

# CEE: The future

Building the **COMPLIANCE-ENABLED ENTERPRISE**

This groundbreaking study underscores the gap between management focus on compliance-related issues and IT's lack of ability to implement critical policies and procedures—while revealing the state of corporate governance and legal discovery readiness, identifying potential vulnerabilities and offering recommendations for improvement.

Underwritten by:



In Partnership with:

**CHIEF  
EXECUTIVE**



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This BPM Forum report was produced by GlobalFluency in partnership with: AXS-One, Chief Executive Magazine and IT Compliance Institute.

## > Introduction

Content and compliance: They're distinct yet connected, constant yet evolving, and theoretically clear and simple yet unbelievably ambiguous and complex. Together, they represent two of the greatest sources of pressure corporate America faces today. And it's not going to get better anytime soon.

Take content. . . please. This year alone, corporate e-mail messages will number nearly 40 billion a day, with most containing business-critical data. And remember, that number's just for e-mail and doesn't include other forms of essential communication, such as Instant Messaging—a rapidly emerging headache for those charged with managing and archiving content—as well as voice, video and images. And then there's all the other content that makes up the bulk of business collateral: proposals, contracts, spreadsheets (in multiple iterations, of course), reports from back office systems such as SAP, marketing brochures, etc. Companies have got a lot to say, and, increasingly, everything they've said needs to be recorded somewhere.

Which gets us to compliance. Today's enterprises must ensure that the way in which they manage and retain their electronic records, that mountain of words and images, complies with a variety of complex government regulations and guidelines. Thanks to a litany of high-profile scandals—with previously respected CEOs being marched off in handcuffs and blue-chip success stories dropping like flies off NYSE and NASDAQ—there's a new era of government oversight and corporate governance. Just wading through the minutiae of major legislation such as Sarbanes-Oxley, USA PATRIOT Act, HIPAA, Basel II, Gramm-Leach-Bliley, etc. can be a drain on the budget and the spirit. AMR Research reports that corporations worldwide will spend more than \$1.6 billion on technology to ensure compliance with Sarbanes-Oxley alone—that's not counting the other 14,999 laws and regulations that govern compliance, retention and privacy, with provisions that sometimes conflict with each other.

And on a related note, the real monster in the box might be legal discovery. Consider the following:

- Sued by financier Ronald Perelman, financial services powerhouse Morgan Stanley stonewalled the courts for two years with claims of difficulty in producing relevant e-mails. Ultimately, the court's patience ran out, and Morgan Stanley's attorneys were reprimanded for their "stonewall tactics" and Morgan Stanley itself was criticized for its "negligent management of its e-mail archives." The judge issued an adverse inference to the jury that said in part, "Morgan Stanley participated in a scheme to mislead [plaintiff] and others and cover up the massive fraud at Sunbeam until Morgan Stanley and Sunbeam could close the purchase." The initial ruling: Morgan Stanley was ordered to pay \$1.45 billion to Perelman.
- In *Zubulake vs. UBS Warburg*, Warburg was ordered to pay the plaintiff over \$29 million when it was proved that employees of UBS had deleted e-mails to cover up their participation in a gender discrimination case.

## > Introduction

These are not isolated incidents. Nearly a quarter (24%) of organizations have had employee e-mail subpoenaed, and 15% of companies have gone to court to battle lawsuits triggered by employee e-mail issues, according to American Management Association (AMA) and The ePolicy Institute. And while e-mails are the most prominent symptom of the disease, electronic content originating from pretty much any application, ERP and Microsoft Office for instance, are increasingly in plaintiffs' crosshairs. Legal discovery orders typically encompass all relevant content, and the time allotted to find, retrieve and reproduce it is minimal.

So how well is corporate America coping with these challenges? How ready is all that content—and all the procedures that go with it—to meet the pressures applied by compliance, corporate governance and legal discovery?

Not well, and not very ready at all, to judge by the key findings from “CEE the Future: Building the Compliance-Enabled Enterprise,” the Business Performance Management (BPM) Forum's benchmark study that explores corporate America's level of compliance readiness. CEE: The Future, underwritten by records compliance management solutions provider AXS-One, reveals that while compliance is definitely a management concern, policies and procedures are yet to take hold, enforcement seems to be a loose concept, and management's general familiarity with issues around compliance is painfully lacking.

Launched in January 2006, CEE the Future is a comprehensive study that includes qualitative and quantitative insights and assessments from leading compliance executives, including a poll of CEOs by Chief Executive magazine to gain their critical compliance viewpoints. In all, almost 400 executives participated in the project. The report not only unearths the apparent lack of legal discovery readiness, but it also identifies flaws in compliance procedures currently in place, pinpoints other potential vulnerabilities and offers recommendations for improvement.

*“We don't have any specific regulations around electronic content management, and so far we've been able to locate and produce communications we've needed. But given the frequency of litigation, it's definitely something we need to think about.”*

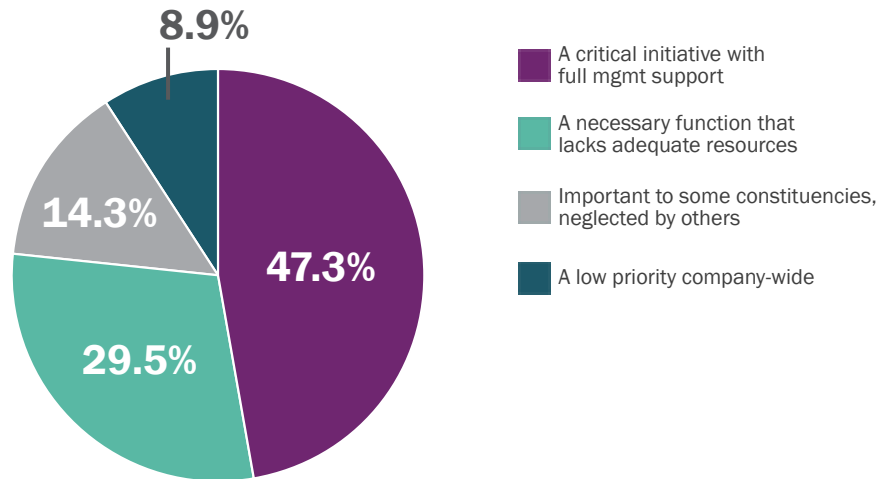
*- Compliance Executive*

## > Key Findings

### IT Executives: Compliance Lacks Full Management Support

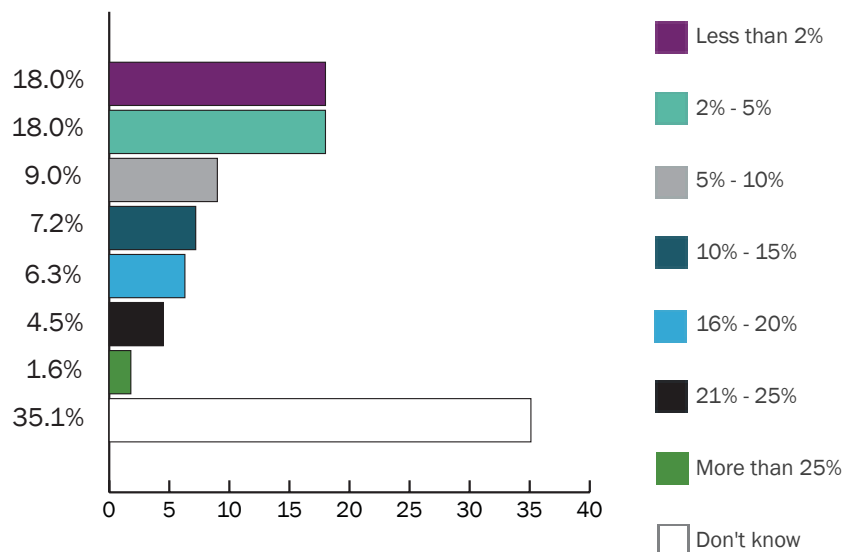
Less than half of IT executive respondents consider the general pursuit of compliance as a “critical initiative with full management support.” Nearly 30% say that it is “a necessary function that lacks adequate resources,” and close to 10% say it is a “low priority company-wide.” Furthermore, a surprisingly large percentage (35%) of chief executive respondents is in the dark as to how much of their IT budget is tied to compliance-related technologies.

How would you characterize the pursuit of compliance at your company?



### Chief Executive Poll

Compliance-related concerns now account for a major portion of the IT budget at many corporations. How much of your company's IT budget would you estimate is directly tied to compliance-related technologies?



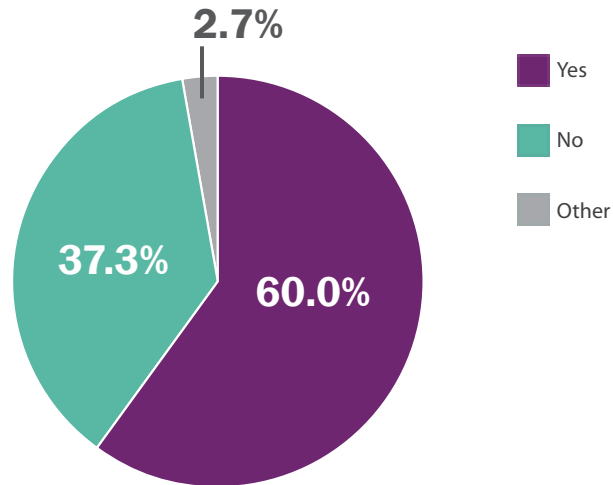
## > Key Findings

### More Resources Than Commitment

Nearly 40% say their company’s IT execs do not understand the current regulations well enough to effectively implement compliance technologies and policies. What is more, just 40% of respondents feel that their companies are effectively enforcing electronic records management policies.

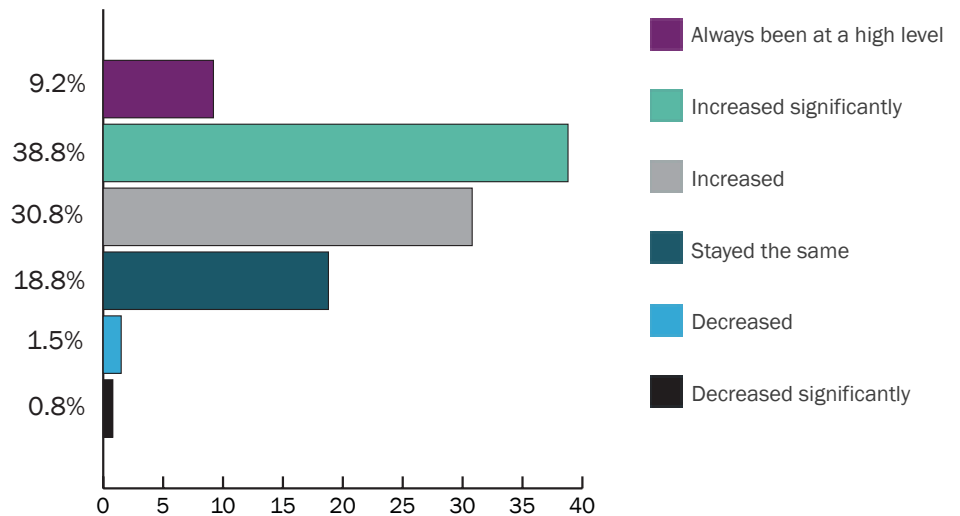
On the flip side, in our poll of CEOs, nearly 70% say that the amount of time and money spent on compliance has increased (39% of that sample say it has “significantly” increased). These points together reveal that more money spent by the top brass on compliance doesn’t necessarily translate into effective technologies and policies.

Do you believe your company’s IT executives understand current regulatory requirements well enough to effectively implement technologies and policies that keep the enterprise in compliance with all relevant regulations?



### Chief Executive Poll

Since the year 2000, please rate how the amount of time and money you spend on regulatory compliance has changed within your business.

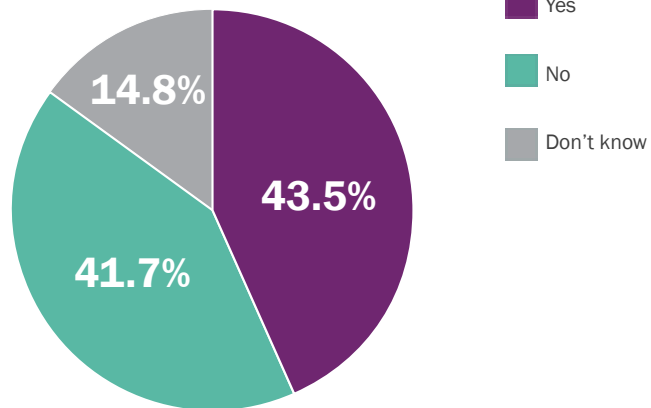


## > Key Findings

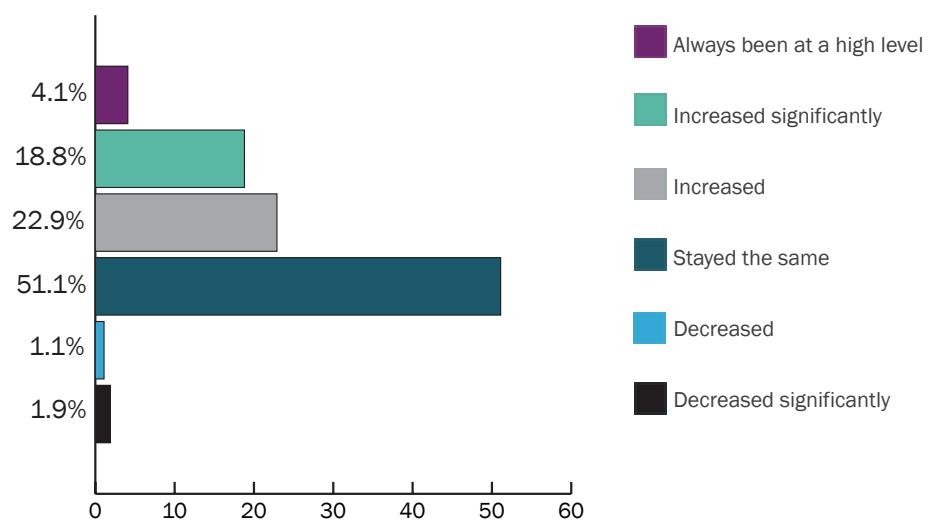
### Ensuring Compliance *Should* Be a Management Priority

Nearly 45% of survey respondents express concern that failure to archive and manage all of their electronic content is a liability for their firm. Our poll of CEOs mirrors this finding: 41.7% say the threat of being investigated has increased since 2000.

Are you concerned that the failure to adequately archive and manage ALL electronic content represents a liability for your company?



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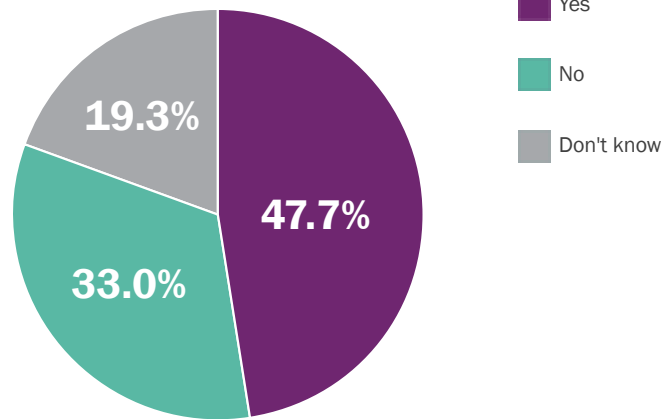


## > Key Findings

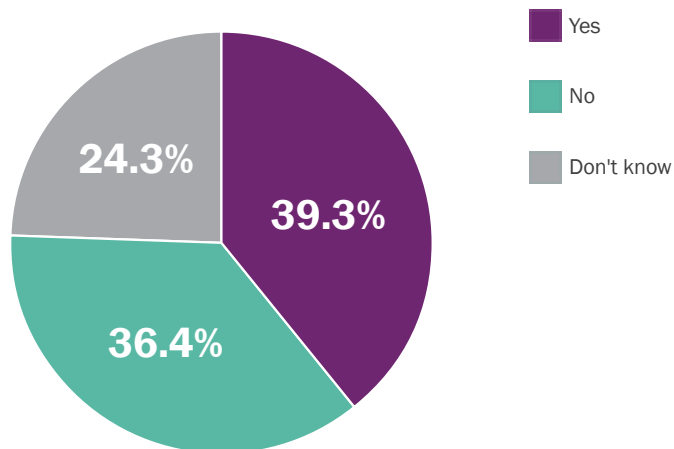
### Electronic Records Management: Companies Playing with Fire

A full third of respondents say they have no specific corporate policy covering electronic records management. In fact, nearly 20% don't know whether they even have such a policy. One clear vulnerability is the potential lawsuit: Over a third have no technologies or policies whatsoever in place to manage a legal discovery order involving electronic records. That puts companies at risk since recent court rulings clearly establish the obligation to inform employees when served with notice of legal action.

Does your company have a specific corporate policy covering electronic records management with regard to government regulations (Sarbanes-Oxley, Patriot Act, etc.)?



Does your company have technologies and policies in place to manage a legal discovery order involving electronic records?

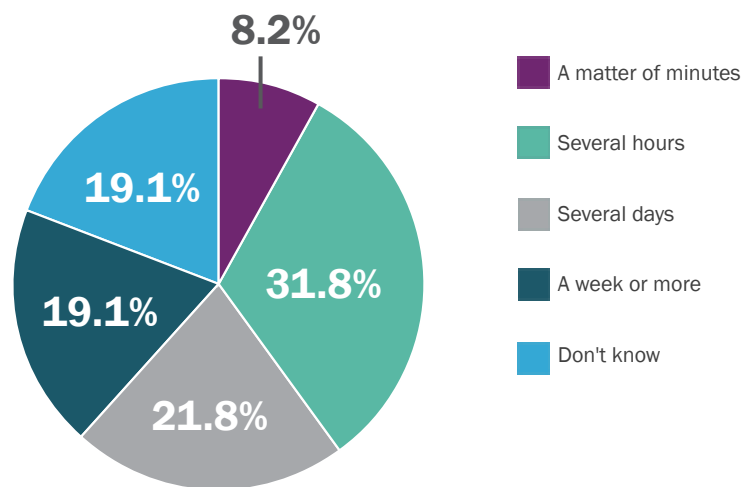


## > Key Findings

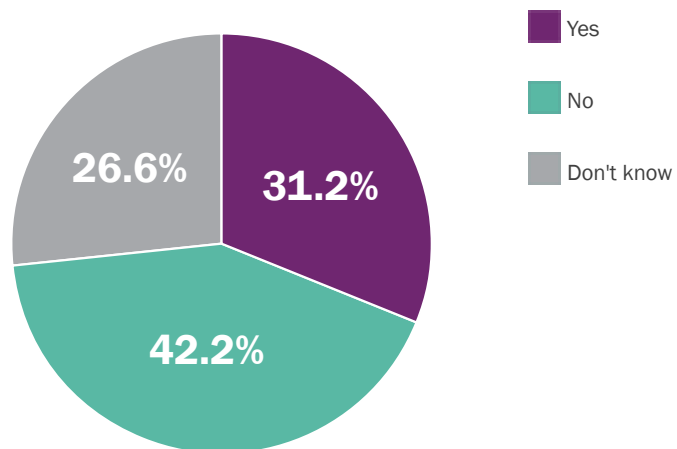
### Precious Time Ticking Away

In the event of a legal discovery order, more than 40% of respondents say it would take several days to a week or more to retrieve e-mails related to a particular transaction. This result makes some sense considering over 40% do not run tests on identifying and retrieving electronic content.

How fast do you think that your company could retrieve and produce every e-mail related to a particular transaction?



Does your company ever run tests to ensure that it can efficiently comply with an internal or external investigation that requires the identification and retrieval of all electronic content (such as e-mail)?

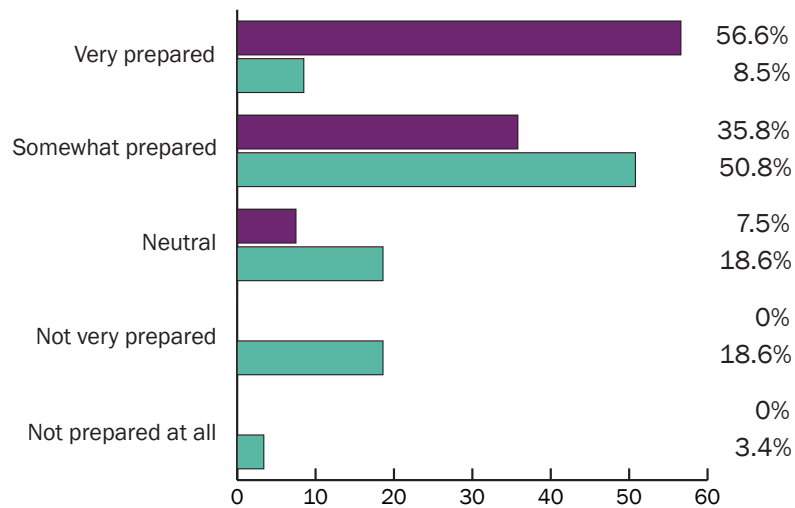


## > Key Findings

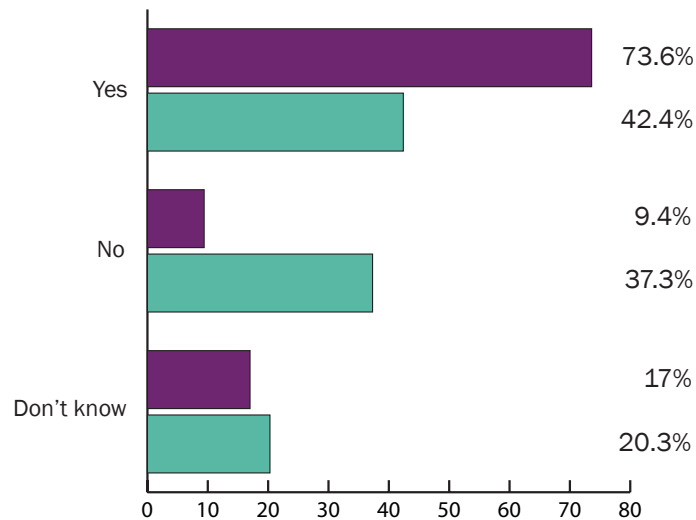
### Companies that View Compliance as Critical Are Better Prepared

Drilling down on the data, we compared the answers of the executives who characterized their pursuit of compliance as a ‘critical initiative with full management support’ versus those who answered ‘a necessary function’ down to ‘low priority company wide.’ The results are revealing: Of those executives who view compliance as fully supported in the enterprise, close to 60% are ‘Very prepared’ to comply with regulations. Further, 73.6% of respondents with full management support of compliance have a corporate policy in place for electronic records management—versus 42.4% for those who do not have full management support.

How prepared is your company’s management team to comply with regulations - e.g. Sarbanes-Oxley, Patriot Act, industry-specific regulations such as HIPAA, global mandates such as Basel II etc. - that affect your organization?



Does your company have a corporate policy in place for electronic records management (how long each document in a given category must be retained when it must be destroyed, etc.)?



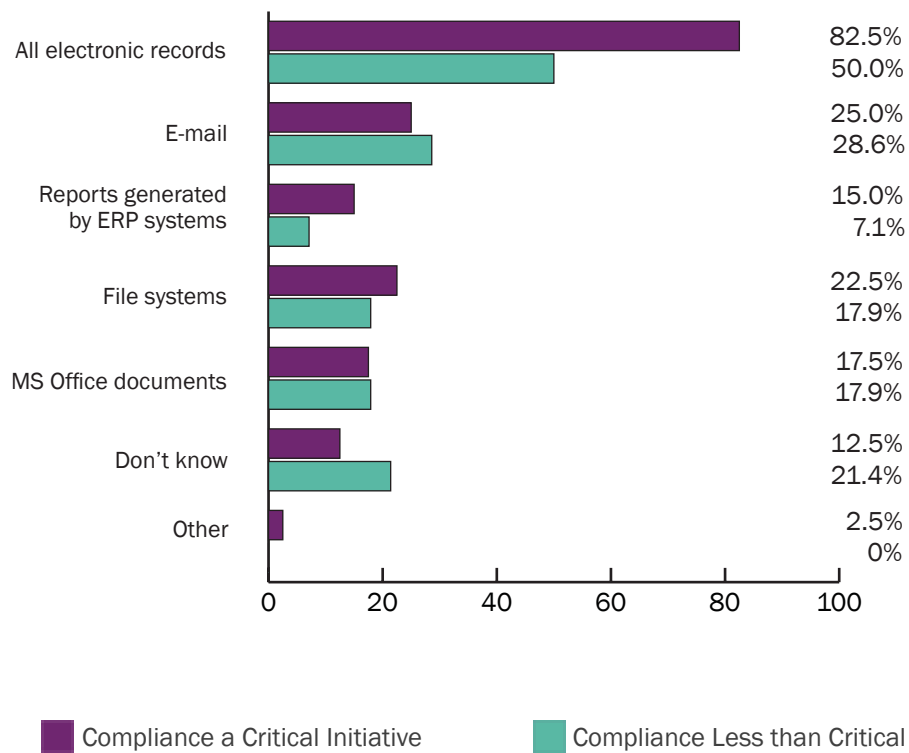
■ Compliance a Critical Initiative    ■ Compliance Less than Critical

## > Key Findings

### Not All Records are Covered

Of those respondents who say compliance does not have full management support but have a corporate policy in place for e-records management, only half have all electronic records covered in that policy, compared to 82.5% of companies that view compliance as critical. This is a crucial finding because documents other than e-mail can be critical in a legal discovery motion. For example, business professionals use Instant Messaging to send 1 billion messages a day, yet most companies don't archive IMs at all.

What electronic records does your company's policy cover?

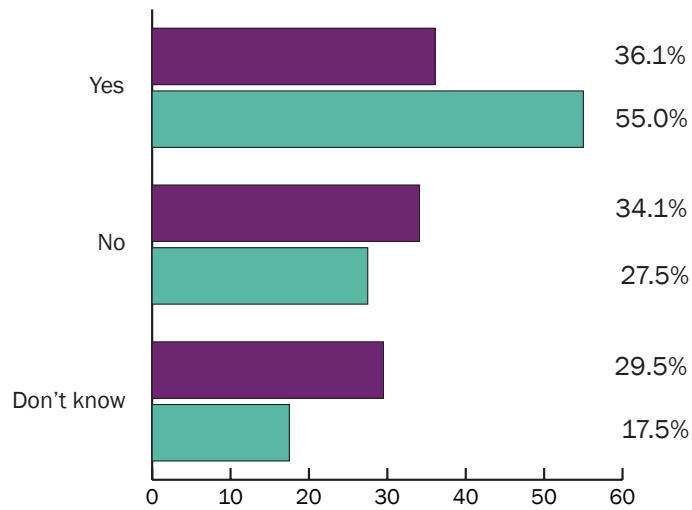


## > Key Findings

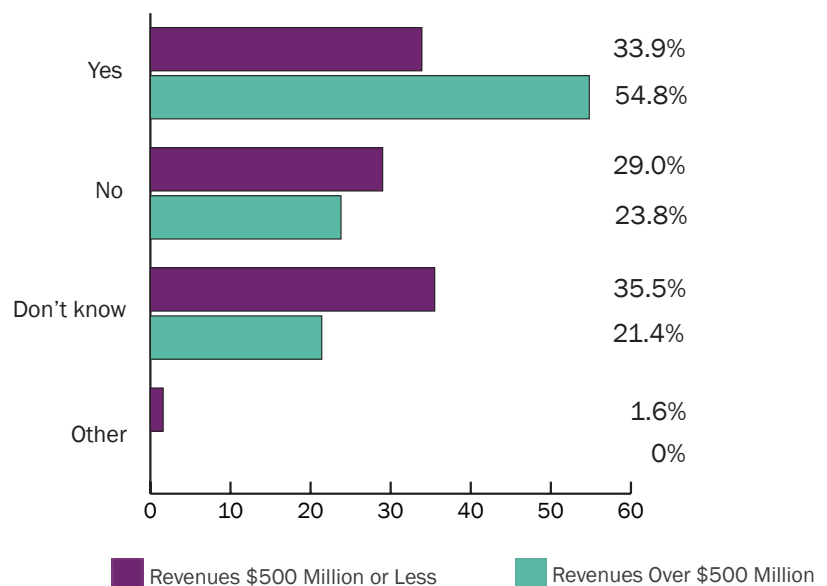
### Smaller Companies Less Vigilant Toward Compliance

We also compared answers from respondents whose companies had yearly revenues of over \$500 million to those with revenues under \$500 million. Given the reduced compliance budgets of smaller companies, some of the comparisons are predictable. But other findings reveal the vulnerability of SMBs to compliance-related issues. For example, just over a third of respondents from companies with revenues under \$500 million believe compliance policies are enforced with sufficient effectiveness. Further, only a third of those respondents believe their electronic records management capabilities are adequate, compared with 55% of respondents from large companies.

Do you believe your company enforces compliance policies with sufficient effectiveness?



In your estimation, does your company's compliance management technology for all electronic records provide adequate security, authenticity, search, recovery, audit and retention management capabilities?

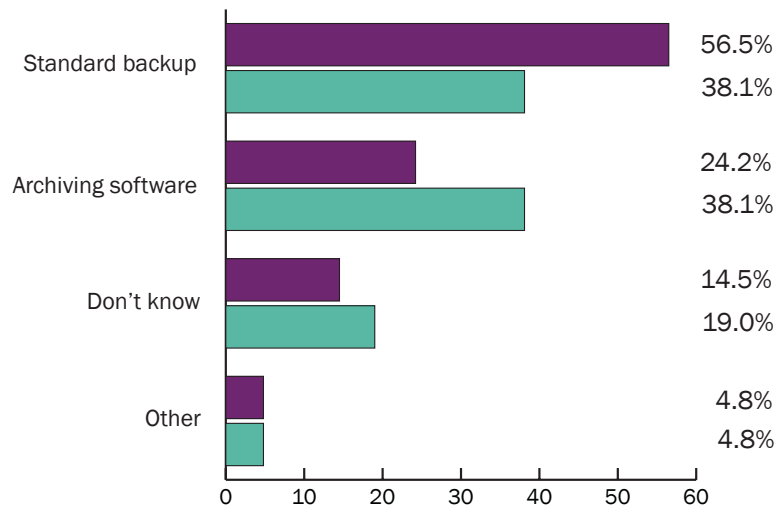


## > Key Findings

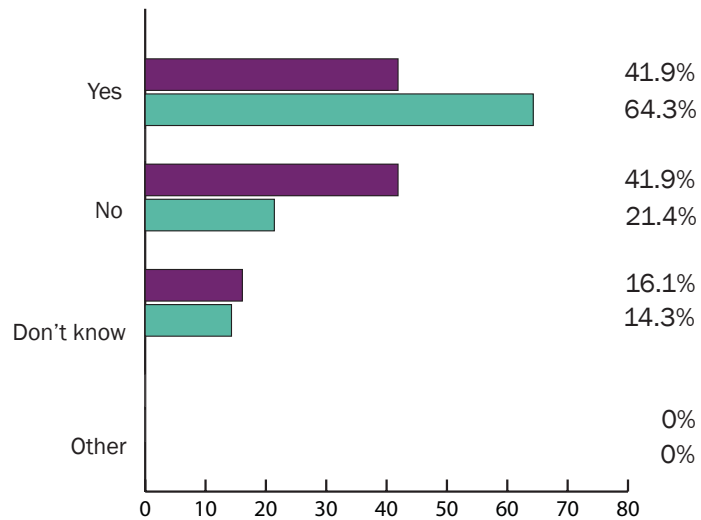
### Smaller Firms Rely on Traditional Methods for E-Retrieval

Companies under \$500 million in revenues predominately rely on standard back-up applications to retain electronic records, while with large companies it's an even split between standard backup and archiving software. Predictably, smaller companies show less reliance on third-party consultants and/or solution providers when meeting compliance requirements.

Which of the following methods does your company use to retain electronic records?



Has your company retained third-party consultants and/or solution providers specifically to meet compliance-related requirements?



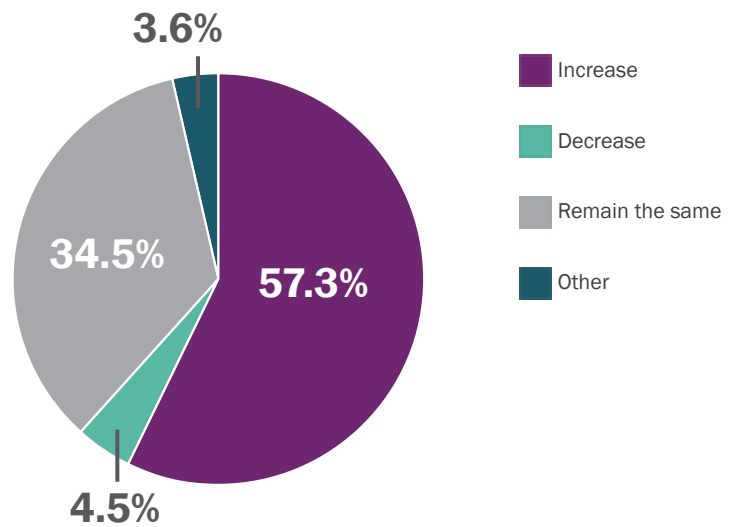
■ Revenues \$500 Million or Less
 ■ Revenues Over \$500 Million

## > Key Findings

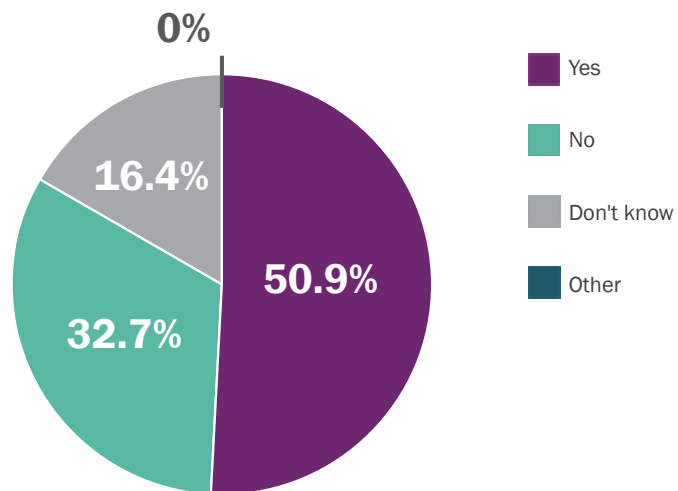
### But the Good News is...

As a whole, general compliance issues appear to be on the front burner for the future, as nearly 58% say IT spending on compliance will increase. And, over half of respondents said their companies have gone outside for help—hiring third-party consultants and/or solution providers to meet compliance requirements.

Over the course of 2006, IT spending on compliance-related issues will:



Has your company retained third-party consultants and/or solution providers specifically to meet compliance-related requirements?

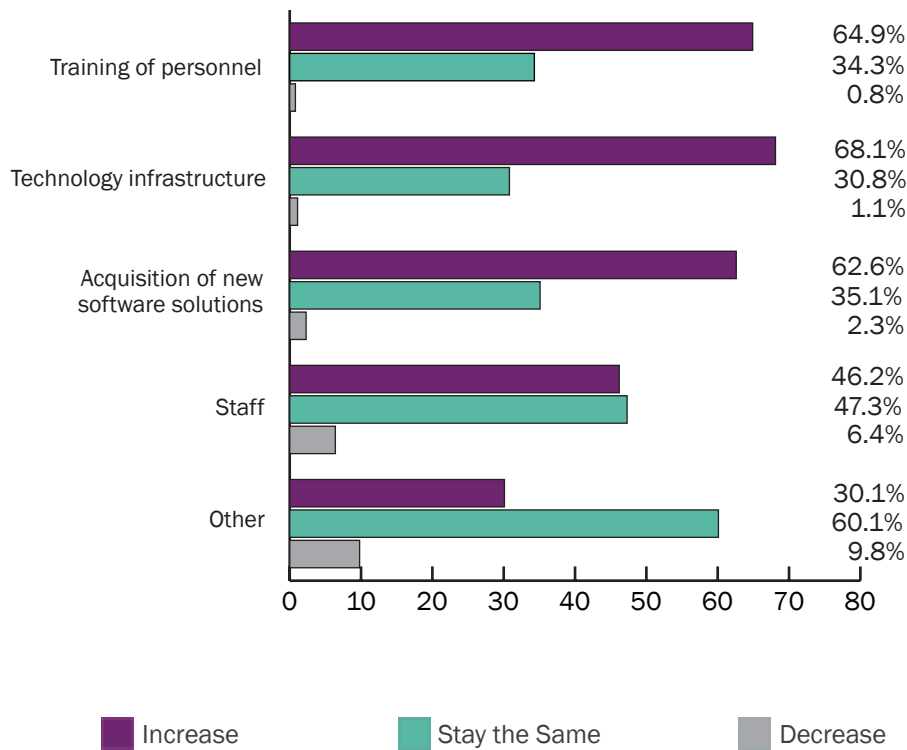


## > Key Findings

### Chief Executives Recognize Importance

More than 60% of CEOs polled by Chief Executive magazine say they expect to increase spending for training of personnel and for the acquisition of new compliance software solutions. Close to 70% plan to improve technology infrastructure to better handle compliance issues.

Please select how your spending will change in the following areas of compliance:



## > Conclusion

A quick scan of any business section of a daily newspaper will tell you the problems companies have with compliance to SOX and other regulations. Some even have weekly “rap sheets” to keep track of violators. Companies spend millions in technologies and resources to keep out of such lists, or risk significant reductions on share price, brand equity and profits—exactly what befell Morgan Stanley from its case with Ron Perelman.

E-discovery compliance issues, however, appear to be overlooked, as shown by both qualitative and quantitative findings from this study. Nearly half of IT executives polled felt that their companies’ failure to effectively manage electronic content was a liability; a full third of respondents have no specific policy regarding electronic records; and of those who had specific policies, 40% say they are not effectively enforced. A statistic that should have every corporation worried, given the proposed changes to the Federal Rules of Civil procedure that will go into effect on December 1, 2006 (barring any congressional action to the contrary). The changes introduce significant new rules for the discovery and handling of electronic records and are being made to formally align legal process with current business reality: today, the majority of business records are created and stored electronically. While these changes deal specifically with the legal processes for discovery and use of electronically stored information in litigation, they will have significant repercussions on organizations’ electronic records management policies. The impact of the changes, therefore, must be considered from an IT as well as legal perspective.

It is estimated that over the next seven years, a company with 20,000 employees will have to save approximately 4.5 billion e-mails, and have the ability to search through all of them on a timely basis when required to for compliance and/or litigation support. Why then, if the failure to produce electronic communications can be so damaging, is there a lack of urgency in putting mechanisms in place to mitigate e-discovery risk?

For one, Sarbanes-Oxley looms large. Companies are spending millions on technologies and human resources on SOX. One CEE task force member with a large information services company says a dozen staffers do nothing but SOX and internal audits. As for management of electronic content, he says, “We don’t have any specific regulations around it, and so far we’ve been able to locate and produce communications we’ve needed. But given the frequency of litigation, it’s definitely something we need to think about.” Clearly, SOX can’t be used as an excuse to ignore other compliance issues. A second distraction is the recent focus on the protection of the privacy of sensitive personal information. Already, 26 states have passed laws relating to the protection of personal data about their residents. As a result, many companies are focusing their compliance dollars on this problem. Interestingly, archiving enhances the abilities of companies to apply identity management and encryption to its sensitive data.

*“How prepared are we for a compliance investigation? I think we’re in pretty good shape. These days it can happen to just about any company, anywhere, anytime. You have to be prepared.”*

*- Compliance Executive*

## > Conclusion

Another reason why electronic content management is not top of mind is many executives believe that existing computer back-up systems are effective enough for storage and retrieval of e-mails and other documents. There are, however, key operational and compliance advantages featured in e-mail archiving applications that are missing in traditional back-up systems. To name a few:

- Substantial reduction in storage costs
- Easier establishment of audit trail and chain of custody
- Control over inappropriate or illegal content
- Quicker response times to discovery orders
- Increased data and privacy protection
- Optimal system performance
- Improved employee productivity

Specifically, archiving saves up to 90% in storage; and can significantly reduce the conservative estimate of 15 minutes per day per employee that's lost just in mailbox management—the equivalent of 625,000 hours of lost productivity per year in an organization with 10,000 employees. All of these drivers help minimize legal risk and negative publicity that invariably follows an investigation.

Compliance-savvy companies are putting such systems in place. But as this study shows, the majority has yet to do so. To get started, companies must first identify and quantify the risk of not having a planned approach to the archiving of electronic communications. Then, specific corporate messaging policies must be crafted as part of an overall risk management plan. A practical strategy needs to be set to store large volumes of historical communication—with the ability to easily search for and retrieve specific e-mails and documents.

Is there a financial upside to such implementation? The General Counsel Roundtable finds that each additional dollar of compliance spending saves an organization, on average, \$5.21 in heightened avoidance of legal liabilities, harm to the organization's reputation and lost productivity. Furthermore, ask Morgan Stanley executives if a robust electronic document archiving system would have paid for itself given the \$1.45 billion judgement against them.

The notion that companies are ill-prepared for such compliance issues in and of itself is not surprising. But the low level of preparedness is a cause for concern. There will be litigation and there will be legal discovery issues. Companies would serve themselves well to take stock in their current e-discovery policies and technologies, before a nightmare scenario strikes them.

## > Sponsors



### AXS-One Inc.

(AMEX: AXO) is a leading provider of high performance Records Compliance Management Solutions. The AXS-One Compliance Platform enables organizations to implement secure, scalable and enforceable policies that address records management for corporate governance, legal discovery and industry regulations. Founded in 1979, and headquartered in Rutherford, NJ, AXS-One has offices worldwide including in the United States, Australia, Singapore, United Kingdom and South Africa. [www.axsone.com](http://www.axsone.com).



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IT Compliance Institute (ITCi) strives to be a global authority on the role of technology in business governance and regulatory compliance. Through resources such as the Unified Compliance Project, ComplianceINSIGHT white paper series, and ComplianceNOW weekly e-newsletter, ITCi helps organizations overcome the challenges posed by today's regulatory environment and find new ways to turn compliance efforts into capital opportunities. [www.itcinstitute.com](http://www.itcinstitute.com)