORGANIZATIONS) (2018-2019)**



## OF THOSE RANKED, WHAT IS THE MOST IMPORTANT FACTOR IN MANAGING E-DISCOVERY IN LITIGATION (2019)

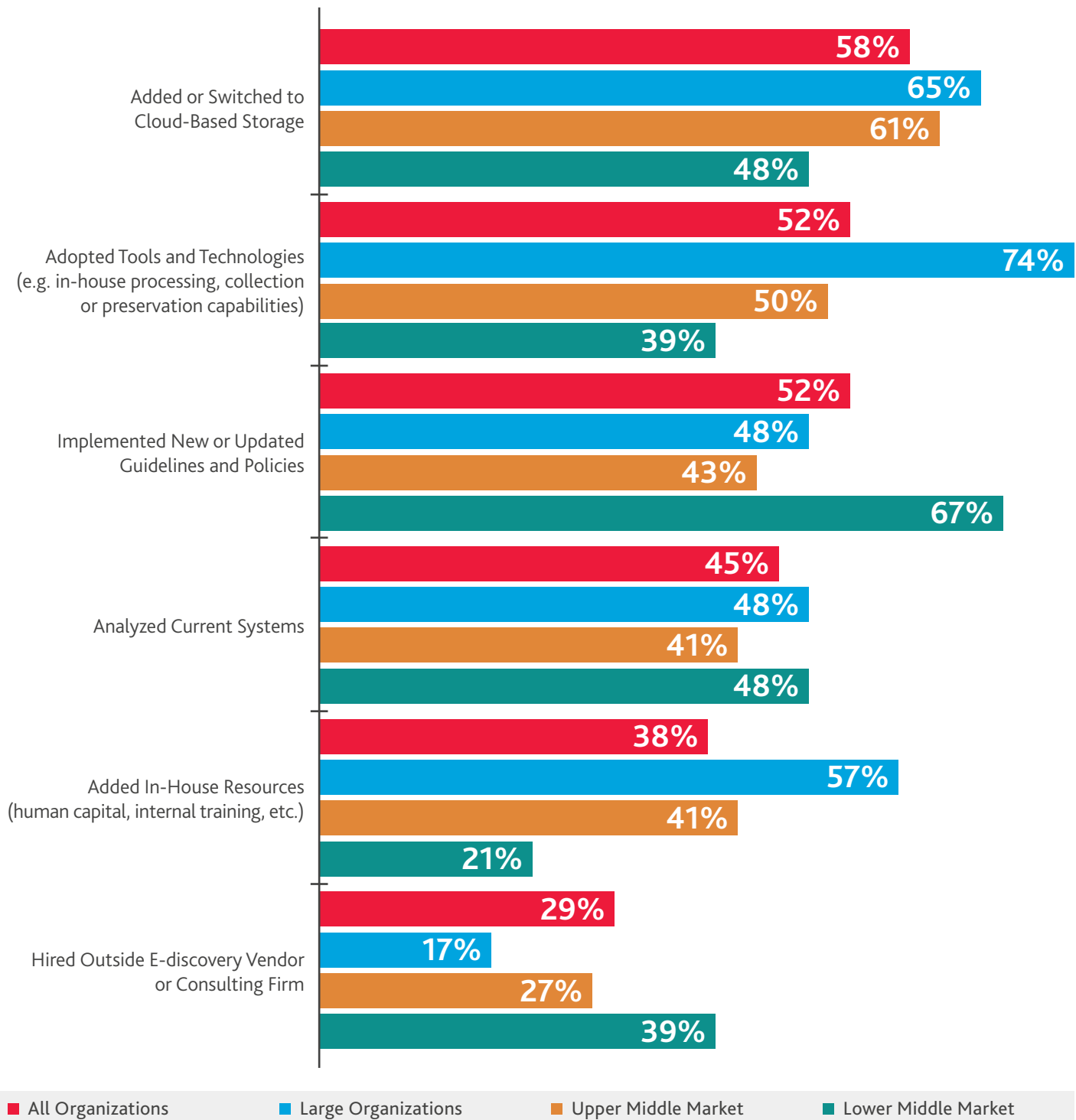




# Corporate Counsel Make E-Discovery Strides

To improve e-discovery, survey participants made several changes last year, including adding or switching to cloud-based storage (58 percent), adopting new tools and technologies (52 percent), and implementing new guidelines or policies (52 percent). The former—moving to the cloud—is an action we predict all organizations will have taken by year end.

## WHAT CHANGES HAVE YOU MADE IN THE PAST YEAR TO HOW YOU MANAGE E-DISCOVERY?

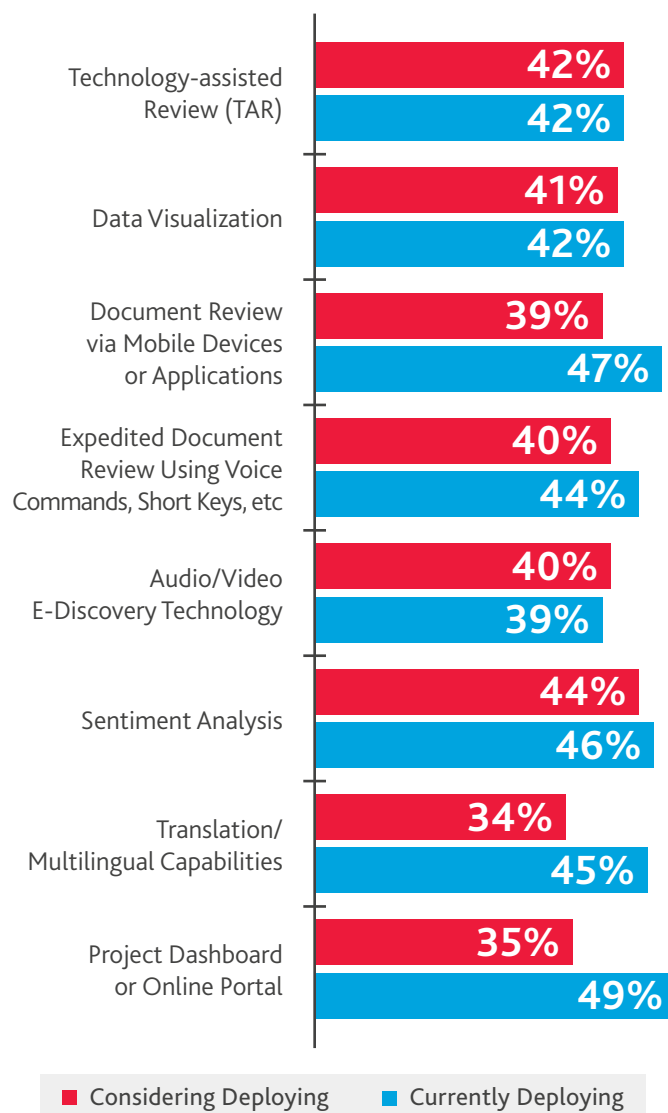


A combination of bigger-than-ever Big Data, compressed timelines and heavier workloads has made a human-only approach to e-discovery review not just impractical, but virtually impossible for the modern legal department. Technology-assisted review (TAR)—even as rudimentary as its typical deployments have been to date—has proven to be a game-changer for legal professionals, serving as a gateway to the adoption of more advanced analytics tools and techniques. Sentiment analysis—which 52 percent of upper middle market and large organizations are considering deploying—can help legal departments gather important business intelligence on various topics, decide which tone to adopt in court cases, and even identify potential misconduct or discrimination based on subtle communication cues among employees. Meanwhile, new data visualization techniques—often embedded in advanced legal analytics tools—enable users to quickly spot potential data patterns, outliers and gaps, leading to enhanced communication and decision-making.

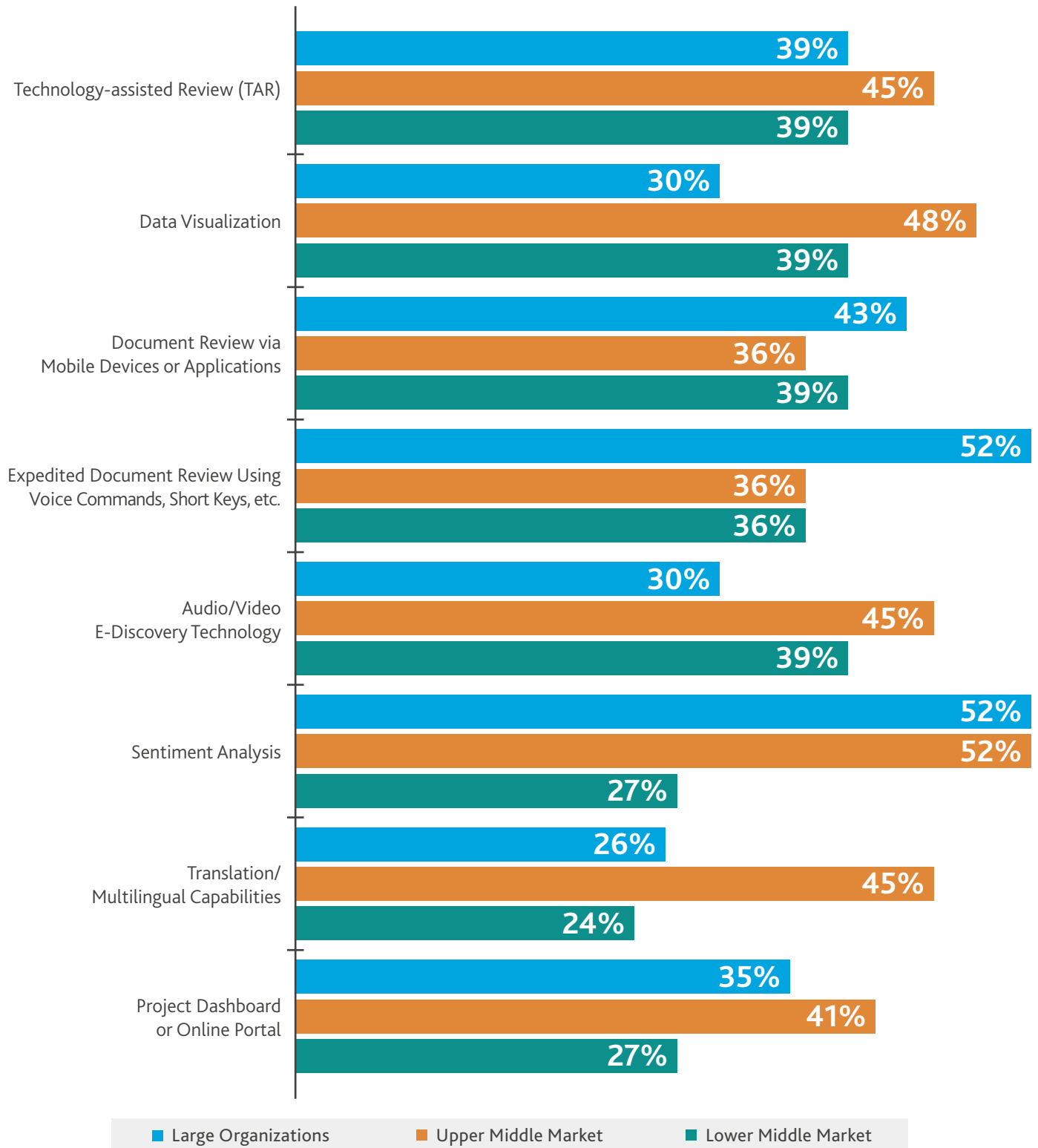
As expected, large organizations are deploying more translation and multilingual capabilities (65 percent) than their lower and upper middle market peers (39 percent each), likely due to their more global presence. They also are making more use of project dashboards or online portals (57 percent vs. 39 and 52 percent, respectively)—a factor likely attributable to their work on larger cases requiring more structure, as well as a need for more visibility on their progress.

Nevertheless, it is troublesome that a smaller percentage of lower middle market organizations are considering or currently deploying advanced e-discovery techniques. While lower middle market companies may have fewer resources, they cannot afford **not** to invest in tech—and they have a strong case for doing so. By using e-discovery technologies, they can reduce the number of manual or repetitive tasks they undertake, saving time and money. They also can mitigate risk and monitor and assess spending. Even if they don't have the people and money to build out these technological capabilities themselves, lower middle market organizations can achieve similar results with help from consulting firms and outside vendors.

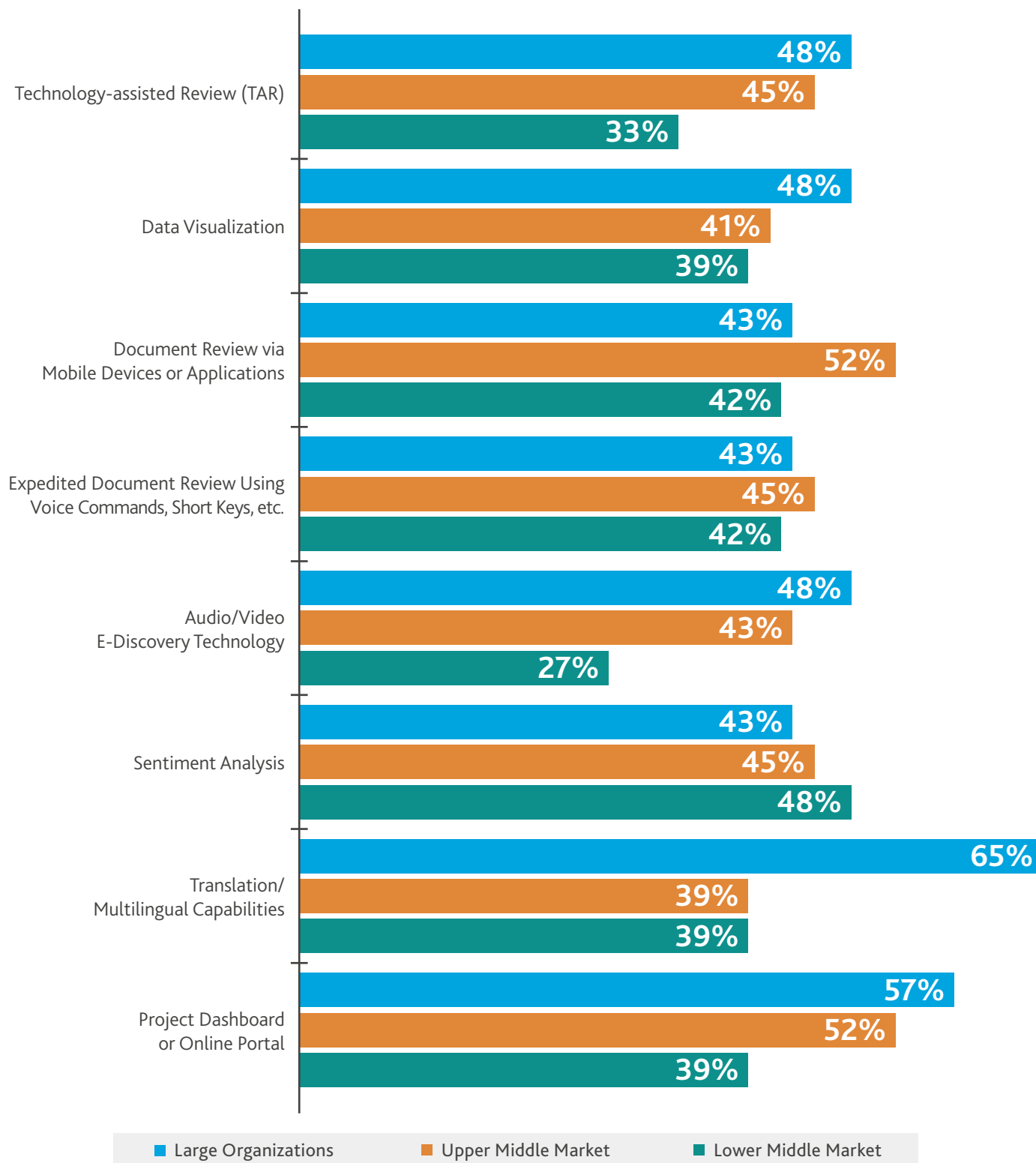
**IS YOUR ORGANIZATION DEPLOYING, OR CONSIDERING DEPLOYING, ANY OF THE FOLLOWING ADVANCED E-DISCOVERY TECHNOLOGIES? (ALL ORGANIZATIONS)**



**IS YOUR ORGANIZATION CONSIDERING DEPLOYING ANY OF THE FOLLOWING ADVANCED E-DISCOVERY TECHNOLOGIES? (BREAKDOWN BY ORGANIZATIONAL SIZE)**



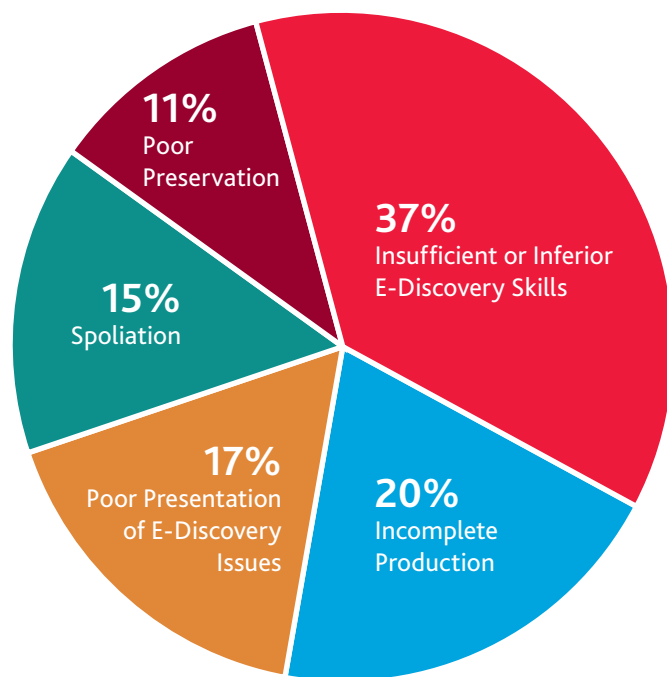
**IS YOUR ORGANIZATION CURRENTLY DEPLOYING ANY OF THE FOLLOWING ADVANCED E-DISCOVERY TECHNOLOGIES? (BREAKDOWN BY ORGANIZATIONAL SIZE)**





Failing to invest in e-discovery can have serious consequences, as indicated by respondents' responses to the question, "What is the most common e-discovery mistake you see from opposing counsel?" At the top of the list is having insufficient or inferior e-discovery skills (37 percent), followed by incomplete production (20 percent). Organizations that find themselves or their outside counsel making these mistakes should quickly realize that some changes may well be in order.

#### WHAT IS THE MOST COMMON E-DISCOVERY MISTAKE YOU SEE FROM OPPOSING COUNSEL?



## The Power of Two in E-Discovery

### Why fish in a pond when you can fish in a lake?

In every e-discovery matter, you start with a lake full of data. Yet, all too often, the only place where you can fish is the small pond of data puddled at the bottom of the review waterfall. What if you could expand your scope and remain in the lake?

BDO has helped general counsel do just that—with only two reviewers—using a four-step analytical methodology.

#### BDO'S FOUR-STEP ANALYTICAL PROCESS:



##### 1. Reduce

De-duplicate, deNIST, and cull by date range, file type, and domain name.



##### 2. Investigate

Use tools such as concept searching and visual conceptual clustering to locate the data that matters most.



##### 3. Match

Once the focus becomes clear, deploy predictive coding to "find more like this."



##### 4. Verify

Utilize "hedge" technologies such as Boolean searching to evaluate the efficacy of the work done in the previous two steps.

**Why is this important?** Winning is about telling the most compelling story, and cloud-based e-discovery's powerful analytical capabilities can help organizations build that foundation. These tools, coupled with the right support and guidance tailored to each team's capabilities and needs, can help companies' core investigative and litigation teams quickly discover what matters most, use insights from that data instantly and return whenever they desire to the lake of data they started with.

## Data Privacy & Cyber Concerns Remain Front and Center

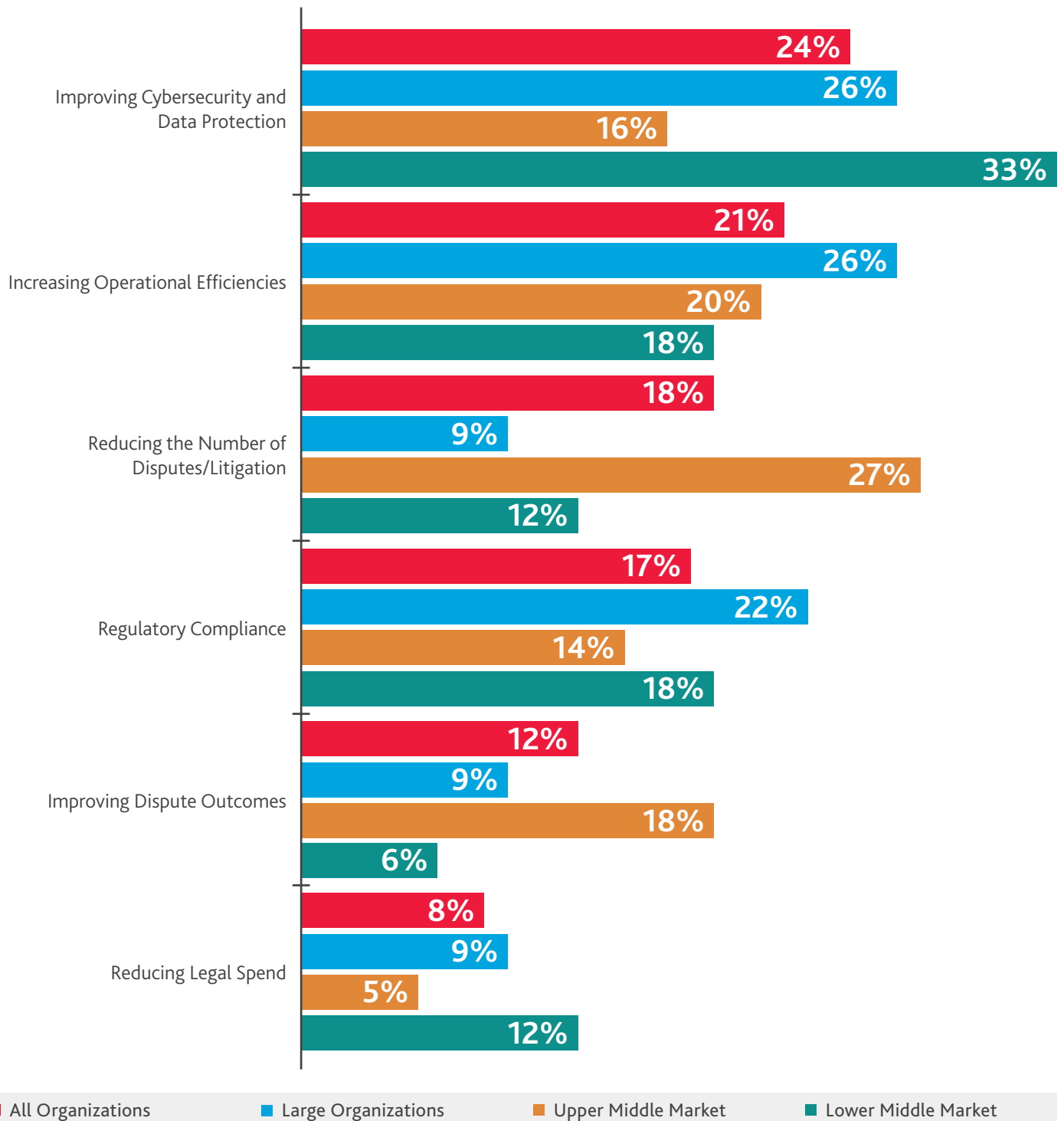
The threat of a data breach has corporate counsel running scared—and for good reason. According to IBM Security Intelligence, the risk of experiencing a data breach of at least 10,000 records is greater than that of catching a winter flu. Now that cyber risk mitigation falls within corporate counsels' purview, it comes as no surprise that in-house attorneys rank improving cybersecurity and data protection as one of their top three biggest business priorities for the year ahead. Lower middle market companies, especially, are looking to shore up their cybersecurity and data privacy efforts, with a third listing it as their No. 1 business priority.

*"Every organization, regardless of size or industry, will experience a data breach or cyberattack multiple times in their lifetime—if not weekly or monthly. Corporate counsel can help organizations prepare for every scenario possible by actively participating in discussions around cybersecurity and data privacy and shoring up their own data management and protection practices."*

GREGORY A. GARRETT  
Head of U.S. and  
International Cybersecurity



## WHAT IS YOUR TOP BUSINESS PRIORITY IN THE NEXT 12 MONTHS?



Both data breaches and data privacy rank in corporate counsel's top three biggest legal risks with respect to data, cited by 54 percent and 42 percent, respectively. While a higher percentage of respondents cited concerns about data breaches, the issue of legal risks associated with data privacy has increased substantially with the introduction of the EU's General Data Protection Regulation (GDPR), effective as of May 2018, and the California Consumer Privacy Act, which goes into effect in 2020.

## WHAT ARE YOUR 3 BIGGEST LEGAL RISKS WITH RESPECT TO DATA?

### All Organizations



**54%**

Data Breach



**42%**

Data Privacy



**41%**

Big Data

### Large Organizations



**57%**

Data Breach



**48%**

Data Privacy



**43%**

Data Encryption

### Upper Middle Market



**55%**

Data Breach



**41%**

Data Privacy



**39%**

Big Data and Dark Data (tie)

### Lower Middle Market



**52%**

Data Breach



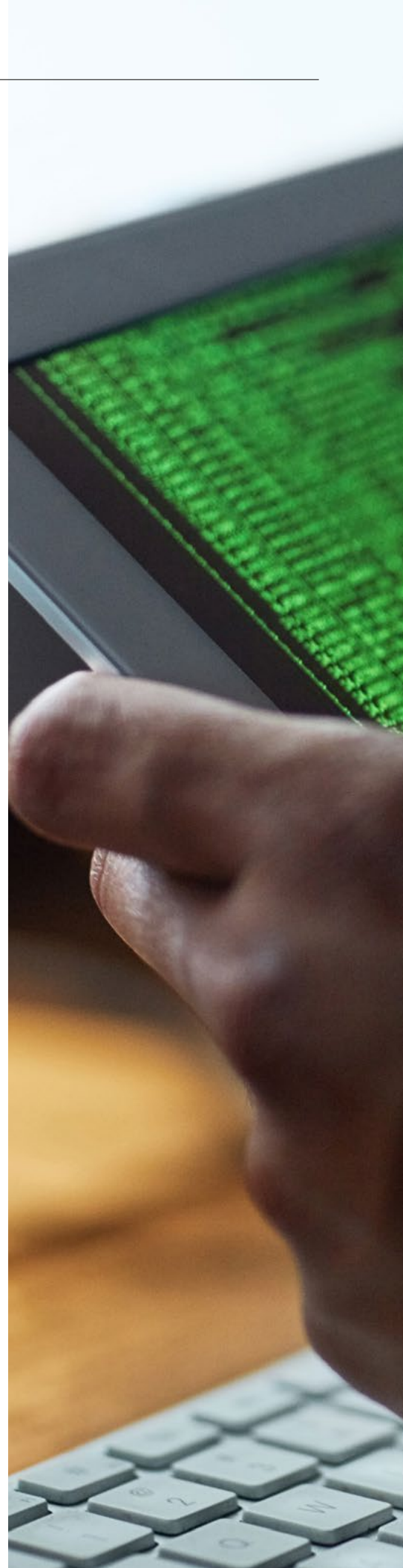
**45%**

Big Data



**36%**

Cross-border Data





## A New Era of Data Privacy: Complying with National and International Standards

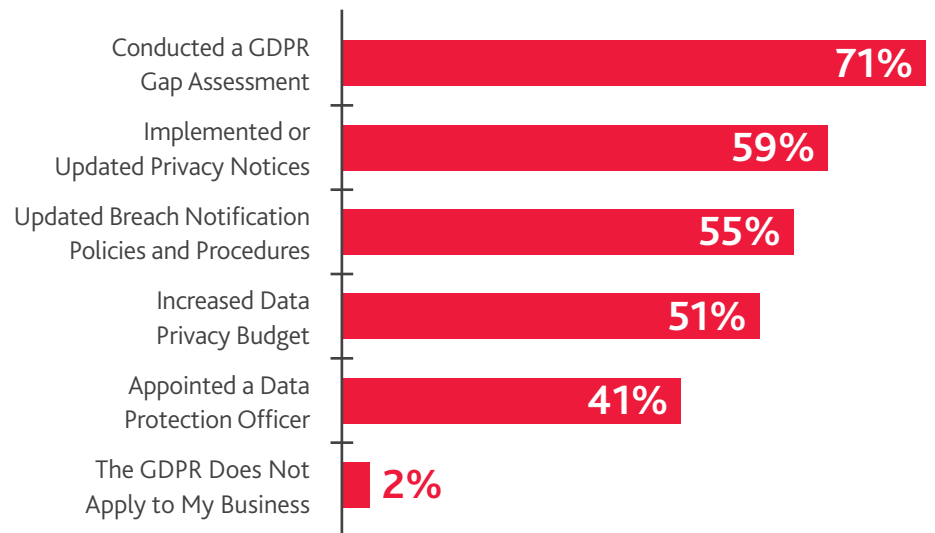
Data comes from all over the world. As such, compliance with international data laws is just as critical as compliance with those at the federal, state and local levels.

When it comes to global data privacy regulations, few are as top of mind for corporate counsel as the EU's General Data Protection Regulation (GDPR), which came into effect on May 25, 2018. To comply, more than half (59 percent) implemented or updated their data privacy notices and/or increased their data privacy budget (51 percent).

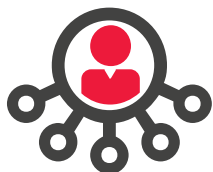
Nevertheless, while the GDPR's compliance deadline has passed, organizations' initial compliance journeys are just beginning. How the GDPR is monitored and enforced will change over time, requiring corporate counsel to stay alert.

But it doesn't end there. In the wake of the GDPR, many similar data privacy laws have started to crop up—starting, in the U.S., with the California Consumer Privacy Act of 2018.

### WHAT STEPS HAS YOUR ORGANIZATION TAKEN TO COMPLY WITH THE EU'S GDPR?



The Act, which goes into effect on Jan. 1, 2020, is intended to give consumers greater ownership, control and security of their own data in the following manner:



### 1. OWNERSHIP

Under the Act, businesses must provide consumers with the categories of information collected about them, their devices and their children, upon request; they must also stop collecting this information, if asked. Businesses that intend to sell consumers' personal information must also inform them of the categories of personal information they are selling and to whom.



### 2. CONTROL

Under the Act, businesses cannot discriminate against consumers if asked to stop sharing or selling their personal data. This includes charging the consumer more, denying him or her access to services, or changing the quality of the service rendered.



### 3. SECURITY

Under current California law, businesses are required to implement "reasonable security measures" to safeguard Californians' personal information. The Act increases the fines and penalties for violations of the existing law, so businesses are held more responsible for safeguarding consumers' personal information.

Several other states have begun discussing whether it makes sense to implement their own similar regulations, and a strong push for a comprehensive federal privacy law has already begun.

Abroad, the GDPR has triggered similar stirrings among other countries. Brazil, for example, recently implemented its own General Data Privacy Law (Lei Geral de Proteção de Dados Pessoais or "LGPD") in August last year, whose provisions closely mirror the GDPR's. Meanwhile, many other countries are debating whether to implement similar rules or to update current ones to be more comprehensive.

Corporate counsel will need to figure out how to navigate these national and international regulations. Navigating disparate, and sometimes conflicting, data privacy laws is currently survey respondents' greatest challenge in managing cross-border e-discovery (37 percent). In the end, a company may find itself between a rock and a hard place when forced to decide which legal risk to take—violating data protection laws or failing to respond to a U.S. subpoena or discovery requirement.

*"The constant, never-ending addition and revision of data-related regulations worldwide will only continue to add complexity to companies already trying to navigate a challenging network of cross-border litigation, investigation and data privacy concerns. Seeking data privacy expertise to help them navigate these international intricacies will become increasingly vital to organizations that are growing, or are looking to expand, their international reach."*

**JENNA AIRA-VENTRELLA**  
Managing Director and BDO Global  
E-Discovery Practice Leader



*"Data governance for privacy, confidentiality and compliance is an ongoing process and commitment to safeguarding personal and other sensitive data that an organization collects, processes, sells, transfers or stores. Organizations and their legal departments will need to take a holistic approach to both—by not only evaluating and reacting to current risks, but by constantly readjusting their e-discovery strategies, technologies and processes to incorporate personal data privacy and protection into their design from the beginning."*

**KAREN SCHULER**

BDO National Data & Information  
Governance Practice Leader





## Regulatory Compliance Continues as a Top Challenge

Last year saw a flurry of global and domestic regulatory activity, and this year won't be different. Given the volume and complexity of these laws, keeping up with regulatory changes is corporate counsel's top personal challenge (24 percent), a figure that rises among General Counsel and Chief Legal Officers (38 percent) and large organizations (35 percent).



**28%** list **regulatory activity** (FCPA, ITAR, HIPAA, etc.) among the **top three** e-discovery-related issues that will have the **greatest business impact** on their organization this year.



**26%** cite **regulatory compliance** as their organization's **biggest information management challenge**, a figure that rises to **42%** among lower middle market firms.



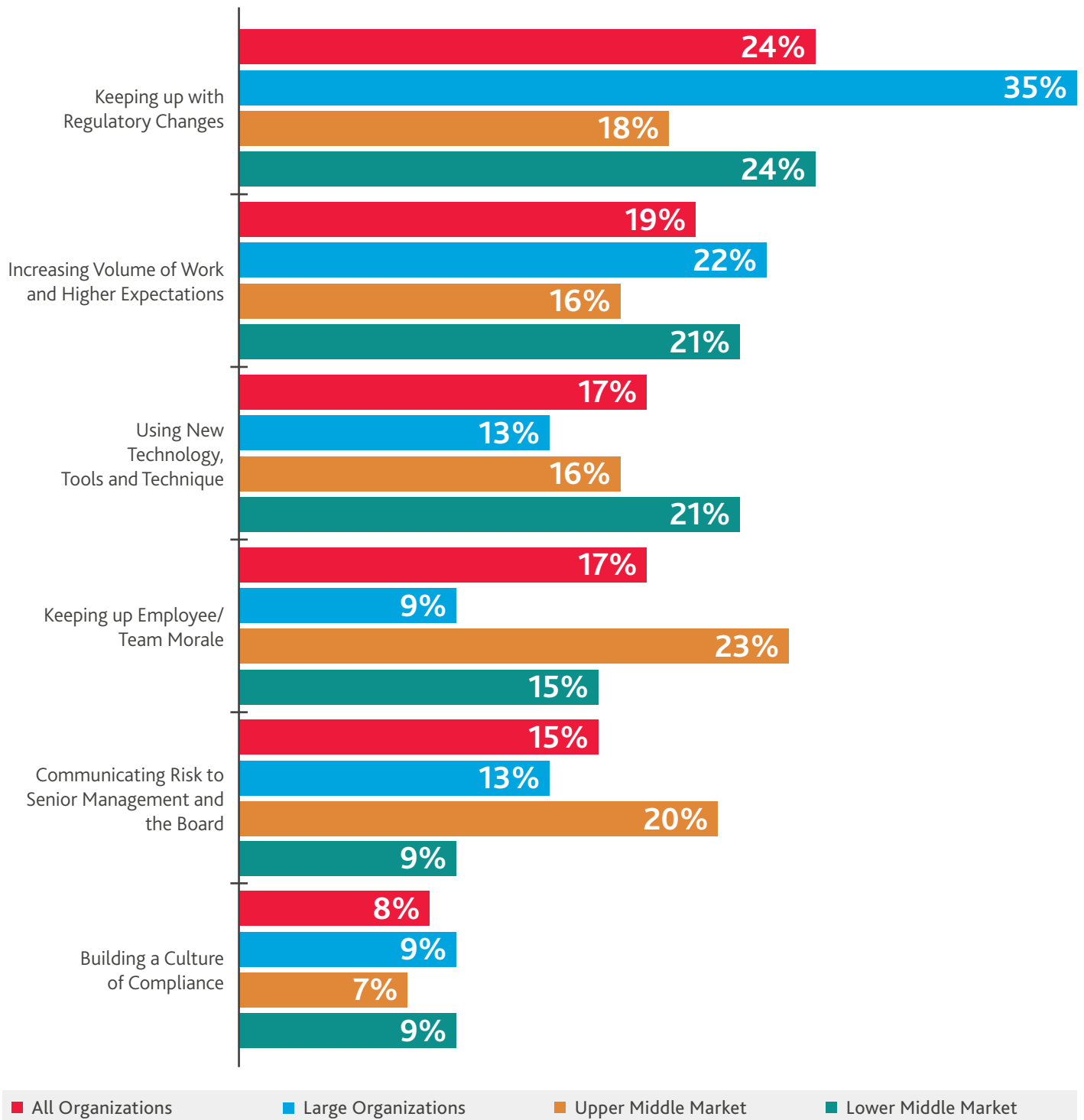
**17%** cite **regulatory compliance** as their **No. 1 business priority** in 2019.

Organizations in heavily regulated industries, such as financial services, healthcare, life sciences, and energy face a particular burden. In addition to having to actively monitor news from federal, state and local legislators and regulatory agencies, general counsel in these industries have to be attuned to trends that could produce potential regulatory changes down the road.

The consequences of noncompliance are serious—ranging from lawsuits and fines to business dissolution.



## WHAT IS YOUR BIGGEST PERSONAL CHALLENGE?





## 3 C's of a Successful Compliance Program



### **CUSTOMIZE YOUR PROGRAM**

While it may sound obvious, creating a custom compliance program that addresses your organization's specific profile and risks—while staying within your resource constraints—is critical. When creating or revamping your program, it's imperative that you work with, and complement, your organization's current operations, rather than attempt to build from scratch.

A significant part of this customization process is figuring out which compliance technology offerings are best suited to your business needs. While it may be tempting to simply implement any solution that promises automation and efficiency gains, it's important to remember that one size does not fit all. To select the right tools, organizations should first assess their current IT capabilities, including their IT infrastructure's ability to integrate new systems and their staff's technical skills. Next, they should identify which of their already-existing processes are best candidates for automation, and which additional features are needed to bridge any gaps. Finally, they should conduct due diligence while researching different vendors. It's important that organizations find partners who can not only meet their current needs, but also future requirements.



### **CULTIVATE A CULTURE OF COMPLIANCE**

While technology can greatly ease companies' compliance burdens by predicting trends, flagging anomalies, calculating risk, aiding decision-making and more, technology without a strategy or organizational processes to back it up is still ultimately just that—technology. Organizations that wish to avoid compliance failures must ensure that, in addition to implementing the right systems and tools, they are also creating a strong corporate culture of compliance—starting with tone at the top. Senior executives must take care to address potential compliance issues on every level and hold themselves to the same high standards to which their organizations should be held. In addition, companies should maintain ongoing employee training with some frequency to ensure that all individuals are familiar with the responsibilities and expectations demanded of them, as well as tools that could be used to report anomalies. Implementing a holistic end-to-end compliance system that accounts for people, technology and processes is imperative to rendering it long-lasting and effective.



### **CONSTANTLY RE-ASSESS**

Compliance is an ongoing endeavor, not a one-time fix. As such, it's critical that organizations test their compliance program on a regular basis and change procedures, protocols, systems or tools that aren't working effectively. This is where outside advice from third-party digital experts comes in handy. Due to the rapidly changing nature of technology and the regulatory landscape, organizations that wish to avoid becoming complacent should regularly seek independent expert advisors who can flag gaps in their current compliance programs and help them plan for the future.

At the same time, companies must be honest and transparent about their own program capabilities to external stakeholders—reporting the actual level of compliance they are operating at on a daily basis, versus an elevated one.

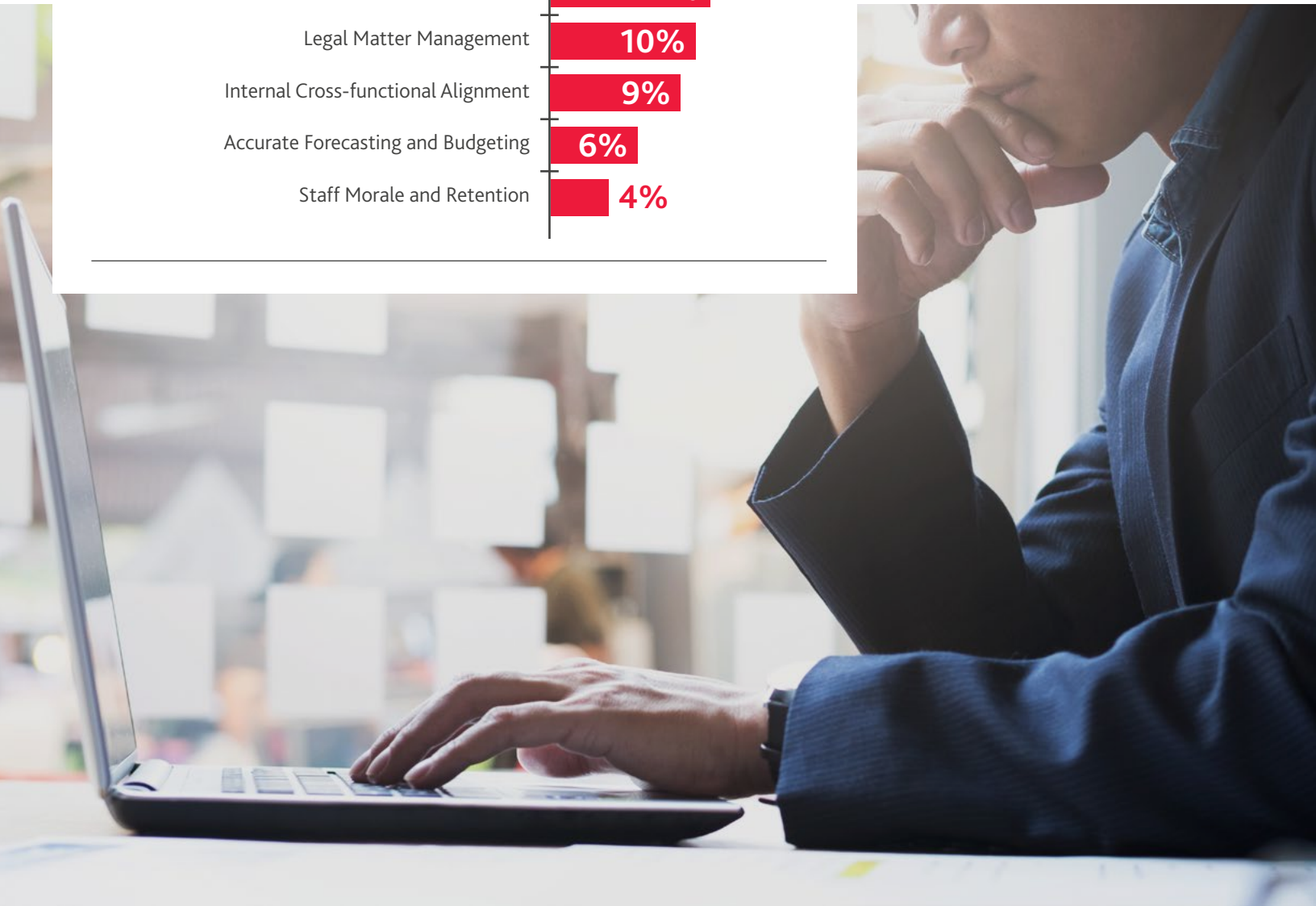
# Operational Efficiency, Through Innovation, Remains the Holy Grail

## WHAT IS THE BIGGEST OPERATIONAL CHALLENGE FOR YOUR ORGANIZATION'S LEGAL DEPARTMENT?

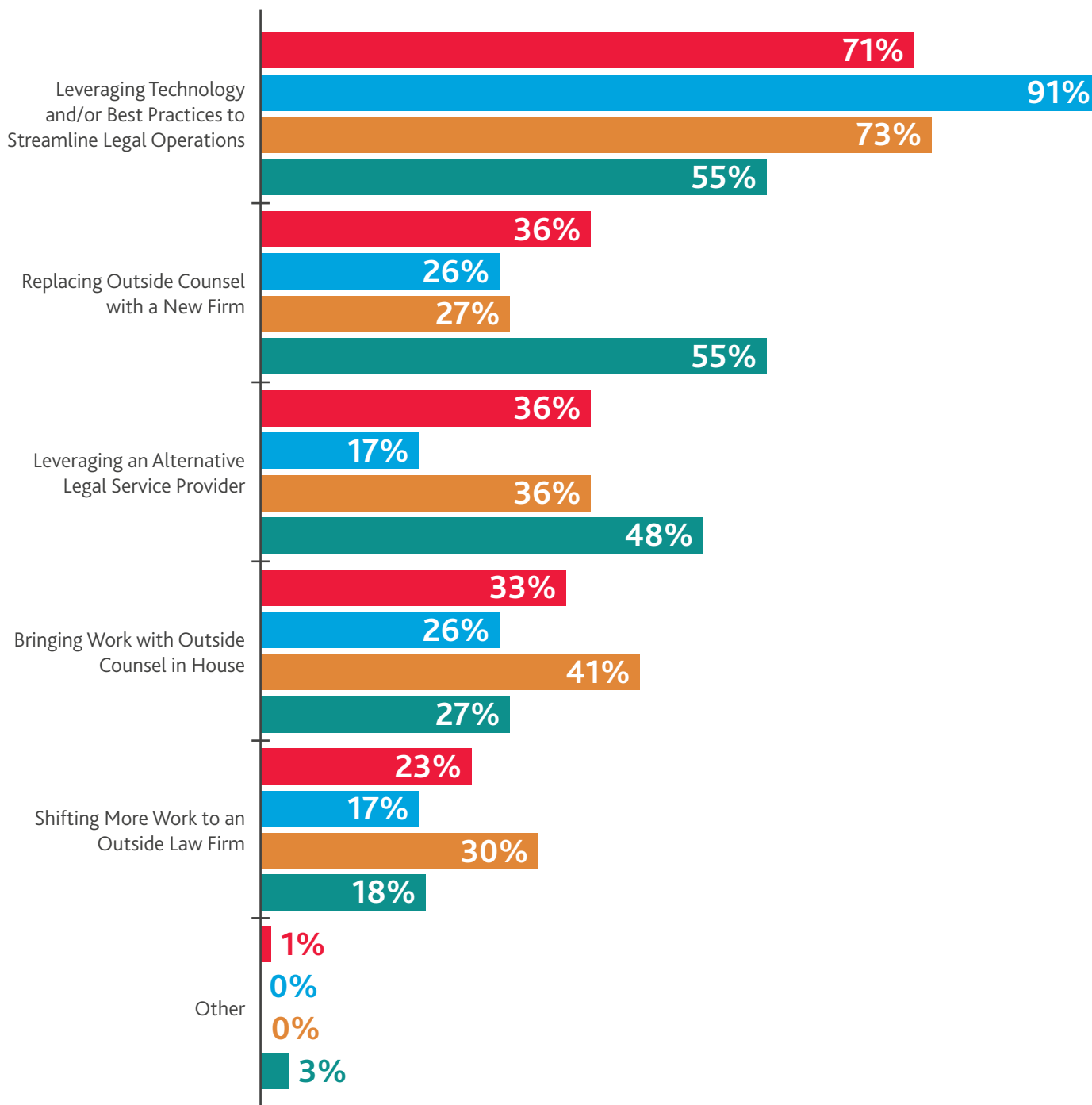


As the volume of work and expectations demanded of legal departments increases—cited by 19 percent of survey participants as their biggest personal challenge—so do the pressure and desire to operate at optimal efficiency.

To streamline their processes, many legal departments have traditionally looked to two main sources for help—outside counsel and technology.



## ARE YOU CONSIDERING ANY OF THE FOLLOWING ACTIONS IN THE NEXT 12 MONTHS?



■ All Organizations

■ Large Organizations

■ Upper Middle Market

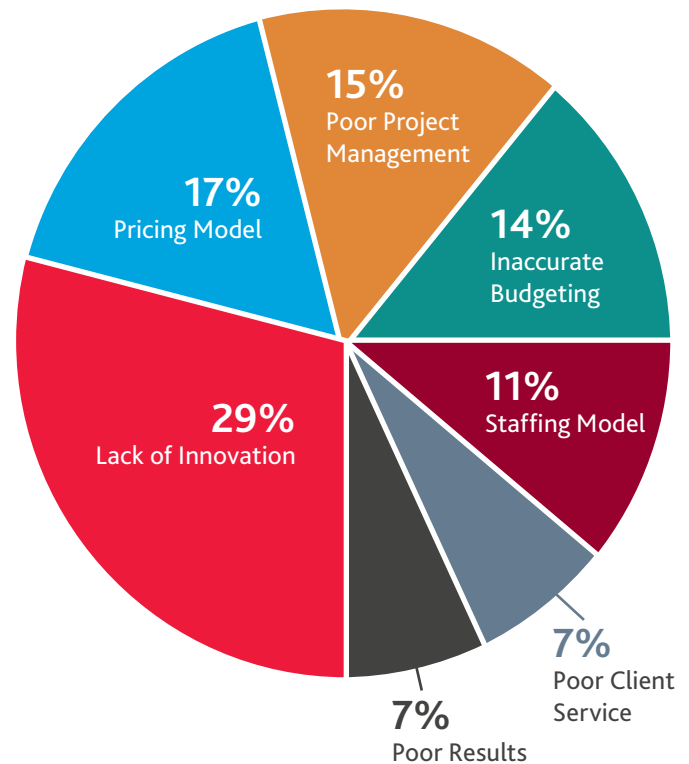
■ Lower Middle Market

## SEEKING OUTSIDE COUNSEL: CORPORATE COUNSEL AND LAW FIRMS' EVOLVING RELATIONSHIP

Seeking advice from outside counsel has traditionally been an action taken by organizations to fill any gaps in skills, knowledge or resources. Nevertheless, this year's survey reveals a startling statistic: Over a third (36 percent) of general counsel are considering replacing their outside counsel with new firms over the next 12 months. This is especially true among lower middle market companies, where over half (55 percent) are considering switching partners.

Why the change? The answer is eye-opening, with 29 percent of organizations citing a lack of innovation (also the top complaint). It's even higher among lower middle market organizations (39 percent), who are perhaps eager to innovate and catch up to their larger peers. Other complaints are more logistical in nature, including issues with pricing models (17 percent), poor project management (15 percent) and inaccurate budgeting (14 percent).

## WHAT IS YOUR BIGGEST COMPLAINT ABOUT YOUR OUTSIDE COUNSEL?



## TRANSFORMING THE LEGAL DEPARTMENT

Corporate counsel's desire to innovate may not be completely new, but increasingly, it's becoming a top priority. Critical to this process is digital transformation. While technology adoption isn't easy—17 percent of survey participants cite using new technology, tools and techniques as their biggest personal challenge—it's inevitable, and general counsel are getting the memo. Seventy-two percent are considering leveraging technology or best practices to streamline legal operations—a percentage that rises to 91 percent among large organizations.

The good news is that the environment is ripe for innovation. Data analytics, predictive modeling, artificial intelligence, machine learning and automation, among other technologies, are quickly becoming essential to the legal profession, helping organizations sort through complex information, find relevant documents more quickly and accurately, make better strategic decisions, improve workflows and more. Fortunately, many outside vendors and consultants have invested significantly in these various technologies to differentiate themselves from the pack. When figuring out which firm(s) to partner with, in-house counsel should pay attention to these factors and choose organizations with the vision and capabilities that best reflect their own goals and roadmap.

While a world of technologies exist, here are a few we believe will be most prevalent this year (as noted in our [2019 E-Discovery & Beyond Predictions](#)):



#### **Data Analytics**

The use of data analytics in e-discovery will come into its own in 2019, as practitioners move beyond using concept searching and predictive coding to deploying a much richer mix of capabilities such as information extraction, biologically-inspired computing and computer vision.



#### **Artificial Intelligence (AI)**

AI will become more popular among firms, but will still be met with pushback —especially regarding concerns about how AI works, how personally identifiable information is used and abused, and what will happen when AI begins thinking on its own.



#### **E-Discovery for Mobile Data**

Mobile data will become the new email, as text, WhatsApp, Slack and their counterparts become even more widely used. Software developers are taking note and will likely offer a multitude of new offerings for identifying, preserving and collecting, processing, reviewing, and analyzing mobile data in its various forms this year.



#### **Robotics Process Automation (RPA)**

RPA will become a major disruptor, driving legal departments and law firms to rebuild their operations from the ground up, while also delivering the much-needed increased reliability, speed and accuracy that effective automation can provide.

## Conclusion

Corporate counsel will have a lot to contend with in 2019. The continued explosion of Big Data and dissemination of information will require organizations to heighten their focus on information governance, e-discovery and data management. Regulatory developments at the national and international levels—ranging from the EU's GDPR to industry-specific laws—will demand an almost religious upkeep of legal and regulatory compliance processes. Meanwhile, increasing competition, market pressures and burgeoning fears of a potential recession make cutting costs and maximizing operational efficiency even more of a business imperative.

Luckily, legal departments are arming themselves up to meet these challenges. From increasing investments in information governance and e-discovery, to adopting new technologies and processes, to fully undergoing digital transformation, corporate counsel are finding new and innovative ways to stay ahead.







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