# Contents

2018 Analytics Report

Introduction

Gartner, a leading research firm, claims that emerging technologies must go through phases before they are truly ready for large scale adoption. Gartner's "Hype Cycle" starts with an Innovation Trigger, progresses to the Peak of Inflated Expectations and then moves to the Trough of Disillusionment – all before eventually progressing to mainstream usage. In 2017, Gartner notes that Artificial Intelligence (or "AI Everywhere") has evolved enough that this group of technologies (including the subset of machine learning) will start delivering meaningful, competitive differentiation.

> *"AI technologies will be the most disruptive class of technologies over the next 10 years due to radical computational power, near-endless amounts of data and unprecedented advances in deep neural networks. These will enable organizations with AI technologies to harness data in order to adapt to new situations and solve problems that no one has ever encountered previously."*

Simultaneously, as corporations look to drive efficiencies across their operations, they are attempting to take more control of their internal processes, particularly legal matters. In lieu of deploying more personnel, the more common and savvy response is the greater use of technology tools.
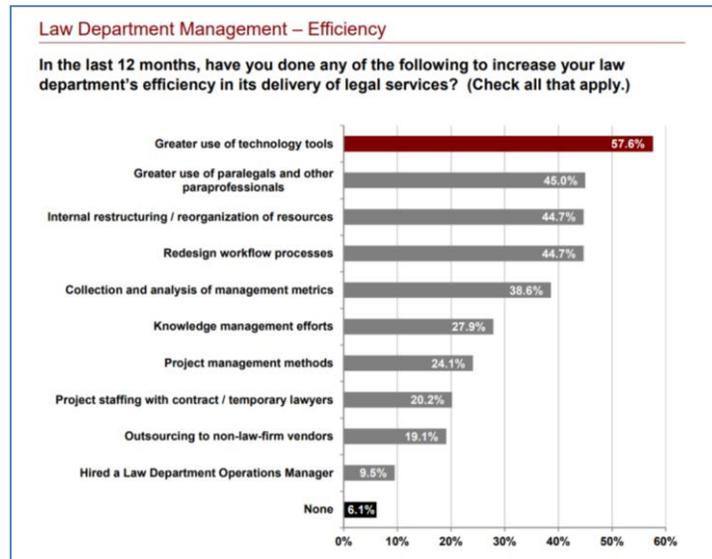
These converging trends are borne out by the results from the **3rd Annual Analytics Survey** conducted by the **Coalition of Technology Resources for Lawyers (CTRL).** CTRL partnered with **The Information Governance Initiative (IGI)** to survey corporate in-house counsel to determine how they use data analytics in eDiscovery, Information Governance (IG), and other disciplines. In the survey, CTRL asked broad questions about the importance of technology and specific questions about analytics use cases and spending levels.

Analytics Are "Indispensable"

Now in its third year, CTRL's Analytics Survey reveals unmistakable traction in the broader adoption of analytics. The overwhelming majority of respondents agree that data analytics will be **"will be very important, will be considered indispensable, and [their] use will be widespread"** among the legal profession over the next 10 years.

As in past years, analytics in eDiscovery continues to lead the way with "**95% of practitioners indicating that their spending in this area will grow or stay level."** Additionally, three times as many organizations indicate they will "start using analytics for eDiscovery in the next 12 months."

Other ancillary analytics use cases continue to show dramatic year-over-year increased usage rates as well, with **massive growth in Outcome Analysis (up 42%), Information Governance (up 78%), and Contract Review (up 146%)**.

What Are Analytics Used For?

For the 3rd year in a row, **culling—the broadest stage of data filtering prior to review—is the number one use case for analytics**. Culling, either in collection or in processing, has long been seen as a way to mitigate the rapidly expanding data volumes that are common eDiscovery. Unlike some of the controversial uses of analytics (such as technology-assisted review -TAR) deploying analytics in the culling phase creates actionable efficiencies and is further borne out by this year's survey data.
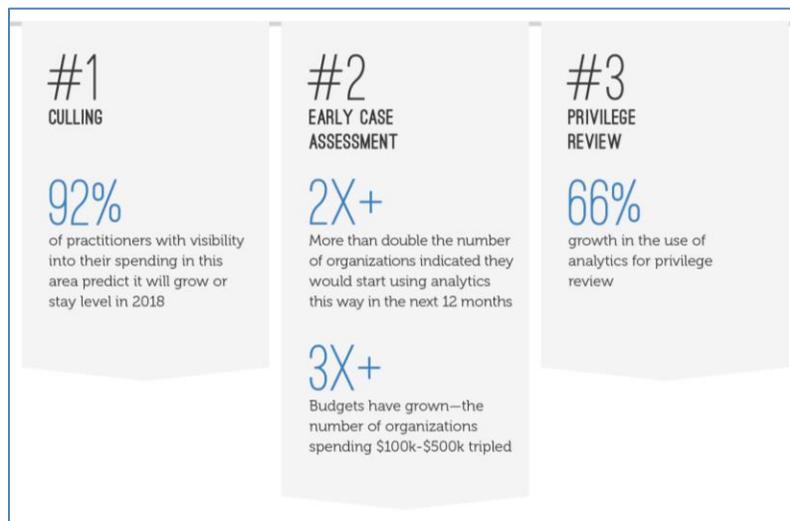
The second most popular analytics use case reported in the survey was for ECA (Early Case Assessment). ECA is similar to culling in that its usage is uniformly non-controversial, is generally cost efficient, and it's substantively effective for analyzing data sets at the beginning stages of the eDiscovery process.

In an interesting development for year three of the survey, **Privilege Review took over the third spot,** replacing fact finding from the previous year's survey.

The Case for Review

Last year we noted that "privilege review is such a sacred process and the risks of mistake are so grave that it often warrants unassisted, eyes-on review." Yet, the survey data seems to show that the document review landscape is changing, as **both Privilege Review (up 66% Y/Y) and Relevancy Review (up 17% Y/Y) made definitive strides**. It's likely that practitioners are finally getting comfortable with letting the technology work as intended and then layering in additional review passes as needed to safeguard against inadvertent disclosures.

Exponential Growth in Contract Analytics

The 2017 report reflected an astronomical **rise in Contract Analytics** use cases with 5 times as many legal departments using analytics as the previous year. In 2018, that trend picked up even more speed with a **whopping 146% increase in usage**.

The top two use cases are unchanged: (1) **evaluating existing contracts** (58% in 2017, 73% in 2018) and (2) **evaluation during negotiations** (42% in 2017 and 68% in 2018). It is interesting to note that the frequency of use in both categories grew significantly, respectively changing 25% and 64%. Finally, there was also a 54% increase in those organizations that predict they will start using analytics for this use case, from 13% in 2017 to 20% in 2018.

Funding appears to be following suit, as 46% indicated spending would increase for Contracts Analytics. Amounts typically budgeted for this use case fall between $100,000 and $500,000.

Outcome Analysis

One of the most futuristic analytics use cases has always centered on the ability of attorneys to predict how a given judge in a specific jurisdiction might rule on a particular type of litigation. It appears that this use case is starting to cross the chasm and move into a more sustainable application.

In year three of the survey, **respondents noted a 43% uptick in the use of analytics for Outcome Analysis**. The top use case in this area by rank remains the same (*i.e.*, **assessing risk exposure in a matter**). The second most common use case changed from guiding future legal decisions by assessing

past outcomes (47% in 2017 to 48% in 2018) to "**evaluat[ing] the effectiveness of a particular decision or strategy already taken**" (52% in 2018). There was also a **massive 175% increase** in the number of organizations predicting their spending on this use case will grow over the next year, from 16% to 44%.

Outside Counsel Selection

In year two of the survey, we reported that **15% of in-house counsel used analytics to select law firms**. This usage rate plateaued in 2018, with applications focusing on evaluating outside counsel billing rates (77%), evaluating their performance in similar matters (53%), and ranking their experience with similar parties such as judges or opposing counsel/parties (35%). Despite the flat usage rate, anticipated spending is up, with a reported 200% increase in the number of organizations who represented that their spending on this category would increase over the next 12 months.

THOSE USING ANALYTICS IN THIS AREA ARE FOCUSING ON:

77%
Evaluating
billing rates

88%
Performance

Matter Management

With sophisticated companies facing thousands of lawsuits each year, in-house counsel is responsible for making sense of it all. Year three of the survey saw a moderate increase as **31% of respondents now use a matter management system** and **20% of the remainder planned to start** using a matter management system within 12 months. The top Matter Management use case changed from "Comparing actual spend to predicted spend" to "Budgeting resources" (at 60% for 2018). Curiously, the use of analytics to "**measure and manage spend on eDiscovery**" substantially decreased, from second place in 2017 (at 63%) to last place in 2018 (at 29%).

MORE MATTER MANAGEMENT

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68%
of legal departments
predict spending will
grow or stay the same

44%
growth in the number of
organizations that will adopt
analytics for this use case

Analytics Are a Catalyst for IG Programs

IG can be defined in many ways, with everything from defensible disposition to content classification. The good news is that for those skeptical of IG's traction, the third annual survey shows significant growth in analytics usage, with a 78% change in adoption rates.

Across the IG use cases, though, the frequency of selection dropped in all categories except for "**extracting business insights from information**." This grew from 38% to 59% (an increase of 55%). This response likely shows that use cases in IG vary, but that the corporate audience is generally receptive toward analytics in IG, regardless of the type of deployment envisioned. This is borne out in anticipated spending, as 72% plan to devote more budget in the upcoming 12 months versus 66% in the prior survey.
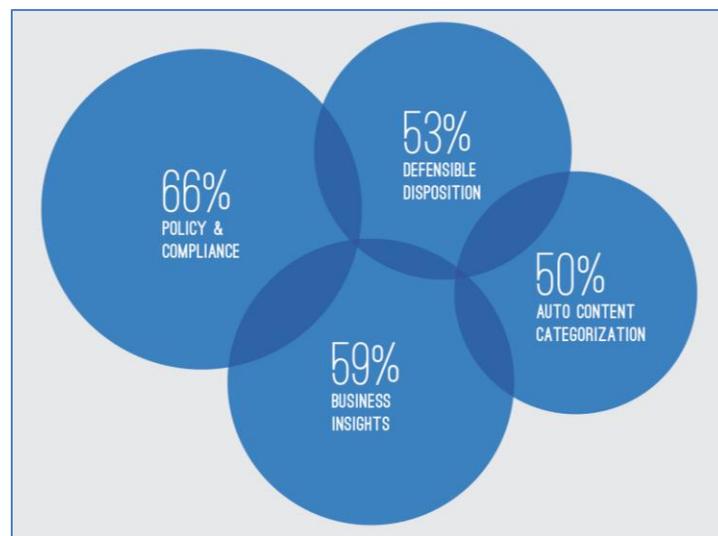
All of this bodes well for analytics usage in more proactive and increasingly diverse IG scenarios.

Conclusion

This 2018 CTRL Survey shows that analytics, AI, and machine learning are continuing to cross the chasm as corporate legal departments strive to increase productivity. While the use cases vary, the key takeaway is that analytics are fast becoming part of the standard corporate operating procedure for innovating and solving legal challenges. It is refreshing to see the previous analytics hype turn very quickly into reality.

Nevertheless, not all use cases will continue to proliferate at the same rates. In order for analytics to become truly instantiated within corporate legal departments, the deployment and training of such systems need to be turnkey. Otherwise, inertia will reign supreme and innovation will be stilted.

Survey Population

Survey respondents primarily comprised three kinds of professionals, each representing about a third of the total. A third were senior attorneys; a third were IG, IT, and analytics professionals supporting their legal department; and the final third were other types of professionals supporting their legal department in areas like litigation support, operations, and eDiscovery. Most respondents were from the United States. Respondents came from a variety of industries, with finance, professional services, government, and healthcare heavily represented. Approximately one third of respondents represented small organizations (under 500 employees), another third from mid-sized organizations (501 to 5,000) and the final third from large organizations (over 5,001).

About CTRL

The Coalition of Technology Resources for Lawyers (CTRL) is an industry education and research group committed to the development of practical 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 practitioner resources like a model stipulation and TAR protocol. 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/.

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[i] Altman Weil (2017) CLO survey, *available at* http://www.altmanweil.com/CLO2017/