

The governance of records management

Attention granted now to document retention policies and systems will serve to significantly mitigate the rising tide of costly risks. **BY MICHAEL J. BARRETT**

A major insurance underwriter is asked to pull a digital file created in 1985 to settle a multimillion-dollar claim. But because of rapid technological advancements, no hardware or software exists to allow access to the document. The insurer pays.

A multinational financial institution has to produce exact copies of thousands of customer statements to defend against a class action lawsuit. But because the statements were printed “on the fly” by a new breed of one-to-one digital printing presses, the only records that exist are data streams in disparate databases, and are not considered evidentiary. The court awards a substantial sum to the plaintiffs.

A well-known Internet service provider has hundreds of thousands of customer records altered by a malicious overseas hacker. With no way to restore the information with assurance of one hundred-percent accuracy, 10% of its subscribers begin receiving error-laden billing statements. Shortly thereafter, the company faces a financial shortfall from the exodus of frustrated customers.

A manufacturer must prove that a buyer ordered 100,000 parts through its electronic order system, not the 1,000 as the buyer claims. But because no physical record exists of the actual online order form, the manufacturer cannot prove its position. It's left with an abundance of inventory and no buyer in sight.

Chaos and confusion

Few corporate leaders are aware of the liabilities intrinsic to their document retention policies — or lack thereof. Moreover, even a smaller number are cognizant of the risks associated with various archival processes, preferring to let technology staff — who have little interest in the corporate-wide ramifications of critical information management

— drive these decisions. The result can lead to chaos and confusion when business-critical information turns up missing or inaccessible, presenting a broad range of regulatory, legal, economic, reputation, and operational crises.

What role can senior executives or corporate directors be expected to play in such a technologically driven arena? By having a general knowledge of the risks and costs associated with document retention policies and systems, and the options available to mitigate such exposures, they can and should act as the chief policymakers.

Just as cash acts as a tangible storehouse for monetary value, documents act as a storehouse for corporate knowledge. Contracts, customer records, transaction statements, e-mails, claim forms, research and development logs, et al. are the lifeblood of business. Losing control of such items can have severe ramifications on an organization's ability to function.

While few standards have ever existed for records preservation, one widely known process was paper-based retention. Every quarter, vital documents would be indexed, packed into filing boxes, and warehoused off-site. Should the need arise to review a document, it would be retrieved in a matter of days or weeks.

However, the rapid rise of digital origination, in which documents are “born” electronically and rarely reach the paper world, has ensured that the

Michael J. Barrett is general manager, Imagelink Products, within the Commercial Imaging Group at Eastman Kodak Co. He oversees all aspects of Kodak's worldwide business related to digital preservation, as well as microfilm supplies and equipment.



hard copy warehousing approach only captures a small fraction of today's business-critical files. Approximately 80% of documents now exist in an unstructured format. In addition, the pace at which these largely unmanaged documents are created continues to increase, especially with the shift to using e-mail for the bulk of business communication.

Overlay that evolution with the fact that a "document" may no longer take the shape of a single instrument created to display information for a singular purpose. With the rise of one-to-one or variable digital printing, as well as Internet-based or other electronic transactions, a document is often a "moment in time" collection of various data points automatically culled from relational databases.

The cost to keep this document explosion somewhat structured has also been growing exponentially. Every new electronic document not only consumes valuable space on storage devices, but also incurs seven to 10 times that cost for personnel to manage the digital document repository.

Determining potential exposures

With that in mind, is finding methodologies to manage the new breed of digital documents a worthwhile time and monetary investment for a corporation? Perhaps a rephrasing will help: Is the corporation willing to knowingly destroy its most valuable knowledge-related assets and covenants with delusions that no employee, investor, government oversight committee, or competitor will notice?

It's not just Andersen

While the spotlight shines on Arthur Andersen's alleged destruction of Enron documents, other companies have come under similar scrutiny in the recent past. Unfortunately, most organizations are at risk from even simple, seemingly innocuous records mismanagement. Consider these prominent cases:

Procter & Gamble: P&G was sanctioned \$10,000 for failure to preserve corporate e-mail communications despite its knowledge that the e-mail would be relevant to an action.

Applied Telematics Inc. v. Sprint Communications Co.: Sprint's failure to preserve electronically-stored routing plans resulted in an order for payment of plaintiffs' costs and attorney fees.

Prudential Ins. Co. of America Sales Practice Litigation: Prudential's "haphazard and uncoordinated" approach to document retention denied its opponents potential evidence to establish facts in dispute, and was grounds for a \$1 million fine.

— Michael Barrett

Where are organizations most at risk from not having strong, well-policed document retention policies and systems in place? While it can often vary by industry or business type, common areas of focus do indeed exist.

Regulatory. From a traditional standpoint, the most intensive document retention policies have been adopted within highly regulated industries. For instance, the absence of environmental compliance forms or inspection reports could lead to significant EPA fines or restrictions placed against companies. Readily available, validated documentation also comes into play in industries that few would expect, such as advertising. For instance, if a dispute is brought to the National Advertising Review Board, preserved records denoting research findings, past discussions between the feuding parties, and post-campaign reader/viewer studies could make or break a case.

Legal. Pursuing or defending against litigation requires that considerable resources be placed against document discovery, indexing, and review. In fact, a sizable industry exists just to provide document-centric litigation support services. But what happens when key documents aren't available for such review? If a corporation can produce a digital file but can't find a way to access its valued content, the court will usually fail to acknowledge its existence [please refer to the Randolph Kahn sidebar]. Similarly, a record reconstructed from database information will not hold the same evidentiary value as an original.

Economic. Lost or inaccessible information can impact corporate revenue in any number of ways: reduced technology licensing income if supporting documentation can't be produced for patent filings or challenges; million-dollar payouts in lawsuits where documents retrieved from a reference archive would have brought a different result; reduced sales from rollouts of new CRM systems incompatible with legacy customer records. The list goes on. Another financial burden is the increasing salary base of IT personnel who manage digital assets, compounded by the number of such positions skyrocketing year-over-year in relation to digital storage growth. With the average investment for a proven document preservation process and system at under \$100,000 per year, the return percentage is frequently in the triple digits.

M&A. The due diligence process surrounding mergers and acquisitions, regardless of organi-

zational size or industry, always has a review of documents at its core. Days, if not weeks, are often spent simply converting one company's files into the other company's preferred file format — time that could be better spent reviewing the information contained within. Of greater risk are missing or inaccessible documents, of which even a few could be deal breakers.

Physical Security. Electronic records are highly susceptible to alteration by malicious actions within an organization or from outside attack by hackers. Even with sophisticated enterprise security systems in place, access loopholes will always be present. A stringent records management process reduces the exposure caused by human error, while storage formats inaccessible over a computer network will foil criminal activity. These ensure the validity of corresponding digital assets.

Trend Adoption. With document retention policies under increased scrutiny after recent disasters and accounting cover-ups, investors, customers, and industry partners are taking note of organizations' actions in this area. As is often the case, those corporations who adopt stringent controls over document access and preservation will receive a reputation boost, while those who linger could be viewed by stakeholders as dismissing corporate accountability.

Corporate Policy Disruption. The average employee touches tens if not hundreds of documents every working day, and considers them to be part of the general throwaway culture. After an e-mail is read, it's deleted. After a contract is updated, the initial draft is dragged to the Windows recycle bin. Attempting to change that mindset will be a fruitless,

Be a good steward of your e-records

By Randolph Kahn

The Enron/Andersen story is a stark reminder that managing company records requires directives for normal operations and altogether different rules when litigation, audits, or investigations strike.

Intentional destruction of evidence has devastated reputations, slashed stock prices, and raised the ire of regulators. The monetary — and perhaps even criminal — exposure a company may face as a result of the destruction of records can be mitigated by implementing policies that dictate employee conduct in the context of a lawsuit. While implementation of policies might not preempt a rogue employee's destruction of evidence, it can help to insulate the company and its management from the ramifications of such misconduct. Indeed, when a court recently imposed a seven-figure penalty on a financial services company in a high-profile lawsuit, it noted that it was not the destruction of records itself which prompted the penalty but, rather, the company's failure to have a policy in place to ensure that records were not destroyed.

Randolph Kahn is a lawyer and principal of Kahn Consulting Inc., an information management consulting firm (www.kahnconsultinginc.com).

There is another type of "destruction" far more insidious and potentially damaging that exists across corporate America. With ubiquitous use of computers for virtually every component of every business, there is a growing volume of e-records that companies routinely fail to manage like their paper counterparts both from a policy, as well as a technological, perspective. While there is no intentional destruction of these records, there is nonetheless mismanagement that may create corporate liability because records that happen to be in electronic form are not available.

In fact, some courts have recognized negligent destruction of evidence as a cause of action, thereby allowing for penalization of poor management of records. In one such example, a court concluded that utilizing a system of record keeping which "conceals rather than discloses or makes it unduly difficult to locate" records was the functional equivalent of destroying records. In this regard, courts have evidenced a willingness to mete out penalties against corporations for mistaken destruction of records by their technologists who have simply reused storage tapes, thereby making previously recorded data inaccessible, or for being unable to reproduce e-records because the necessary software or hardware for accessing the records is no longer avail-

able. Increasingly courts are less likely to be lenient when confronted with a situation where e-records have dissipated because someone failed to recognize a particular storage medium's limited life.

Records management has become a serious governance and compliance issue. Companies need to have policies in place to manage records both to safeguard against the intentional bad acts of its employees, as well as to protect against loss of records due to employees' inadvertence or carelessness. To this end, e-records management will require greater stewardship from senior level executives.

No longer should corporations allow their technology departments to arbitrarily dictate policy about what is retained, and for how long, based upon technology choices alone, budgetary restrictions, and computer system space limitations. While executives may not be jailed for relegating e-records management to the "techies," mismanagement of company e-information assets will have ramifications. If management is not moved by regulatory or legal repercussions, they should be motivated to manage e-records because harnessing e-information, ultimately, results in a more efficient, better-run company.

costly exercise. But a records retention process that builds in a capture element before digital documents expire can help preserve vital corporate knowledge.

Elements of best-in-class systems

While information technology managers will have day-to-day operational responsibility for document reference/preservation systems, the senior executive team has the ultimate responsibility for document survival. As such, no system should be authorized unless the following characteristics can be proven:

Standards-based processing and storage medium:

With technology companies competing for market share, many processing and storage methodologies are proprietary — and often incompatible with other systems. An industry-standard file format and storage media are the best guarantees of future accessibility, and ease short- and long-term cost of ownership burdens.

Few corporate leaders are aware of the liabilities intrinsic to their document retention policies — or lack thereof.

Reversibility: Any document placed into a reference archive must be retrievable in a manner that does not change its content, context, or even appearance, as the position of information on a page is considered part of a document's content.

Inalterability: If a stored document can be altered in any way, its validity could be easily questioned during legal proceedings. Moreover, the compromised information could lead to inaccurate, potentially dangerous decisions being made by employees, leaving the organization with further exposure.

The above attributes help create highly valid evidence. Regardless of any other features, any document reference system must have these elements at its core.

Your preservation options

There is no shortage of records management options available to businesses, but few meet the criteria required for a best-in-class system.

Paper-based preservation provides many benefits, but introduces complicating factors such as the need for substantial warehouse space, significant human capital to shelve and retrieve documents, and the establishment of highly automated printing systems to capture millions of electronic

records.

Digital-only (i.e., storage to magnetic or optical disk) would appear as the better choice, but it exhibits more pitfalls than a pure analog approach. Not only can most file formats be altered, but they are also highly susceptible to corruption after years of constant migration to new application versions and operating systems. This problem is only compounded by technological obsolescence of storage hardware, in that the optical disk on which vital financial information is saved today may be unreadable by systems in five years (recall the ubiquitous 5 1/4-inch floppy disk from the late 1980s, which is all but useless today). Add in the fact that few digital file formats are interoperable, and few if any standard platforms exist, and digital-only storage is on track to become a nightmare of unimaginable proportions.

The current standard is a combination of techniques to manage structured and unstructured records — a digital-to-analog-to-digital approach. Existing electronic records of various types are combined with digital images of scanned paper documents, and indexed according to an organization-specific filing scheme. These files are then printed as highly compressed photos on a film-based medium. Because the industry standard storage media is analog-based, the image of the document cannot be altered in any way. To reverse the process, a film scanner automatically searches the media for the requested image, and outputs a digital image suitable for review and electronic distribution.

This integrated approach is used by organizations such as the U.S. Social Security Administration, Primerica Financial Services, Toshiba, Boeing, Florida Power & Light, and Chicago Title & Trust. Approximately 44 million documents worldwide are preserved via this method every week.

More technical information is available at www.digitalspreservation.org. The site contains recent news and findings, as well as links to multiple industry bodies advocating the intelligent management and preservation of information. ARMA (www.arma.org), the association for information managers, is also a source on the national and local levels.

Time to review and update

A company's valuation is directly related to its knowledge capital. Its knowledge capital is manifested within corporate records. Its records provide the validation sought by stakeholders looking to invest in or conduct business with the organization. As digital systems proliferate, the weakest link in this chain — the documents — will be subjected to increasingly tremendous strain. Attention granted now to document retention policies and systems will serve to significantly mitigate the rising tide of costly risks, insulating an organization against near- and long-term exposures. ■