

# OVERCOMING THE 4 BARRIERS TO DEFENSIBLE E-DISCOVERY

EXAMINING TODAY'S BIGGEST E-DISCOVERY  
CHALLENGES AND HOW TO TACKLE THEM



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# NEW DATA CONSIDERATIONS

Data proliferation = Application proliferation

“The FBI reported that the number of complaints about cyber attacks for their cyber division pre-COVID was about 10 per day. Now, it’s a 400% increase since the start of the pandemic—4,000 complaints per day.”

Why?

More employees have been working from home than ever before since early 2020, and it’s safe to say that many won’t go back for a long time, if not ever.

Why is this important?

- Employees use these applications and create new data types that are relevant to litigation, companies must understand how to maintain those sources, preserve the data within them, and produce it if needed
- New applications aren’t always supported immediately by other.
- As companies increase their global footprint and stretch into new geographies with their own sets of rules.

Preservation obligations are made substantially more difficult because of cross-border discovery. The challenge of working to satisfy your preservation obligations in a U.S.-based litigation matter without violating the data privacy regulations that you're facing in different geographies.

## Conducting Early Case Assessment is key

It's important to identify your custodians first because data protection laws might govern the preservation, collection, export and production of the data.

When you're implementing a legal hold in other geographies, it really requires that you have a knowledge of data privacy laws in those other geographies. It's important to review relevant regulations and policies.

Why?

Data Protection Regulations (DPR's) – govern the collection, use and disclosure of personal information

Statutes – Certain foreign statutes can prohibit the application of foreign law

- This could block certain types of data to be transferred (financial or economic data)
- Prohibit depositions

Obtaining Financial Banking information

## Legal Hold Considerations

Have different versions of the legal hold go to different geographies, be sure to revise the requirements and the instructions according to that country's requirements. In some countries a traditional U.S. legal hold could violate those laws.

# DATA RETENTION CONSIDERATIONS

If you store data in your organization, litigation may create obligations to review and produce it in a variety of contexts, including scenarios where U.S. privacy laws like the California Consumer Privacy Act (CCPA) come into play. Consumers exercising their right to delete personal data that businesses store may be needed for litigation—and could lead to spoliation claims if it were deleted.

The minimal retention and processing of data is crucial to defensibility.

Keeping data only as long as necessary is going to put the client in good position to defend its legitimate preservation of data.

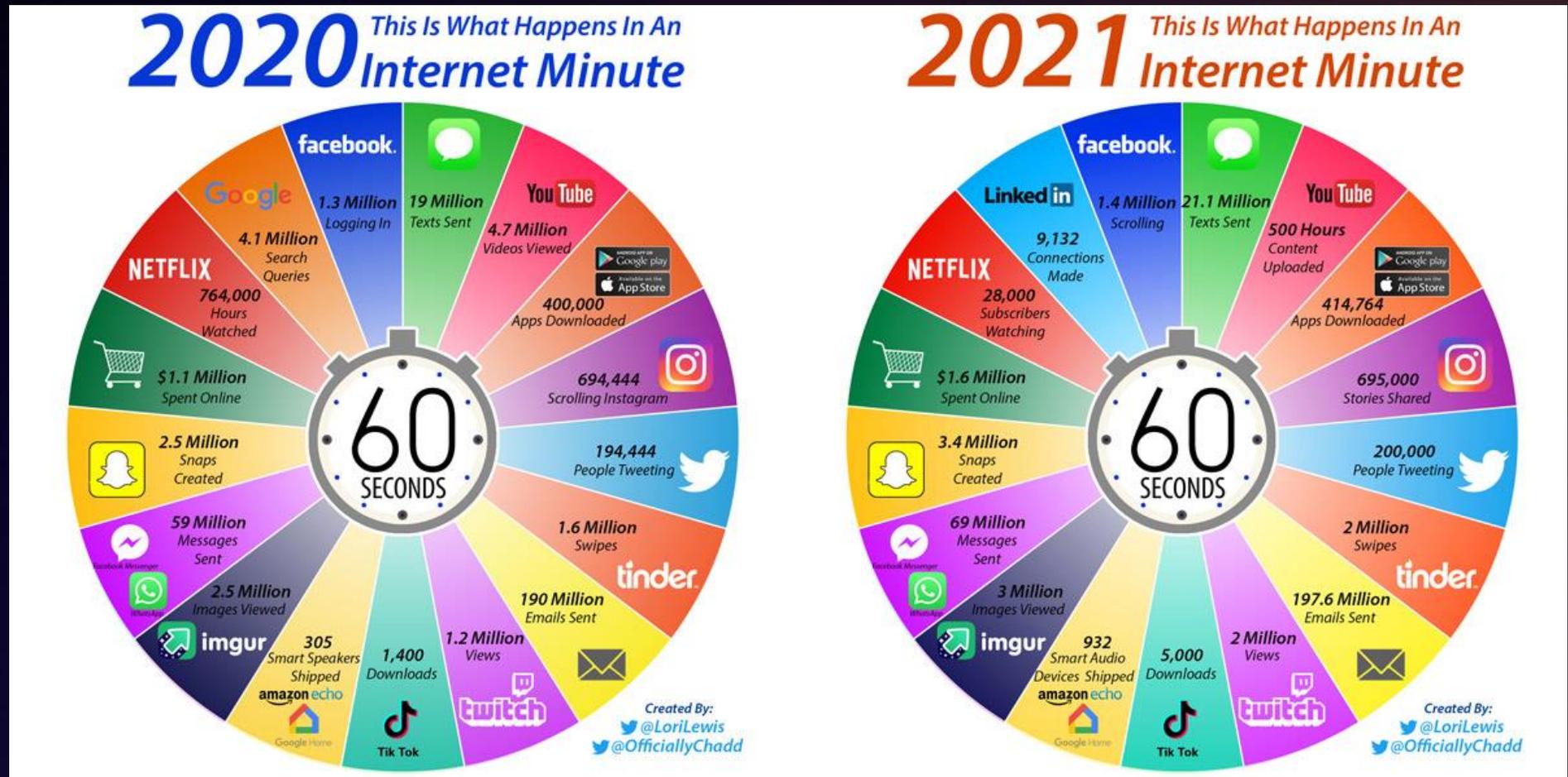
Law firms and other third-party vendors that are handling or processing data on behalf of a client must ensure that their security is up to date—and that they thoroughly vet the firms they work with, such as:

- Security of our data centers
- Differences between hosting in a cloud solution vs. a physical location with a firewall
- Compliance Controls
- Cybersecurity provisions in vendor contracts

## E-DISCOVERY BARRIER #3

## THE RISING VOLUME OF LITIGATION

The total amount of data created, captured, copied, and consumed globally is forecast to increase rapidly, reaching **64.2 zettabytes in 2020**. Over the next five years up to 2025, global data creation is projected to grow to more than 180 zettabytes.



## E-DISCOVERY BARRIER #3

## THE RISING VOLUME OF LITIGATION

- Proliferation of diverse data sources
- Complexity of data collection
- Review tools that support data sources

e-Discovery activities have been impacted largely by ballooning data volumes and the ever-growing number of sources and repositories where responsive data can hide.

Ephemeral messaging sources like Slack, Teams, and Zoom being used more often, they're also capturing both audio and visual evidence.

Unstructured data populations sitting on desktops, laptops, SharePoint, O365, G-Suite, and Slack/Teams

Company iPhones or Android data

Structured data—systems like SQL data warehouses or Azure, Workday, and QuickBooks

## E-DISCOVERY BARRIER #4

# THE PROLIFERATION OF DATA SOURCES

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Third-party hosted solutions like Salesforce or ServiceNow, and they've got all the important information from your HR and finance teams, or your sales team being stored in these applications

File hosting services like Dropbox, Google Drive, OneDrive

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# THE IMPORTANCE OF THE ENTERPRISE DATA INVENTORY

The ability to identify all data sources is truly critical to understanding, accessing, and using data for business or litigation purposes.

Connect with the client, someone in the IT department, and to really have at least a basic or high-level sense of their data map or typical user profile.

This understanding can help uncover the types of data that you'll need to collect from, the systems that you're dealing with, the stewards/owners of that data, who manages the department where the data will be found.

Know what you're dealing with, and you can't always rely on the custodians to tell you what you need to know.

The three-pronged stool of success: People, process, and technology. It's important to both A.) know where you need to be looking for data, and then B.) ask the people who will know more than you.

# Thanks *for* Attending

For more information on anything from today's presentation, please contact...

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