

ADVENTURES IN PARKING LOT THEORY:

BUILD IT SO THEY PARK





A powerful business woman with enough disposable income buys a snazzy sports car, bad economy and all. Her only real worry is where to park it. Maybe she won't even drive it to work. Can the valet be trusted with such a precious vehicle? Her assistant could run it down to a self-park lot a few blocks away-but that's inconvenient. Anyway, he loathes her enough to purposefully park it so close to another car to ensure it gets scratched. And what if it gets stolen?

When I was young, I got the family hand-me-down "scratch and dent" and never cared where I parked.

PART 1 - The Parking Lot Conundrum

Information is like a vehicle, you need a place to park

Over the past couple of decades, the business world has evolved from being paper-based into one almost entirely electronic form. Virtually all new information is born digital and may never make it into paper form. The evidence, of all kinds of business activities, contractual obligation, rights and responsibilities, upon which most global organizations will have to rely for business or legal purposes, is an electronic record.

E-information is increasingly parked in one of many non-sanctioned Information Parking Lots. Given the importance of the electronic record, it is now the time more than ever for information to be parked securely, made accessible, and is easily retrievable. The higher the value of information, just like the valuable car, the more functionality (protection, security, control, records management capability, etc.) needed from the Information Parking Lot. The more it's used, the more you want it readily available and conveniently located. The more valuable the information, the more you should be willing to spend to protect it. In other words, when the car was a junker, little thought was given to where it was parked and how secure the lot was. In the business world that requires good electronic records, the Information Parking Lot matters as never before.

How are Employees Doing at Managing Information?

The growth of electronic information is sometimes referred to as "exponential" or "meteoric". But you can't really understand the true magnitude of the growth of E-info until you put it in simple terms. So for example, according to IDC there is predicted to be approximately 1800 exabytes of new information that will be created in 2011. If one Exabyte of data is the equivalent of 50,000 years of DVD movies run continuously, then 1800 exabytes is the equivalent of 90 Millions years of DVD movies running continuously. This amount of content will be created in just one year. What about next year and the year after that? And how are we going to manage all this stuff?



ADVENTURES IN PARKING LOT THEORY: BUILD IT SO THEY PARK

As early as 2008 we knew employees were not faring particularly well with retaining company records and preserving information for audit, litigation or investigations. Indeed the Kahn Consulting GRC Survey of hundreds of organizations and companies, large and small¹ concluded that only about 16% of respondents felt that their employees were properly preserving potentially relevant information for litigation and about 21% were retaining records properly. **Warning:** Don't get complacent just because everyone is seemingly having a difficult time managing information. If employees were having a hard time managing records and unearthing essential information for litigation or for a regulator in the past, as information volumes continue to grow, how will they fare in the future? The absence of a major overhaul to the way things are being done now may cause things to only get harder to manage as more digital content is created and found in more places in more technologies. As a result, responding to litigation will get more costly, and more inconvenient, and perhaps most importantly, finding needed business records to enable efficient business will be a greater challenge!

Why Parking in the Electronic Age Is Different and More Challenging

Why are businesses having greater challenges in managing electronic information than paper records nowadays? For starters there is simply a lot more of it to manage. Because certain popular communications technologies appear casual, employees may not realize that they contain records. If organizations use social networking, or allow mash-ups of data, then some third party may be in control of your business critical information. Remember if e-content does the same thing as what a paper record used to do, then you should expect the obligation to manage it as a record as well.

Another reality is that in the past the records management department did most of the heavy lifting for employees when it came to records retention. Now everyone with an email account or a laptop has to be a "records manager", at least for the content they park. Increasingly businesses use "informed" communications tools to do real business so your Information Parking Lot needs to be able to manage website content, blogs, wikis, etc. Electronic records are harder to manage and easier to alter without detection, easier to transmit and are often outside central control, and it seems they self-propagate. For all these reasons and more, Information Parking Lots, large and small, propagating all over the enterprise and beyond are making management a major challenge.

Despite all that has been said so far, you might have realized that there is a Catch 22 involved: If you don't have a Parking Lot where are the employees going to Park? If you have given the employees the rights to Park wherever they want, employees will be inclined to park in thumb drives, home computers, on disks, third party storage devices, laptops, PDAs, free online storage networks sites. Failing to have a good "multi program" Information Parking Lot means the business will experience greater loss of centralized control of needed business information and greater expense and inconvenience and liability when lawsuits happen, as ESI (Electronically Storage Information) has to be unearthed and produced.

¹ GRC, E-Discovery, and RIM: State of the Industry. A 2008 Kahn Consulting, Inc. survey in association with ARMA International, BNA Digital Discovery and E-Evidence, Business Trends Quarterly and The Society of Corporate Compliance & Ethics.



Employees have **NOT** embraced ECM technology

One of the ways businesses have tried to get electronic record management under control is to implement functionality-rich Electronic Content Management (ECM) technologies to house company records. But employees haven't embraced ECM technologies as expected, perhaps because they require employees transform their work habits and create extra work for employees, who are already overburdened. Traditional ECM software applications are rigid (which is also one of their strengths) which does not seem to work well for many office workers. After years of the technologies being implemented and underused, one should ask "why make employees do something that limits productivity and causes employee discord?" Unless your organization is highly regulated, (in which case you may have no choice) we are entering a new phase of business where parking where you work makes more and more sense. For years organizations have been investing in all kinds of ECM functionality-rich technology. But in the end, employees generally don't flock to use records and document management applications and CIO need to take note.

"Employees have voted with their feet making it clear that technologies like SharePoint have all the right stuff to do their job. SharePoint 2010 has built-in a myriad of information governance functionality that not only makes it the hottest business collaboration but also allows business to happen in a "legally compliant" way."

— --Randolph Kahn, Author: *Information Nation*

Manage Where Employees Work

So maybe we need to change the paradigm. Build or buy an Information Parking Lot that employees LIKE to work in, and apply records management, privacy and other compliance functionality behind the scenes with limited employee involvement. In other words, stop forcing employees into a world that does not work for them. Unless you mandate its use and make their income dependent upon moving their content into the ECM software application that is required by the company, then it won't happen.

Through people, process and technology organizations need to reharness the information that flows through their business whether in a social networking site or an employee's mobile device or home office or anywhere else for that matter.

Court Imposes Sanctions for Destruction of Information Contained on BlackBerry® Smartphones

Se. Mech. Servs., Inc., v. Brody, 2009 WL 2883057 (M.D. Fla. Aug. 31, 2009). In this ongoing computer fraud and abuse litigation, the plaintiff requested sanctions alleging the laptops and BlackBerry smartphones belonging to the defendants were wiped of data. The defendants argued that all evidence was preserved on the servers and that e-mails were produced in hard copy from the servers. Relying on explanations provided by computer forensics experts that the "wiped" state of the BlackBerry smartphones was attributed to intentional and deliberate actions, the court disagreed with the defendants' arguments and held that sanctions were appropriate. Given the nature of the destroyed evidence, including personal e-mails, telephone records, text messages and calendar entries, the court determined the evidence was likely unfavorable to the defendants and therefore issued an adverse inference instruction.



Determining the value of information so you know if you need to park, where to park, and for how long

Many IT professionals don't know and perhaps don't care that a myriad of laws dealing with record retention apply to all businesses no matter how big or small and apply to electronic records in IT systems. IT departments need to take an interest in the data that they manage and park. Parking all types of information without knowing IF anything is valuable is a disaster waiting to happen.

So here are some simple rules to guide your IT department--you can't keep everything forever and you can't get rid of everything tomorrow. So how does the IT department "clean house" and not worry about being the next destruction of evidence headline. If no action is taken to know the content and to make defensible decisions about disposing it, huge volumes of electronic data will pile up day-after-day until the IT department is overburdened, thereafter purging systems of content even "innocently" may be considered unwittingly destroying potentially valuable records perhaps in violation of law. If you don't figure out very quickly what you need and what can be properly disposed of after considering business needs, record retention and litigation hold obligations then the organization is left with a mound of stuff so deep and so wide that it will no doubt impact your employee's ability to make business happen efficiently. Also, when the company is issued or audited, all the additional information unnecessarily "parked" will make responding that much more challenging and expensive. In other words, the more information you need to look through, the more time and money you need to find the relevant information.

Record retention rules allow wheat and chaff decisions to be made so that info gunk gets defensibly disposed of and valued data is readily available for use. Purging without regard to retention requirements and litigation preservation obligations is really risky. Remember, if relevant information is innocently purged by an unsuspecting technologist, after a law suit has started, such actions may nonetheless be considered destruction of evidence for which the employee and/or organization can be penalized.



PART 2 - The Information Parking Lot Rules

20 Truisms To Get Your Head Around for Your New Information Lot Functionality

1. Records and Information Management (RIM) is often viewed as a waste of time by employees and a “cost center” by executives.
2. RIM policies and rules are too complex and need to be seriously simplified.
3. Companies and employees generally perform poorly at RIM tasks which have greater consequences for the future.
4. Employees will not get RIM right all the time, in every situation, which means that the technology solution needs to help out more often.
5. IT doesn’t see the connection between their disinterest in RIM and getting their corporate back-side kicked in the E-discovery process.
6. Records managers are prepared for a 1960s cold-war style land war, not today’s techno battles.
7. Lawyers often fail to give practical guidance to IT personnel in order to address RIM and discovery issues impacting IT.
8. Information growth is so fast that sometimes nothing can be done to make sure that company IT infrastructures can continue to function.
9. Organizations must rely on technology to better manage information—people aren’t capable or willing.
10. The only way to “clean house” and sleep well at night is if you are satisfied that retention and preservation obligations are apparent before the accidental purging begins.
11. Innocent disposition, common in IT, can be considered destruction of evidence with serious consequences!
12. Making employees move their business content into a RM or DM application does not meet with appreciation by employees.
13. IT thinks “data”, not “records” or “evidence” and that makes managing information a lot harder.
14. Companies have gotten their clocks cleaned due to information mismanagement (remember Andersen Accounting).
15. Having great technology which is not used is also a failure.
16. Most content in your company is not really managed at all.
17. Most unmanaged content is a cost and a risk factor to the growth of your business.
18. Its better to have a “less-than perfect” Parking Lot that employees like working in, than having a Perfect Parking Lot that employees don’t ever use.
19. Proper Information Parking is a process not a project that requires IT brainpower, guidance and knowledge.
20. I couldn’t come up with a twentieth truism, so this entry is affirmation. If you got the rest of the list right, you are well on your way to having an Information Parking Lot that works.



Parking Lot Construction 101

5 Essential Parking Lot Rules

1. Address the functionality, convenience and cost of the Information Parking Lot upfront.
2. Define the boundaries of the Parking Lot to better manage content and minimize risk.
3. Not All Parking Lots Are Created Equally- Use the Right Parking Lot.
4. Don't force employees to park in a way which impacts their work performance.
5. Plan for future but don't over buy or over build the Parking Lot.

Your company needs to park differently if they are like most other organizations, because information management is totally broken. So here are a few simple rules to get your head around the right Information Parking Lot Rules.

You Can't Park Wherever You Want

Did you ever forget where you parked your car? Was it at the mall or at a sporting event? Imagine a limitless parking lot the size of the universe. Now imagine forgetting where you parked in that limitless universe. Now imagine that the limitless universe is every company and their information.

Exponential growing amounts of E-info scattered across innumerable applications, systems, email servers, Wikis, LANs, WANs, SANS, Blogs, laptops, PDA, desktops, Tweets and backup systems, to mention just a few of the corporate Parking Lots, creates major issues in all kinds of ways. With certain technologies or Software As A Service (SaaS) applications, the Parking Lot may not even be within your IT department or its control.

Further, organizational policies creating more and more new Parking Lots don't help matters. When the CIO give instructions for employees to clear out their email boxes due to overburdening email environment, it is likely that employees will create new "Work-around Parking Lots" on thumb drives, disks, home computer, free storage services and "in the Cloud". Efficient business becomes more challenging when being required to respond to a regulators request for information. When a needed business record is retained and is on an employee's PDA and nowhere else, the company no longer can run its business as efficiently. So the company needs to have a rule prohibiting the use of personal Parking Lots or make sure the record gets back to a company Information Parking Lot.



Seek to Make Parking Lots Functional Not Perfect – Perfection leads to an environment that doesn't support employee adoptability ...

1. Address the functionality, convenience and cost of the Parking Lot upfront and over time as needs change

FUNCTIONALITY

As the value of information goes up, the need for better functionality goes up as well. If information documents business activities and decisions, you need to make sure the functionality around the Information Parking Lots commensurate with its value and is good enough to protect it into the future. If customer data is exposed through mistaken or intentional acts, your business trade secrets, private information, customer information, product pricing, can fall into the wrong hands. Be sure your systems are secured limiting access to such information.

Access control and Security – Manage and determine who should access which systems or applications, providing correct access to the correct systems at the right time and protecting trade secrets, private information, customer information, and product pricing.

Management Attributes – E-information may not look like records but if it was replaced with a document or communication that was retained as a record in the past, it is likely a document that needs retaining still. So to be able to manage a record over the life cycle, declare it as the final and tag it with various other attributes will require technology tools.

Search and Retrieval – With more information and more file types you need to have better and more robust search and retrieval tools to support the business and users.

Convenience – Park Information to Maximize Its Value to Employees and the Organization.

Employees want information at their finger tips. Moving business content to a place which makes it harder to do their job will be met with resistance. Organizations need to provide ready access to information no matter its file type or the application from which it came.

We all want immediate access. Requiring employees to park data in a way that takes more time and more steps usually is met with resistance. Remember speed and time matters.

As information matures it may need to be accessed less often, but nonetheless it may need to be retained for business or legal purposes. While taking information to a “remote” Parking Lot may be cheaper in the end, employees still may need access to information, and competitive advantage in an information intensive world requires ready access.



ADVENTURES IN PARKING LOT THEORY: BUILD IT SO THEY PARK

COST

Hard costs related to storage continue to skyrocket for many organizations (saying nothing of finding the needed info for business purposes, audit or litigation). The various cost factors (from the obvious like storage media, servers, human cost, to the not so obvious like electricity to cool the air conditioning) militate in favor of keeping only what you need to keep for business and legal purposes and getting rid of the information junk. In other words, you don't want to keep everything just for the sake of keeping everything. Parking for the sake of parking is a bad use of resources.

Things that impact parking costs

- Use the right technology for the job -- backup is great for backup not great for archiving, record retention or finding documents relevant to a lawsuit
- Records retention allows unneeded information to be purged
- Keep what you need for only as long as it is needed
- Tiered storage is fine but make sure you can get needed content easily enough
- Back-up is essential but don't use it for records management and doing discovery. It is hugely expensive and a major headache in discovery.
- For all retained information, make sure you have the hardware, software and technical capability to ensure future access.

It is estimated that the average office worker spends about 150 hours a year just looking for needed information. Imagine the huge cost savings and increased productivity if your organization could cut that in half.

2. Define the boundaries of the parking lot to better manage content and minimize risk

In Parking Lot Theory, the world is NOT your oyster. Define the outside of the parking lot with policy and technology. If policy doesn't tell an employee where to park they will likely park in the location most convenient to them, like a home computer, thumb drive or third party storage network, making retention and preservation that much more complex and expensive. In fact, for every technology used in business already there have been lawsuits that have requested information from those "non-standard parking lots. In the *City of Ontario v. Quon*, the Supreme Court just ruled that it was appropriate to search the text messages (some personal, some work) of an employee for messages stored on a third parties servers. Give employees a spot to park in the Information Parking Lot and tell them what to park. That way, information is more readily available.

Don't park in someone else's parking lot if you need the information and can't control access. For example, if your company uses a third party provider for your businesses HR function, you may have issues of ownership or access to information as there may be a question of whose data it is. Or if your business "mashes-up" data from another source, you may need information that is not yours and may be parked elsewhere.



ADVENTURES IN PARKING LOT THEORY: BUILD IT SO THEY PARK

Cloud computing create a new Information Parking Lot to contend with. If you manage that relationship properly upfront and contractually lay out obligation and responsibilities you will have ready access to your data any time you need it. There is nothing wrong with Cloud computing. Indeed, it may make loads of business sense. But remember there are no Cloud Fairies making your Cloud relationship run smoothly, so bring your sound business rules and Parking Lot to that business relationship.

3. Not All Parking Lots are created Equal

In today business environment, for most businesses of any size their complex IT infrastructure does not make keeping track of documents or records practicable or even possible. It is not enough to ask IF a records has been retained for future use, the better question is “what is being stored and where.” If all email “records” are “retained” on back-up tapes, then finding the one needed for business purposes becomes really costly and labor intensive. Back-up is an important Parking Lot but for the heaps of business critical records that need to be restored en masse in the unlikely event of disaster. Similarly, shared drives may have become a Word document “Parking Lot” for employees over years, but harnessing the value of the knowledge pool for the business is not likely easily attainable without major effort. The point is that not all technology has needed functionality so you need to use the right Parking Lot, not just any ole Parking Lot.

In a recent AIIM survey, 40% of respondents admit to routinely printing newly generated office documents and emails for the purpose of filing them as paper records.

4. Don't force employees to park in a way which impacts their work performance

Most employees fail to use ECM software to manage all their records even if the company has provided it because it makes them take extra steps and work in a way that is not their normal practice.

Most companies that use ECM software likely have experienced resistance to its widespread use so that they probably don't park all records in the application. That is because employees are not in the parking attendant business and have a full time substantive job and resist being a records manager. So manage where they like to work and build parking lots nearby to augment management. If business rules (security, privacy, records management, etc.) need to be applied to business content, perhaps technology should be harnessed to do the job that employees won't do or can't do.

Why not build a big parking lot in which their business process can thrive and all document types can be parked. Buy or build an Information Parking Lot that allows new record types to be parked as new technologies are implemented. In other words, don't buy technology for last year's information management challenge or one file type—buy for business needs down the road that accommodate as many new technologies and file types as possible. In the end, managing fewer Information Parking Lots is essential.

5. Plan for the future, but don't over buy or overbuild the Parking Lot

I would much rather have an imperfect Information Parking Lot that employees like to use than the functionality rich parking Lots that are too cumbersome for regular use.

Building or buying reasonable compliance, reasonable records retention, reasonable functionality that is good enough. Overbuilt technology that impacts productivity is not useful. Records retention that is too complicated is not valuable because it won't work.



ADVENTURES IN PARKING LOT THEORY: BUILD IT SO THEY PARK

Buy what you need today and plan for the future. As the company and its employees mature in the use of Information Parking Lots, you can always augment your Information Parking Lots' functionality. In other words, don't over-buy or over-build. Ease employees into taking responsibility—don't overwhelm them with tons of new rules and tons of new technologies all at once. Ease them into the Information Parking Lot.

Conclusion

Bryan, the group leader of XYZ Life Insurance Company marketing unit has totally reinvigorated business and for his efforts he has won the Business Improvement Award for the Americas. Harnessing social networking tools he let his staff reconnect with old customers and has evolved the business relationship with the children of existing customers. To the chagrin of some of his more conservative colleagues he retooled the marketing and messaging machine to communicate in the way the new generations want to and the business has been handsomely rewarded.

Like all business, from time to time business questions come up, analysis and planning is done and the company gets sued. Most often, for all normal business activities and even when the company has to defend a lawsuit, it will rely upon company records located in electronic form. Whether or not XYZ can readily find needed information to be "faster, better and cheaper" will depend on the Parking Lot Bryan built. Unearthing, preserving and producing needed evidence of business relations gone bad will depend on the Parking Lot Bryan that built. Do you have a good Parking Lot?

The growth of information and the challenges related to the management of it isn't going away any time soon. Companies must build and control their Information Parking Lots in a manner that allows for the appropriate protection of their assets and improved employee productivity and acceptance. Understanding the value of the information and parking it in the right place will reduce the waste and liability associated with parking it in the wrong place. Parking Lots Matter. Parking Lots Rule.

"... we see no evidence of fraud or bad faith in a corporation destroying records if it is no longer required by law to keep and which are destroyed in accord with its regular practices. As we have previously observed, storage of records for big or small businesses is a costly item and destruction of records no longer required is not in and of itself evidence of spoliation." — Moore v. General Motors

Sponsored by: **Microsoft**
August 2010
www.KahnConsultingInc.com

For general information only. Not a legal opinion or legal advice. For all questions regarding compliance with specific laws and regulations seek legal counsel. KCI shall have no liability for errors, omissions or inadequacies in the information contained herein or for interpretations thereof. The reader assumes sole responsibility for the selection of these materials to achieve its intended results. The opinions expressed herein are subject to change without notice.

Kahn Consulting Inc.
P.O. Box 1045
Highland Park, IL 60035
P (847) 266-0722 F (847) 266-0734