

Survey Shows Companies Struggling to Keep ESI Policy Up to Date

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A survey released Monday reveals that more and more organizations report having an electronically stored information (ESI) discovery strategy, but many still fall behind when it comes to keeping them up to date with the times.

Kroll Ontrack's fourth annual ESI survey shows that 79 percent of responding companies have a document retention policy and 52 percent have an ESI-specific response policy. However, only 23 percent of respondents "strongly felt" that their organization's policies were "repeatable, defensible, and tested," while 77 percent did not, noted Kristin Nimsger, president of Kroll Ontrack.

The survey featured 203 respondents from mid- to large-size organizations, with a mix of IT and legal department leadership rounding out the respondents. "There is a clear dichotomy between ... the existence of policies and the fact that they have any practical benefit to the organization for a whole host of reasons," Nimsger said.

A lack of optimization is a likely factor.

Only 38 percent of companies reported having tested their policies, while 45 percent did not know if the policies had been tested. Kroll's vice president of business development, Jason Straight, said that it's "not much of a surprise to see that lower-than-expected level of confidence in these policies," considering the lack of testing.

Companies that do perform tests of their policies can do so either with "live ammunition," he said, such as waiting for an actual subpoena or document request to come through, or through any number of hypothetical situations.

"There are technologies," Nimsger said, "that are available to organizations to assist them with implementation, to assist them with compliance as it relates to a legal hold, and to reduce their risk and cost, but those are not being necessarily selected for the proper purpose, or implemented appropriately, within organizations."

The two agreed that any disconnect between legal and IT departments can contribute to a lack of confidence in policy, as well. Nimsger noted that, while policy creation is seen as the job of the legal staff, technology implementation is often viewed as the IT staff's responsibility.

The survey does offer encouragement in that area, though, as 44 percent of respondents now believe that job should be shared. While that number is up from 35 percent last year, it is still not a majority, and, as Nimsger said: "there is no substitute for having both IT and legal at the table."

Straight feels that having the two sectors come together would go a long way toward improving confidence in ESI strategies as more and more companies begin dipping their toes in the document retention policy waters. "Having that constant cooperation and interface between IT and legal is really the only way to maintain confidence that a program that you implemented six months ago is still defensible," he said.

