



Data Analytics in the Legal Community: 2016-2017 Trends

CTRL

Coalition of Technology Resources for Lawyers

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2017 Analytics Report

Introduction

William Gibson, the noted science fiction writer, once said:

“The future is now, it’s just not evenly distributed.”

This quote sums up the results from the second annual Analytics Report conducted by the Coalition of Technology Resources for Lawyers (CTRL). CTRL partnered with The Information Governance Initiative (IGI) to survey corporate eDiscovery and information governance (IG) lawyers on the role of data analytics in their practice. In the survey, CTRL asked broad questions about the importance of technology and specific questions about use cases and results. The quintessence of the CTRL survey was the uniformity and agreement across the corporate bar: **99% agreed that analytics will be indispensable to the practice of law over the next 10 years.**

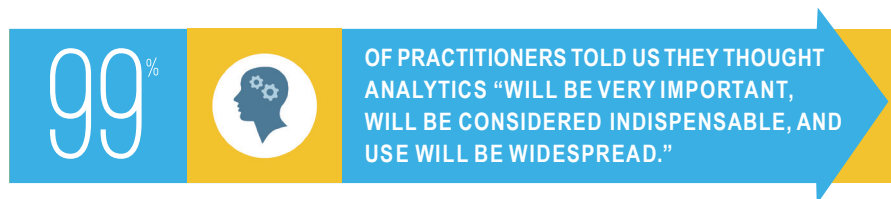
Across the spectrum more organizations are evaluating or rolling out active analytics programs with significant budgets. In current practice, culling, early case assessment (ECA), and fact-finding are the top 3 use cases, respectively. On the IG side, the survey found that analytics had already gone mainstream with a significant majority of respondents. Further, respondents indicated remarkable growth for automated content categorization and data migration.

Survey Population

A majority of survey respondents were attorneys, with most holding senior-level positions. Around one third of respondents were non-attorneys, including IT, analytics, and other professionals within or providing support for the in-house legal team. Most respondents were from the United States. The survey attracted respondents from a range of organization sizes and industry verticals, including financial services, government/military, pharmaceutical/chemical, manufacturing, and others.

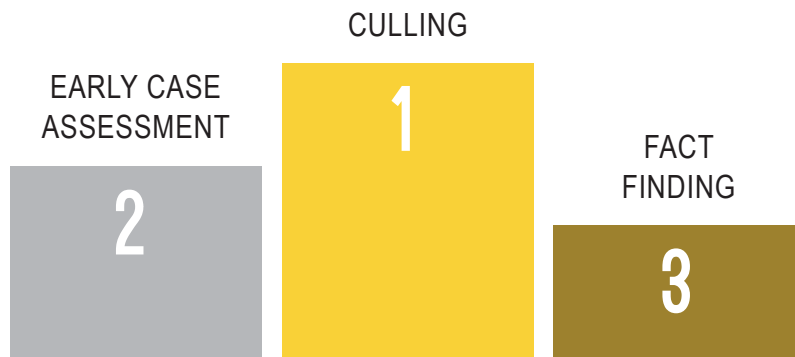
Analytics Are Indispensable

This year, **99% of respondents indicated that analytics will be “indispensable” to the practice of law** (up from 93% last year). In lockstep, **77% of legal departments will spend more on eDiscovery analytics this year** (up from 71% last year). The data is clear: corporate legal teams are not only using analytics, they are expanding their investments. This year’s results continue an upward trend that we predict will persist as corporations master the legal challenges of investigating and managing their rapidly expanding electronic data.



What Are Analytics Used For?

Unsurprisingly, **culling—the first and broadest stage of data filtering prior to review—is the number one use case for analytics**. Culling has traditionally been heavily based on file metadata, providing attorneys a way to use date ranges, custodian names, file types, and other content-agnostic measures to reduce the data population. However, over the past few years we’ve seen a marked increase in more advanced analytics for culling. Keyword and structured Boolean queries came first, but now we are seeing even more advanced tools like clustering, concept analysis, and supervised machine learning at this early stage.



The second most popular analytics use case reported in the survey was for ECA/EDA (Early Case/Data Assessment). This is likely a reflection of the blurring lines between culling and ECA. In the past, eDiscovery technology was traditionally stratified by bifurcating the process between the initial sorting and the true “review for production.”

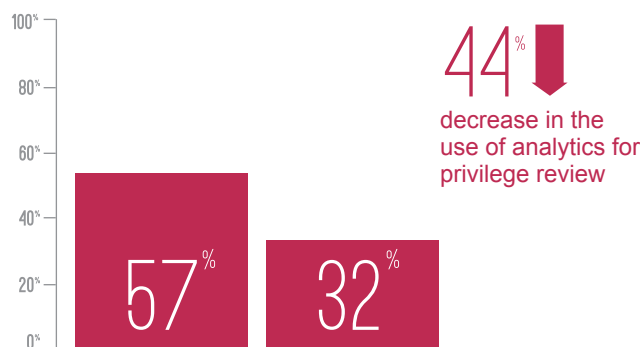
Culling and ECA were also the top use cases last year. What does surprise us, though, is **the rise of fact-finding analytics**. What used to be a byproduct of the standard relevancy review workflow has now taken prominence as a stand-alone, and rather critical, use case apart from relevancy review. **Relevancy review ranked 4th in this year’s survey for analytics use cases**. This is a significant shift in respondents’ priorities since most legal analytics were initially developed in response to relevancy review workflows.

Fact-finding is different. It’s a more fluid and dynamic process than relevancy review. In a review for production, there are conferences where opposing parties negotiate protocols, schedules, and search terms. They leverage disciplined review teams in the business of review and move from document to document coding them as relevant or irrelevant. Fact-finding offers less framework and attorneys looking for data must be much closer to the process—and the data. There’s a critical distinction here in that relevancy review can be (and usually is) accomplished by deploying low-cost contract attorneys on a moderately culled dataset. Fact-finding requires attorneys that are familiar with not only the business but the underlying claims or investigation, as well. Knowledge should be concentrated in a few specialists rather than distributed across a large contingent. **Only the cumulative advances in machine learning make this possible.**

Machine learning goes by many names in the legal industry—**Technology-Assisted Review (TAR) and Predictive Coding are the most prevalent**. For more on that subject, please refer to [CTRL’s 2016 Guidelines Regarding the Use of Technology-Assisted Review](#). For more on the jurisprudence of TAR, please refer to the CTRL [Predictive Coding Case Law Wiki](#), one of the world’s most complete databases for judicial opinions on the subject (all freely available and with public source PDFs).

The Special Case of Privilege Review

Surprisingly, **respondents indicated a 44% decrease in the use of analytics for privilege review**, from 57% to 32%. One theory is that the use of analytics upstream in the process is generally producing more targeted production sets that can be managed with manual review. Another explanation could be that legal departments are outsourcing more privilege review work to their firms and vendors. The most basic thesis is that privilege review is such a sacred process and that the risks of mistake are so grave that it often warrants unassisted, eyes-on review.



Analytics Budgets Are Steady or Growing

Since the overwhelming majority of practitioners recognize the value of analytics, **95% of their spending in this area is either steady or growing**. This measure demonstrates that organizations already leveraging analytics have recognized the value and have maintained or expanded their investment. To that end, **3 times as many organizations plan to use analytics for eDiscovery in the next year** compared with the last, and they plan to start with budgets between **\$50,000 and \$100,000**.

The recent shift in the eDiscovery analytics industry toward cloud solutions has undoubtedly contributed to the spending growth. The cloud better enables organizations to move from a transactional model to a more disciplined, strategic approach to eDiscovery. Cloud deployments generally reduce the infrastructure and maintenance cost associated with processing-intensive analytics platforms, making it easier for corporate legal teams to bring in the powerful software necessary for better culling, ECA, and fact-finding.

Outside Counsel Selection

Analytics are being deployed on new processes across organizations. The CTRL survey showed that **some (15%) in-house counsel use analytics to decide which law firms get business**. These technologies track and aggregate critical firm statistics like hourly rates and win rates. They can measure and quantify firm strengths, down to their success rates before individual judges. Corporate legal departments are using these tools to manage and evaluate **outside counsel billing rates (67%) and performance (60%)**.

Matter Management

Sophisticated corporations face thousands of lawsuits each year, and it's up to inside counsel to make sense of it all. To that end, **27% of respondents already use a matter management system, and 14% of the remainder planned to start** using a matter management system within 12 months. There was a dramatic change in adoption predictions: **twice as many legal departments plan on using analytics for matter management** as compared with last year. This trend is likely a natural byproduct and response to the additional volume of [legal work that is being in-sourced by corporations](#).

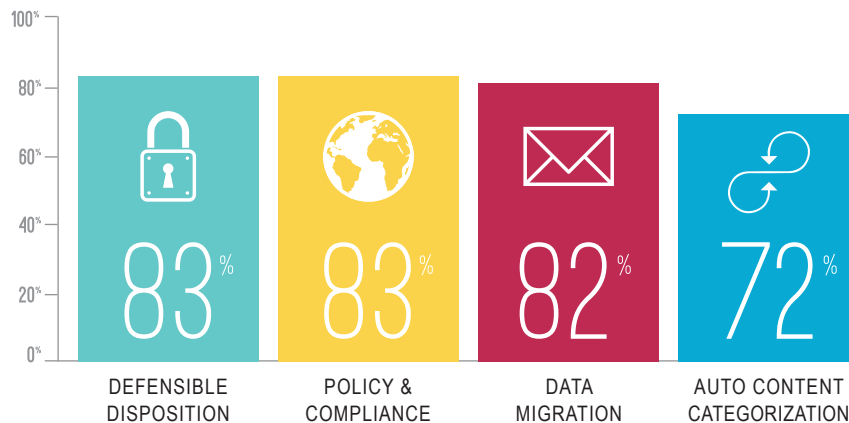
Exponential Growth in Contract Analytics

The run-away story for this year's survey was the astronomical rise in contract analytics with **5 times as many legal departments** using analytics as last year. Contract analysis presents a particularly compelling use case for analytics across an organization. Corporate lawyers spend a vast amount of time and energy negotiating, drafting, and maintaining contracts. And, they need to research and track key terms, dates, termination clauses, etc. across thousands, if not millions, of contracts. **The number of legal departments that will spend more money on contract analytics this year (versus last) went up 125%.**

Analytics Are Leading the IG Initiative

Every organization wants to organize and reduce their data. It's a constant struggle for large organizations to rein and control the data diaspora. Business-critical information is accumulating across multiple databases and repositories without centralized control. Many organizations are responding by connecting analytics into these varied databases to **delete (83%), comply (83%), migrate (82%), and categorize (72%)** their data.

ANALYTICS IN INFORMATION GOVERNANCE GOES MAINSTREAM
TOP USE CASES IN IG



The compliance use case is largely driven by new regulations. Take the GDPR, for instance, the new EU data protection regulation. Not only does it standardize data security obligations, it imposes a penalty up to 4% of gross revenue for poor IG practices that expose personal data.

The last bit of insight from the survey statistics: The use cases grew at dramatically different rates compared with last year. **Defensible deletion uses grew modestly (8%), but migration (36%) and categorization (50%) experienced significant growth.** Considering that the overall usage of analytics for data categorization still lags behind the others, this indicates to us an area with more growth to come.

Conclusion

This 2017 CTRL Survey backs up industry observations that corporations are using analytics to do more e-discovery work themselves. The numbers show that corporate legal professionals view analytics as indispensable and continue to invest in technological solutions for ECA, culling, and fact-finding. The survey also showed corresponding growth in analytics for matter management and information governance. The trend of increased adoption ought to continue as software developers harness advances in machine learning and computing power to solve legal challenges.

About CTRL

The Coalition of Technology Resources for Lawyers (CTRL) is an industry education and research group committed to the development of practice and proactive guidance for lawyers as they leverage various technologies in practice. CTRL hosts a searchable, public database of case law focused on machine learning applications and maintains a number of practitioner resources like a model stipulation and protocol and an information governance playbook. Learn more at <http://ctrlinitiative.com/>.

About the IGI

The Information Governance Initiative (IGI) is a cross-disciplinary consortium and think tank dedicated to advancing the adoption of information governance practices and technologies through research, publishing, advocacy, and peer-to-peer networking. The IGI publishes research, benchmarking surveys, and guidance for practitioners that is freely available on its website. More information about IGI is available online at <http://iginitiative.com/>.