

## RenewData Mitigates Dormant Liability Risk

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**Abstract:** Many organizations are starting to make technology investments to help them facilitate and gain control over electronic discovery processes. However, many of these purchases assist corporate counsels and IT in managing recently created information. RenewData solves a problem that many of these organizations are overlooking: managing and controlling historical information scattered throughout a company on backup tapes. This data is often included in the scope of legal and regulatory electronic discovery requests, and companies must find a way to prevent it from becoming an enormous liability.

### The Dormant Liability Challenge

Backup tapes—most IT departments use them because they have to, not because they want to. They store copies of critical corporate information in support of data protection and disaster recovery operations. Very often, backup tapes are also used as corporate archives to retain business records in compliance with regulatory or corporate governance requirements.

Long retention periods to support backup and archive processes, combined with tape's portability, leaves information dispersed across data centers, remote offices, and third-party service provider warehouses. These tapes are rarely accessed, so most IT departments do not know how many individual pieces of media they have, where they are, or what is on them. Sure, backup software can track some of this data, but when companies use multiple data protection applications, a variety of tape libraries, and send media to and fro on a regular basis, it's tough for any staff to stay in control.

Many legacy backup tapes are never used by IT for recovery purposes, but now they can represent an enormous risk (and potential cost) to any company. Regulators and litigators often target information on these tapes as sources of evidence to support investigations and a wide range of legal matters. When surveyed by ESG, nearly 50% of corporate counsels stated that the average age of data requested during an electronic event is 36 months or older.<sup>1</sup> When companies begin restoring tapes that hold much of this data, they have no idea what data may quickly become a corporate liability.

### RenewData Reduces Electronic Discovery Risks and Costs

ESG estimates that one out two organizations—regardless of number of employees or industry—has been through an electronic discovery event in the past twelve months.<sup>2</sup> This trend is likely to increase as more business is conducted digitally and the Federal Rules of Civil Procedure (FRCP)—which mandate how civil law processes must be carried out—now includes specific procedures on Electronically Stored Information (ESI). As such, companies must be prepared to identify, collect, preserve, analyze, review, and possibly produce almost any source of electronic data. These tasks must be completed in relatively short order as court-imposed timelines are typically measured in weeks.

Many current products, inclusive of search and archive solutions, help customers manage relatively new data in the context of the electronic discovery process. RenewData assists customers in dealing with less accessible, older, tape-based information in response to or in preparation for ongoing electronic discovery inquiries. The company has three primary offerings for customers:

<sup>1</sup> Source: ESG Research Report, *Electronic Discovery Requirements Escalate*, November 2007.

<sup>2</sup> Ibid.

1. **Tape Restoration services** are ideal for customers that must respond immediately to an electronic discovery inquiry. RenewData can leverage its 43,000 square foot lab to quickly restore large volumes of backup tapes (or other backup media), indexing the data for easy search and retrieval. Over the past three years, RenewData has processed over 70,000 terabytes of tape-based information for customers.

As the data is processed, it is deduplicated to help reduce the amount of data ultimately stored in a central repository called ActiveVault—or it can be exported and delivered back to the customer. The output can take the form of .TIFF formats, database application load files, legal case load files, or portable storage media like a DVD or removable disk for easy transport. When leveraging ActiveVault, customers can log into the secure, web-based portal to run searches to locate responsive information and begin the review process. While in ActiveVault, customers can organize content by the various matters that are underway. Additionally, content in the archive can be tagged with retention periods to assist with the legal hold processes and some data may be denoted as privileged, which will help attorneys decipher what can be shared with opposing counsel as the discovery progresses.

RenewData can preserve the information in an unalterable format, preventing any risk of spoliation. After the matter or investigation has concluded, a customer may choose to keep the information online, which can be beneficial if the data has a high likelihood of being requested as part of another event. Throughout the entire process, RenewData maintains complete evidence chain of custody from the time media is handed over to the company until the online data set is sent back to the customer or moved into the ActiveVault.

There are other components of RenewData Risk Management services, including assistance with building a corporate ESI data map as well as data migration services, which can help reduce the amount of tapes companies need to save ongoing historical data.

2. For those customers that do not want to constantly react to electronic discovery inquiries and put their corporate counsels on the defensive, **RenewData's Evidence Archiving services** enables customers to proactively restore tapes into an archive.

Using the same ActiveVault that is available to customers reactively restoring backup tapes, customers can actively manage their once-offline data by setting and enforcing retention periods. Content can be expired when it is no longer needed for compliance, legal, or business reference purposes. When a discovery request arrives, a customer can easily log into the portal and look for relevant data. They do not have to worry about the interim tape restoration step, which can save corporate counsel valuable time when preparing overall case strategy or for 'Meet and Confer' sessions with opposing counsel where sources of Electronically Stored Information must be disclosed. With more insight enabled by RenewData's Evidence Archiving Services, attorneys can negotiate for the inclusion or exclusion of specific search terms, knowing what data exists when it is time to start the collection process. As with its tape restoration service to an archive, RenewData also facilitates legal holds with proper data preservation and properly maintains chain of custody while it is responsible for the information.

3. Many companies want to centralize content, both old and new, to facilitate more-broad information access—with electronic discovery being a primary driver of such activities. RenewData combines its Tape Restoration offerings with its archiving expertise to help customers centralize old data from backup tapes—along with the data being sent and received in the future—into a single archive with its **Archive Migration services**.

Because e-mail is the most common source of evidence requested during electronic discovery events (see Figure 1), companies are making it a priority to invest in technology with the hopes of identifying a better way to make messages and attachments more accessible and searchable. ESG estimates that over one-third of U.S.-based organizations have deployed purpose-built e-mail archive solutions in order to help facilitate electronic discovery and records retention tasks, as well to lower overall messaging application storage costs.<sup>3</sup> E-mail archive solutions help companies manage messages and attachments from the date the product is deployed and some solutions facilitate personal archive migrations. However,

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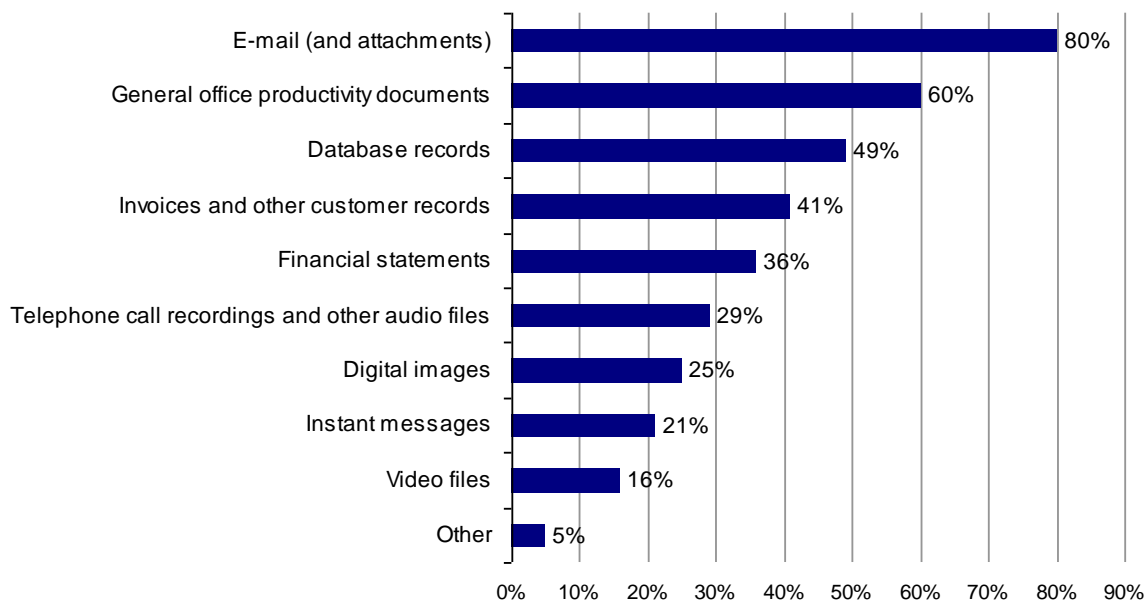
<sup>3</sup> Source: ESG Research Report, *2007 E-mail Archiving Survey*, November 2007.

older messages stored on backup tapes are often left stranded outside of these archives. With its expertise in dealing with this type of information, RenewData has integrated its solution with several e-mail archive products—including those offered by Symantec, AXS-One, Mimosa, and Google—allowing customers to import tape-based messages into the archive. Customers can then have one centralized archive that serves as system of record for long-term management of all their e-mail.

Much of RenewData's R&D investment centers on the ability to process data quickly and to make the ActiveVault extremely useful for corporate counsel and compliance officers to manage the restored data intelligently and efficiently. Through its ability to de-duplicate redundant content or its contextual analytics built on top of the ActiveVault rich index, customers are assured that they will be able to take a large data set and make it much more intelligible.

**FIGURE 1. MOST FREQUENTLY REQUESTED RECORD TYPES DURING ELECTRONIC DISCOVERY EVENTS**

**To the best of your knowledge, which of the following record types has your organization been asked to produce in a legal proceeding or regulatory inquiry? (Percent of respondents, N = 107, multiple responses accepted)**



Source: ESG Research Report, *Electronic Discovery Requirements Escalate*, November 2007.

### The Benefits of Accessible, Centralized Data

Over one-third of organizations have hired IT staff dedicated to electronic discovery.<sup>4</sup> This reaffirms that IT is preparing for the ongoing support of corporate counsels with very complex processes. If companies do not want to hire resources in line with the increase in the amount of electronic discovery requests they receive—a number that is sure to increase in proportion to the amount of business conducted digitally—they must invest in technology and services that centralize information and makes it accessible. And, right now, the most inaccessible information that creates the most cost and risk is stored on backup tapes. The alternative is leaving data on tapes scattered inside and outside of the organization. The time it takes to find and restore data can cost attorneys valuable case preparation time, but, more importantly, ignorance of the contents of these tapes may create a substantial legal risk.

Companies should also improve information accessibility to enable the consolidated electronic records management programs that are starting to be implemented through many companies. Data on tapes may be subject to a variety of record retention mandates, including those pertaining to regulatory requirements. And,

<sup>4</sup> Source: ESG Research Report, *Electronic Discovery Requirements Escalate*, November 2007.

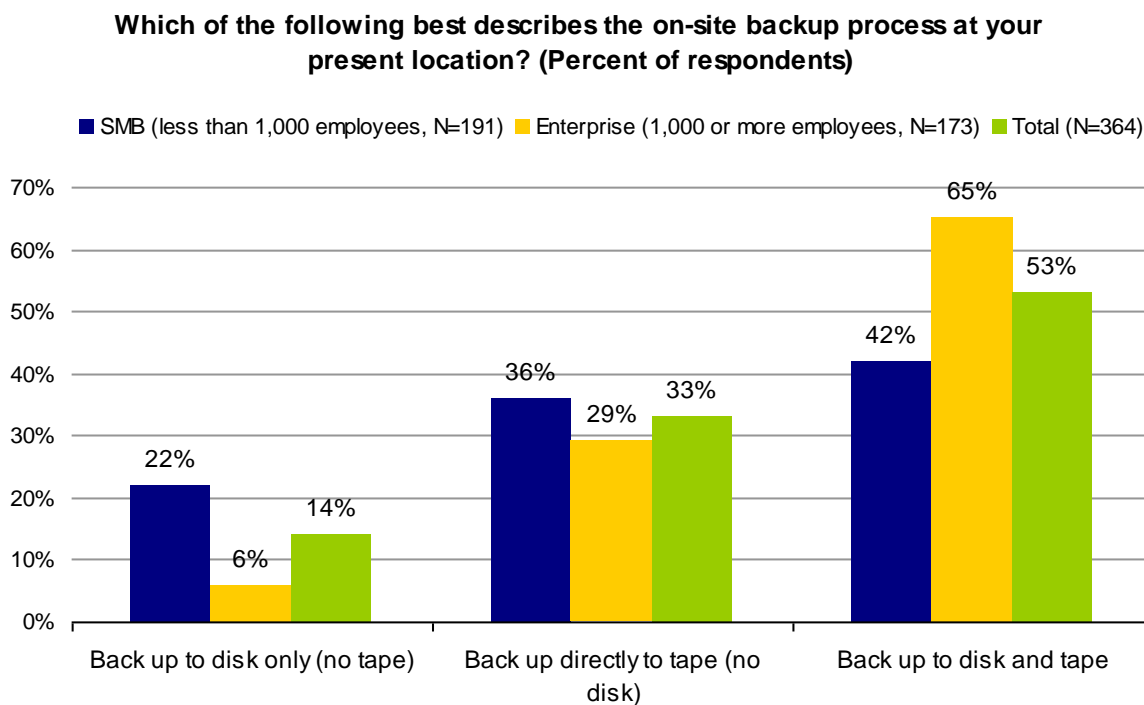
many companies cannot enforce disposition policies, which are allowable per the FRCP so long as content is deleted during the normal course of business and it is not currently on legal hold. It is very hard for companies to locate data on tapes, never mind setting and enforcing records management policies.

Of course, there are other benefits to be gained by making more information available, including better collaboration amongst knowledge workers as historical data can be analyzed for more informed decisions. Having older information centralized also provides authorized employees, including corporate counsels and compliance officers, with a system of record that can be easily searched.

### The Bottom Line

Over 70% of organizations stated that they have tapes on legal hold and over 20% said they have hundreds to thousands set aside.<sup>5</sup> Although there are plenty of disk-based backup solutions in the market, ESG research indicates that companies are going to still use tape as a data protection storage media going forward—even for onsite backups (see Figure 2). With the likelihood of an increase in the number of electronic discovery events due to the U.S.'s litigious profile, coupled with ongoing record retention mandates, organizations are going to need a way to manage aged data more efficiently.

**FIGURE 2. ONSITE BACKUP PROCESSES CURRENTLY USED**



*Source: ESG Research Report, Data Protection Market Trends, January 2008*

RenewData understands the demands of managing information in the context of chain of custody requirements and has built expertise around restoring tapes rapidly so that corporate counsels can begin searching, culling, and reviewing data quickly. There are plenty of other, usually newer, sources of data that must also be managed during electronic discovery events, including e-mail repositories, file systems, and database applications. Knowing that it could not do it all when it came to expediting the many different aspects of electronic discovery, RenewData has focused on a challenge that is unlikely to go away while enabling customers to get more out of their other electronic discovery-related technology investments, like e-mail archive solutions.

Most organizations stumble upon a vendor like RenewData because they are in a very tough situation: they need tapes restored and processed because of an urgent legal or regulatory matter. When engaging RenewData,

<sup>5</sup> Ibid.

customers would be remiss if they did not ask how they can avoid the same situation in the future. RenewData may not be able to help them with all of their electronic discovery or compliance issues, but it can help solve those involving inaccessible, high-risk data.

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