

## Email Archiving and Discovery Survey

ZL TECHNOLOGIES, INC.  
WHITE PAPER





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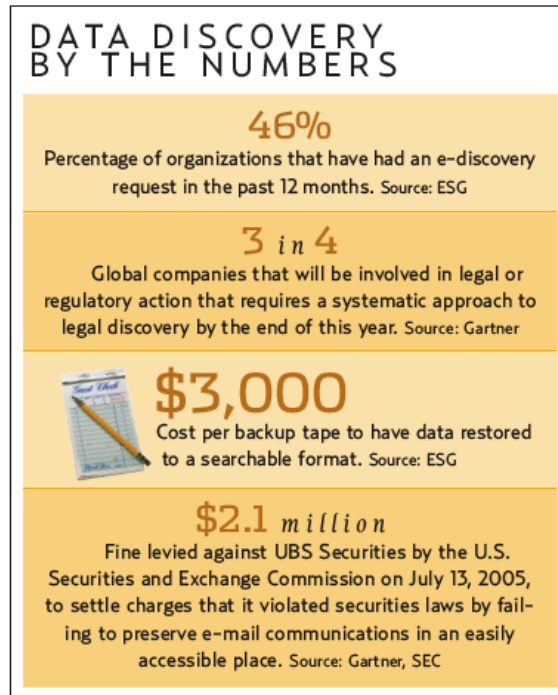
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## Introduction

### Email Archiving - it's cheaper than a discovery request

No longer is email simply an ad hoc communication vehicle. Messages are now considered business records and are expected to be retained and managed like paper records. SEC, NASD, HIPAA and Sarbanes-Oxley regulations, to name a few, specify retention periods of at least three years, under penalty of hefty fines, and/or jail time. In addition, lawyers have come to view email stores as the repository for “the smoking gun” in many lawsuits. Search and discovery requests for the contents of corporate mailboxes have become commonplace, while the ability to retrieve the requested data from system backup tapes has not. If you think the upfront expense of implementing email archival is too severe, think again. The cost of discovery is so enormous; email archiving can often offset litigation costs and pay for itself within a year.



Source: Byte and Switch  
[http://www.byteandswitch.com/document.asp?doc\\_id=107838&print=true](http://www.byteandswitch.com/document.asp?doc_id=107838&print=true)

### Key decisions regarding email retention

“A discovery request aimed at the production of records retained in some electronic form is no different, in principle, from a request for documents contained in an office file cabinet. While the reality of the situation may require a different approach and more sophisticated equipment than a photocopier, there is nothing about the technological aspects involved which renders documents stored in an electronic media ‘undiscoverable.’”

- *Linnen v. A.H. Robbins Co., Inc., 1999 Mass. Super.*



“Back-up tapes . . . are not archives from which documents may easily be retrieved. The data on a backup tape are not organized for retrieval of individual documents or files, but for wholesale, emergency uploading onto a computer system. There, the organization of the data mirrors the computer’s structure, not the human records management structure if there is one.”

- *Rowe Entertainment, Inc. v. William Morris Agency, Inc.*, 205 F.R.D 421 (S.D.N.Y. 2002)

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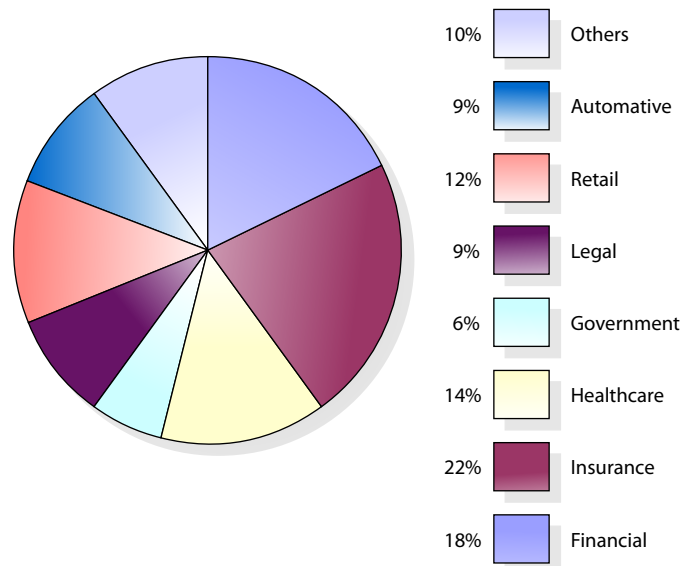
ZLTI conducted a short survey between January and March 2005, of 160 customer prospects from both regulated industries, including financial and healthcare, and non-regulated companies. Survey respondents were either the Chief Compliance Officer (CCO) or Senior IT Administrator of the companies. The survey was conducted *prior* to any purchase and/or deployment of a ZLTI solution.

### Survey Sample

This study examines the results of an internal survey conducted by ZLTI between January and March 2005. The survey was conducted across 160 corporations, representing a total of 104,237 users.

<b>Total number of Corporations</b>	<b>160</b>
<b>Total number of Users</b>	<b>104,237</b>

**Figure 1: Number of Survey Respondents**



**Figure 2: Surveyed Corporations by Industry**

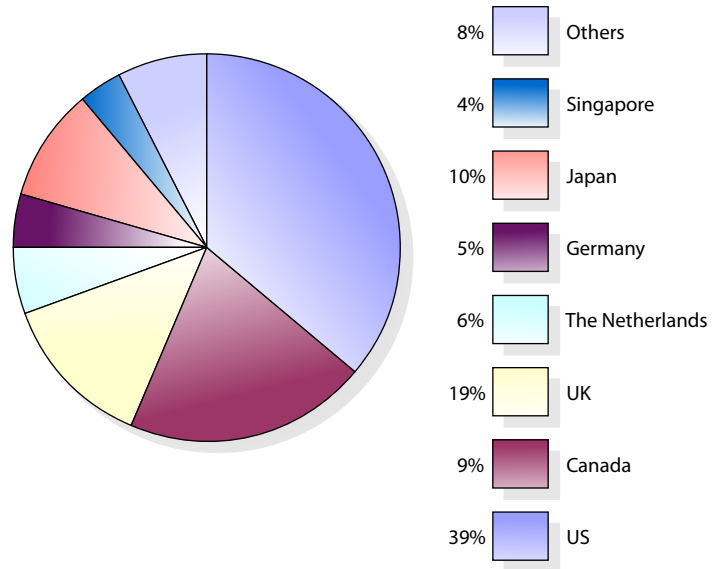


Figure 3: Surveyed Corporations by Country

### Survey Results

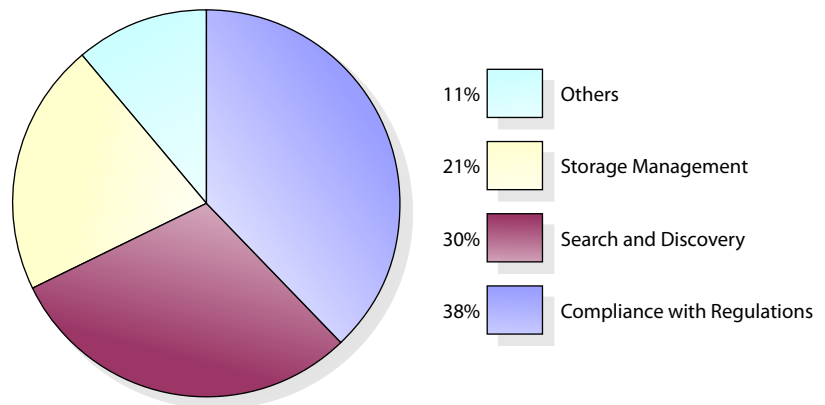


Figure 4: Primary Reason that Companies Archive

### Primary Reason to Archive

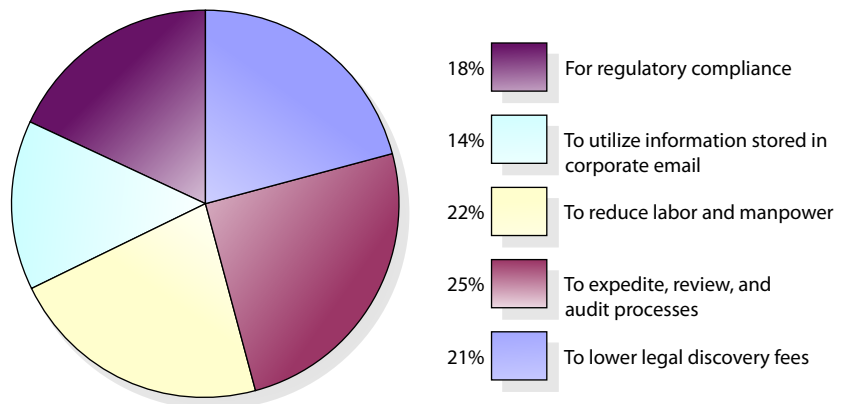
The majority of survey respondents, 38%, indicated that compliance with regulations such as SEC 17a-4, NASD 3010, Sarbanes Oxley, HIPAA was their primary reason for archiving. This came as no surprise.

However, a large number, 30% said that they were actively seeking a solution that would provide them not only with adequate, but highly



sophisticated search and discovery functionality. This is a shift from the general trend in 2004, when legal discovery was not really much of an issue. Since the SEC announced its intention of being more “anticipatory and preventative,” in its oversight, and audits and subpoenas are being served with shorter time frames for response, respondents felt they could no longer depend on the old-fashioned ways of doing search and discovery.

21% of respondents said that storage management was their primary reason to archive email. Their servers suffered slowing performance, bogged down by increasing volumes of corporate email and attachments.



**Figure 5: Main Drivers for Search and Discovery**

### Main Drivers for Search and Discovery

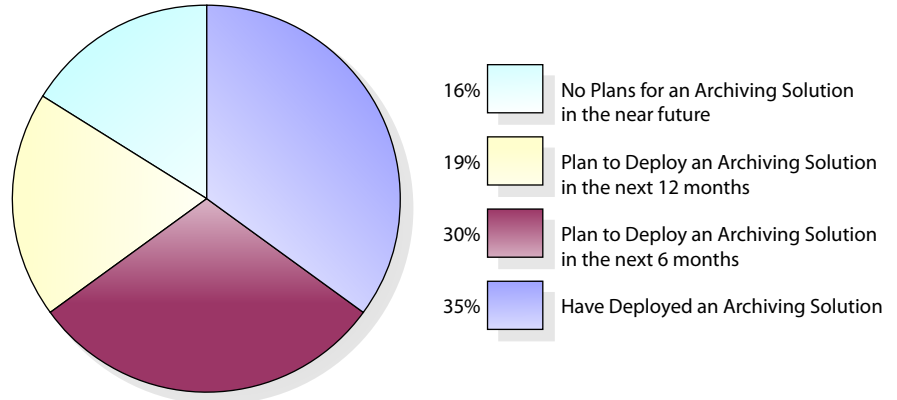
25% of survey respondents said that the main driver for search and discovery functionality was to expedite review and audit processes. They were convinced that such processes should be a natural extension of an archiving solution, and such features are vital to the organization.

22% of companies wanted to reduce the labor and manpower required whenever any kind of systemic search had to be done.

Lowering legal discovery costs was cited by 21% of all respondents as the main driver for wanting search and discovery features. The costs for discovery escalate very quickly, especially when cases are dragged out over months, and even years. Further, past searches could not be leveraged in new cases, and re-inventing the wheel was no longer acceptable.



Only 18% of companies wanted search and discovery primarily for regulatory compliance, and 14% wanted to more effectively locate and utilize business-critical information stored in corporate email.

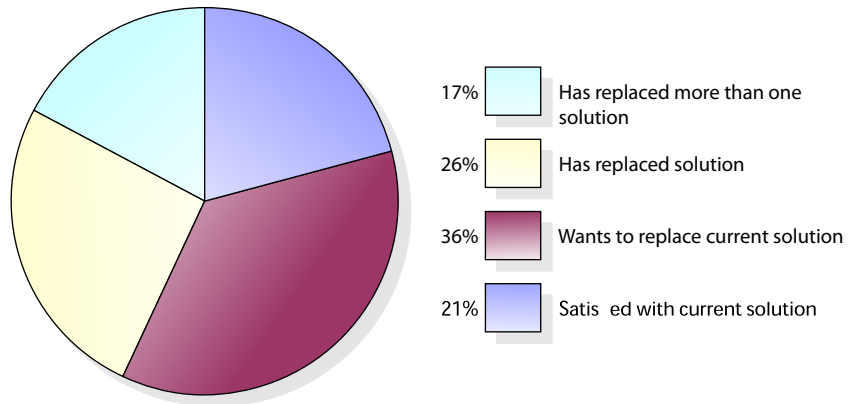


**Figure 6: Archiving Deployment Plans**

### Archiving Deployment Plans

It came as no surprise to ZL Technologies that despite the increasingly aggressive actions of regulatory bodies like the SEC for non-compliance, to date, only 35% of survey respondents have deployed an official archiving solution. With the retention requirements differing among regulations and lack of clear guidance from the oversight bodies, not to mention repeated postponing of compliance deadlines, it is no wonder companies have been delaying deployment for as long as possible. However, the recent wave of penalties and enforcement actions has forced companies to move archiving up in priority.

30% of survey respondents plan to deploy an archiving solution in the next 6 months, to future-proof the organization against looming or potential regulations. 19% of survey respondents plan to deploy an archiving solution in the next 12 months, due to regulations being postponed. 16% of survey respondents have no plans for an archiving solution in the near future.

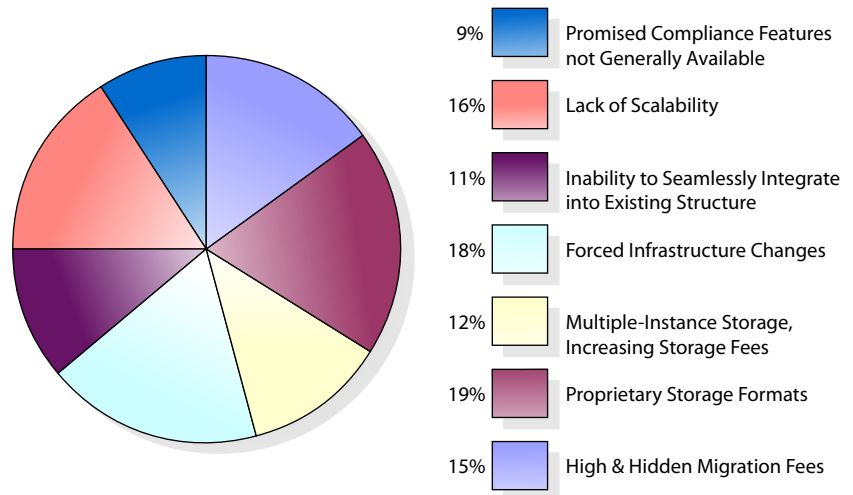


**Figure 7: Customer Satisfaction with Current Archiving Solution**

### **Customer Satisfaction with Current Archiving Solution**

Customer satisfaction among survey respondents was relatively low. Only 21% of companies surveyed were satisfied with their present archiving solution. The remainder, however, cited pricing and convenience as primary factors in any decision to replace existing solutions. Detailed reasons for customer dissatisfaction are provided in the following section.

36% of respondents were actively looking to replace their current solution, and their time frame ranged from 3 to 9 months on average. 26% of survey respondents had already replaced one solution, and most were still evaluating if they were completely satisfied with the new solution. 17% of survey respondents already had deployed and found not one but two previous solutions inadequate for their needs, and were determined to make sure that, moving forward, they had the best solution in place for their present and future needs. For these survey respondents, money and budget were usually not a main concern, they were most concerned about getting it right on the third try.



**Figure 8: Main Reasons for Customer Dissatisfaction with Current Archiving Solution**

### Main Reasons for Customer Dissatisfaction with Existing Archiving Solutions

There was a long list of reasons for customer dissatisfaction with current archiving solutions. The recurrent theme can be summed up as “buyer beware.” Archiving for regulatory purposes today requires a previously unnecessary synergy between corporate Compliance and IT departments. In addition, nascent compliance requirements and inexperience with archiving solutions all combined to lead respondents to make purchases, which proved inadequate.

Many companies (19%) raised the issue of dissatisfaction with proprietary storage formats, claiming that they were not informed that their archived emails would be stored in a manner that virtually locked the customer into a single solution in perpetuity. The inability to easily move their legacy data to another archiving solution was the second largest cause of discontent – forced infrastructure changes.

18% of respondents complained that their archiving software was hardware, OS or mail server specific. Such limitations affected, and in some cases prevented, respondents’ necessary infrastructure changes and upgrades. For example, one respondent with a Microsoft Exchange specific archiving solution was acquired by a company with a large Notes deployment. The respondent’s archive solution was no longer usable in the new environment and, since the legacy archive utilized a proprietary storage format, the data couldn’t be consolidated with the new archive.

16% of companies were very disappointed by the product’s failure to deliver on promises of scalability. While this figure seems low, this



disappointment was actually prevalent across all companies surveyed – however, only 16% cited it as the primary reason for dissatisfaction with their existing product.

Many archiving products were purchased with vendor claims of scalability, both in users and email volumes. As initial deployments were typically small (50 to 200 users on average), the system would run fairly smoothly in the beginning. However, when companies tried to deploy across entire organizations, the average breaking point appeared to be about 1,500 to 2,000 users, with some break points as low as 300 users. Companies doing partial or selective archiving encountered breaking points at higher user counts.

15% of companies said that high or hidden integration fees and professional service fees were a source of irritation. Respondents who expected hardened, off-the-shelf archive solutions were rudely surprised by the amount of time and money required to get their chosen solution working properly. Often, the integration fees were underestimated in the price quote, only surfacing later when the respondent was in mid-project.

Companies who had replaced a legacy archiving solution (26% as indicated above) cited migration fees as the worst part of their experience. Exit strategies are rarely factored in to choosing an archiving solution. Respondents who chose their first archive based on price had no way of knowing that data migration fees would wipe out their initial savings many times over. When scalability or functionality issues forced a company to replace their legacy archive solution, they were hit with the additional headache and cost of migrating their legacy data from a proprietary format into the new solution. Migration fees are based on the amount of data to be processed, so the longer respondents waited to replace the problem solution, the more expensive the project became.

The storing of multiple versions of archived messages was cited by 12% of companies as the main cause for dissatisfaction. The additional overhead was usually glossed over and not realized until well after the solution was entrenched, resulting in greatly increased and unanticipated storage fees.

The final two reasons were the inability of the archiving solution to integrate seamlessly into existing infrastructure (11%), and that promised compliance features were either still in beta, or not generally available at the time of actual deployment (9%).

## Cases of Precedence

As our survey showed, the dissatisfaction with many archival solutions today is due largely in part to customer expectations not being met. The companies surveyed were under the impression that their archiving solution should provide them not only with the capability to archive and index corporate email, but also with highly-sophisticated search and discovery capabilities for fast, comprehensive searches. The alternative is paying for IT man-hours to compile the data, and then paying paralegals



to manually index and search it for the particular case or audit. In addition, the efforts are specific to that particular instance and cannot be re-used for future searches.

With search and discovery being so business-critical, costs could be alleviated with email content that is all in one place, fully indexed, and with sophisticated search capabilities to pull all out. Here are statistics on companies that did not have comprehensive archiving solution in place, much less sophisticated search and discovery capabilities. The costs incurred in terms of time, money and resources were enormous, and could easily have been avoided.

### **Morgan Stanley (2006)**

Morgan Stanley has agreed to pay a \$15 million civil penalty in response to complaints by the SEC that the brokerage did not supply e-mails during an investigation, and over-wrote e-mail backup tapes. Although the SEC asked for the files in December 2000, Morgan Stanley did not really begin looking for them until July 2005, the SEC complained, meanwhile lying about document availability and over-writing tapes. As a regulated broker, Morgan Stanley is required to produce any records requested by the SEC in a timely manner. The firm also agreed to adopt approved policies and training concerning e-mail retention, under the review of an independent consultant.

### **Rambus (2006)**

Emails from Micron Technology Inc. and Hynix Semiconductor Inc. provide some of the first details of a global conspiracy to raise prices on memory chips and could support allegations by Rambus Inc. in a closely watched antitrust case. The messages were gathered by the Justice Department and provided to Rambus, which disclosed them to The Wall Street Journal. Rambus filed private antitrust claims against Micron, Hynix and Samsung Electronics Co., makers of memory chips that have been implicated along with Infineon Technologies AG in a long-running Justice Department price-fixing investigation.

The emails, mainly among sales personnel at Micron and Hynix, refer to other messages, phone calls, lunches and meetings among direct competitors in the memory-chip business. In some cases, the messages suggest competitors traded information in an effort to keep chip prices up. A July 2001 email between one Hynix sales executive and another, for example, says a counterpart at Micron wanted to discuss with them "measures to stabilize the market price." The message, which discusses the possibility of an in-person meeting with the Micron executive, praises the concerted action between competitors. "I think your diplomacy is working," the writer praises his co-worker at Hynix, which is based in South Korea.



### **Linnen v. A.H. Robbins Co., Inc. (1999)**

Email recovery cost: more than \$1.1 million to search backup tapes for the contents of only 15 mailboxes. ~\$73,000 per mailbox

Linnen v. A.H. Robbins was filed against the makers of phen-fen, the diet drug that caused heart failure. Plaintiffs (filed on behalf of their deceased daughter) cited internal emails as proof the drug company knew they were marketing an unsafe drug. The defendants attempted to withhold email from evidence, citing inability to recover mail from 15 mailboxes. The defendant had a 90-day retention policy for all emails, but had not taken into account both backup tapes made and stored for disaster recovery, and also additional tapes from the same time period which had been preserved for an unrelated case.

### **Zubulake v. UBS Warburg (2003)**

UBS Warburg archived on optical disk outgoing and incoming external e-mail to and from registered traders. Internal e-mails, however, were not stored on this system. The discovery request for this gender employment discrimination suit sought internal mails, which were stored on backup tapes. UBS Warburg paid 100% of costs to recover data from an initial five backup tapes: \$19,003.43, or ~\$4,000 per tape.

For the remaining 77 tapes, the court applied cost shifting principles and ordered that UBS bear 75% of the estimated \$165,000 cost of restoring and searching the remaining backup tapes, and 100% of the estimated \$107,000 cost of reviewing and producing the electronic data once it had been converted to an accessible form. Cost to UBS Warburg: \$240,000 not including the legal fees and costs incurred in litigating the issue twice before the court.

### **Medtronic Sofamore Danek, Inc. v. Michelson (2003)**

Consultant charged a total of \$605,000 to restore, search, and de-duplicate 124 sample backup tapes, or \$4,881 per tape. Amount excluded attorney privilege review, and production costs. The court refused to shift costs, and ordered the defendant, at his own cost, to search through 300 gigabytes of individual user emails, using Boolean search terms provided by plaintiff's counsel.

### **Byers v. Illinois State Police (2002)**

Cost shifting was applied to the case. Defendant had to pay 100% of restoring and searching old backup tapes from over an eight year period, estimated at \$20,000-\$30,000. However, since the defendant had recently switched to a new email system, the court ordered shifted the cost of licensing the old e-mail program to the plaintiff - at a cost of \$8,000 month.



## About ZL Technologies

Established in 1999, ZL Technologies, Inc. (ZL) provides cutting-edge enterprise software solutions for email archiving, regulatory compliance, litigation support, corporate governance, content management, file archiving, and secure email. ZL's flagship product, the Unified Archive, offers comprehensive email and file archiving and management for companies using Lotus Notes/Domino, Microsoft Exchange, Bloomberg, and others. The suite provides a highly flexible framework that is fully scalable, enabling organizations of all sizes to meet legal discovery, compliance, and storage management requirements. With a proven track record and an impressive list of clients, including Walgreens, Bank of New York Mellon, Pacific Life, and Morgan Keegan, among other top global institutions, ZL has emerged as the premier provider of email archiving and compliance solutions. For more information, please visit [www.ZLTI.com](http://www.ZLTI.com)