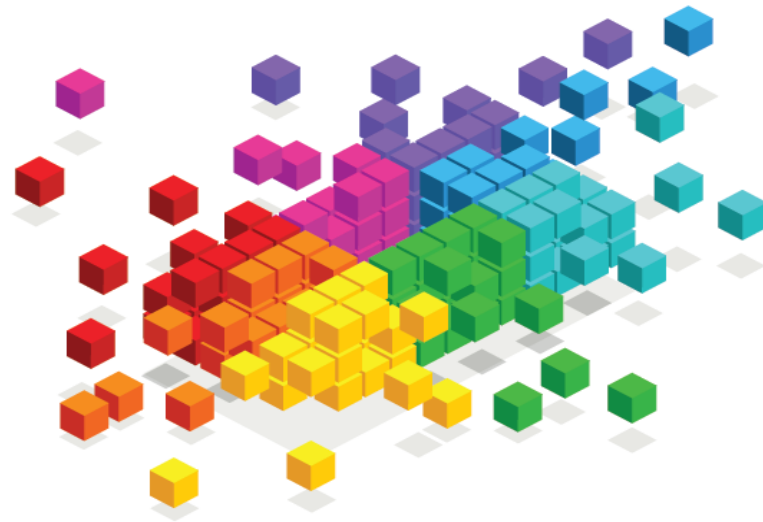# Helping Your Legal Department
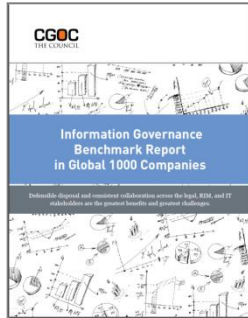# Meet Information Obligations and Reduce Risks

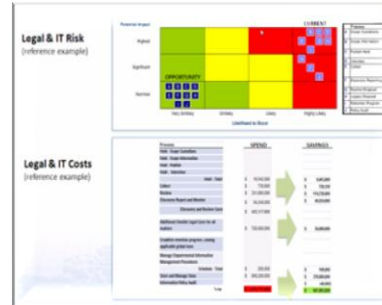Putting Content to Work
ECM UserNet 2011

Our Program Goal

Help you identify opportunities to leverage your skills and investments on high-cost, high-risk information governance challenges your organization faces with sessions on:

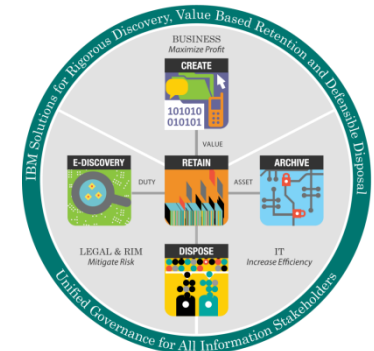**1** — Executive Challenges & Recent Findings

2 — Executive Points of View on the Challenges
- ✓ CIO
- ✓ **General Counsel**
- ✓ Risk & Compliance

3 — ECM Building Blocks
- ✓ Value Roadmap
- ✓ Product Roadmap
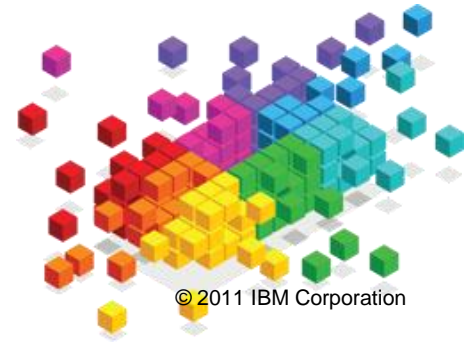
Leadership Opportunities for ECM Practitioners

- *"Working with other content and collaboration professionals at BCBST, **Andy Jacobs, the company's lead enterprise content management (ECM) architect**, sought to address [the challenges of surging volumes of content … including mounting legal expenses when relying on high-cost, third-party services organizations for identification, collection, and downstream eDiscovery efforts]"*

Forrester Case Study:
BCBST Tackles Strategic Archiving Initiative

- *"His key steps included:
Creating a strong cross-functional team…. **Jacobs collaborated with the company's records manager, associate general counsel, and other stakeholders** to understand requirements, identify areas of highest legal risk, and capture sufficient detail to scope and justify the program."*
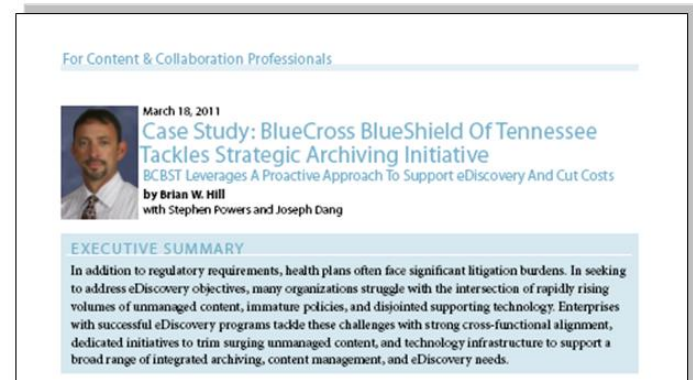
Topics

1. **The GC's pain points**

2. Addressing the problem

3. Developing the business case for change

4. Building on your expertise and ECM investments
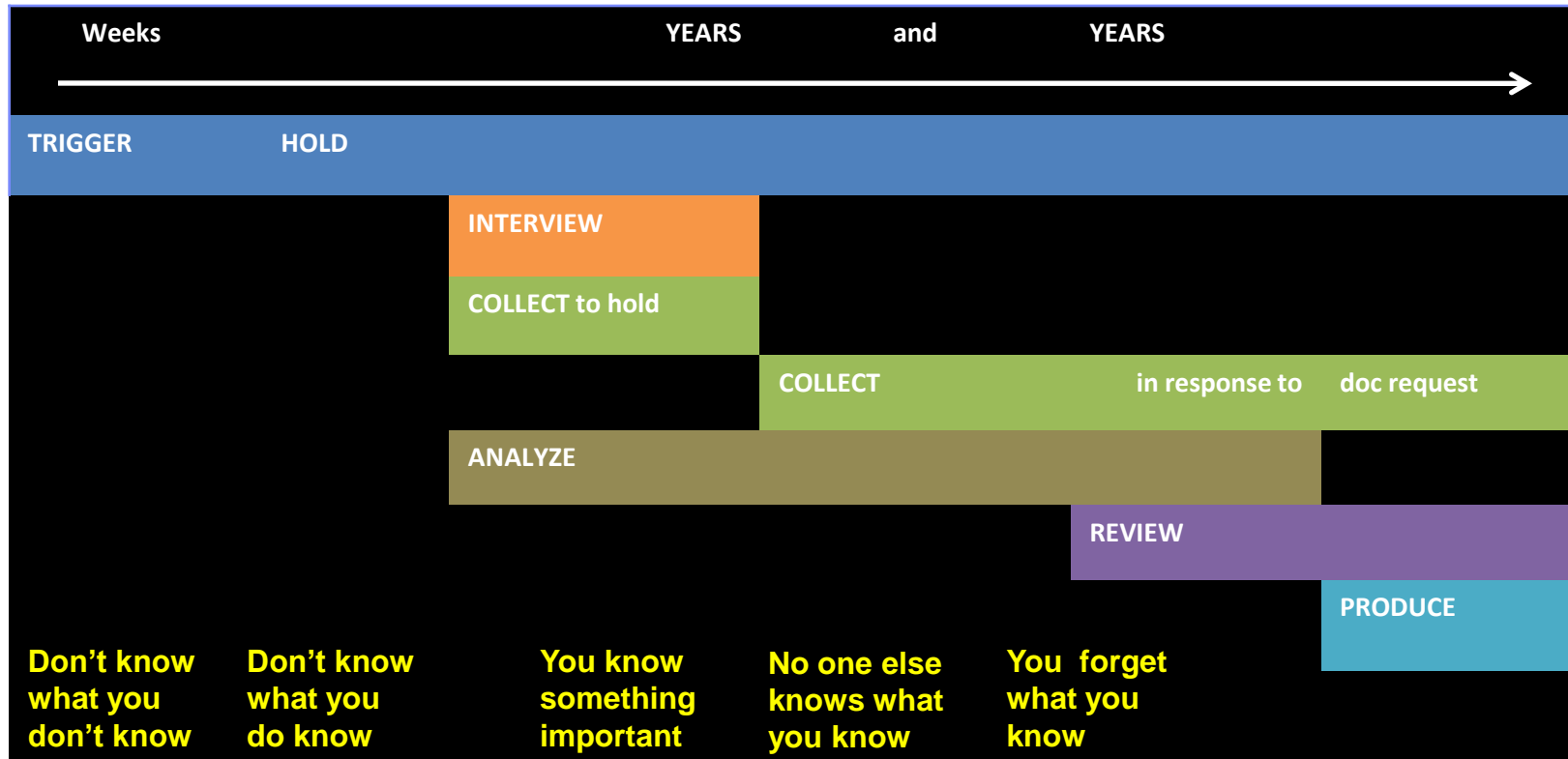
5. Resources to learn more

Legal Duties for Information or "eDiscovery"

Duty to Preserve	Duty to Produce
▪ **Legal hold on all potentially relevant information must be instituted when specific litigation is reasonably anticipated** ▪ Adversary does not have to request the hold ▪ Obligation to update and monitor scope ▪ Data in custody or control of company	▪ **Obligation to respond to a specific request for documents or motion to compel** ▪ Do not have to produce without being asked ▪ Often can avoid producing what was asked; always attempt to avoid ▪ Reviewed by counsel for relevance and privilege first -- difficult to argue irrelevance
100% of matters	**10-20% of matters**

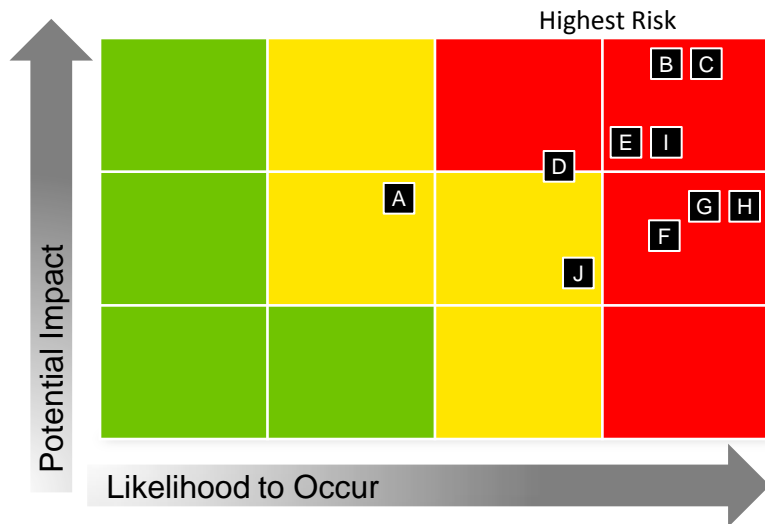# Lack of institutional process memory, reliance on "people glue" create gaps and exacerbate risk

Average Case Lasts 3 Years … Only 1% Ever Go to Trial

Weeks			YEARS	and	YEARS	

→

TRIGGER   **HOLD**

INTERVIEW

COLLECT to hold

COLLECT   in response to   doc request

ANALYZE

REVIEW

PRODUCE

Don't know what you don't know	Don't know what you do know	You know something important	No one else knows what you know	You forget what you know	

Process Memory and Transparency Are Critical Factors in Risk & Cost

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Process is Source of High Risk

Highest Risk

Potential Impact

Likelihood to Occur

Low risk Does not require constant monitoring and is easy to prevent, detect, correct, defend. Less than 10% likelihood.

Moderate risk Requires frequent monitoring to prevent and detect; costly to correct or mitigate. Between 10-50% likelihood.

High risk Requires constant monitoring and review, immediate escalation on failure or impending failure. 50% chance of occurring.

Typical Preservation Risk Scenarios

	Sources of Failure Risk in Manual Process
A	Legal scopes the wrong employees, those employees terminate or transfer mid-matter and data subject to hold is lost.
B	Legal fails to identify sources of data managed by IT staff and data subject to hold is destroyed.
C	IT migrates, retires or modifies data subject to hold.
D	Legal fails to identify or follow through on information gleaned in thousands of interviews.
E	Data isn't collected because of a missing data source, departing employee, incomplete prior collection inventory, and communication and tracking errors.
F	Unable to assemble, understand or defend the audit trail of discovery activities.
G	Retention schedules are not followed and/or the validity of the current schedule is hard to defend.
H	IT saves all data because they fear disposing of the wrong data, increasing discoverable mass and confusion.
I	IT disposes of data subject to legal obligation.
J	Internal compliance audit failures on records and legal holds expose the company in discovery or unable to respond to regulators.

Volume of Enterprise Information is Source of High Cost

> **"Electronic discovery requires litigants to scour disparate data storage mediums and formats for relevant documents." <u>Harkabi v. SanDisk, Inc.</u> (2011)**
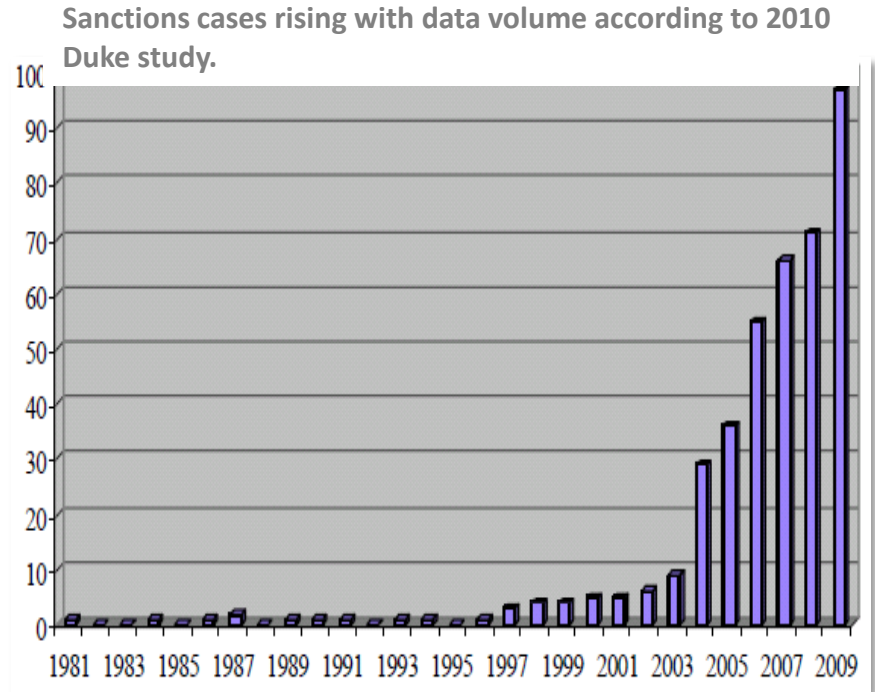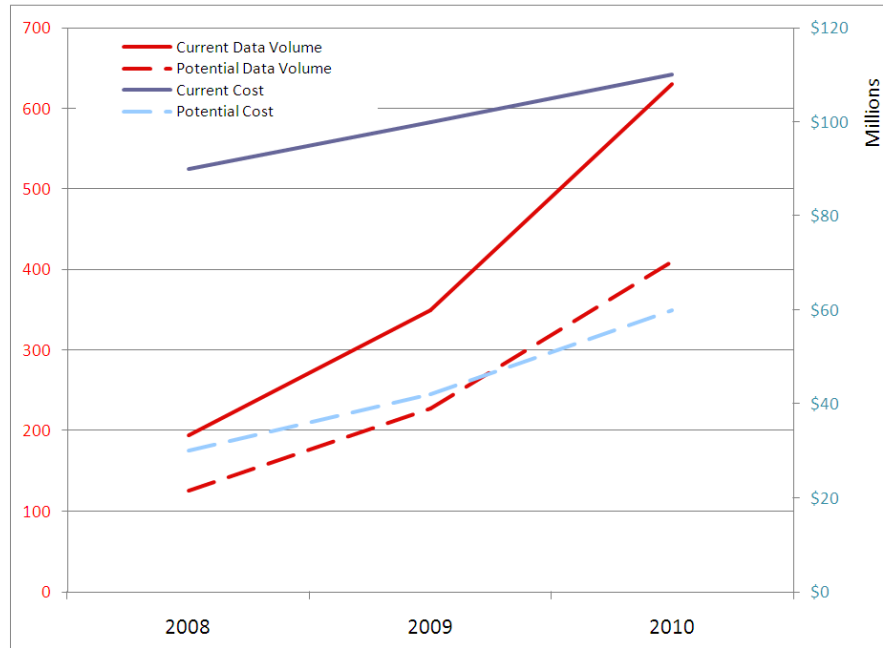
- Unable to find data subject to legal hold
- Over **1,200 terabytes of data -- estimated 19 billion pages** -- were restored and reviewed by outside counsel
- Over 7 million pages produced to adversary
- Cost far in excess of original $4 million damages sought in wrongful termination case

> **At Bayer: "200 tons of documents produced for single lawsuit and product line"**

- Unanticipated earnings hit from expense
- **40 million pages** already produced from 130 sources
- Adversary requesting **30 million more pages** now

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More Data Does Not Reduce Risk

Sanctions cases rising with data volume according to 2010 Duke study.

- **Currently storing in perpetuity with 80% growth per year**
- **Benchmark 3 year retention requirement**
- **IT spend benchmark is 6.5% of revenues, 7.4% of opex**
- **35% of current information eligible for disposal and a source of financially material unnecessary cost and risk**
- **Excess IT cost and excess exposure to eDiscovery cost grow at the same rate as information volume ... not self resolving**

Conundrum

- If you know what you need to preserve for litigation and regulation

- And you know what you need to keep for its business value (and for how long)

- Then you can throw everything else away

Subject to Legal Hold

Has Business Utility

Regulatory Record Keeping
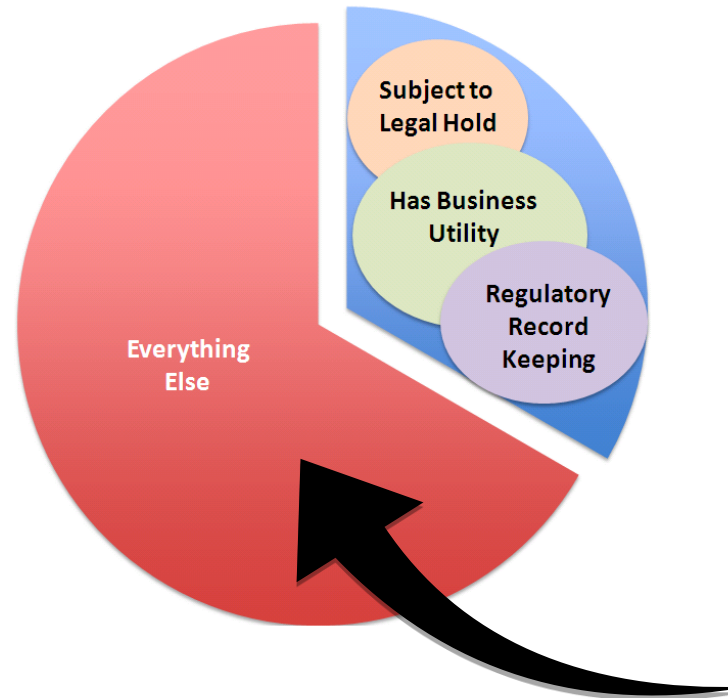
Everything Else

If you can't determine specific value and legal duty, you must:

1. Manage everything as if of value

2. Guess if you're in compliance

3. Spend too much to manage unnecessary data

4. **Spend too much to preserve and produce it unnecessarily**

The GC and CIO Share the Pain and Problem

3.5%
Percentage of revenues spent on information management (6.5% in Financial Services)

44x
Projected information growth, 2009-2020[1]

$3M
Average cost to collect, cull and review information per legal case[2]

70%
Portion of information unnecessarily retained[3]

98%
Companies that cite defensible disposal as key result of governance programs[4]

22%
Companies that can defensibly dispose today[4]

1 IDC Digital Universe Study, May 2010

2 Litigation Cost Survey of Major Companies, 2010 (from Conference on Civil Litigation, Duke Law School, May 2010)

3 Industry estimates

4 CGOC Benchmark Report on Information Governance, October 2010

Questions for Litigation Executives

"Our current process is fine" requires MORE process questions

Process Element	AGC is focused on how RELIABLE the discovery process is *In contrast, a Director of Legal Ops is focused on how painful the process is*
Scope of Custodians	How accurate do you think the HR directory you're scoping from is? How easy is it to really keep track of who gets added and removed from scope over time and why? Are you sure everyone identified in the spreadsheet receives a notice and that is documented?
Scope of Data	Do you just identify and notify custodians? How does IT know how to manage those custodians' data in the background during the hold? How do they know they shouldn't migrate server data, recycle departing employee laptops? Are data sources tracked through spreadsheets or lists? How would IT handle overlapping holds on server data and tapes?
Legal Hold	Are you confident everyone receives and responds to notices? How do you ensure everyone receives a reminder and how do you track that? Do you have a standardized escalation process? How does Legal communicate the descriptions of records or information subject to hold so RIM and IT staff can comply and how much second guessing do these stewards need to do? How do you know people on hold have left the company and how is preservation of their data ensured? *How much time do these activities really take and is your team covering all the bases given their workload?*
Interviews	Do you use outside counsel to interview custodians and find out about their data? Or do you attach forms to notices that custodians must download and fill out? If so, how does your legal team reassemble the facts and follow up on all them?
Evidence Collection	How many spreadsheets are really used between legal and IT in the collection process for a single matter? For all matters? How many IT hands touch collection for a single custodian? For a single matter? How do make sure legal doesn't have potentially relevant information in the pile of evidence already collected? Are there multiple copies of collected data for every hand that participated in the process?
Review	What portion of data collected is really relevant in any given matter? Do you over spend on processing charges and review for irrelevant and duplicate information only to find out that the small amount of actual evidence should have informed your strategy much earlier?
Early Cost Assessment	How often are you or your internal clients surprised by the cost of discovery after the game plan has long been in place? How confident are you that you provide these clients with timely, reliable insight on cost to make better decisions about case strategy? Do you find out how much discovery will cost *after* discovery?
Monitoring	How do you ensure that your holds process is consistent, non-responders are identified and addressed, custodians and collection facts are lost in spreadsheet translations, and the fact pattern will be good under scrutiny?

Topics

1. The GC's pain points

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5. Resources to learn more
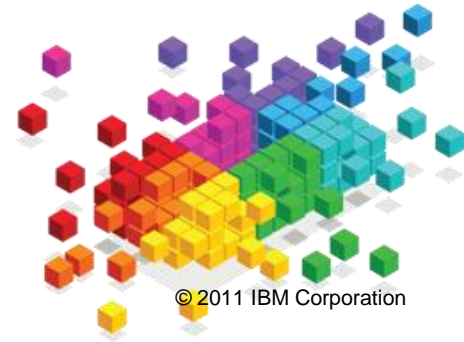
A Billion Information Choices, None of Them Actionable

1,500

2,000 departments
30,000 people

6500 laws

Matter

Department

Law or Regulation

1,500

5,000

642 codes

Hold

System

Retention Schedule

55 PB

Information
(Content itself)

How do business people get what they need when they need it? Without undermining legal or compliance?

How does IT efficiently determine which of 7,500 legal obligations apply to which departments, employees and information assets? How does legal?

The Path from Ad Hoc to Shared Responsibility
Lower Risk & Cost, Higher Value
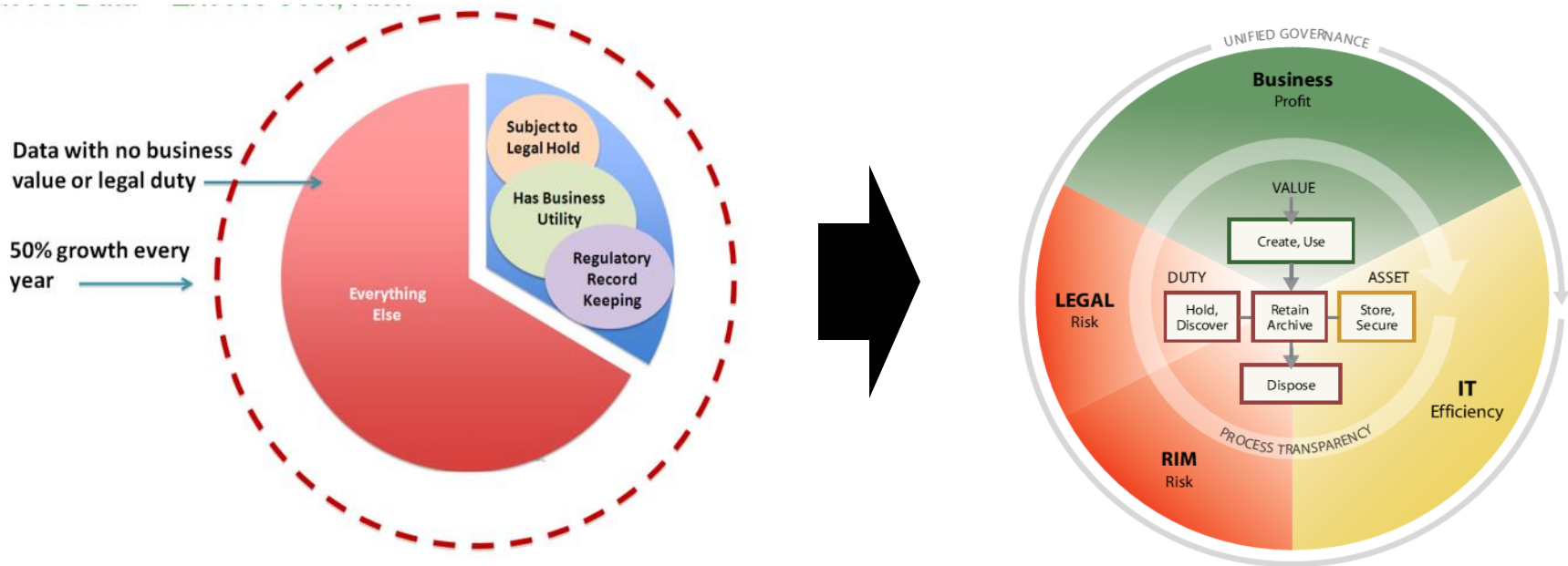
Everybody's doing their job, but *…risk and cost are too high!*

Isolated Stakeholders & Processes

Legal Risk	RIM Risk	IT Efficiency	Business Profit	
				Silos of activity
Collect / Hold / Produce	Retain / Dispose	Secure / Dispose	Create / Access	Manual, semi-structured processes
Holds Custodians Collections	Schedules & Laws	Data Storage & Systems	Information	No systematic linkage of holds, schedules or business utility to information assets
Collected Data	Structured Data Stores	Unstructured Data Stores		
10000 matters ✖	10000 regs ✖	10000 systems ✖	4000 processes	Significant complexity

Close the Gaps to Reduce Risk & Cost

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IBM Software Addresses Virtually All Litigation Risks
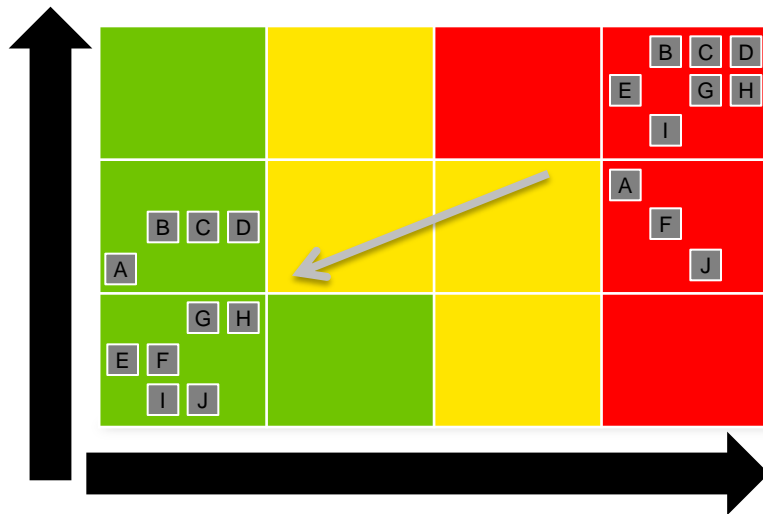
Typical Preservation Risk Scenarios

	Sources of Failure Risk in Manual Process	Risk Mitigation Achieved with Software
A	Legal scopes the wrong employees, those employees terminate or transfer mid-matter and data subject to hold is lost.	Legal can reliably scope custodians by current and historical organization hierarchy and automatically detect terms and transfers.
B	Legal fails to identify sources of data managed by IT staff and data subject to hold is destroyed.	Legal can reliably and accurately scope data and information managed by IT and RIM staff source
C	IT migrates, retires or modifies data subject to hold.	Legal holds can be automated on data in place and IT and RIM staff are systematically alerted; they have continuous visibility to holds on systems and records.
D	Legal fails to identify or follow through on information gleaned in thousands of interviews.	Interviews are conducted online, results automatically compiled and follow up action items trigger alerts and exceptions
E	Data isn't collected because of a missing data source, departing employee, incomplete prior collection inventory, and communication and tracking errors.	Information inventory workflow and tracking link legal with RIM, business and IT information owners for transparency, automated collections and tracking.
F	Unable to assemble, understand or defend the audit trail of discovery activities.	Hold and collection audit trails are generated automatically to eliminate double record keeping, errors and risk.
G	Retention schedules are not followed and/or the validity of the current schedule is hard to defend.	Business specific schedules can be easily and sustainably managed and automated.
H	IT saves all data because they fear disposing of the wrong data, increasing discoverable mass and confusion.	IT saves only data of value or that which is subject to legal obligation, and performs routine, defensible disposal.
I	IT disposes of data subject to legal obligation.	IT saves and manages data commensurate with its value
J	Internal compliance audit failures on records and legal holds expose the company in discovery or unable to respond to regulators.	Predictable audit compliance and highly defensible legal holds and disposition.

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IBM eDiscovery Management Solution Set

Process Needs	Capabilities Required	Products that can help
eDiscovery Process Management	▪ Issuing Holds ▪ Custodian Interviews and tracking ▪ Scoping people, data sources & records ▪ Coordinating and conducting collections ▪ Enterprise map for rapid discovery ▪ Monitoring and reporting on the eDiscovery process ▪ Defensible disposition of collected data ▪ Enforcing and releasing holds ▪ Compliance coordination for IT, employees and records managers	▪ Atlas Discovery for Legal* ▪ Atlas Discovery for IT* ▪ Atlas Discovery for Employees *
Case Assessment & Analytics	▪ Evidence assessment and analytics ▪ Case cost assessment ▪ Cross-portfolio cost forecasting ▪ First pass review ▪ Cross-portfolio custodian, case and evidence pattern analysis	▪ Atlas Discovery Cost Forecasting* ▪ eDiscovery Mgr ▪ eDiscovery Analyzer ▪ IBM CM8 or FileNet P8 ▪ IBM Content Collector

IBM Solutions for Rigorous Discovery, Value Based Retention and Defensible Disposal

Unified Governance for All Information Stakeholders

BUSINESS
Maximize Profit

CREATE

101010
010101

VALUE

E-DISCOVERY   RETAIN   ARCHIVE

DUTY   ASSET

LEGAL & RIM
Mitigate Risk

DISPOSE

IT
Increase Efficiency
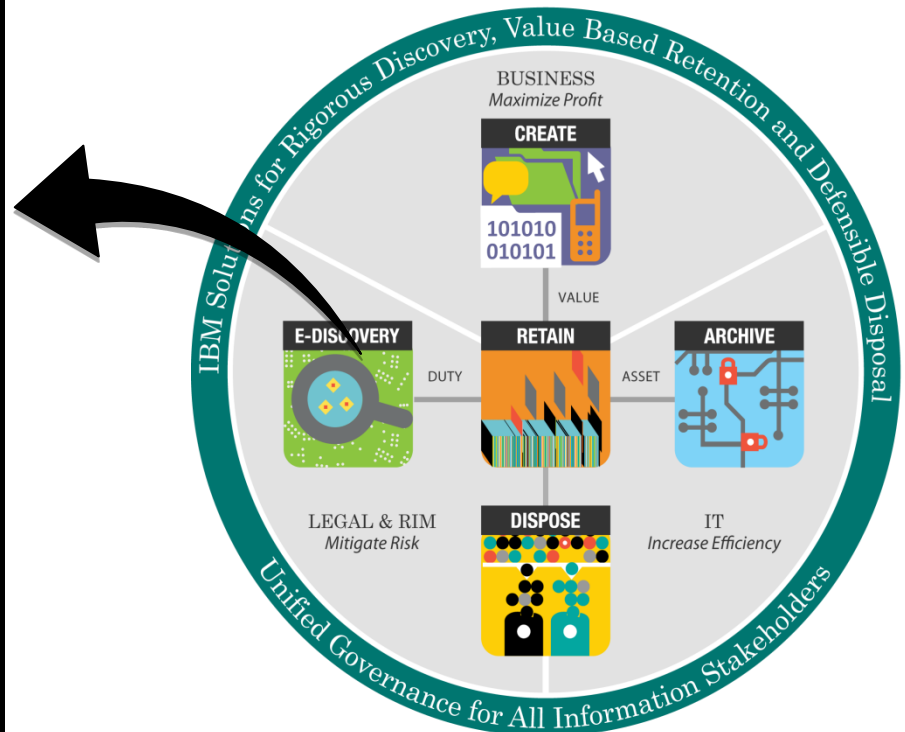
* - New ILG portfolio elements

IBM Provides **Essential Memory, Good Facts, Lower Risk** for Matter & Portfolio

IBM Evidence Analytics Integrated with Process Provides **Better Insight, Lower Risk**

IBM Continuous Cost Assessment Leverages Facts to **Improve & Accelerate** Matter & Portfolio Decisions

Manage Risks & Costs for the Portfolio

Data Governance Metrics   Export

Catalog · Catalog Management · Data Governance Metrics

Category [All ▼]   [Search] [Clear]
Information Class [All ▼]   Steward [All]
Organization [All] sub-orgs ☑   Steward's Organization [All] sub-orgs ☑

▶ Advanced Search

View: [Overview ▼]

Legal Duties

900
400
200
50
NONE LOW MED HIGH

Top Data Sources
● EV Email Archive North America
● SharePoint HR
● Centera Clinical Tests
● Iron Mountain West
● SharePoint R&D #4
● File Share General Finance HQ
View Full Report

RIM

1000
200
NONE LOW

Top Data Sources
● SharePoint HR
● SharePoint Finance
● Iron Mountain West

Volume

500
280
200
110
NONE LOW MED HIGH

Top Data Sources
● Iron Mountain Northeast
● MS Content Management (West)
● Open Text eDocs Finance
● IBM FileNet RM Tech & Serv
● Oracle Stellant HR (NV)
● Iron Mountain West
View Full Report

Combined

200
30
NONE LOW

Quick Navigation ▼

(A)(T)(L)(A)(S)   My Atlas   Law Library Schedules   Matters   Reports   Cost 🗄 🔒 ⛁ Map   My Holds   Admin

Costs

Most Expensive Matters

During: [Current Fiscal Quarter ▼]

Matter	Incurred	Period ▼	Total
Zephora v. Netestate, LLC	$90.8K	$50.4K	$90.8K
Zephora v. Verza Domain Depot BV	$35.3K	$42.8K	$59.6K
Zephora v. AfterGen, Inc. dba JumpingDot	$0	$33.3K	$2.21M
Zephora v. Universo Online S/A (UOL)	$23.9K	$28.3K	$35.3K
Zephora v. GoDaddy.com, Inc.	$12.8K	$17.4K	$35.4K
Zephora v. AirNames.com Inc.	$0	$13.7K	$1.09M
--Age Discrimination Matter - Greg Sol	$0	$13.1K	$397K
--Supressa Product Investigation	$0	$12.6K	$604K
Zylos v. A Rite Tern, LLC	$13.6K	$12.0K	$18.3K
Showing 10 - 18 of 817		◄ Page: 1 2 3 4 5 ... 91 ►	

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Form and Process Mismatch
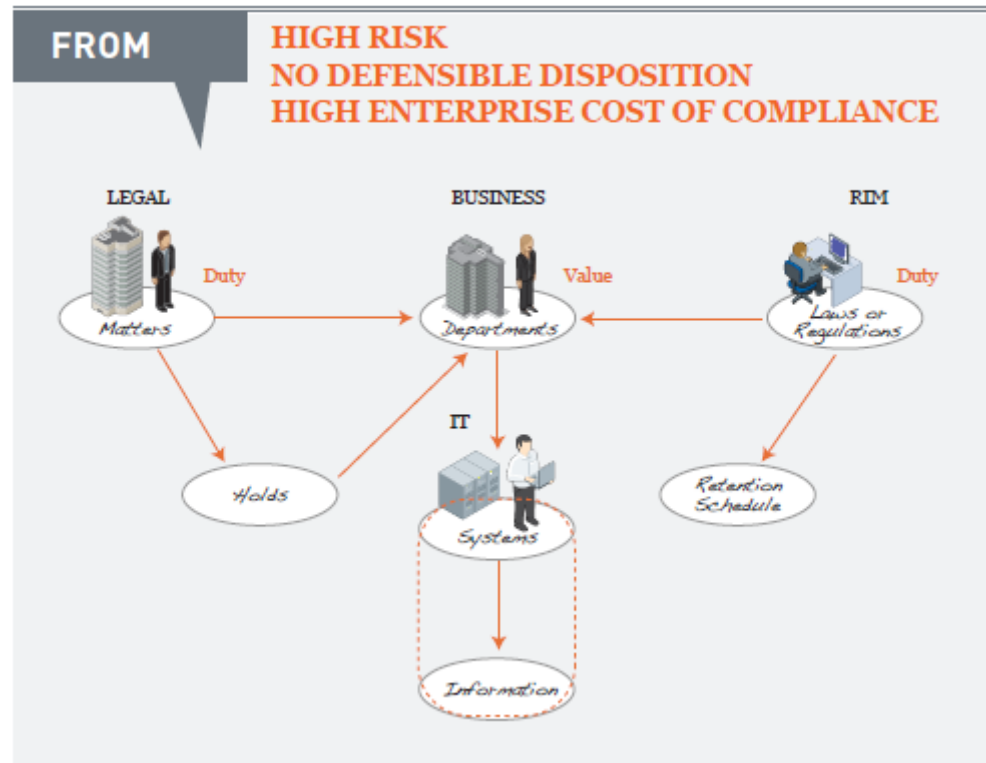
Legal holds
defined by
employees
involved,
notices sent to
them.
IT and
Records left
out of process.

FROM

HIGH RISK
NO DEFENSIBLE DISPOSITION
HIGH ENTERPRISE COST OF COMPLIANCE

LEGAL — Duty — Matters

BUSINESS — Value — Departments

RIM — Duty — Laws or Regulations

Holds

IT — Systems

Retention Schedule

Information

Schedules
documented
by record
class.
IT unable to
apply the
schedule.

Systematic Linkage of Stakeholders and Processes
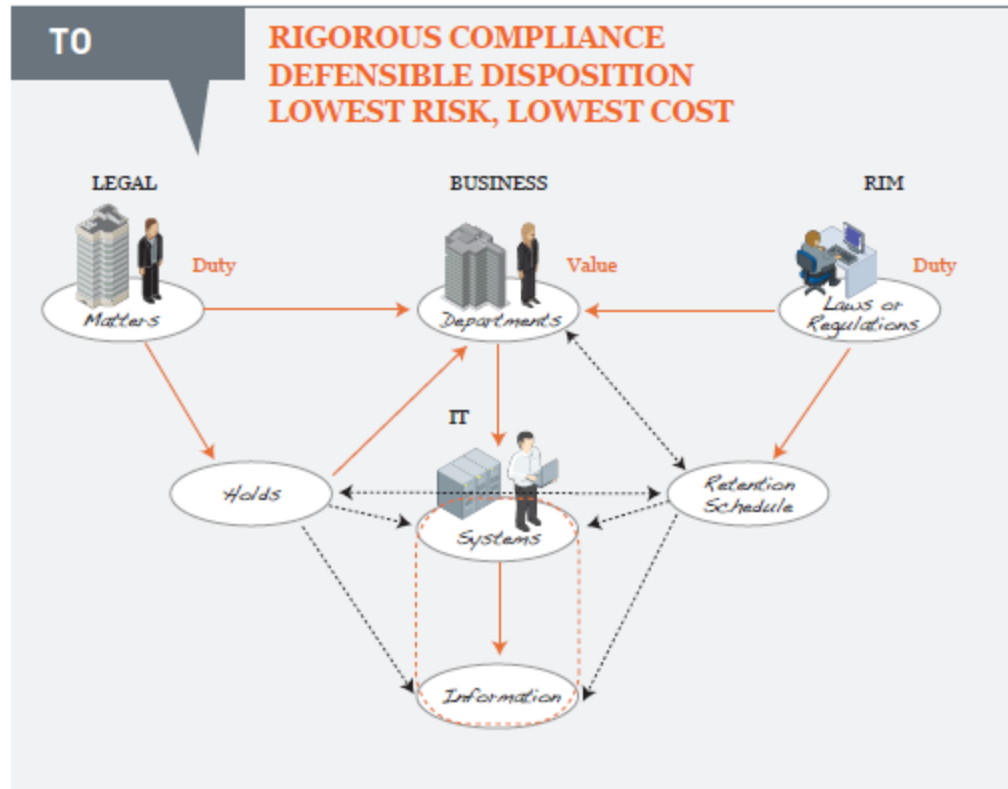
IBM Provides Governance Capabilities for **Legal**, RIM, IT & Business Stakeholders

PROCESS TRANSPARENCY
Unified Governance
✓Natively integrated workflows
✓Common data model, enterprise map and governance hub
✓Automatic linkage of duties, value to information assets and business processes

HOLD, DISCOVER
Rigorous Discovery
✓ Robust, automated legal holds for people + data
✓ Efficient discovery process, including data collection
✓ Early case assessment
✓ Legal cost and risk analytics
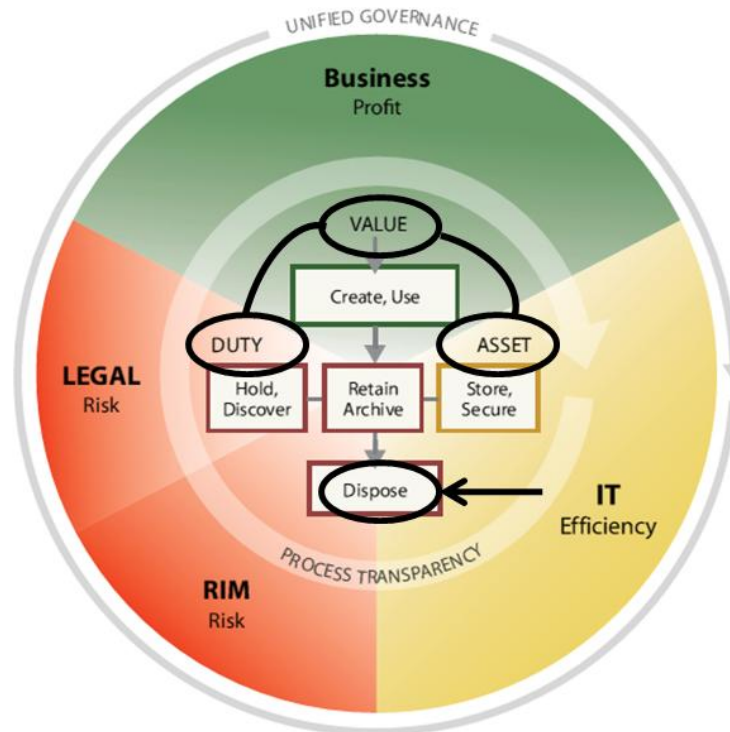
CREATE, USE
Optimal accessibility
✓Determine what is of value
✓Ensure trusted content availability
✓Search smaller corpus faster for better business productivity
✓Meet SLAs for structured and unstructed information access

STORE, SECURE
Efficient Storage
✓Standardization and consolidation
✓Virtualization and deduplication
✓Rationalization
✓Policy and governance

RETAIN, ARCHIVE
Value-Based Retention
✓Regulatory requirements master
✓Index of information's business utility
✓Reliable retention schedules with automated classification and execution
✓Cohesive archiving across data types
✓Program cost and risk analytics

DISPOSE
Defensible Disposal
✓Catalog of obligations and duty by asset
✓Legacy data clean up, application retirement
✓Procedures for disposal by source
✓Risk and cost dashboard for information portfolio
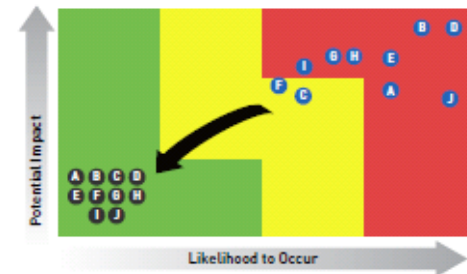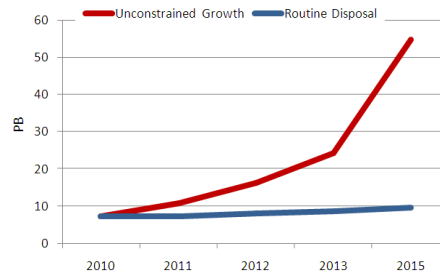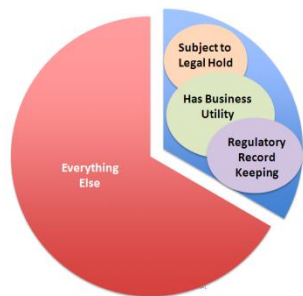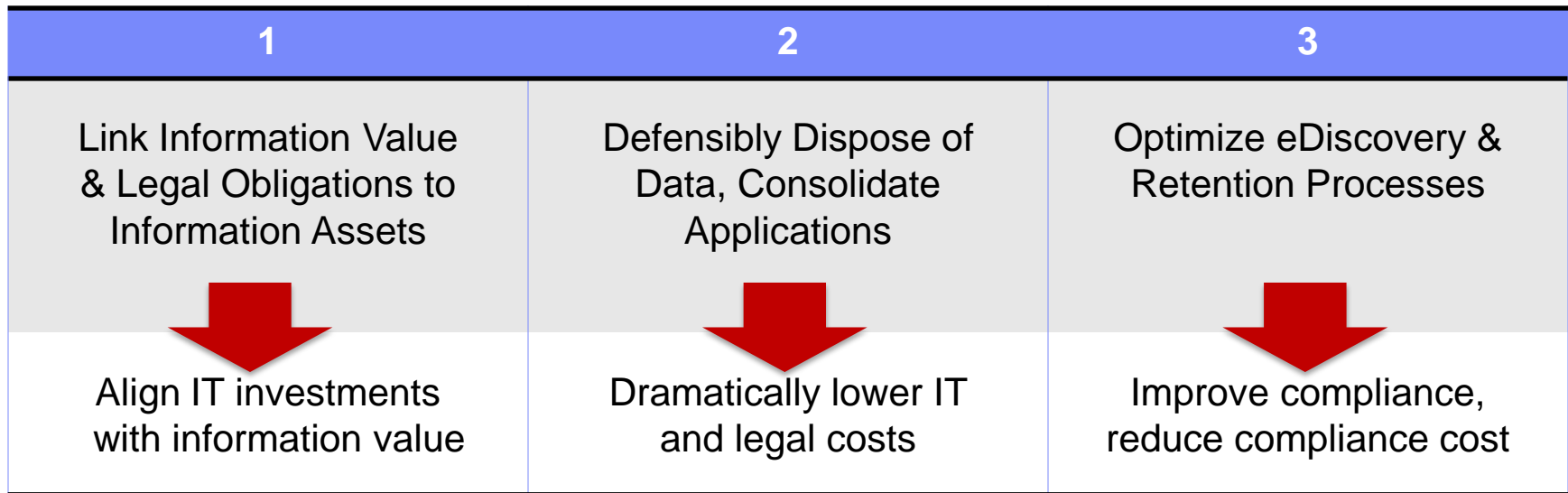
UNIFIED GOVERNANCE
Business Profit
VALUE
Create, Use
DUTY | ASSET
LEGAL Risk
Hold, Discover | Retain Archive | Store, Secure
Dispose
IT Efficiency
RIM Risk
PROCESS TRANSPARENCY

Breakthrough Solution

1	2	3
Link Information Value & Legal Obligations to Information Assets	Defensibly Dispose of Data, Consolidate Applications	Optimize eDiscovery & Retention Processes
Align IT investments with information value	Dramatically lower IT and legal costs	Improve compliance, reduce compliance cost

Topics

1. The GC's pain points

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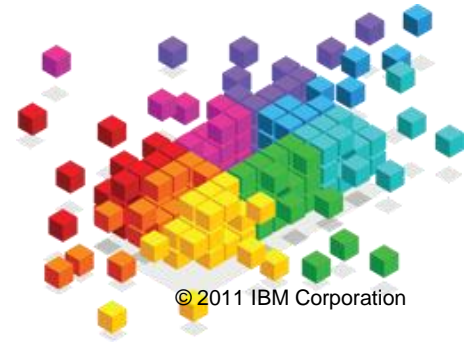
We Have Tools to Help You Assess Processes, Quantify Risk and Cost and Chart the Course Forward to Lower Cost and Risk

13 Key Processes
Maturity Model and Self Assessment

Risks in these Processes
Current and Future State

Legal & IT Costs of Process
Current and Future State

We Can Assist You with an Assessment

EXECUTIVE ENGAGEMENT

1

Calibrate value

3 Executive report on ROI, Roadmap for action

PRACTITIONER ENGAGEMENT

2

Fact finding on current processes

Cross-stakeholder workshop
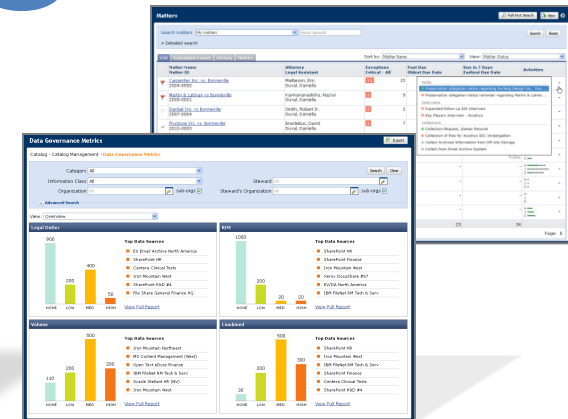
Demonstrate value to each stakeholder community

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Topics

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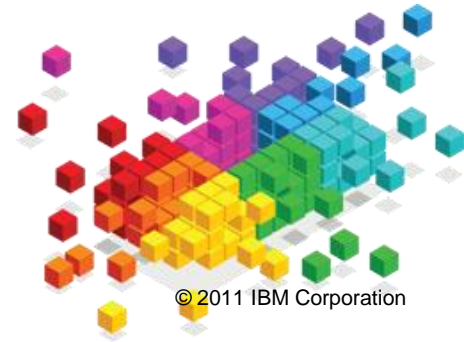
Room for Improvement is in Adjacent Area for ECM Leaders

85% cited lack of systematic linkage and collaboration across legal, records and IT a critical point of failure

70% use people glue to link legal obligations and business value to information assets

50% of IT departments don't use retention schedules at all

33% identified records subject to legal holds as part of the hold definition

30% of companies are achieving disposal and risk reduction benefits of information governance today

22% of companies can routinely dispose of data, predominantly paper
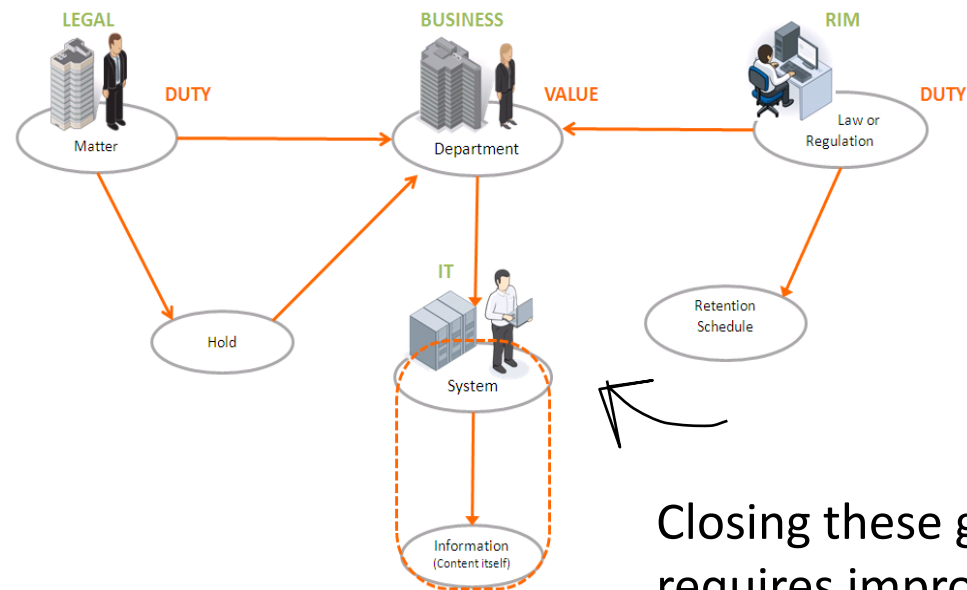
Closing these gaps requires improvements in:
✓Business process
✓Information practices
✓Systems

IBM Has a Differentiated Enterprise Solution
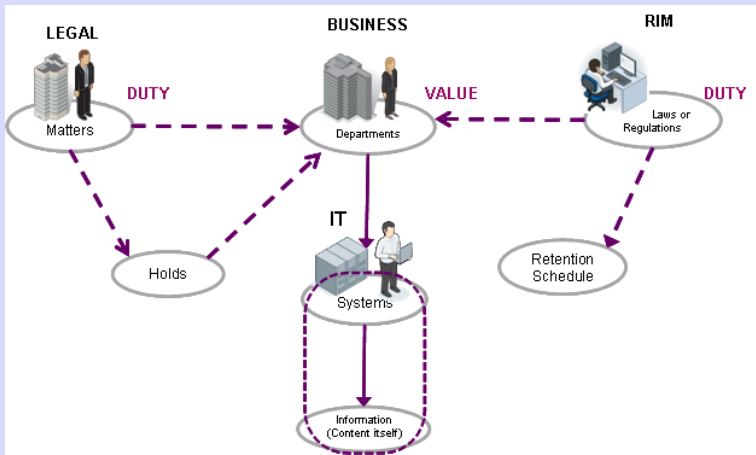
Other vendors:

- Stretch the small budget rather than changing the huge growth curve

- Make routine disposal impossible or unreliable

- Create permanent disconnected silos between IT, legal, records and business – which leads to endless data build up

- Some ediscovery solutions actually *increase* data volume and undermine IT

- Benefit from the "storage addiction"
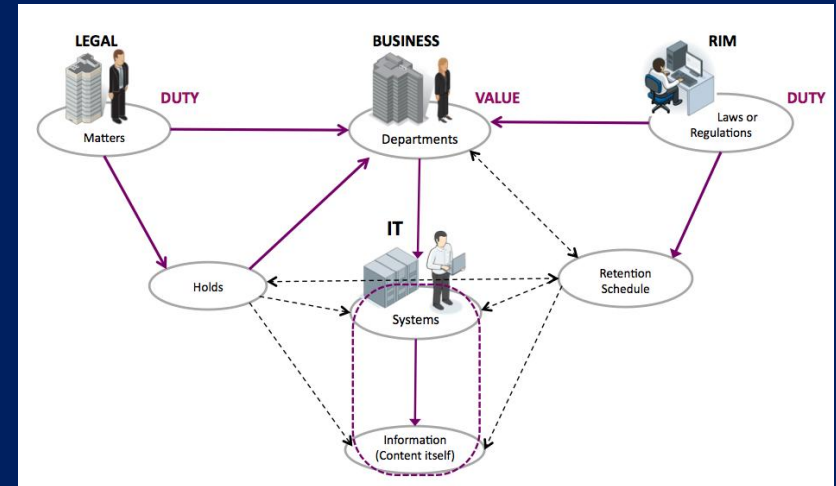
Only IBM:

- Systematically links business value and legal duties to information assets

- Enables legacy data clean up and application retirement with data disposal

- More efficiently manage less information with Smart Archive

- More efficiently manage legal obligations for information with eDiscovery and Retention and Records Management

Building on Your ECM Investments for Enterprise Value

Data

Value

Risk

Archiving and storage
optimization

FileNet upgrade

eDiscovery process
management and analytics

Records and retention
management

Paper disposition

Defensible disposal

Instance consolidation

SharePoint archiving

LoB analytics on
smaller, better quality
corpus
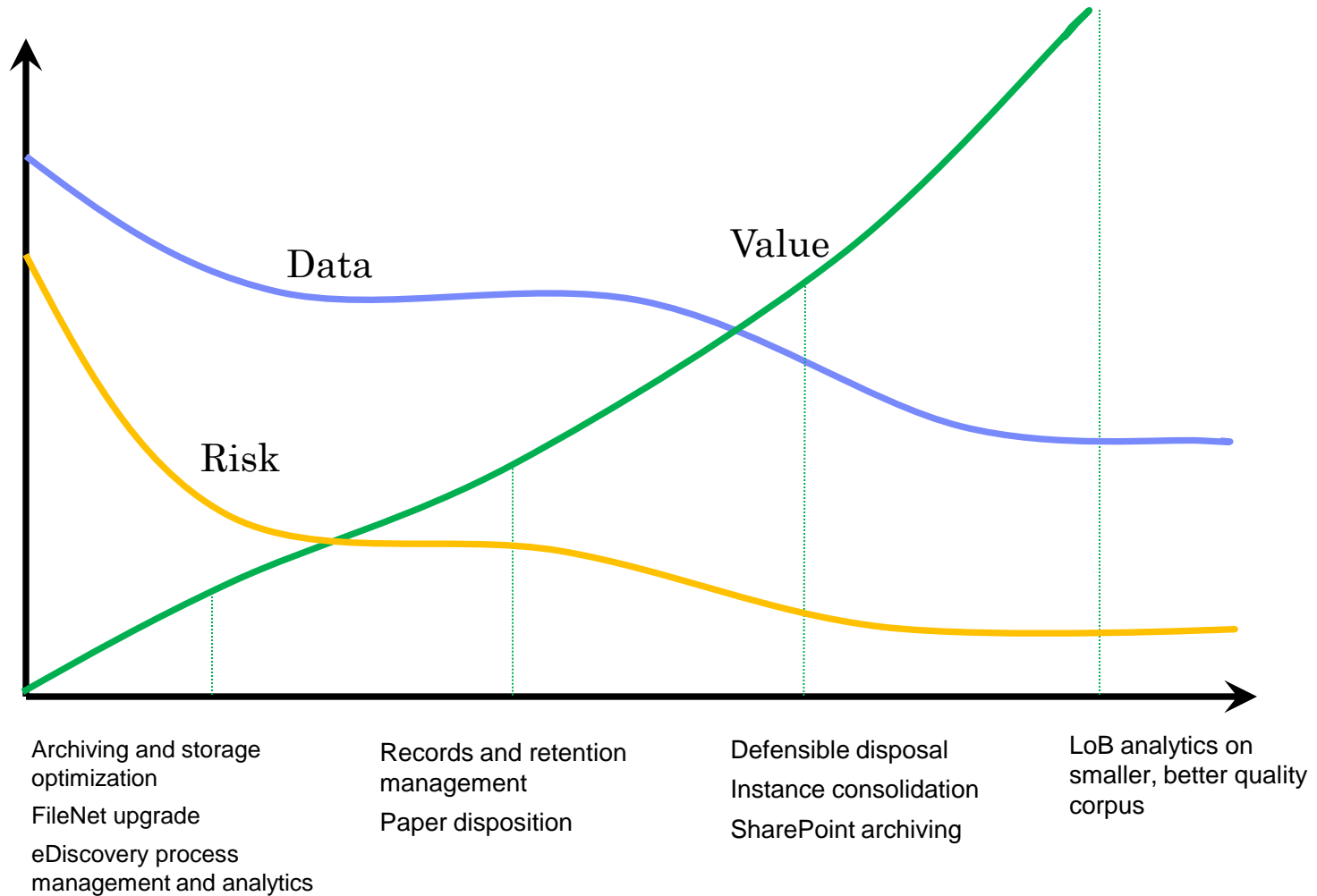
ILG Solutions Close Gaps Between Legal, IT and Records Stakeholders to Systematically Lower Cost and Risk

Only IBM links stakeholders and their processes to connect legal duties and business value to information assets.
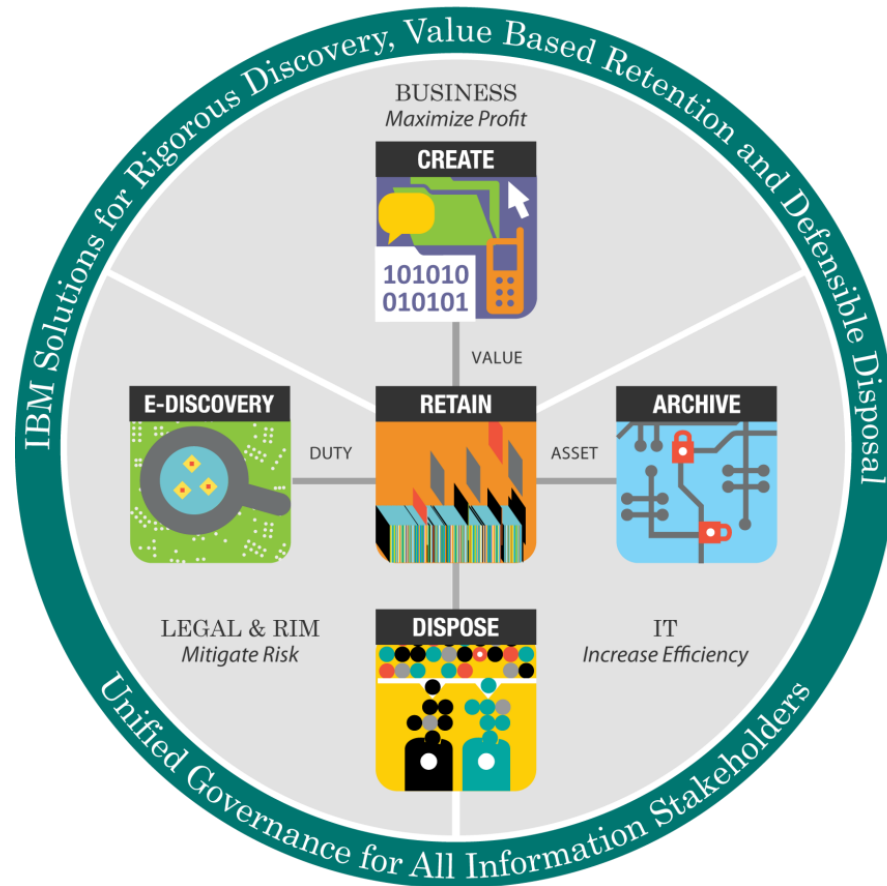
Topics

1. The GC's pain points

2. Addressing the problem

3. Developing the business case for change

4. Building on your expertise and ECM investments

5. Resources to learn more
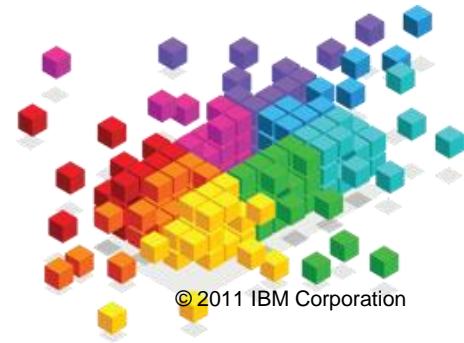
Learn More and Assist Your Legal Colleagues

www.cgoc.com

Tool Kit for Communicating Legal Risk to Business and Finance Executives

Presenting the business case for legal hold and discovery workflow software to IT, business and finance execs is more productive when framed in familiar business — rather than legal — terms.

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Legal Holds and Discovery Whitepaper

Judge Scheindlin's Recent *Pension* Decision

Guidance for Corporate Counsel

Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of Am. Secs, No. CIV. 05-9016, 2010 U.S. Dist. LEXIS 1839 (S.D.N.Y. Jan. 15, 2010).

by Thomas M. Lahiff, Director, PricewaterhouseCoopers and Deidre Paknad, President & CEO, PSS Systems

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Participate in CGOC Programs

CGOC is a corporate practitioners forum focused on the intersection of legal holds, discovery, retention and information management started in 2004.

✓ Exclusive, invitation only

✓ Highly relevant business content

✓ Not a trade show or vendor event

✓ Customers lead discussions

Learn More About Executive Challenges & How You Can Be Part of the Solution

4:30 PM – 5:20 PM Tuesday

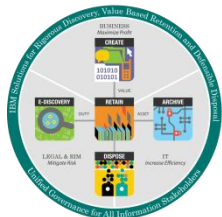**Addressing The CIO's Cost Challenges**

10:15 AM – 11:05 AM Wednesday

Addressing General Counsel's Risk Challenges

11:15 AM – 12:05 PM Wednesday

How RIM Helps -- Aligning Retention Policy with Information Pace

1:05 PM – 1:55 PM Wednesday

A Smarter Approach to Archiving Can Reduce IT Cost and Legal Risk

2:05 PM – 2:55 PM Wednesday

Building on ECM Investments – Value & Product Roadmap

IBM Information Lifecycle Governance

TOOLS   **BEST PRACTICE EXPERTISE**   **SOLUTIONS**

Putting Content to Work
ECM UserNet 2011

References / Links

Resource	Link
Forrester Case Study: BCBST Tackles Strategic Archiving Initiative	http://www.forrester.com/rb/Research/case_study_bluecross_blueshield_of_tennessee_tackles/q/id/58702/t/2
CGOC Benchmark Report on Information Governance, October 2010	http://www.cgoc.com/register/benchmark-survey-information-governance-fortune-1000-companies
Litigation Cost Survey of Major Companies, 2010 (from Conference on Civil Litigation, Duke Law School, May 2010)	http://civilconference.uscourts.gov/LotusQuickr/dcc/Main.nsf/$defaultview/33A2682A2D4EF700852577190060E4B5/$File/Litigation%20Cost%20Survey%20of%20Major%20Companies.pdf?OpenElement
IDC Digital Universe Study, May 2010	http://gigaom.files.wordpress.com/2010/05/2010-digital-universe-iview_5-4-10.pdf
Information Management Reference Model from EDRM.net	http://edrm.net/projects/imrm
Join the CGOC today!	http://cgoc.com
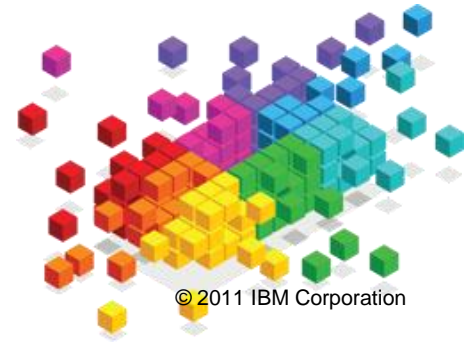
Thank You!

Helping Your Legal Department
Meet Information Obligations and Reduce Risks

Michele Kersey
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