

The Data Trap:

Why You Need to Manage Electronic Data, and
How

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Our Topics Today

- Getting a handle on electronic data
 - Mapping your system
 - Figuring out the rules
 - Applying the rules

Determining Where Data Resides

- Why we care:
 - Audits
 - Discovery
 - Retention
 - Legal Compliance

A Pressing Need

- F.R.C.P. 26
 - Mandates a data map
 - Map must be delivered to opponents early in litigation
 - Map must show repositories likely to contain relevant data

Another Pressing Need

- Too much data:
 - Capacity limitations
 - System performance
 - Search and retrieval issues

Yet Another Pressing Need -- Privacy

- U.S.
 - no generalized right of privacy
 - no constitutional protections
 - privacy protections granted by statute
 - The particular rights granted will vary
 - who information can be disclosed to, what can be done with it

The U.S.

- Statutes Governing Privately Held Records Cover Narrow Situations
 - rental of videos
 - library records
 - educational records (sort of)
 - electronic communications
 - hotel room conversations
 - bank records (e.g., Gramm-Leach)
 - medical records (e.g., HIPAA)

The Rest of the World

- Second and third world countries, the middle and far east
 - many have little or no explicit privacy law
- Russia, There's a data privacy law, but:
 - the Russian State Archives is authorized to take possession of any record created by anyone

The E.U. and the Data Privacy Directive

- All E.U. countries, and some non-E.U. countries
- Increasingly adopted outside the E.U.
- A very different approach to privacy
- May require very specific adaptations of RIM and IT systems

E.U. Data Privacy

- Personal data:
 - is presumptively private
 - can only be used for its original purpose
 - can only be retained as long as needed for the original purpose
 - Permission must be obtained to keep longer or for additional uses
 - Can't be sent anywhere where there is not a comparable level of protection

E.U. Data Privacy

- Essentially a bureaucratic approach
 - when processing data:
 - notifications required:
 - National data authority
 - data subject
 - records must be kept:
 - of notifications:
 - of the processing

Still Another Pressing Problem

Electronic Records, Electronic Signatures and
Electronic Commerce

Three General Situations to Deal With

- Permissive law
 - few conditions on e-commerce
- Restrictive law
 - many restrictions on e-commerce
- No law
 - Uncertainty – is e-commerce legal, are transactions enforceable?

The Problem

- U.S.-centric systems may not comply with requirements in foreign jurisdictions
- Foreign requirements may be burdensome in the U.S.
- Failures and uncertainties mean increased costs and risks

The Landscape

- Most of Europe:
 - No global e-records law – electronic records only in particular situations
 - Images may require authentication and digital signatures
 - Particular formats or technical details may be specified in law
 - Records not kept in conformance to law may not be admissible in legal proceedings

The Rest of the World

- By default, the law prefers:
 - paper records
 - hard copy wet signatures
- Many countries have laws on the books requiring:
 - paper records
 - wet signatures
- Unless an e-commerce law explicitly authorizes it, a technology or process may not be legal

An Example

- Kuwait has no e-commerce or e-records law, but –
- It's a major, first world financial center
- Electronic transactions are common, but:
 - Are effectively unenforceable – courts routinely deny admissibility to e-records
- Lost lawsuits are a cost of doing business

Another Example

- Imaged accounting invoices
 - Legal in Switzerland, but:
 - Each image must have a digital signature attesting to accuracy and authenticity
 - No signature, no admissibility in tax audits
 - Digital signature service bureaus are a cost of doing business

Quasi-Legal Issues

- An auditor or judge may want paper regardless of the law
 - You may be stuck regardless of the merits
 - You can't afford to be on their bad side
 - A lawsuit would take years, and might be futile

Your Issues

- Conflicting and burdensome legal requirements
- No data map
- No full organizational knowledge of system
- Personnel shifts and changes
- Data migration
- Legacy systems
- Orphan systems and repositories

Getting a Handle on Things

- What's needed:
 - Infrastructure map
 - Repository map
 - Repository contents map
 - Specs for building a compliant system

Issues

- Distributed systems
- Virtual addresses for data
- The “Cloud”
- Bad management practices
 - no standard data structures
 - No standard indexing, etc.

Bottom Line

- There may be little organizational knowledge of:
 - where information actually resides
 - Who in the organization really knows
 - Who's the real gatekeeper

Where to Start

- Step 1: Identify key players
 - Who understands the system?
 - Who really knows where data resides?
 - Who's in possession of institutional memory?
 - who can impose rules?

Step 2: Identify Repositories

- What kind of data
- What system it resides on
- What format or software it is in
- Apply some rules

Issues with Step 2:

- Easy to do with structured databases
- Not so easy with:
 - Share drives
 - Portals (e.g., Sharepoint)
 - Local hard drives
 - Orphaned data and servers

More Issues with Step 2:

- RM or ECM software often poorly implemented
 - bad or no indexing
 - bad or no data structures

Steps in Resolving the Problems

- You must find out *something* about the data in a repository
 - The kind of data, or the project it relates to
 - The age of the data
- If you know nothing about it, you can't manage it

Some Ways to Find Out

- Find somebody who knows
 - You may first have to find somebody who knows what's out there
- Look in and analyze the data

Practical Issues with Electronic Repositories

and some solutions

Triage

- Old project portals, Sharepoint sites, etc.
 - the project may be complete
 - the material may all be duplicates
 - the repository may not have been accessed for years
- If so, it may be a candidate for purging

Software That Impedes Management

- Problems:
 - You can't purge by record series
 - Data shared across series
 - You can't purge at all
- Solutions:
 - Bigger buckets
 - “archiving” capability

Legacy Systems

- Problem:
 - Can't retire because of litigation or audit needs
- Solution:
 - Parse out and retain only what's needed for current holds
 - Eventually everything goes away

Software that's not Legally Compliant

- E.U. privacy laws
- HIPAA
- E.U. digital signature laws
- Maximum retention periods

- Solution? re-configuration? new software?

Ultimately, the Solution is to Re-Engineer the System

- Design Rules
- Implement:
 - at every data migration
 - at every software purchase
 - At every standing up of a Sharepoint site, share drive, etc.

How The Planning Process Often Works

- Forecasting
 - We've got lousy records – we'd better do something or we're going to get sued one of these times
- Initiation
 - Let's throw some money at it
- Planning
 - Let's buy some software
- Execution
 - Let's install the software on the system
- Completion
 - The software doesn't work as well as we wanted it to

Why Does This Happen?

- The Magic Bullet theory
 - _____ will fix this problem for us
 - Software
 - SharePoint
 - ECM
 - RM/DM software
 - Retention schedule
 - RIM policy

Underestimating the Problem

- Only taking into account one facet of the problem
 - Software but no retention schedule
 - RIM policy but no procedures or other tools
- Rosy assumptions about:
 - Cost
 - Time
 - Resources

Territorial Stakeholders

- Think they know everything about the problem and solution
- Don't want to share:
 - Knowledge
 - Resources
 - Glory

RM/ DC/ECM Software Selection

- Planning

- What is it we actually expect it to do, on a detail level?
- Who's going to use it?
- What will they be expected to do?
- What other systems must it talk to?
- What other things must be in place before it is implemented?

Failure Points

- Only a general notion of requirements and outcomes
 - “It’ll fix our records issues and discovery problems”
 - No discussion with other stakeholders
- Failure to identify critical precedent tasks
 - Index, file plan, data structures
 - Retention schedule
 - Operating rules
- Failure to identify key features the software must have
- Failure to train personnel

Results of Bad Project Management

- Sub-performing system
 - Lots of data objects in it that shouldn't be
 - Lost records
 - Difficulty locating records
 - High discovery costs
- Maybe a failed installation
- Big money wasted

How Can You Avoid This?

- Plan, plan, plan
 - What is the real outcome we expect?
 - What's must have, what's only desirable?
 - What do the details of that outcome look like?
 - “Fix our records” isn't enough

Resource Allocation

- Do not underestimate the required resources
 - Money
 - Staff time
 - Consultant time
 - Lawyer time
 - Diversion from other activities
- Scrap time projects usually fail

Critical Paths and Dependencies

- You must identify critical paths and key dependencies
- Resources must be preferentially allocated to them

Typical Critical Paths that Fail

- Data collection
 - You can't proceed (or at least be successful) without knowledge
- Resource availability and scheduling
 - People and resources have to be available to do the work

Typical RIM Critical Precedent Tasks or Projects

- Data maps
- Indices, data structures, records listings
- Retention schedule
- Policies and procedures
- Functional software specification

All of these will have their own precedent tasks and critical paths to development and completion

Typical Failure Points

- Failure to plan for or address critical dependencies and precedent tasks
- Tasks or projects improperly sequenced
- Failure to allocate enough resources
- Failure to get input from key stakeholders

Stakeholders and Accountability

- Complex problems require input and support from all stakeholders
 - RIM
 - Legal
 - IT
 - Risk Management
 - Executive management
- The project needs address all concerns

- **Questions?**

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