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The legal operations tipping point: How shifts in law department management continue to transform the industry

Welcome to the new era of corporate legal operations. What started as a niche group within the broader legal department has grown rapidly over the past decade in lock-step with the rise of legal technology to an influential office with broad responsibilities, not only in core legal functions, such as eDiscovery, but also in adjacent legal concerns, such as security and document management.

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Contents

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When OpenText™ Discovery engaged Ari Kaplan Advisors to survey this community for the first time in 2015, the goal was exploratory. While legal operations leaders traditionally serve as a chief of staff who help legal departments get the most out of their legal budgets, vendors and legal technology, corporate legal operation responsibilities fluctuate dramatically from organization to organization.

OpenText wanted to identify common trends, functions and opinions:

- How is eDiscovery being handled?

- Are legal technologies moving to the cloud?

- How is AI being integrated?

- Are security and content management being driven independently from legal operations?

- How are legal operations initiatives being measured?

A leading industry analyst, Ari Kaplan's unique position affords him intimate conversations with legal operations professionals who share war stories, anecdotes and insights. From metrics to modernization, legal operations professionals are helping build a next-generation law department in collaboration with visionary chief legal officers, savvy in-house technology experts and an array of innovative outside providers. That team-oriented approach and strategy resonates throughout the commentary and statistics reflected in this white paper.

Participants

Ari Kaplan Advisors interviewed 35 legal operations leaders with Fortune 500 and 1000 companies between July and August 2018 (17 of whom were interviewed for the 2017 report). Eighty percent served as their organization's director of legal operations (or in an equally senior role). Most had traditional responsibilities for outside counsel and vendor management, legal technology administration and budgeting, while others participated in or led initiatives related to e-Discovery, advanced strategic planning, talent utilization and business process improvements. Forty-nine percent were from companies with revenues of more than $10 billion and 83 percent were with organizations with revenues of more than $5 billion. Two-thirds were at companies with more than 10,000 employees and 91 percent were with organizations maintaining more than 5,000 employees.

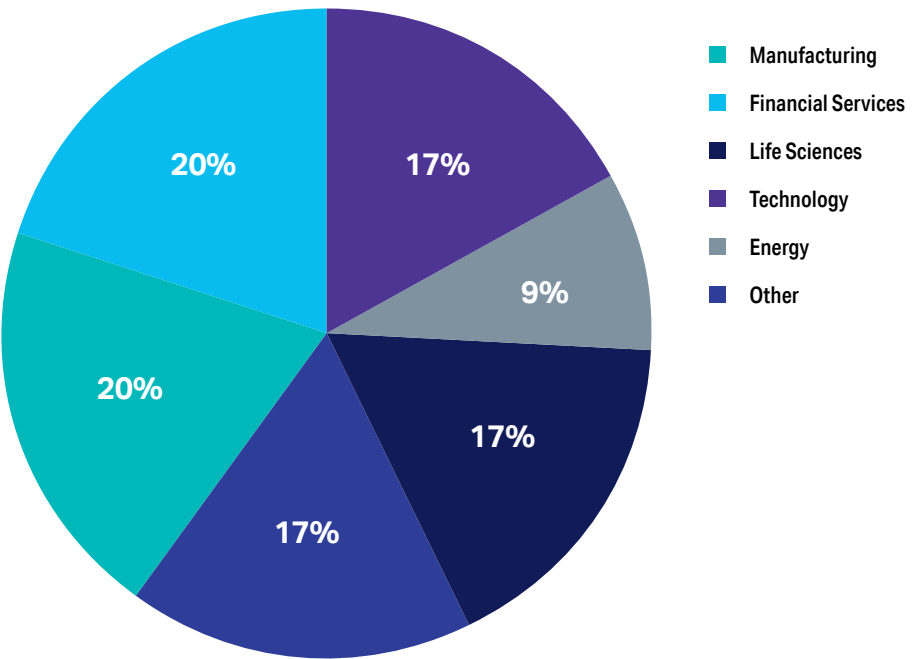| Corporate legal ops groups at a glance	
Median employees supporting legal ops	4
Median lawyers in each law department	50
Median number of outside law firms used	100
Median number of outside eDiscovery vendors	2

Figure 1: Participant Industries

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Operations leaders are transforming legal

Since 2015, Ari Kaplan has conducted nearly 100 interviews with corporate legal operations professionals to paint a picture of an evolving and dynamic role in flux. No two corporate legal operations managers share the same responsibilities and none reported stagnation. "It has expanded from basic business operations to include a range of chief of staff responsibilities," noted one participating director of legal operations. Another added, "It has been completely overhauled from reactive to strategic; now we offer rich analysis and identify how analytics are impacting resource allocation, staffing, pricing and hiring."

In addition to the diversity of work, operations leaders are developing an increased level of technology-related expertise. "It has become a lot more technical; like a moth to light, I am drawn to technology," said a legal operations director in the Energy sector. "We have made a lot of progress on tools that existed like eBilling, but also on analytics, data management and document management." A peer in Financial Services said, "There has also been a migration towards better in-house knowledge management to find information and work product more easily."

Many respondents cited a deeper assimilation of the role within the legal team. "The level of responsibility has grown and expanded, we are more integrated than we once were," said a director of legal operations in Life Sciences. Another in retail said, "In the beginning, the general counsel was not sure how to use the role, but now leaders in the legal department look to us for optimization, ideas on leveraging technology and suggestions for driving efficiencies."

The operations function has evolved from focusing on a narrow set of tasks or objectives to influencing the entire approach to legal services. "I came into the company to serve as a change agent and transform the law department," said an Insurance industry operations leader, "I wanted to help write and be a part of the story."

Metrics have become mainstream and meaningful in strengthening legal operations

Corporate legal operations are almost universally attuned to the importance of metrics, with 89 percent of respondents tracking different milestones to strengthen legal operations and internally market their success. While many of the participants used metrics differently, there was a general acceptance of their utility in addressing critical challenges.

For instance, the numbers help justify resource allocations. "Metrics are mostly used to provide visibility into spending," said one leader with a technology company. Another in Life Sciences said, "We use them to make a business case whenever we are spending money as it is part of the equation when we are looking at technology or improving processes."

After studying spending, assessing outside counsel bills is a popular way that operations teams apply this strategy. "We use metrics for matter management and eBilling to ensure up-front approvals and usage of panel firms to drive down costs and track alternative fee agreements," said a manager of legal operations in consulting. A leader in technology said the company studies the use of its tools, analyzes savings and total outside counsel spend and leverages an invoice review system to identify future savings.

Many legal teams have developed unique delivery methods for broadcasting this data internally. "We provide great dashboards of insights similar to report cards, so we know how we are spending, how we are staffing and the level of diversity, among other factors," said one Energy sector operations professional.

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"We spend more time working with IT than anything on the planet, but it is the single worst experience of my life in terms of productivity."

A director in Insurance said, "We track information, use matter management and recently implemented a metrics and analytics tool. We have about 80 reports in the system from which it derives information, which it is migrating to dashboards."

That said, 11 percent are not validating their work in this manner. "We don't need to use metrics to justify legal operations. We provide metrics to the general counsel and deputy general counsel so that they can make effective decisions," said one participant in Manufacturing. "You cannot base everything on metrics because you need a feel for people and a human touch."

Other cited uses of metrics include:

- Identifying patterns and making decisions based on those patterns.
- Highlighting areas of risk.
- Managing the company's panel of outside law firms.
- Deriving more value from an LPO relationship.
- Gaining better insight into the areas of the business that need the most support and paralegal allocation.

Although most of the participants reported finding success in studying their internal statistics, they found that metrics are challenging to implement. "The thing you need to do is dig ditches and install plumbing before you can run the water, much less measure it," said a Life Sciences responded.

Commitment to collaboration extends beyond legal to IT, security and compliance

It is no surprise that corporate legal operations are building bridges within the legal department, but new data shows they are fostering broader relationships with other key departments. As corporate legal responsibilities grow to include eDiscovery, privacy, security and information governance, so too do the responsibilities of corporate legal operations. The alliance with compliance was the strongest, but that may be because 60 percent of respondents reported that compliance professionals were part of the legal team or so closely aligned with the department that it was a fairly seamless relationship.

The relationship with IT was less established for most organizations and the comments reflected some major challenges regarding prioritization. "We work very well with our IT group, but the problem is that legal is not always a priority because it is a cost center. There are definitely more projects that are customer facing and need more immediate attention," said one individual with a technology company. This was a common refrain. "The problem with IT is that whenever I have a new project, it is a two-year waiting list, so we end up doing things ourselves without the involvement of IT," said a Manufacturing respondent.

Unless respondents came from an IT background, they generally struggled to develop successful relationships despite high levels of collaboration. "We spend more time working with IT than anything on the planet, but it is the single worst experience of my life in terms of productivity," reported a Life Sciences respondent.

Level of collaboration with Legal (out of 5)	
Compliance	4.41
IT	3.91
Information Security	3.71

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91% of the respondents have data security concerns around distributing electronically stored information to multiple discovery vendors and law firms.

Concentration on security is strong, but sensitive

With respect to security, there seems to be a leadership vacuum. "We are struggling with who owns which aspects of security: IT or IS," said one respondent in the Energy sector. "IS focuses on cybersecurity and IT focuses on security of data collection, which creates minor conflicts." Another director in the same field noted that "legal has inserted itself more into security."

It was not surprising that 91 percent of the respondents have data security concerns around distributing electronically stored information to multiple discovery vendors and law firms (a slight rise from the 89 percent in 2017 and markedly higher than the 72 percent in 2015).
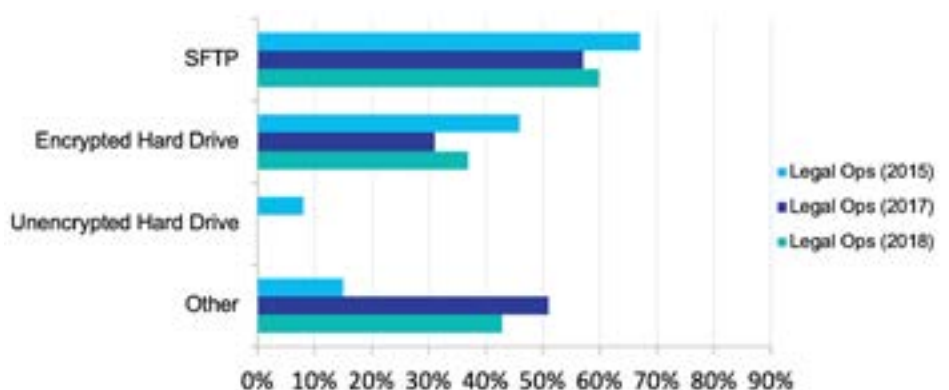

Figure 2: How do you typically deliver raw electronically stored information to your outside vendors?

"We have significant guidelines focused on cyber protocols. We have had vendors tell us we are a real 'pain in the a—' and we want to be a 'pain in the a— in cyber [so that] we are doing everything we feel we can to intentionally mitigate," said one operations leader with an Energy company.

Despite the near-universal security concerns, we found that almost 10 percent of respondents were using non-encrypted email as one of their transfer methods in addition to encrypted hard drives (37%) and SFTP (60%). "Using encrypted email will take a lot of change management so it hasn't happened yet," one individual with a technology company noted.

Others conceded that their processes are not optimal. "We haven't actually done anything about it yet, [but] our data and technology team reviews everything so there is a comfort that they are doing all that is necessary without being cavalier about it," said an operations leader in Retail. A real estate respondent said, "We are relatively immature in this area. We have recently implemented an information security policy."

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Emphasis on security is slowly increasing the interest in auditing outside counsel competency and systems

Since 2015, corporate legal operations have steadily increased audits of their outside counsel's technological competency and systems. The heightened scrutiny reflects a shifting dynamic in the reputation of law firms. "We've always thought of our legal partners as being different from a traditional vendor, but a new audit program is currently in progress," said one operations leader in Retail. "That is definitely in the pipeline that we want to start doing on an annual basis," said another in Technology.

Year	Respondents that audit outside counsel
2015	20%
2017	26%
2018	31%

The feeling that law firms are "different" is not universal. Most respondents are not conducting audits because they haven't experienced a breach yet. "We probably should," said one operations leader who laughed when delivering the response. "We haven't had issues so that is the only reason, but not a good reason," said another.

But the serious implications of a breach are not lost on most legal operations professionals. One director in Life Sciences proclaimed, "It doesn't happen to us. None of our data has been compromised and we have not been in the media [so] I don't know what it will take to light that fire. It seems like an uphill battle when I have this conversation at the company [and] we are almost negligent in our responsibility in that area... I have been watching this area for 10 years and it hasn't gained traction. I just don't understand why legal departments are not doing more in this area."

Some respondents assume their law firms are taking steps to ensure security based on reputation and size—the larger the firm, the more "passive assurance" respondents feel. "We are not the largest or biggest client of any law firm and would never ask because someone else has probably already done some type of audit," said one leader in Manufacturing. Another respondent in Energy said, "The people who are getting the majority of our work are such large firms, we feel that if other people are trusting them, we have some level of passive assurance that they are as secure as we are."

The GDPR is driving major eDiscovery, privacy and security changes

Eighty percent of respondents advised that data privacy concerns are affecting how they handle discovery and investigations, which is particularly important given that 49 percent reported that the volume of government or regulatory investigations has grown over the past 12 months. The General Data Protection Regulation (GDPR) has raised the stakes in the tension between eDiscovery obligations and privacy rights.

Furthermore, despite a lack of formal auditing, the GDPR is, at a minimum, requiring some legal departments to obtain data management declarations from their outside attorneys. "With the GDPR, we are now making sure our law firms sign a data protection agreement [and those] who receive personal data, now undergo a mandatory initial security assessment. What we do is pretty intrusive and could take up to three months," said one director of legal operations in Technology.

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The new regulations are also affecting the interdependence between legal and security with 91% reporting that the legal department's influence on information security decisions has increased in the last three years.

Sixty-nine percent of respondents reported that the GDPR and other data privacy regulations have changed the roles and responsibilities in their organization around security and compliance. Although for most respondents the work is beginning slowly. "Last year, for the first time, the company sent a questionnaire to law firms focused on their security protocols, but we are still in the early stages of reviewing security at law firms," said an operations leader in Energy. A respondent in Real Estate said, "In the last version of our policy, we added language to allow us to do it, but we have not acted on it yet."

The new regulations are also affecting the interdependence between legal and security, with 91 percent reporting that the legal department's influence on information security decisions has increased in the last three years. In fact, 49 percent highlighted that the legal team is much more involved in information security.

"Legal has a much stronger voice at the table, especially in data privacy and security. While there were different regulations in the past, legal was not involved in data privacy and security, but due to the increased requirements from the GDPR and other regulations, legal is much more involved and in the driver's seat or being reactive," said one operations director in Life Sciences.

More companies are spotlighting success in eDiscovery

Every respondent played some role in their organization's eDiscovery process, and this year, we observed a dramatic increase in the number of respondents formally measuring the success of their eDiscovery practice to 54 percent (from 34 percent in 2017). One surprise was the expanded emphasis on tracking "review efficiency." Historically, this was a statistic that law firms were tracking much more widely than corporate legal operations.
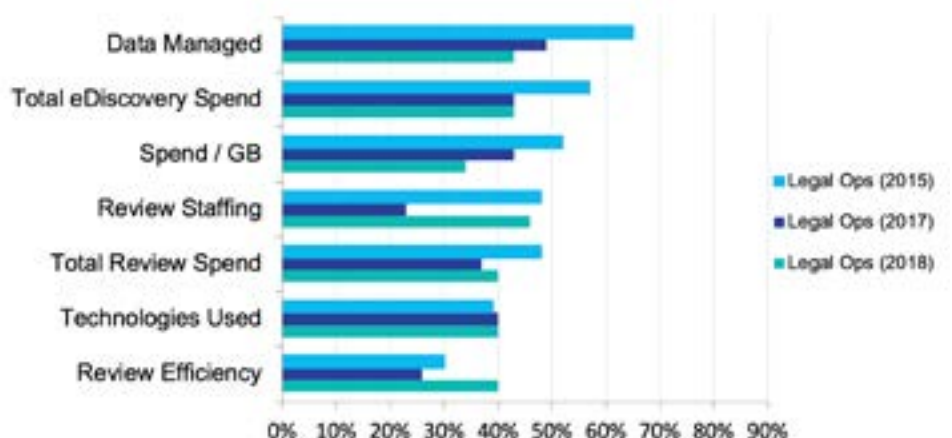

Figure 3: What metrics are you tracking for eDiscovery?

While some measure eDiscovery success by individual factors, such as processing time, the amount of data on hold and costs, others gauge it simply by outcome, data reuse potential and the speed with which the company manages its litigation docket. "Litigation support is not the tail wagging the dog. We do everything necessary to support the case team, ensure that errors are minimized and bring any [mistakes] to the attention of the lawyers for correction," touted an operations leader in Manufacturing. A respondent in Financial Services said, "Measuring success is about cost savings and reducing the scope of discovery requests."

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Only 34% of respondents reported receiving effective reports from their outside counsel on discovery budgets and review efficiency.

A director in leasing said, "We measure success by identifying ways to use eDiscovery technology to leverage information we have to make smarter decisions. A retail respondent added, "It is an off-the-cuff conversation that takes place within the litigation team [because] e-discovery sits within litigation, yet legal operations helps to optimize the process and whittle away the legal team's resistance to change."

Centralizing eDiscovery is much more common and likely to grow

The universal move to the cloud and comfort with consolidating data seem to be simultaneously influencing improvements in discovery management. Sixty-three percent of respondents used a centralized approach for hosting and managing discovery data, which is a significant jump from the 43 percent in 2017. One explanation for the dramatic change from 2015 is simply that most corporations have brought eDiscovery technology in-house, which integrates analytics at no additional cost and results in enormous costs savings.

"All of our data is hosted in the cloud. We didn't want to deal with outside counsel with various levels of access, so our data is now web-accessible and rolls into the review software mother ship," said an operations director in Manufacturing.

Driving a brave new culture of transparency

Only 34 percent of respondents reported receiving effective reports from their outside counsel on discovery budgets and review efficiency. In addition, most shared a general apprehension about the reports they do receive. "I'm sometimes a little skeptical of reports that I receive because I don't know the metrics behind them or how they were compiled," said a director in Financial Services. A Life Sciences manager said that reporting from outside counsel is sometimes difficult to track.

For others, it is the cadence with which they receive them. "The major problem I have with those things is the inconsistency with the reporting we get; one quarter you get it and sometimes you don't. My preference is—and this is something that I am working on—to create a dashboard in which the law firms can push their data because I don't want to receive various pieces of information in many different formats," said a leader in Technology. "It is random. I would like it to arrive regularly," said a respondent in the Energy sector.
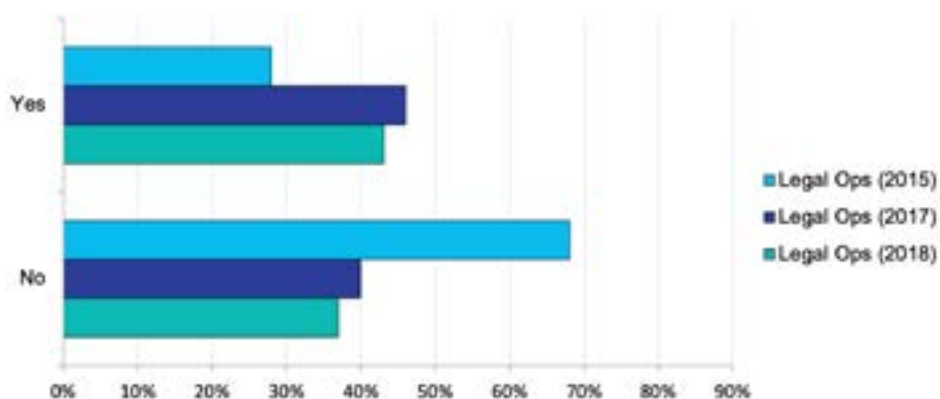

Figure 4: Do you have enough visibility into the discovery processes of your outside counsel?

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80% of this year's respondents reported that they contract with eDiscovery vendors directly.

Forty-three percent of respondents felt they had enough insight into the discovery processes of their outside counsel, a number which is up significantly from 28 percent in 2015. "We put a stake in the ground and now have quarterly business reviews with outside counsel to gain greater visibility into their work by demanding those conversations," said a respondent from Life Sciences. Furthermore, the centralization trend is yielding enhanced control and transparency. "Our policy is that our outside firms review in our tool, so they don't typically provide metrics, since we already have them as they play in our sandbox," said a Financial Services director.

In fact, 80 percent of this year's respondents reported that they contract with eDiscovery vendors directly—a significant rise from 63 percent in 2017. And nearly two in three dictate the specific vendor outside counsel should use. "We have an entire process set up and instruct outside counsel in how we want it done," said one survey participant. "In order to access the company's data, the outside firm must use its technology and providers," added another.

Momentum moving to the cloud continues

The ubiquity of Microsoft® Office365® has heavily contributed towards cloud migration and, in general, we found a steady sentiment towards using at least some cloud-based tools. The most dramatic growth came from organizations that were heavily using cloud tools. More organizations are willing to dive deep in to the cloud than ever before.

Year	Using cloud-based tools somewhat (3)	Using cloud-based tools heavily (4 or 5)	Were you previously very open to using the cloud?
2015	80%	32%	56%
2017	89%	51%	66%
2018	83%	60%	69%

For many legal operations leaders, the movement to the cloud is based on an enterprise-wide campaign. "There is a mandate to use the cloud in legal. Matter management, eBilling and document management are still on-premises, but everything else is in the cloud. The company uses Office365," said one respondent. For others, despite enthusiasm for the cloud, their teams are not able to abandon certain legacy systems.

Security and reliability are top of mind as organizations move to the cloud. "We are concerned about the predictability of cloud but are generally navigating towards more cloud solutions that are secure and reliable," said an operations leader in Retail. In addition, organizations are less interested in maintaining the internal infrastructure necessary to support high-power applications. "We have a terrible IT infrastructure, so we are trying to get out of the IT infrastructure business," said an operations professional in the Energy field.

Paradoxically, some professionals see these same motivating factors as cause for concern. "The general counsel is not confident that the cloud is safe and will not allow the legal department to adopt a cloud-based solution," said one respondent.

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The fact that 51 percent of participants are uncertain about these issues is critical, since 57 percent said they influence ECM-related decisions.

Integrations with IT applications are streamlining eDiscovery

Given the importance of data management in corporate law departments, it is no surprise that more respondents are looking to connect eDiscovery applications with their Enterprise Content Management (ECM) systems. Seventy-four percent of respondents said they would benefit from connecting eDiscovery and ECM, which is the same result as last year.

The first step is just understanding the ECM ecosystem—51 percent had either no idea how many ECM applications their organization maintained or could only guess. In addition, many of the responses began with "Oooh, gosh" and "I could not even begin to answer that question." Others simply started laughing in response.

The fact that 51 percent of participants are uncertain about these issues is critical, since 57 percent said they influence ECM-related decisions, which is a material number, but a significant drop from the 80 percent who advised doing so in 2017. "Legal influences the decision due to privacy concerns and to ensure compliance with the GDPR [since] we need to know where data sits and how to retrieve it," said one operations leader. "We are seen in the company as one of the more progressive departments technologically, so we are given a seat at the table," added another. In fact, one said, "We can stop everything if it is a bad legal decision."

One operations director noted however, that "Legal reviews contracts and will try to provide advice, but it is often the business units who make the decision." Another said that "It would only be in the later stage when IT is selecting a vendor, but it does not include legal in those decisions."

74% say it would be helpful to the entire law department if their ECM systems were integrated with their eDiscovery platforms.

"It would simplify the process for our eDiscovery specialist, rather than [require that person to] go to multiple places and use multiple tools."

"It would allow us to access the data more quickly and pull it more seamlessly to send out to our discovery vendors."

"It would create greater efficiencies across the organization."

Despite the support for this integration, "You need to have context to what you are doing and in a targeted manner, otherwise, it gets out of control," said a legal operations director in Manufacturing. "We are so big, it might just be a big mess," noted another in retail.

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66% of respondents believe that spending on AI solutions will increase in 2019.

As we predicted last year, the use of artificial intelligence is growing

Thirty-four percent of respondents use artificial intelligence in the legal department (up significantly from 23 percent in 2017) in a variety of ways, including eDiscovery and contracts "We are investigating it more broadly in contract management, but [currently] use it for eDiscovery," reported one leader. "We are trying to embed AI into many of our tools using bots or contract clause creators to reduce risk," said another. "We use it primarily in contracts for extrapolating data from unstructured documents to ease the burden of data entry," offered a third. One participant summarized the goal, "We are looking to replace low-value work that is not fun for people with AI."

For those reasons, 66 percent of respondents believe that spending on AI solutions will increase in 2019. "We are starting a big project to use AI on contracts," said one operations leader. Another said, "Some existing vendors have AI updates on their roadmap and contract management will be the first opportunity to showcase the benefits of AI."

Openness to using AI is significantly higher this year, up by 17 percent. Nearly nine in 10 respondents rated their organization's openness to using AI at a three or higher on a one to five scale. "As a company, we are becoming so much more tech savvy than we used to be," said one individual.

The challenges and obstacles for AI generally stem from a lack of relevant use cases and cultural resistance. "I'm very open to it if I had an application for it," said one leader. Another said, "Culturally, there is some resistance because people don't understand what it means." The educational challenge is a persistent one—both in terms of what AI can do and whose job it will take. Here are some of the sound bites from conversations around the challenges:

- "The concern is that it is replacing human beings with robots because humans need jobs."

- "I need a better understanding of what it could possibly do for me and where it would provide efficiencies."

- "It is early days in terms of the effectiveness of these tools so you need to be careful before you make any major steps, but it could be quite helpful."

- "I want to make sure it isn't today's cool tool; I hope I'm approaching it with healthy skepticism but I do think there is a there there."

- "Adoption [laughter]."

- "Managing the expectations on the outcome."

- "There is a lack of confidence in AI because it gives empowerment to the business units rather than keeping that control in legal."

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With 89% rating their organization's openness to using AI at a three or higher, the adoption rate is likely to accelerate as leaders become more familiar with the practical application of these tools.

Predictions for 2019

The pace of law firm security audits is likely to accelerate

In the past two years, our research has highlighted a rise in the number of organizations that audit the technological competency and systems of their outside counsel. The focus on holding law firms more accountable to enterprise-wide standards is likely to rise, given that 69 percent of respondents indicated that the GDPR and other data privacy regulations have changed the responsibilities in their organization around security and compliance and that 91 percent have seen an increase in the legal department's influence on information security decisions.

Migration to the cloud will continue

With 83 percent of respondents rating their organization's use of cloud-based tools at a three or above on a 1-5 scale and 94 percent rating their company's openness to implementing cloud solutions in the coming year at three or above, the rapid adoption of the cloud will continue.

ECM is likely to be part of the conversation in legal department technology development

For two consecutive years, almost three-quarters of survey participants have reported that if their ECM systems were integrated with their eDiscovery systems, it would be beneficial for the legal department. Specifically, they noted that it would increase efficiency, enhance productivity, control costs and simplify various complex processes. Given those prospective advantages, ECM connections are likely to remain part of the technology portfolio conversation.

The use of AI in legal departments will continue to expand

With an 11 percent rise in the number of participants who are using artificial intelligence in their legal departments and 66 percent expecting that spending on AI solutions will increase in 2019, legal teams are more likely to take advantage of this technology in the coming year. In fact, with 89 percent rating their organization's openness to using AI at a three or higher, the adoption rate is likely to accelerate as leaders become more familiar with the practical application of these tools.

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Conclusion

In studying the legal industry through the eyes of those dedicated to corporate legal operations over the past few years, the evolution of the role in tandem with the profession is clear. With discussions increasingly focused on innovation, efficiency and the next generation of legal practice, legal operations leaders are at the forefront of piloting new technology, executing strategic initiatives and helping senior leadership navigate a precarious landscape. The rise of the cloud and the emergence of artificial intelligence represent progress, but not completion. The year-over-year data helps predict that as the market shifts, the law department leaders who contributed to this year's report (and those who have shared their views in the past) will consistently pivot to remain at the forefront of an industry in transition.

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