

## **ELECTRONICALLY STORED INFORMATION (ESI) MANAGEMENT IS TOP OF MIND FOR CORPORATIONS, BUT EFFECTIVE IMPLEMENTATION IS FALLING SHORT**

*Kroll Ontrack Annual Study Reveals a Large Disparity Between the Existence of Corporate Document Retention Policies and ESI Discovery Readiness Strategies*

**Minneapolis – Oct. 21, 2009** – A strong majority in the U.S. and U.K. have a document retention policy, but a much smaller number (46 percent in the U.S. and 41 percent in the U.K.) claim to have an ESI discovery readiness strategy. This gap highlights a potential risk and a false sense of security that the existence of a document retention policy is adequate to protect organizations when litigation or other events requiring the discovery of ESI strike. This is a key finding from the Third Annual ESI Trends Report, an independent study commissioned by Kroll Ontrack®, the industry's leading provider of paper and electronic discovery, computer forensics and ESI consulting, jury consulting and courtroom presentation services.

This year's survey also reveals 77 percent of U.S. companies and 56 percent of U.K. companies believe their ESI discovery policy or strategy is repeatable and defensible. However, only 57 percent of U.S. and 39 percent of U.K. corporations have a mechanism to preserve potentially relevant data when litigation or a regulatory investigation is anticipated. Without an identified means to suspend the expulsion of potentially responsive data, many companies are not positioned to execute proper preservation protocol or claim their ESI discovery readiness policy is effective.

"The economic downturn forced corporations to determine how to effectively and adequately defend organizational assets with fewer resources," said Kristin Nimsgger, president of Kroll Ontrack. "The best way for corporations to 'do more with less' is to implement sensible ESI preparedness strategies. Planning will not only prevent an ESI discovery misstep, but also serve as a corporation's best discovery cost savings strategy. Furthermore, having a sound document retention policy is an important step, but without a reliable mechanism to ensure that the policy is properly implemented and, more importantly, may be suspended in response to litigation, companies are still at risk. Testing the defensibility of practices and policies before they are challenged in a legal proceeding is also highly advisable."

The survey went on to reveal that 63 percent of U.S. and 54 percent of U.K. companies believe the need to produce ESI for litigation and or an investigation has increased in the past 12 months. Despite this, only half of corporations in the U.S. and the U.K. have updated their ESI discovery readiness policies to include newly utilized corporate technologies and channels such as virtualization and social networking sites. Moreover, U.S. and U.K. corporations report experiencing an average of at least one data breach annually, proving effective ESI risk management is further complicated by security considerations.

"Policies are only effective when they are kept up-to-date to include the tools, devices and communications their organizations are utilizing," said R. Jason Straight, senior managing director of Kroll Ontrack's computer forensics, ESI consulting and secure information services practice. "Sound planning does not stop with document retention and discovery readiness policies. In today's environment, data security risks must be taken into account and addressed in a company's document retention and ESI discovery readiness policies and strategies."

Despite shortcomings, survey results reveal a continued evolution with respect to ESI discovery readiness, strategy creation and enforcement ownership. Companies in the U.S. and U.K. are looking to IT and legal to co-own this task, a drastic change from the inaugural report, when in-house counsel owned this function. Moreover, three-fourths of organizations in the U.S. and U.K. claim IT and legal teams are effectively working together to respond to ESI discovery requests. This relationship is not without its challenges. IT is feeling the brunt of the work following the implementation of ESI discovery readiness policies, and time restraints, differences in day-to-day priorities as well as technical and legal expertise discrepancies were cited as the top collaboration challenges among both IT and legal.

“While IT and legal have joined forces and taken steps in the right direction, there is still work to be done,” added Straight. “Collaborating to create policies is one thing, but sound implementation, enforcement and management requires regular communication, cooperation and a lot of patience.”

To see the results in entirety, visit [www.krollontrack.com/library/esitrends3\\_krollontrack2009.pdf](http://www.krollontrack.com/library/esitrends3_krollontrack2009.pdf).

This survey was conducted by Research Plus on behalf of Kroll Ontrack. A total of 461 online interviews were conducted among IT and in-house counsel within commercial businesses, 231 of which were in the U.S. and 230 of which were in the U.K. Interviews were completed between June and August 2009.

The Legal Technologies & Consulting division of Kroll Ontrack provides corporations, law firms and government agencies with technology and consulting services for large scale paper and electronic discovery, computer forensics, and litigation readiness and response projects. Through the acquisition of TrialGraphix (September 2007), the leader in jury consulting and presentations, Kroll Ontrack now offers a wide range of trial services such as jury research; witness preparation; trial consulting; graphics; and presentation technology for mediations, arbitrations, and trial. Helping clients quickly and cost-effectively find, review, manage, produce and present relevant evidence, Kroll Ontrack is recognized as the leading electronic discovery provider by the Am Law Tech Survey (2002, 2003, 2004, 2005, 2006, 2007 & 2008).

#### **About Kroll Ontrack Inc.**

Kroll Ontrack provides technology-driven services and software to help legal, corporate and government entities as well as consumers recover, search, analyze, produce and present data efficiently and cost-effectively. In addition to its award-winning suite of software, Kroll Ontrack provides data recovery, advanced search, paper and electronic discovery, computer forensics, ESI and jury consulting, and presentation services. Kroll Ontrack is a technology services division of Kroll Inc., the global risk consulting company. For more information about Kroll Ontrack and its offerings please visit: [www.krollontrack.com](http://www.krollontrack.com); [www.ontrackdatarecovery.com](http://www.ontrackdatarecovery.com); [www.ontrackgenium.com](http://www.ontrackgenium.com); [www.trialgraphix.com](http://www.trialgraphix.com).