



Breaking Free: Dynamic Discovery & Governance of Cloud-Based Data

Speaker:

T. Sean Kelly, FTI Technology

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Introductions



Sean Kelly

T. Sean Kelly is a Senior Director at FTI Consulting and is based in Philadelphia. As a senior member of the Information Governance, Privacy & Security practice of FTI Technology, Mr. Kelly leverages more than a decade of experience to advise clients on all aspects of information lifecycle management. Specializing in data privacy and security challenges facing regulated companies, Kelly designs and implements business process(es) and workflow(s) to increase defensibility and preparedness, while reducing risk and increasing operational efficiency. Having previously worked in-house for a Fortune 100, Kelly brings clients a unique perspective on litigation preparedness and response, including expertise with cloud-based repositories, dynamic social media platforms, and the shifting landscape associated with cross-border transactions for global enterprises.

The Problem

The Problem



The Problem



- 70% of Fortune 500 companies have purchased in past 12 months
- 400% growth in monthly active users



- 5m business have 'gone Google'
- 64% of Fortune 500

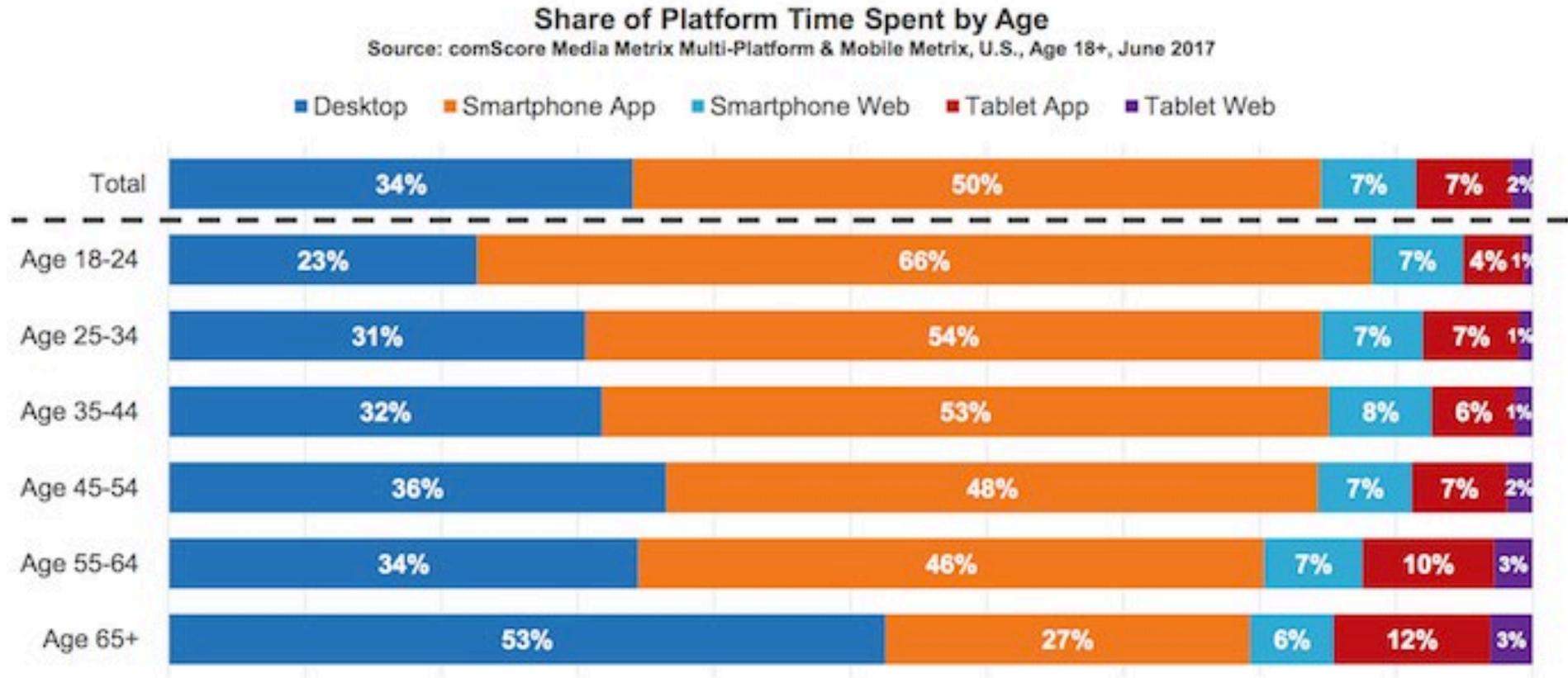


- 97% of Fortune 500
- 11 MM new subscribers in 2017
- ~140 billion files



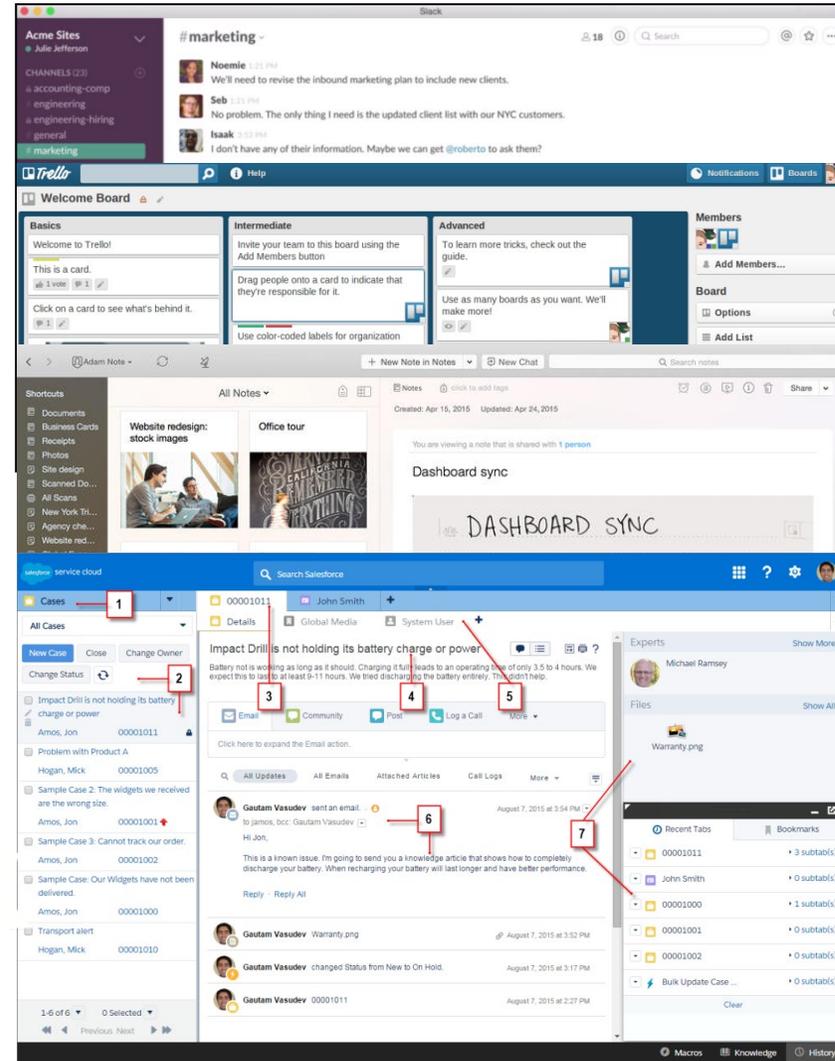
- 57,000 customers
- 59% of Fortune 500

The Problem



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The Problem



The Problem: Knowledge Workers Want Speed, Flexibility

- "Because we have access to very good tools in our private lives we expect the same level of functionality and performance in business," says Jeffrey Mann, a vice president of research at Gartner. Workers are often disappointed by **legacy applications that can drag down productivity** and workflow. As a result, Mann says, many employees have stopped using these ineffective apps or at least avoid using them as much as possible.
- **Enterprise collaboration is being transformed by the nexus of mobile, social, cloud and data**, says Monica Basso, a research vice president at Gartner. While the hurdles to success may be daunting, she encourages businesses to not be shy about experimenting with newer tools and resources.
- Gartner projects more than **300 billion mobile apps** a year will be downloaded from mobile app stores. "This is where the work is moving so mobile is becoming the primary access point for IT resources and solutions," says Gartner analyst Monica Basso.

The Problem: Knowledge Workers Want Speed, Flexibility

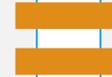
Technical Diversity

- A new Apple App is submitted for approval every two minutes
- New companies and new applications appear faster than packaged software can be modified
- Minimal IT expense, instant scalability, and (almost) free software



Workplace Changes

- Mobile, global workforce puts new demands on data storage and access
- Lines blurring between professional data “owned” by a company or by an individual
- Many users do not know how to (or want to) maintain multiple identities



Lack of Corporate Control

- IT and Legal departments do not know their data universe
- Users can easily move, share or delete data
- Collection tools cannot keep pace with new applications

The Problem

Legal requirements are not a priority for app developers

- ✓ Critical features for legal compliance and discovery are either missing or unreliable
- ✓ Rapid changes targeted at the key customers break tools used for legal management
- ✓ Every system has unique challenges in accessing information
- ✓ Every messaging systems has individual interfaces and logging mechanisms
- ✓ Apps often have no real search capability – and do not index external links or attached files
- ✓ Email systems and archives (including Google and eVault) do not support complex legal searches

The Case Law

The Case Law

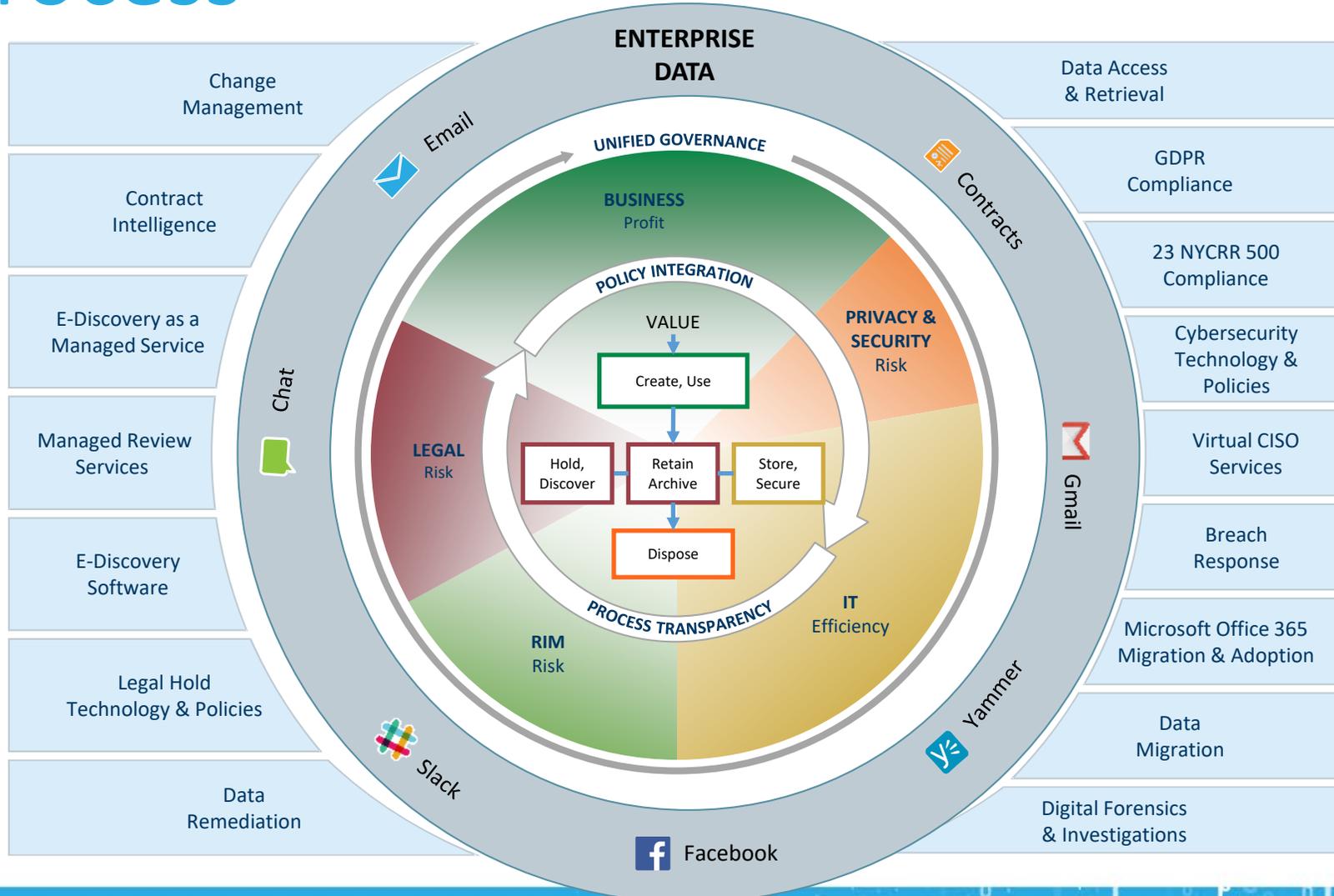
- Relevance
 - *Ledbetter v. Wal-Mart Stores, Inc.*, 2009 WL 1067018 (D. Colo. 2009) (denying plaintiff's motion for protective order regarding Facebook, MySpace, and Meetup.Com content).
 - *Forman v. Henkin*, 2018 N.Y. Slip Op 01015, Feb. 13, 2018: even materials deemed "private" by a Facebook user are subject to discovery, if they contain material relevant to the issues in controversy in litigation.
- Possession, Custody & Control
 - Individual user sued individually has a duty to preserve relevant social media content that the individual can obtain on demand. *Arteria Property Pty Ltd. v. Universal Funding*, 2008 WL 4513696 (D.N.J. Oct. 1, 2008).
 - Court may require a person to execute an authorization providing for a social networking site to produce one's so-called "public" postings, but also may require such authorization to extend to private posts not accessible to the public, as well as to deleted and archived posts. *Romano v. Steelcase, Inc.*, Index No. 2233/2006 (Sup. Ct. Suffolk Co., Sept. 21, 2010).

Additional Considerations

- Ethics
 - Stored Communications Act, 18 U.S.C. § 2701
 - Fed. R. Civ. P. 26(b): limits on discovery due to burden
 - Fed. R. Crim. P. 17(c)(3): need court order for subpoena of personal/confidential information
 - Authentication and Use
- Privacy
 - GDPR
 - State-level data privacy regulations (CaCPA, NYDFS 500, etc.)

The Process

The Process



The Process

- Ensure you have an acceptable use policy that specifically addresses social media and networking applications
 - *set expectations for end-users that are attainable and not idealistic*
- Cross-functional collaboration with stakeholders
 - *such as IT, Compliance, eDiscovery Collections, Procurement/Sourcing and business leadership*
- Align Information Governance policy to account for third-party applications that will store/host your organization's information
- Select applications that suit your organization's risk tolerance
 - *(e.g. finance and pharma are highly regulated and risk-averse with respect to data security and governance)*

The Process

Collection

- From the Cloud?
 - Requires custodian passwords
 - Two factor authentication
- From a Device?
 - Who owns the device
 - Do we have the passcode
 - Are there other devices that might have deleted content?
- Choice of collection tool / export feature (e.g. Google Takeout) can make a difference on the format, timestamps, or completeness of the collection
- Logs, metadata, and databases may contain additional metadata

Analysis

- First, understand what data has been collected and what it represents and whether it is current
- Decrypt / decode data as needed
- Analyze SQLite databases, logs, and metadata
- If needed, test similar version of app to confirm behavior observed
- Report findings to Counsel

DropBox Example:

- Imaged hard drive containing DropBox files;
- Decrypted DropBox database
- Performed testing of DropBox PC application/DB
- Reported that thousands of files had been deleted prior to imaging/filed an affidavit
- Gained access to live DropBox account
- Examined history information, reports, and other information available on the DropBox website





The Technology

The Technology



Emails



Instant Messages



Word, Excel & Image Files



Hard Drives



Email Servers

The screenshot shows a Bloomberg chat window titled "CHAT-INSIDER-TRADING-00001-0001". The chat history includes messages from participants JACK BAUER, NINA MYERS, and KIM BAUER, with timestamps ranging from 1:19:25 PM to 1:20:27 PM UTC on 10/1/2014. Several messages include disclaimers regarding the confidentiality and security of the communication. To the right of the chat window is a "Bloomberg Chat Information" sidebar containing document metadata such as "M File Name", "Chat Start Date", "Chat End Date", and "Document Properties".

Emerging Digital Sources Discovery & Governance

COMMON EMERGING DIGITAL SOURCES

- SMS\MMS
- Bloomberg Chat
- Slack
- iMessage
- Salesforce Chatter
- Skype
- WeChat
- HipChat
- Facebook Messenger
- LinkedIn Messaging
- Google Talk
- Symphony
- Twitter Direct Messages
- Zendesk Chat
- Voxer
- Yammer

Productivity Platforms

- Office 365
- Atlassian
- G Suite

Platform as a Service

- AWS
- Heroku
- Azure
- Force.com

Source Code and Version Control

- Microsoft Team Foundation Server
- GitHub
- Bitbucket Server

Social Media

- Facebook
- Instagram
- Twitter
- Pinterest

Discovery and Governance for chat and messaging, social media, collaboration tools, productivity platforms and other cloud based applications

An array of emerging digital sources, including chat and instant messaging applications, collaboration tools such as Slack, social media and cloud-based platforms have become standard inside organizations around the globe. Yet many companies are unable to control the growth, management and discovery of these new data formats. To compound this problem, third parties typically host the data, but lack standard export workflows or preservation policies, making it difficult to obtain, quantify or assess. And, should the data be relevant for a legal or regulatory matter, few e-discovery applications enable legal teams to organize or review it in context with other information.

DISCOVERY AND GOVERNANCE FOR EMERGING DIGITAL SOURCES

To address this problem, FTI Technology provides expert services and proprietary technology that can pull data from a wide variety of emerging digital sources, visually organize it in a way that is easy to understand and review, and integrate it into the organization's choice of platform as part of a regular e-discovery process, investigation or regulatory response. FTI Technology also provides services to help organizations proactively organize and better manage and protect digital sources as part of a comprehensive information governance program. As a whole, these solutions are aimed at giving organizations faster and more actionable insights from all across the emerging data source universe.

QUICKLY COLLECT, REVIEW AND PRODUCE

FTI Technology partners with clients to develop a strategic and economic approach to collecting, processing, analyzing and reviewing the full spectrum of emerging data sources. Organizations can view this data alongside more traditional electronically stored information to quickly understand and act upon the content for legal matters, investigations or regulatory responses. FTI Technology professionals utilize defensible tools and methodologies to ensure that even the most complex new data source is handled in a forensically sound manner.

SPOTLIGHT ON CHAT DATA

Chat is perhaps the most critical and difficult emerging data source to assess. In some highly regulated industries such as finance, chat has become the primary communication mechanism. As a result, chat logs are of high importance during investigations or for legal and regulatory responses. And while logs are usually available, they are only viewable in difficult-to-parse formats, which forces legal teams to review them slowly and painstakingly - apart from more traditional electronically stored information. FTI Technology's chat data solution gives legal teams the power to connect directly to the source and transform indecipherable communication logs into easy to understand and review conversations. This allows teams to integrate chat strings into the normal workflow in their chosen e-discovery platform and save a significant amount of review time - while enabling more powerful insights into chat data.



Questions?

