

Records Management Beyond the File Room



March 2007

A Publication of ILTA

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EDITOR'S NOTE

Records managers have more to consider and act upon than ever before and less time to organize it all. Our authors offer insight on how firms and law departments handle electronic records, RFID, new or improved records management policies, records department visibility and staffing. The processes and technologies our authors discuss stress the importance of RM's need to be a firmwide initiative, not a back room function.

We hope you benefit from the insight and information provided herein, and we wish you success in conquering your records management issues.

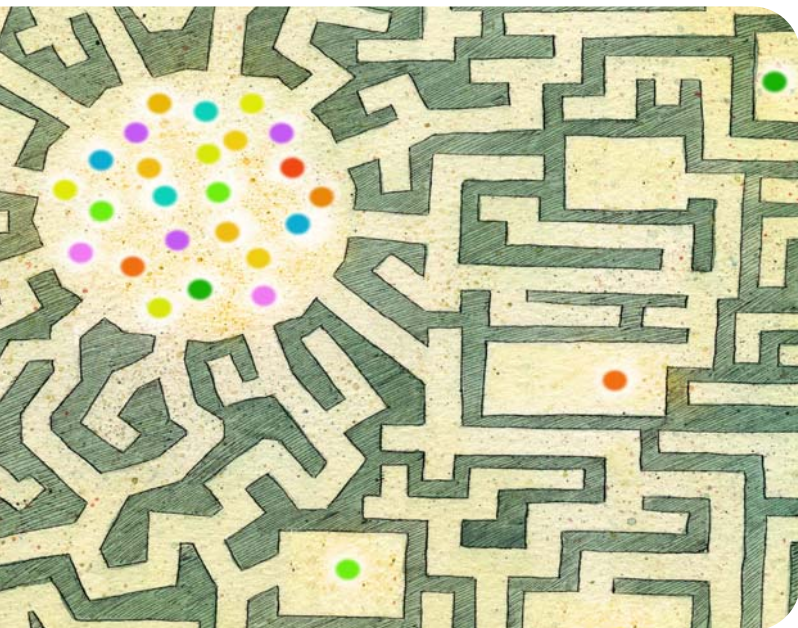
Ken Hansen, Editor

Statement of Purpose: ILTA is the premier peer networking organization, providing information to members to maximize the value of technology in the support of the legal profession.

ABOUT ILTA

Providing technology solutions to law firms and legal departments gets more complex every day. Connecting with your peers to exchange ideas with those who have "been there done that" has never been more valuable.

For nearly three decades, the International Legal Technology Association has led the way in sharing knowledge and experience for those faced with challenges in their firms and legal departments. ILTA members come from firms of all sizes and all areas of practice, all sharing a common need to have access to the latest information about products and support services that impact the legal profession.



by Nancy Beauchemin of InOutsource

:: Moving Records Initiatives Forward

By Going Back to the Basics

Without a doubt, the biggest challenge that law firms are struggling with related to records management is how to handle electronic records. All organizations — law firms included — have underestimated the impact that e-mail would have on transforming the way business is communicated and conducted.

As e-mail usage and volume of messages stored in servers increased, IT reacted to quickly implement policies and technology to ensure e-mail servers were stable and secure. While those efforts were intended to provide some assurance that information would be accessible when needed, they were often met with resistance by firm attorneys because they did not take into consideration the way attorneys were using e-mail in their daily lives.

Sheer volume has made it difficult for attorneys to find time to organize and manage important matter-related e-mail messages consistently. Attorneys report that nearly 90 percent of client communication occurs via e-mail, and the majority of those same attorneys receive an estimated average of 200 to 300 e-mail messages per day. As a result, matter information that constitutes a record is left unclassified and sometimes unread in an attorney's inbox. Consequently, the struggle to keep up with e-mail messages is also creating issues related to records management, risk management, attorney productivity and client service.

It is not just an IT problem to solve, but one that impacts and must be addressed by the firm as a whole. A surprising majority of firms, regardless of size, find themselves at a standstill. They recognize that there are “problems” but are unsure how best to move forward. The real challenge is identifying and understanding the origin of how attorneys have adopted and modified a system intended to manage messages to

their own personal document management system. Any proposed solutions will undoubtedly require management to accept that user behavior will need to change and stakeholders will need to conform in order to manage information according to firm policies and procedures.

Because IT personnel were initially called to task to tackle electronic records from a technology perspective, they were often expected to be able to solve or help with other change management issues as well. The logic employed suggests that because e-mail technology is IT's domain, then they can solve e-mail related records management challenges. Firms that operate under this assumption will continue to struggle with e-mail because there is no simple way to resolve all of the issues.

There is no one technology available today that a firm can implement to suddenly simplify the management of electronic records. There are vendor solutions that can help with classifying, storing and retrieving electronic records, and many firms have implemented these technologies. However, the “best” repository to manage electronic matter content should be a secondary consideration to a solid information management strategy.

The biggest mistake firms can make is relying on technology selection and implementation as a primary remedy without a clear understanding of the overriding business issues, historical perspectives and resulting work habits that have been developed by attorneys to manage information.

For IT professionals, success is dependent on the ability to reach beyond their primary domain expertise and recognize the factors in their respective firms that will ultimately support or impede the implementation or redeployment of an electronic records and information management solution. IT can gain greater insight if they

take the time to learn why existing document and records management deployments have not been fully embraced and accepted by the stakeholders (attorneys) in their firm.

Historically, law firm IT departments have painstakingly rolled out document management, e-mail archiving and sometimes records management systems with the hope that all electronic matter content would be moved from e-mail servers to a more secure and stable repository. Some IT professionals realized early on the importance of gaining initial support from the attorneys and reached out to end users in advance of major document and records management implementations to solicit their input on profile information.

Most early deployments of document management systems resulted in upwards of 100 document types to acquiesce to the varied wishes of attorneys and practice areas. Unfortunately, many of these initiatives were not fully embraced because they did not fulfill the expectations of the attorneys in the firm. These end users struggled to find the time to complete the numerous steps required to classify e-mail and other electronic matter content. The behavioral leap was too big.

To move forward in addressing electronic records management issues, firms need to go back to the basics and take the time to fully appreciate the numerous factors that ultimately contribute to the success or failure of these initiatives.

Identify the Motivators

From the beginning, a cross section of key personnel in addition to IT should be involved in developing the firm's information management strategy, including general counsel/risk partner, managing partner, executive director, records director and shareholders representing various practice areas. Regardless of who is driving the process, be sure that these individuals are involved.

Before any decisions are made, the first step should be to recognize the underlying business drivers in play. Why is the firm considering a change in the way electronic information is handled? While firms may prioritize motivators differently, the "whys" behind the need to tackle this issue are somewhat universal and typically include:

Support Firm Business Goals. The information strategy should be aligned to support the firm's overall business goals. For example, is there merger activity on the horizon? Is regional, national or global expansion a top priority? Are there specific revenue requirements or cost reductions being considered? What compliance and risk management concerns need to be addressed? Is the firm struggling with how to leverage and market its expertise and protect intellectual capital?

Mitigate Risk Issues. There are countless ways electronic information can expose firms to malpractice and other legal risks. Firms need to consider their ability to protect confidential client information, ensure critical dates important to the matter are docketed, have systems and procedures in place to respond to discovery requests, and comply with court imposed orders and audit responses. The implications of firm mergers and incoming/outgoing attorneys also pose potential risk management concerns.

Improve Client Service. Technology has changed the way people work. Clients expect their attorneys to be immediately accessible and reactive to their needs. Industry surveys have shown that a firm's ability to respond to client demands is a key reason for the decision to change counsel. However, unstructured data (*i.e.*, e-mail) residing in personal inboxes makes it difficult for attorneys to locate relevant information as well as collaborate with their peers as needed to meet clients' growing expectations.

Enhance Productivity. The increased volume of e-mail is significantly impacting billable hours. Countless hours are spent searching for information. Profiling e-mail records for retention and retrieval cuts into valuable billable time, causing attorneys' reluctance to do so. Making classification of and access to electronic information both consistent and easy reduces time spent on non-billable work, increases client responsiveness and can help the firm leverage its collective talent and expertise.

Records and information management deployments must support strategic firm initiatives in order to gain the needed support of firm management, who can then enforce compliance with requisite policy and process changes.

Acknowledge and Understand Attorney Perspectives

Now that the business goals have been identified, the next step is to consider them *vis á vis* your constituents' motivations as well as your own perspective. Recognize the historical perspective of how attorneys in your firm work and their point of reference.

For example, IT may assume that attorneys search for precedent documents in the firm's document management system based on "document type" choices available in the document profile. However, further investigation may reveal that many attorneys prefer to construct searches based on "document name."

Some systems are set up in such a way that e-mail messages are no longer accessible on PDAs when moved or copied to a designated document management or records management archive repository. Attorneys often express that is easier for them to identify "final versions" of important client-matter documents when managed in individual e-mail stores.

In client engagements with several mid- and large-sized firms that advocate storage of client-matter e-mail in the firm's document management system, we surveyed attorneys so that we could better understand their specific reasons for not using firm-designated systems to manage e-mail and electronic matter information. Here are some of the questions posed to attorneys and the eye-opening responses shared:

Do you utilize the firm's document management system to save client matter e-mail messages and attachments?

Of the more than 500 attorney respondents, 74 percent indicated that they do not save matter e-mail messages to the firm's document management system even though the document management system is the prescribed repository for managing electronic matter content.

Respondents that answered “no” were asked:

What prevents you from profiling and saving e-mail messages to firm’s document management system?

Respondents were allowed to choose multiple responses. 44 percent of respondents indicated that it was “too time consuming.” 65 percent indicated that they “prefer to reference e-mail messages in Outlook.” 40 percent said that “they prefer to reference printed copies of e-mail messages in physical files.”

Many of the attorneys indicated they prefer to search based on e-mail titles, and, since there is no consistency in naming e-mail messages, it’s difficult to locate needed information in the document management system. Attorneys also stated the folder structures in e-mail programs are more intuitive to the way they work because they display information in chronological order.

If an electronic document (including e-mail) is important to a matter, how is it saved?

Respondents were allowed multiple selections. 80 percent indicated they prefer to “print and include in physical matter file,” 60 percent “save in their personal Outlook folder,” 48 percent “profile and save to DMS,” and 30 percent “forward to secretary to handle.”

Most attorneys are unwilling to take the time necessary to fill out detailed profile information to store e-mail messages in the firm’s document management system.

In summarizing these results in more detail, we found the following to be of particular interest:

Ninety percent of the firm partners responded that they “print and include in physical matter file” while only 80 percent of the associates responded that they “print and include in physical matter file.”

Thirty-five percent of the partners indicated they also “profile and save in the firm’s document management system.” Conversely, 73 percent of the associates indicated they save to the firm’s document management system.

The disproportionate percentages are subject to interpretation but seem to indicate the partners have grown accustomed to reviewing and storing matter information in a folder view, and they are comfortable working in systems that closely resemble this view. Many attorneys may not fully understand how to use the firm’s document management/ records management system and may not trust that they will be able to locate needed information easily.

As the results of surveys conducted indicate, attorneys, by default, have become the primary records custodians responsible for managing

client-matter information. However, they are not adequately trained to assume this role, and, as such, they have created their own work habits to manage matter information. The processes they have developed often fulfill their specific needs but may be contradictory to the firm’s information, knowledge and risk management strategies.

Firm IT departments and records managers need to acknowledge how the stakeholders in their firms are using available technology. They must recognize that attorneys may be reluctant to forego their own individual methods for managing electronic matter content without proof that the change will benefit them.

E-mail is a vital communication tool, and any mandates made by a firm as to what repository should retain e-mail information should incorporate a solution that will be convenient and easy to use. To increase the likelihood of compliance, IT should focus on understanding how the timekeepers in their firms accomplish tasks and their specific information management challenges.

What help do attorneys need to better organize electronic matter content?

If the firm has a document or records management solution to manage e-mail, what policies and procedures need to be put in place to ensure compliance?

What additional training is needed for attorneys? Do they understand how to use the document management and/or records management systems?

What resources can be provided to help attorneys manage the backlog of unstructured, unclassified matter content?

Is it intuitive to attorneys where electronic matter content should reside? How many systems are they being asked to reference?

Most attorneys are unwilling to take the time necessary to fill out detailed profile information to store e-mail messages in the firm’s document management system. But they are receptive to alternative methods of storing e-mail information in the firm’s document management system if the process can be made easier and more efficient. In a recent law firm consulting engagement, we asked 50 attorneys, “Would you be receptive to a standard practice-based set of electronic folders to easily classify electronic documents and e-mail messages for each matter, without having to complete traditional profile information?” A resounding 98 percent of the respondents answered yes!

Understand Potential Records Pitfalls

Consider attorney perspectives and how they impact e-mail usage, along with the following specific records management issues:

Identifying Final Versions and “Record” Documents

Many attorneys have difficulty identifying final versions of documents in their firm’s document management system. This is often because attorneys use and identify final versions of documents differently. Some will save a final version as a different document while others actually name a document in such a way to note it is the final version. At

times, the final version of an important client document may only reside as an attachment to a message in an e-mail folder. Many times, the e-mail recipient does not take the time to save a final electronic version to the firm's document management or records management system.

Many Attorneys Do Not Understand the Importance of Preserving Electronic Content

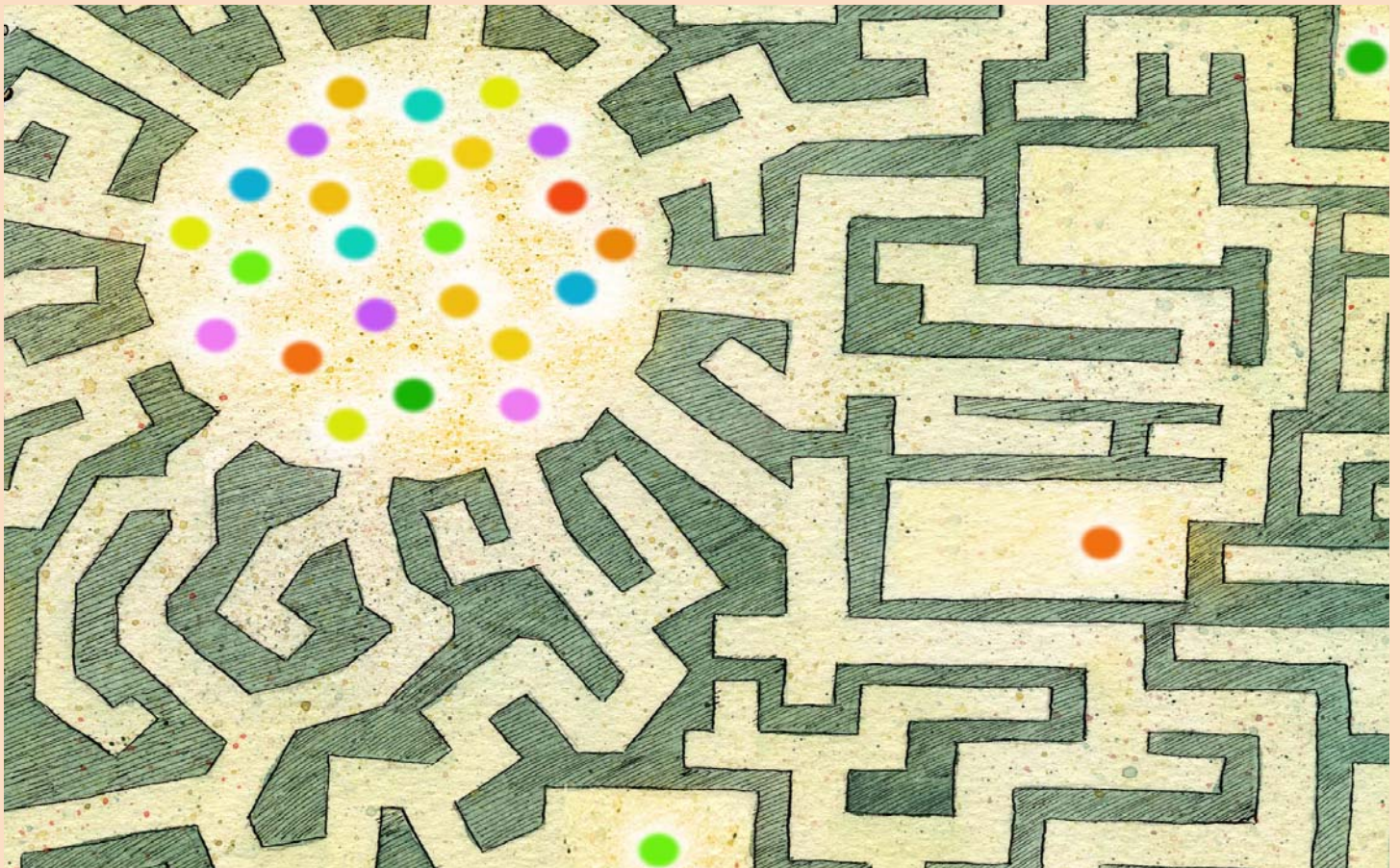
It is always surprising to learn that many attorneys do not understand the importance of managing electronic records in a way that preserves the integrity of the electronic record. Historically, firms employed policies and procedures to control physical records, but these same protocols are not necessarily adequate when dealing with electronic records.

More often than not, this information exists in an unstructured format across multiple repositories and information stores. Attorneys mistakenly believe that unclassified and deleted e-mail messages can be retrieved easily by IT from backups. Attorneys need to realize that backups are intended for disaster recovery purposes and are not suited for records retention. Many attorneys routinely delete e-mail messages once they are reviewed and printed for incorporation into the physical client-matter file. IT professionals should work with a firm's general counsel and or risk management partner, as well as records management, to assess how attorneys comply with policies for managing electronic record content.

Putting Your Expertise into Play

Armed with a clear understanding of your firm's business goals as well as stakeholder needs and behavior patterns, you should be well-positioned to leverage your expertise in developing technology recommendations that will best support the firm's information management strategy.

While it may seem time-consuming to perform the legwork detailed above, know that the success or failure of your initiatives is dependent on adoption by key stakeholders, primarily attorneys. Attorneys are now records managers by default. Equip them so they can manage information in a way that works for them yet still supports firm risk and information management goals. By educating yourself and other firm personnel working on electronic records initiatives, you should have a clear idea of next steps, and the internal sponsorship to make it happen.





by Tom Pemberton of FileTrail, Inc.

:: Utilizing RFID in the Legal Environment

Radio frequency identification (RFID) is a proven tracking technology at law firms and legal departments, with the earliest implementations beginning in 2001. The technology has received a lot of publicity in recent years, and the diversity of applications has created some confusion and misunderstanding. What's needed is a practical foundation in the application of RFID and critical considerations for implementation of the technology.

Background

Before considering the use of RFID technology for your firm or department, it's important to understand the capabilities and limitations of the technology within your environment. RFID has a lot to offer. Plus, dramatic changes in this unique technology recently have opened a whole new world of possibilities.

RFID has provided many advantages over bar code technology since the mid-1990s. The ability to read stacks of tagged files at once without requiring line-of-sight was one of RFID's chief advantages. However, the cost of tags at about one dollar each and short read ranges (10 inches at best) prevented wide-spread adoption. It would take a whole new generation of RFID technology to make it economically viable.

Gen2 Technology

In November 2005, a new RFID standard called Gen2 fixed the limitations of high frequency (HF) RFID. Gen2 operates at a frequency of 915 MHz and was designed primarily to meet the requirements of supply chain management. These requirements are not dissimilar from the requirements of tracking in a legal environment: tracking items that move among many locations, unattended capture of tracking data, a high degree of accuracy and a long read range.

In contrast, HF operates at a frequency of 13.56 MHz, has short read ranges and is attended (requires deliberate action by a person). While HF will continue to be used in entrenched markets such as a library, the bulk of all research and development money as well as manufacturer production will be for Gen2.

Gen2 delivers significant advances in RFID capabilities, including:

- A reduction in the cost of RFID tags by 50 to 60 percent
- Read ranges increased from 10 inches up to 12 feet
- Read cycles increased to 400/second
- Interference eliminated with shielded electrical devices
- Tag-dense scanning improves reading

The improved performance and lower cost of Gen2 technology have made RFID viable for law firms and legal departments of all sizes.

The Disposable Tag

One result of Gen2 technology is that RFID tags are finally considered disposable. Many of our clients who implemented HF RFID, such as the U.S. Department of Labor and NIST, devised special procedures to reuse their tags because of their high cost. Clients implementing Gen2 solutions are not reusing tags; the cost of labor to remove and reapply the tag is higher than the cost of the Gen2 tag.

Relaxed Tag Placement

Another result of Gen2 technology is that placement of RFID tags is no longer a concern. With HF RFID, clients needed to be trained to place tags randomly because tags that were aligned in a stack of files would not be read. The tag-dense performance of Gen2 makes it cheaper to buy folders and filing media pre-tagged, which saves a lot of labor.

Passive Tracking

The new capabilities of Gen2 RFID have allowed us to pioneer the concept of passive tracking. Passive tracking provides continuous automatic tracking as files move from desk-to-desk and office-to-office without need for staff compliance. The files virtually tell the system where they are located.

One of the downfalls of bar code tracking systems is they require active participants. The fact that attorneys and staff will not use the tracking system is so widely accepted that many law firms have none. These

firms see little value in knowing who checked out a file when the file never remains with that person.

Other firms have remedied the shortcomings of bar code tracking by implementing an audit process. Each week, staff use portable scanners in every cubicle and office to update the locations of files. Even with this effort, the tracking system is only accurate once per week and somewhat accurate for the next few days.

RFID solves the problems of the bar code tracking system, eliminating searches and saving labor. In the lowest-cost implementation, RFID cuts audit labor by over 80 percent. At one firm, the weekly audit of 5,000 to 6,000 files at 200 offices and cubicles used to take 32 hours. It is now done in about 4.5 hours.

In a full RFID implementation, passive tracking captures every movement of every file, from desk-to-desk and office-to-office. Sophisticated middleware, designed to accommodate the processes found in law firms and legal departments, manages communication with Gen2 RFID readers and forms transactions for the RM system.

In a full RFID implementation, attorneys and staff go about their normal activities. With proper placement of readers, files virtually tell the system where they are. One large law firm that has implemented RFID discovered happily that with full coverage, there is no longer a need to perform the check-out or check-in processes in their RM system.

How You Can Use RFID

RFID is a powerful technology for automating processes in law firms and legal departments that are currently performed manually or by using bar codes. There are several locations where processes can be impacted by RFID technology.

File Room Workstations

A key place where RFID is implemented is at workstations in the file room. At these workstations, an RFID reader is connected directly to the PC and is used to automate basic processes such as check-in and check-out.

The RFID reader at a clerical workstation is also used in the most critical RFID process, cataloging new items. As new files are being created, an RFID tag is applied. Depending on your choice of methodologies, the reader will either be used to program the tag with a value or to retrieve the value from a preprogrammed tag.

The decision of whether to program tags or use preprogrammed tags is important and has ramifications. However, the choice may be made for you by the selection of a vendor.

After-Hours Workstation

Many law firms have workstations set up to make it convenient for attorneys to check out files they take from the file room after-hours or on weekends. Compliance is generally reported as being very low.

RFID eliminates the need for compliance. In most cases, the attorneys can only access the file room using their security badge. The combination of a badge reader and a Gen2 RFID reader makes the check-out process automatic. A monitor displays it all for the attorney to see, raising awareness that a new tracking technology is in place.

Automatic Check-In

RFID can be used to eliminate the check-in task in the file room. This saves time, and avoids the wasted effort of having staff search for a file they think is checked out when it's actually sitting in the file room waiting for someone to check it in. A pair of RFID readers inside the file room door automatically reads tagged files that come in the door.

Cubicles and Offices

One of the biggest issues with tracking systems in law firms and legal departments is that the files move after being checked out. After the first move, the tracking system is no longer accurate. Gen2 RFID provides the first practical solution to this problem.

The long read ranges of Gen2 RFID provide the ability to track files passively. With read ranges up to 12 feet, RFID readers can be placed in the ceiling, under the desk or in the wall to track the movements of files from desk-to-desk and office-to-office. Each reader is associated with a specific person via the middleware, allowing the RM database to be updated with the current location of each file.

There is a variety of readers available for the cubicle or office. In general, there are readers that connect to a workstation via USB or serial port and readers that connect to an Ethernet network by standard cabling. Determining which is best for each situation in your environment should be part of a vendor's site survey.

Common Areas

RFID technology also can be used to track the locations of files into common areas. In the normal workflow, files often end up coming to rest in a case room, war room, conference room or other area. Determining which locations have enough value to be worthwhile as a tracking location is something that your vendor can help determine.

RFID on a Portable Platform

A portable RFID reader is one of the most valuable time-saving tools for a law firm or legal department. Today's portable RFID readers are built on a standard PDA platform running Windows CE. A color touch screen makes operation simple and intuitive for anyone.

A portable RFID reader automates several common processes:

Locating Missing Files. The single most valuable function of a portable RFID reader is finding desperately needed files. The conventional approach involves manually searching every drawer, cabinet and stack in every office and cubicle. Gen2 portable scanners can be adjusted to read up to five feet. This makes sweeping through an office very fast and reduces the disruption to attorneys and staff.

Office-Wide Audit. A portable RFID reader can complete audits of desks and offices in about 20 percent of the time it takes to do a bar-coded inventory and five percent of the time for a manual inventory, with much less chance of inadvertently skipping files in the process. Locations of files will be updated. The ability to get a reconciliation report depends on the capabilities of your RM system.

File Room Inventory. A portable RFID reader can complete file room inventories quickly. An order-checking process can help you find misfiles. The portable reader will alert you to items that are out of

place. However, if you have more than a few thousand active files, using color coding is much more efficient from a labor standpoint.

Boxing Files. A portable RFID reader speeds the process of boxing files for storage. Typically, only the boxes are bar coded. Since most portable RFID readers also contain an integrated laser scanner, both the files in the boxes and the boxes themselves can be read as the vendor software on these readers typically is built to use bar code and RFID interchangeably.

Shelving Files. A portable RFID reader can assign files to a shelf. This is useful in an environment where the shelf-specific location is important, as when using a dynamic filing system where files are refiled on any shelf that has space and sorting is only done within the shelf. These file rooms typically do not use color coding. If you are using color coding, this capability has no value to you.

Practical Implementations

Implementing a practical RFID solution does not necessarily mean you will automate all of the areas discussed above. The unique attributes of your environment determine which areas warrant automation. Your vendor's site survey will determine specific needs.

Below are generalized descriptions of three scopes of automation that are common and areas where these are most applicable.

Full Coverage. Full coverage applies the passive tracking concept and automates tracking everywhere including the file room, cubicles, office and common areas. Files are tracked from desk-to-desk and office-to-office automatically, without any participation by attorneys or staff. Full coverage solutions are economically viable for IP practices of large law firms, boutique IP law firms and large (Fortune 500) legal departments.

Cubicle Coverage. Cubicle coverage automates tracking among the file room and staff cubicles. Files are tracked from desk-to-desk automatically, without any participation by staff. Cubicle coverage solutions are viable for IP Practices of large law firms and boutique IP law firms where person-to-person file transfers are normally handled by secretaries and require less hardware than full coverage solutions.

File Room Coverage. File room coverage automates all file room processes, including check-in, check-out, archiving and more. In addition, a portable RFID reader is used to conduct periodic audits. File room coverage solutions are economically viable for large law firms and small to medium-sized legal departments. They provide good results with a minimal investment.

Common Concerns

There are several common concerns and potential traps in an RFID tracking solution.

Over-Reliance on the Technology. Organizations acquiring a new technology tend to treat it as the solution to some issues for which it was not intended. RFID is a tool for tracking, as are bar codes. It can be used for detecting misfiles — files out of order on the shelf — but it is not as cost-effective for this as color coding. Even though you have a shiny new hammer, not everything is a nail.

Selection of Locations. It is easy to overdue the selection of locations for RFID equipment. Always keep in mind that you are looking for locations where files come to rest in common workflows. Your vendor will help you stay focused on the value of each candidate location during the initial site survey.

Too Much Too Fast. It is easy to get excited about RFID and its capabilities. However, practicalities of what can be done in a short time, as well as budgets, may mean you want to plan a multi-phase implementation. At the start of an RFID project there are many things to do that take time to complete, like tagging the active files.

Interference. All RFID equipment is FCC regulated to limit interference. It is possible that poorly shielded equipment containing speakers will be disrupted if very close to an RFID reader. This will not happen with quality office equipment. Any issues of interference should be discovered and resolved during a vendor's initial site survey.

Safety. Questions always arise about safety. All RFID equipment is FCC regulated to ensure safety in the work environment.

Architecture. An RFID solution should be well-architected with a full set of offerings. A well-designed application should leverage the investment by tracking files, library materials, equipment, artwork and other assets on a single RFID infrastructure. The ease with which tracking data integrates into the appropriate applications is important.

Summary

RFID is a proven tracking technology in the law firm and legal department environment. Recent advances in the technology have made it affordable to law firms and legal departments of all sizes. Gen2 RFID eliminates the issues of compliance that have been the downfall of bar code and HF RFID tracking systems. A vendor site survey will help answer a lot of questions and determine good locations for tracking as well as what type of equipment to place there.

by Pat Archbold of Integration Appliance (IntApp)



Information Proliferation Poses Challenges

In the past decade, records management has experienced an extraordinary evolution. E-mail and electronic records are quickly eclipsing hard copy files in terms of volume. Further, law firms' increased focus on risk management and compliance has highlighted the importance of records management best practices and elevated the records department's profile within the firm.

Records professionals are responsible for managing and protecting the matter file, ensuring that all information related to a matter is known, accessible, classified and subject to the firm's retention schedule. The records manager's role in ensuring proper records handling extends to access-related security as well. Given the rise in electronic information residing in numerous firm repositories, records and IT (along with other departments, such as conflicts) have begun to forge stronger relationships to reduce the risk of internal and external exposure to protect the best interests of the firm.

Growing Pains Exacerbate Risk Issues

Unabated growth in three primary areas — firm size, information expansion and client expectations — is stretching the ability of firms to keep up with records-related mandates. Consider the following growth categories and the resulting impact on information management:

Firm Size

Firms continue to grow with increasing merger activity, aggressive lateral hiring, geographic expansion and increases in the scope and range of services offered to clients. Naturally, the volume of matter-related information has grown accordingly.

Merger activity forces firms to re-examine their records management practices in light of the merged entity's strategic goals. Records management policies, procedures and technologies vary from firm to

firm and must be realigned for consistency, not to mention compliance and client service purposes.

Both merger and lateral activity (inbound) also pose conflicts review challenges that can impede planned growth initiatives if they cannot be reviewed and resolved via waivers or ethical walls.

Finally, business growth and geographic distribution of work-in-process are driving the volume of information in firms. Timekeepers, attempting to manage information overload themselves (e.g., burgeoning Outlook inboxes), have developed practices that may work for them, but often work against firmwide records and risk management initiatives. Further, the job of preserving comprehensive matter files becomes more daunting for records managers.

Information Expansion

Firm reliance on digital communication is rising. E-mail, voice mail, electronic documents, scanned documents and images are replacing the need for and use of physical files. Protection of this information for disaster recovery and records retention purposes has taken records from box storage to backup tapes and servers as well as archival systems.

Think about the information created throughout the matter life cycle and the number of firm repositories in which that information resides. At a minimum, new business intake systems feed conflict systems, which exchange information with time and billing and customer relationship management systems, which in turn feed document management, litigation support, case management and records management systems, etc. All of these applications contain sensitive information. Decentralized management of these storehouses has made records classification an issue.

How can firms ensure that, upon the close of a matter, records residing in all repositories are declared and managed according to the firm's retention policy? Since they are the ones most intimate with work related to a matter and relevant records produced electronically, attorneys have become records managers by default.

Realistically, this job is often much delayed or left unfinished as attorneys' primary focus is on billable hours, not sorting through and classifying hundreds of e-mail messages that may or may not be relevant as records. The end result is that records information is often left unmanaged and in disparate firm systems, much to the chagrin of records managers, risk managers and IT personnel (who are called upon to assist with tasks such as responding to discovery requests).

Further, with matter information spread across multiple repositories with differing security standards, it becomes difficult to monitor and manage access policies uniformly, creating challenges for enforcing confidentiality.

With regard to conflicts and confidentiality, the amount of information available electronically at the fingertips of all firm personnel poses a major risk issue. Long gone are the days where firms could monitor and manage this risk manually when physical files were predominant.

Information workers have more to consider and act upon than ever before and less time to organize it all without risk management falling through the cracks.

Today, firms must use ethical walls technology to help secure these assets. However, information volume impacts the use of ethical walls, too. They must be scalable and extend beyond records management and document management systems to all firm information repositories. They must also be kept up to date as the make-up of the matter team changes. Plus, the proliferation of ethical walls used in firms today makes it harder for timekeepers to truly remember what not to touch, potentially resulting in unintentional accidents and close calls that can jeopardize the firm.

To address this risk, organizations need to go beyond the standard distribution of memoranda. Even with the best intentions, these can be difficult for attorneys to commit to memory given the number of clients and matters with which they deal. More helpful are reporting tools such as Web-based dashboards that provide timekeepers with a clear record of the restrictions to which they're subject or must enforce. Coupled with automated updates and reminder mechanisms, such an approach creates one clearly-defined place where attorneys can go to make sure they are aware of and in compliance with all applicable walls and restrictions.

Client Expectation Growth

Clients, subject to increasing regulatory and legislative records-keeping requirements themselves (*e.g.*, HIPAA; *Sarbanes-Oxley*), are demanding more from firms, often requiring specific records management and

retention practices as well as proof the firm is adhering to these mandates. Further, clients are acutely aware of electronic information access within the firm and expect firms to be able to properly secure confidential matters or other sensitive client information.

Not only do firms have to maintain their own records retention procedures, they are increasingly called upon to manage client records according to the client's own policies. Clients require assurance of proper retention and destruction practices because a law firm's handling of records can inadvertently expose clients to risk.

For example, a Fortune 10 pharmaceutical company properly disposed of documents according to its retention policy. However, the law firm representing the pharmaceutical company did not. When the company was sued, the firm was in possession of discoverable documents that negatively impacted the outcome of the case and had significant cost implications for the pharmaceutical company.

Clients expect their law firms to protect their sensitive information, not just externally, but internally as well. Clients may have special requirements for firm information handling practices, especially with regard to how data is accessed and communicated within the firm. For example, the firm may have a client that has special concerns regarding potential press leaks or even the fact they have solicited legal advice. Clients involved in intellectual property (IP) pursuits, where the mistreatment of IP such as patents or trade secrets may have dire consequences, may have different requirements. Others may set requirements based on the mandates imposed on them, whether they are regulatory or statutory in nature (*e.g.*, SEC rules) or specified by their own customers or partners.

Information workers have more to consider and act upon than ever before and less time to organize it all without risk management falling through the cracks. For example, a confidential matter may be protected in the document management or records management systems, but what about in time and billing? Or, what if records related to a matter have been destroyed in accordance with the firm's retention policy, but backup tapes of the information still exist? Given the multiple systems law firms use to conduct day-to-day business, integration and automation are essential.

Remedies to Ease the Pain Automatically

Firms are increasingly aware of their susceptibility to records and information management security-related risks. Some firms proactively identify and address these issues, typically leveraging cross-functional teams (*e.g.*, records management, CIO, risk partner/general counsel, conflicts management, managing partner) to ensure a comprehensive outcome. Others are forced to respond reactively due to liability insurance concerns, complications arising during mergers, client mandates or litigation, etc. Fortunately, once firms recognize (whether proactively or reactively) the need to take action, there are viable solutions available to address some of the core risk issues. The key is streamlining and automating information throughout the matter life cycle to minimize end-user intervention and to better assure compliance.

Prior to implementing technology solutions, firms must address several nontechnical issues that will influence the success of needed records

and information initiatives. The first step is to develop best practices and then set rules and procedures for defining and implementing security policies. Next, stakeholder responsibilities must be decided and documented, including determining which parties own what parts of the enforcement process and the specific duties associated. Finally, staff must be educated regarding policies and practices to highlight the reasons for change and increase the likelihood of compliance.

Firm growth requires that new best practices be employed to replace any manual and *ad hoc* approaches to securing firm records and information. Streamlining the application of information security management tools can go a long way toward minimizing issues associated with mergers, laterals and activity volume. When applied pervasively (across multiple firm repositories, not just records management and document management systems), they are a workable and defensible solution.

How does it work? Ethical walls are created and applied to numerous firm repositories. This triggers automatic notification, logged for audit purposes, to inform affected personnel that an ethical wall has been created and to outline the associated restrictions. Additionally, reports are generated so that affected personnel have a consolidated, “at a glance” view of the walls to which they’re subject.

Once established, the ethical walls are monitored, maintained and updated in real time, automatically extending and repairing themselves in response to new clients, matters and attorneys. Again, all changes, as well as potential breaches, are logged to provide a comprehensive audit trail.

This technology and resulting processes represent a significant security enhancement throughout the matter life cycle from memorandum notification, on which many firms presently rely, whereby the security of records and information is directly dependent on an attorney reading and committing the details of a memo (*e.g.*, excluded from this practice group) to memory for the duration of the matter.

With a comprehensive security platform in place, firms can more readily manage conflicts related to merger and lateral hire activity. Instead of thwarting growth, turning down business or struggling to meet client requirements for managing conflicts or confidential matters, firms are able to confidently bring in business.

Information growth challenges firms to balance the need to provide end users with access to information and productive work tools with the need to adhere to records management, risk management and security initiatives. When it comes to preserving records, firms should consider

an automated approach to matter-centric declaration of electronic documents from document management system and Outlook folders, as well as other firm repositories, into the records database.

This approach can be achieved by automating the integration and specific information sharing among the relevant firm repositories, using processes based on firm policies and procedures as opposed to end user action. Firms can control particular records mandates (*e.g.*, based on area of law; client/matter, client specified, etc.) as well as set trigger dates for the auto-declaration process (*e.g.*, date matter closed, billing date). Integrated workflows can be set up to automatically perform records tasks according to firm-specified policies (*e.g.*, when a client matter is closed, generate a report detailing information in all specified firm systems related to the client/matter number).

For confidential matters and conflicts of interest, ethical walls can again be applied to ensure that information is locked down and unauthorized access is prevented

Client expectation growth requires firms to step up their records management and security measures in order to attract and retain clients. By developing best practices and leveraging appropriate technologies as highlighted above, firms can do more than provide lip service, they can actually document their ability to adhere to both firm and client mandates for retention and confidentiality.

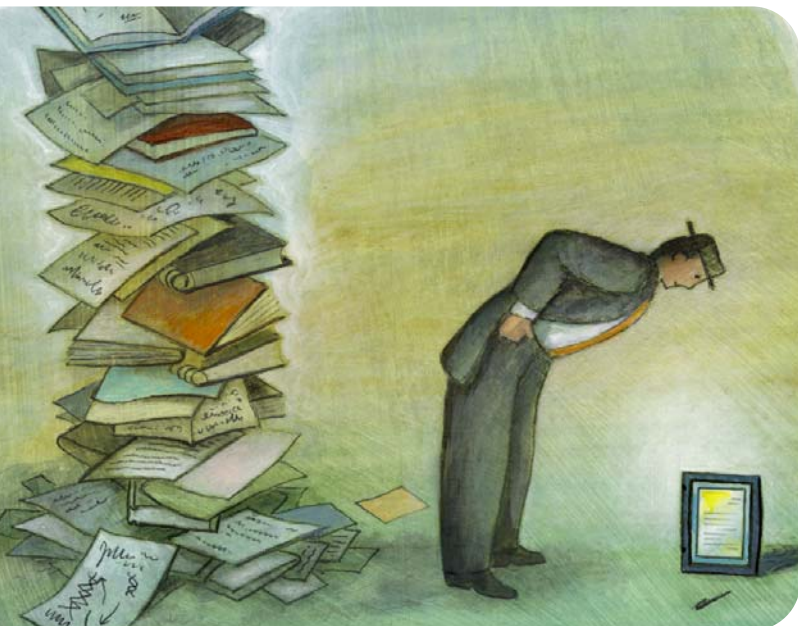
Interestingly, using ethical walls to manage information growth can actually spur firm growth when leveraged as a differentiator in firm marketing outreach and RFP responses.

Regaining Peace of Mind

Today’s business landscape requires law firms to take greater steps to manage and protect their clients’ interests as well as their own. The scope of information created and managed in law firms is constantly expanding, along with client and industry-related requirements.

Not only is the workload growing, the risks associated with keeping up with volume are increasing also. Firms must take a critical look at their practices pertaining to records management and security, identify areas of inefficiency and exposure, and bring together relevant firm personnel to work on developing best practices and implementing effective solutions.

There is no one-size-fits-all solution. Fortunately, there are technology products available today that address multiple firm information management needs in a flexible and automated way, providing both firm and client with some peace of mind among the growth chaos.



by Alvin Tedjamulia of NetDocuments

:: Records Management Systems

Stand-Alone No More?

It used to be that we went to grocery stores to buy food, department stores to buy clothes and auto shops to service our cars. Now places like Wal-Mart Supercenter, Costco, and Super Target, make it possible to do one-stop shopping for groceries, clothes and tires, and even book a vacation. Consolidation is happening everywhere. Individual devices such as cell phones, cameras, MP3 players, GPS devices, calculators, e-mail receivers, PDAs and wireless modems are all consolidating into a single, integrated, smart mobile device.

Multiple Document Systems for a Single Law Firm

This evolution is also occurring in the legal technology space. We now go to a document management (DM) system to store our active documents, a records management (RM) system to archive documents related to closed matters, an extranet service to share documents externally, an e-mail archival system to stub Outlook messages and deflate Microsoft Exchange and a knowledge management (KM) system to research internal and Lexis/Westlaw content. Each of these systems has its own infrastructure for servers, storage, databases, security, administration, APIs, search, authentication, user interface, taxonomy, retention policies and matter-centricity.

The deployment of each of these individual systems can be costly and complex. The combined maintenance and integration of all systems is frightening. A technology which aggregates all document services into a single service and repository would provide enormous benefit for law firms, administrators and end users.

Records Management — The Center of the Universe

In a multisystem environment, it makes sense to consider RM as the final resting place for all digital records because it is the system designed for long-term storage and retention. However, documents also

exist in DM, e-mail programs, PST files, e-mail management/archival systems (EM) and extranets. Consequently, the RM system either has to import documents from these other systems (creating duplicate data), or it has to establish pointers to data residing in the original repositories but managed from a central RM system (creating complexity).

A Single Repository

In a single repository environment, the overall service provides a common infrastructure for storage, API, security, administration, search and taxonomy. Specific functionality is built upon the universal infrastructure: version control and Microsoft Word integration (for DM), retention and purging policies (for RM), e-mail capture and Exchange deflation (for EM), collaboration and notifications (for extranets) and legal citation cross-referencing (for KM). There is nothing to gain by replicating infrastructures.

Benefits of a Single Repository

Emerging technologies offer firms and law departments a single repository and a single service for work-in-process documents, e-mail capture and archival, Microsoft Exchange grooming, extranet sharing, digital records retention and purging policies, knowledge management and even litigation services. Everything is based upon a single repository with a single database and user interface. There is no need to import/export data or set pointers from RM to other repositories. For administrators, this approach offers simplicity and ease of administration. For the firm, it constitutes much lower computing costs. For the end users and attorneys, the concept of a single service for all the digital files offers even more benefits:

A single service can enforce security policies uniformly across all documents. For example, if John Doe must be “conflicted out” of a specific matter, simply establish a straightforward ethical wall for

that case and do it in just one place. The user doesn't have to worry about seeing something he or she shouldn't see.

An enterprise search engine would be built-in to index all metadata and full-text content for all of the firm's digital files. An attorney can issue a query on "Johnson Brothers Estates" within 50 words of "wrongful termination" and find the results in seconds across all DM, RM and EM contents. With a single service, the implementation of an enterprise search engine is never "yet another project," and the deployment of federated searching across multiple systems never becomes an issue.

In a multisystem environment, aggregating data for matter-centricity is complex. In a single repository service, displaying documents, e-mail messages, records and extranets in a matter-centric display is trivial. There is no need to normalize disparate data types through a portal or workspace view. All folder organization and data views are consistent across systems.

When navigating from DM to KM to EM and to extranets, users find a common look and feel in a single service. There is uniformity in drag and drop, right mouse clicking, color schemes and menus. A document would never have two different document numbers, one issued by the DM and another by the RM system.

With a single service, data access from the Web and mobile devices is built-in. There is no need for multiple authentication methods, remote access challenges and disparate display formats.

Managing E-Mail Messages

According to UC Berkeley, 400,000 terabytes of e-mail are produced each year. "Out of control Outlook" is a popular discussion among CIOs because so many attorneys have critical documents in unmanaged Outlook folders and not in the DM. Some attorneys store important documents and messages in PST files, which are invisible to the IT staff. Yet *Sarbanes-Oxley*, Graham Leach, SEC-17a and the Federal Rules of Civil Procedures all demand best practices in records keeping.

Records Management systems today must perform three functions regarding e-mail messages:

Capture messages and attachments in matter-centric workspaces (profile and index)

Enforce retention and purging policies

Deflate and groom the e-mail system for efficiency purposes

Systems today just do one of the three functions mentioned above. DM systems capture e-mail messages for profiling and matter centricity. RM systems age them with retention policies. E-mail archival systems deflate, stub and purge Exchange contents. This forces firms to deploy multiple systems for e-mail, resulting in all the typical problems derived with multiple infrastructures. Document services are just now evolving to where an integrated RM system can simultaneously capture the messages, age them and groom Exchange.

Managing Files with Canonized Versions

Traditionally, the DM system would host work-in-process (WIP) documents, while the RM system would host the same document at completion. In many instances, however, the author never knows when a document is final. Consider a proposed settlement agreement created by the attorney (version 1) and faxed to the client. The RM system must consider version 1 as a record, because it defines the exact contents of the document at the time it was faxed to the client. The attorney, however, may continue to work on version 2, to reflect the suggested modifications by the client. Version 3, containing the edits by the senior partner, is e-mailed to the client. Finally, version 5 is express mailed to the opposing party. Now the RM system must "canonize" versions 1, 3 and 5 as records, while all versions are still in the DM system.

The reality is that the canonization process to transform files and documents into nonrepudiated records is best done at the version level, instead of at the document level. Such a dynamic version-based canonization process can be much more efficiently handled by a single service that incorporates DM and RM functionality, instead of by multiple systems attempting to declare the very same digital file as both a work-in-process document and a record simultaneously.

The SaaS Factor

Another technology trend to be considered is the preeminence of software-as-a-service (SaaS). This is a technology where the firm subscribes to a service, leaving the deployment and management to third-party, trusted experts. For an integrated document service, the SaaS model offers unmatched levels of simplicity, scalability, disaster recovery, universal access and, above all, security.

Consider the fact that simplicity and cost savings are already attained through a common service. Now consider the possibility of also relieving the firm from the costs associated with hardware, software, storage, databases, index reconstructions, three-tier architecture, backups, maintenance upgrades and desktop software management. The IT staff would be focused on optimizing attorney productivity, line-of-business strategic initiatives and deploying practice-specific technologies, instead of the never-ending maintenance of systems and servers.

Legal document services including records management are not only aggregating, they also are getting much more powerful, secure, and comprehensive under the "just turn it on" concept of SaaS.

A Unified Future

Records management systems, as with DM, EM, KM and extranets, must evolve to a single service in order to reduce legal computing costs, simplify administration and create a common infrastructure for search, security, retention policies and data organization. The true winners will be the end users. While today's legal systems are all separate, future market pressures will compel the unification of these systems into a single and comprehensive document service.



by Terrence J. Coan of Baker Robbins & Company

:: The Digital Records Dilemma

Life Cycle Management of Records in a Matter-Centric Environment

With the explosion of records and information being created and accessed by today's knowledge worker, lawyers are front-and-center in the information life cycle, especially the traditional client/matter file, which is the essence of the firm's representation with the client. The content of these files is increasingly digital. Often the sole copy of a critical document exists only in digital form, frequently in an e-mail message.

Lawyers are rapidly transitioning from working with physical records to working with digital ones. They live in e-mail. Most knowledge workers — lawyers included — spend at least 50 percent of their day working in e-mail. It has been estimated that more than 60 percent of business-critical information is stored in messaging systems.

Baker Robbins & Company estimates that, for a firm that places no limits on mail boxes, the average lawyer's mailbox size is about 1.5 GB. The median is approaching 5 GB, and we've seen the extreme reach as high as 20 GB.

As a result, a significant portion of a firm's critical information and client representation records resides in messaging systems, often in a nonstructured format accessible only to the author or recipient of the message. With a majority of today's lawyer-client communication taking place by e-mail, and with this often critical communication not being managed as part of the official client file, the file is incomplete.

Another area of change is the rapid adoption of e-filing for both courts and regulatory agencies. This new methodology creates challenges for the establishment and maintenance of a complete official filings folder. Should it be in digital or hardcopy format? The chosen medium requires extra conversion steps for materials generated in the other.

In addition, many of the digital practice support materials coming into a firm are not managed with the same care as the traditional physical client file. Often, materials are not organized by official matter name/number, and the matter naming conventions used do not follow from other firm-wide systems. Finally, many materials received during discovery including laptop computers, hard drives, CDs, etc., are not being managed by the firm at all, thereby leaving significant gaps in the firm's custodial responsibility.

The Goal

The volume of information now being retained by firms in unofficial systems is exploding. The "keep it all forever" approach of many firms is no longer reasonable since this can result in firms having significant duplication of information, some pundits estimate higher than 50 percent. In addition, once a matter is closed, a majority of the information is never accessed again. Over-retaining information sets up a firm for extraordinarily broad discovery requests to which it can be very costly to respond.

The challenge for a law firm's administration, therefore, is to develop workflows and install supporting technologies that make records management a natural and invisible process for lawyers, one they can follow during the normal course of business. Throughout this process, lawyers and support staff review the entire collection of information and, through a vetting process, determine which records need to be retained as part of the official file. Estimates suggest it is a fairly small percentage — 15 to 30 percent — of all information received that is appropriate for inclusion in the official file. The remaining materials are likely to be convenience items that can be purged quickly or retained for a short period of time to satisfy the lawyer's near-term access requirements.

As professionals work with information, there is a natural vetting process that occurs. Specific materials that are appropriate or necessary for inclusion in the official file are identified. Where the retention of these materials can be applied consistently across the firm, they should be moved to a proper system so that they can be accessed by others from one central point.

Benefits to the Firm

Improper records management means that important client and firm content can end up in the proverbial “black hole.” However, effective management of the client file can lead to:

Improved client service

Increased employee productivity

Reduced risk to the firm

Improved Client Service

Law firm clients are increasingly demanding more for their money. We continue to see an increase in the number of RFPs clients are requesting — if not expecting — their law firms to complete. Clients are looking for fewer firms that can provide the collective mix of legal expertise at a lower cost. Lawyers must leverage prior work product, have confidence in the information the firm has about a matter, be able to answer client questions quickly and accurately as well as minimize the risk to the client. They must manage a client's records properly.

Increased Employee Efficiency

In response to increased pressure from clients to reduce costs in providing legal service, law firm executives are expecting more from their professional legal staff. They are demanding processes and systems that provide employees with quick access to accurate and up-to-date records, improve work team collaboration by reducing information silos and reduce the new lawyer learning curve.

Reduced Risk

There is no doubt that there has been an increase in sanctions against client corporations. It is also important to point out that law firms are no longer necessarily covered by attorney-client privilege, given their client's desire to appear more transparent. In today's tough regulatory environment, corporations are more likely to waive attorney-client privilege in order to receive more favorable consideration from regulators or the court. This puts a law firm's client files and e-mail chaos front-and-center in a discovery request.

From a risk management perspective a firm must:

Provide client advice based on complete information

Respond to subpoenas with confidence

Maintain the ability to reconstruct the history of deals/negotiations

Solidify client relationships by maintaining a comprehensive matter file

Ensure the consistent and timely destruction of records

Limit the chance of a tainted reputation due to irresponsible management of the client file.

The Client/Matter File

The client file consists of a variety of components that includes both physical folders and digital content. The digital content includes materials in the document management system and digital documents stored on network or local drives. In addition, there are e-mail messages and their attachments that reside in messaging systems or e-mail archives, and digital documents that reside in a variety of discovery collections.

Today's client file is rarely complete because most firms are caught in a kind of gray zone. Most internally-generated documents are created using Microsoft's Office suite of products and are filed in document management systems or on local or network drives. Documents created outside of the firm are often received by the firm via e-mail, so they too are available in digital form. But most firms still operate under the assumption that the “official” file — to the extent that a firm has one — consists of physical folders maintained by the records department, administrative assistant or paralegal.

Since digital documents and e-mail messages don't always get printed and filed in the official file, usually because the sheer volume involved prohibits it, the official file can be woefully incomplete.

Shifting Roles and Responsibilities

Given the volume and speed of digital communications, it is no longer practical to delegate the declaration and classification of business records to administrative assistants, paralegals or records staff intermediaries. Printing digital records for filing into a physical folder is no longer a practical solution.

Traditionally, client records have existed in hardcopy formats and have been managed as a back office function shared by administrative assistants, paralegals and records personnel. Who actually creates the folders and files the documents, and the extent to which the firm reorganizes one “official” file, is based on the firm's culture, its mix of practice areas, and whether or not the firm's office design includes a central records center for file storage.

The records manager's role is becoming more strategic. With the help of the IT department, the records manager must help the firm define its records management policy and supporting retention schedules, the procedures and workflows necessary to support the management of records in digital form and the overall strategies for managing records. The strategy used by firms largely depends on the systems and technology they choose to implement for managing the official client file content.

Client Record Repositories

Records can be found almost anywhere in a firm and in a variety of systems. These can include:

Traditional records management systems — usually tracking physical file folders

Document management systems — usually tracking the firm's work in process

E-mail messaging systems — usually holding a significant percentage of client/lawyer communications in an unstructured format and often unavailable to others working on the matter

Practice support systems — usually managed by paralegals or case assistants outside of the records management function; often lacking in consistent structure and organization from one matter to the next

Local or network hard drives — often outside of secure, easily accessible areas; usually without proper client/matter classification applied

Given the increasing e-mail volume in most firms, messaging systems have become overloaded with data in the form of messages and e-mail attachments. By dragging e-mail messages to personal folders within a user's mailbox tree, e-mail systems have become the *de facto* system used by most lawyers to manage important client communications. E-mail messages that are official client communications should be moved to a proper repository — usually the document management or records management systems — and purged from the messaging system.

However, given the huge backlog of unclassified e-mail in most firms, it is impractical to expect that the entire e-mail collection simply can be moved to a proper repository. To deal with this, firms are introducing e-mail archiving solutions to reduce the burden on e-mail servers. E-mail archives can be used to hold the unclassified legacy e-mail, freeing up the messaging system to perform with more stability.

In addition, firms need a way to manage e-mail messages that are not official client communications and don't fit well in the document or records management systems where the primary classification is by client/matter. These messages include personal information or firm administrative materials that are not easily organized under the client/matter hierarchy.

In this case, lawyers continue to drag personal or firm administrative e-mail to personal folders. After a specified period of time (*e.g.*, 90 days), the e-mail messages are moved to the e-mail archive. This action is transparent to the lawyers since they continue to access their messages from the e-mail application interface.

Most firms will use three systems to manage their client file materials — e-mail archive, DM and RM — each of which has its own purpose and inherent attributes:

E-Mail Archive	Document Management	Records Management
Centrally stores e-mail messages and attachments	Manages work in progress	Manages records based on legal, operational and historical requirements
Access is key in large-scale message store	Access and reusability are key	Inalterability is key
Organization (not classification) by author and full-text search	Classification is by client/matter, author, document type	Classification is by record type
Retention is based on last access date and storage availability	Retention is based on potential future need	Retention is based on legal risk, business need and focuses on when record can be destroyed

Expanded Records Life Cycle

In the world of digital records, the records life cycle is expanding. From a traditional hardcopy records management perspective, the records life cycle was usually depicted in four stages: creation/receipt, use/circulation, maintenance and disposition.

The focus was usually on the maintenance (inactive storage) portion of the life cycle. For those firms that have a records retention schedule, their focus also includes the disposition portion of the life cycle.

Today the emphasis is shifting to an earlier stage in the records life cycle with a focus on use/circulation, which has been extended considerably to include review, edit, finalize and declare. These steps are most often performed by the lawyer — either directly or indirectly — and underscore the role of today's lawyer in the management of digital records.

Throughout the life of a matter, materials are added to the official file and reside in one or a combination of the systems (official repositories) mentioned above. These include materials created and received by the firm. They should be stored and classified in such a way so the firm — not only the individual — can access the materials they need whenever they need them. When the matter closes or some other triggering event occurs, the retention clock starts ticking, and the materials can be purged in accordance with the firm's records retention policy.

A Focus on Access

Information and records typically are classified by a number of key attributes. The client/matter hierarchy is the most common primary method to organize client materials. Beneath the client/matter hierarchy, additional values are used to further classify or describe content. Classification attributes usually include author, document type or record category and description. A firm's environment of a single or multiple repositories for client/matter content drives how the materials are classified. The more systems and repositories used, the greater the need is to ensure consistent classification across these systems.

Typical Pitfalls

Physical records are typically managed by container (folder, redweld, box, etc.). Digital records are often classified arbitrarily by individuals without much regard for consistent naming or use of a controlled vocabulary. Document types and record types have become too granular, resulting in inconsistent classification of the same materials by different people (*e.g.*, "agreements" versus "contracts"). If multiple systems are used to hold client materials, there is often no cross-mapping of classification from one system to the next.

The result is that lawyers and staff have a difficult time accessing the materials they need when they need them, reinforcing the desire to keep "their" material in private systems. This can lead to increased risk to the firm and decreased employee efficiency, both reducing client service.

A Better Approach

Firms are embracing matter-centric computing ("MCC"), the organization of materials within a matter workspace in predefined folders. The design of matter-centric folder structures needs to balance simplicity and specificity. Given the high degree of intergroup staffing,

the folder names also need to be consistent and familiar among offices and practice groups.

As a best practice, we suggest that official, virtual matter-centric folders be created automatically in the DMS based on the matter's area of law. Because of (1) the number of access points available in digital management systems and (2) the ease with which the contents of virtual folders can be filtered, sorted and browsed, we believe virtual workspace folder structures are parallel to, but simpler than, the folder structures required for physical records management. We have also found that DM-based folders are more process-oriented, as they segregate documents at different stages in the life cycle of a matter (*e.g.*, work in progress versus issued versus precedent documents).

The number of available record categories for physical folders, although greater than the DM folders, should also be kept to a minimum to limit ambiguity in the filing of paper documents. A limited number of physical records management folders should be created when a new matter is opened (*e.g.*, correspondence and matter management). Any remaining folders should be created only when there are documents to be placed in the official file. Further, we urge that all folders be entered in the records management system when created. If this process is followed, the firm will know what records it has — and where they are — for each active matter.

Typically, there is a common set of folder types that can be used across practice areas. These folder types are then supplemented with practice-specific folder types that accommodate the needs of unique practice areas. The following is an example of how folder type classifications can be created across the document and records management systems:

Common Types — project worklist (searches), correspondence, attorney notes, client materials, drafts, matter administration, research

Corporate Transactions — agreements, closing documents, due diligence, filings, opinions

Litigation — court papers, discovery, transcripts, trial

Intellectual Property — prosecution, searches

Personal Planning — court papers, wills, trusts, forms

Positioning for Success

Firms struggle with establishing a firmwide records management strategy because they don't focus on the processes and systems used to create records, and they underestimate the benefit of a well-defined but simple firmwide classification taxonomy. Even more common, firms don't invest the time necessary to create appropriate governance models and mechanisms to support a firmwide records management program including:

Records management policies

Records retention schedules

Supporting operational procedures

Records program education and training for lawyers and staff

In the end, we believe that effective records management solutions in the digital age are 50 percent strategy/policy, 40 percent process and 10 percent technology.



by David E. Kiefer, Esq. of DocAuto

:: Matter-Centric Architectural Design

Building the Case

Matter-centric collaborative architecture in content management systems (MCC) ranks high on the list of new technologies being considered, scheduled for implementation or currently being implemented by firms of all sizes. But before your firm considers taking the plunge, you'll have much to consider.

If you're a very large firm, you'll cope with more complex implementation strategies, and if your firm is medium- to small-sized, you may find yourself struggling with addressing MCC design basics. Regardless of size, your firm, like many others, may have difficulty in identifying sources for MCC design concepts and data, since many different administrative and practice needs come into play when designing appropriate MCC architectures, including individual attorneys, practice groups, clients, records management, administration and security.

We'll address some of the more powerful advanced concepts that are possible with current MCC tools, and how these can be important factors in encouraging you to move to matter-centricity, accelerate your adoption of matter-centricity, or fine-tune your current matter-centric environments to improve the user experience and further address administrative and compliance issues. These concepts are not meant to be specific how-to examples, but rather to highlight some potential pitfalls and opportunities further down the MCC road.

Advanced Matter Publishing Concepts

"Publishing" is the act of creating "shortcuts" to workspaces in an individual user's My Matters container. Shortcuts can be organized in folder-like containers called "categories," which themselves can contain any number of subfolders or subcategories. Publishing schemes can be maintained for actual (human) users or for "pseudo users." Pseudo users are user accounts created within the system to "own" workspaces

and have their account's My Matters container serve as the "master" organizational structure for the matters owned by the pseudo user.

For example, an `_LITIGATION` user account can be added to the system, and all litigation workspaces will be owned by that user and organized under its My Matters. The underscore at the beginning of the name forces the pseudo user to the top of name selection lists and makes it clear these are not human users. Human users who work with litigation matters can be subscribed automatically to the `_LITIGATION` pseudo user's My Matters, so that they can see the exhaustive listing of matters. Security can be set up so that the human users cannot damage or alter the master organizational structure of categories and shortcuts under the `_LITIGATION` user's My Matters. And since there is only one copy of the structure that users "subscribe" to, the system is faster, more efficient and easier to maintain. That's equally true for all users, minimizing potential training and support issues, although security can be applied to these master structures in such a way that sensitive matters can be hidden from specific users or groups, allowing the identical master structure to appear different ways to different users.

Horizontal Matter Browsing

Category or subcategory names can be determined by metadata values on workspaces, by data coming from an external source, or by predefined alpha-numeric sorting "splits," such as "A-C," "D-E" and so on. These splits can be associated with any specific property on the workspace, such as the Name, Description, Author, Client and Matter, or values associated with the matter that are coming from an external data source but are not actually applied to the workspace, such as Responsible Attorney, Billing Attorney and Next Action Date.

By using multiple jobs to publish workspaces based on different organizational criteria, it is possible to create and continuously, automatically maintain exhaustive organizational structures of matter workspaces using multiple different organizational schemes. To extend our litigation example, the `_LITIGATION` user's My Matters could have root-level categories for:

Matters by Type

Matters by Responsible Attorney

Matters by Client Name

Matters by Status

Matters by Year

Obvious subcategories one or more levels deep can be added under these top-level categories, allowing users an intuitive way to browse to specific matter workspaces, and to reduce the maximum number of bottom-level shortcuts to a reasonable number, which improves system performance and eliminates the need for the user to scroll through a long list of shortcuts. Multiple criteria can also be used to build organizational structures:

Matters by Type and Year

Matters by Responsible Attorney and Status

Matters by Client Name and Matter Name

Alphanumeric sorting categories can also be added at the lowest level, or above any level that is driven by dynamic data at a lower level. For example, one "slice" through this hierarchy could look like this:

- Matters by Responsible Attorney and Year [One of several top-level Categories]
 - A – C Attorneys [Alphabetical Sorting by Attorney Level]
 - Chaplin, Charles [Attorney Name Level]
 - 2004 Matters [Year Level]
 - L – M Clients [Alphabetical Sorting by Client Level]
 - Looney Tunes vs. Merry Melodies [WorkSpace]
 - [Structures and Content within the WorkSpace]

All of these levels' names, sublevels and content can be determined, generated and maintained automatically.

While one of the main goals of this type of system is to provide users with an alternate way to find matters (as opposed to searching), an interesting side benefit is it allows users to browse similar matters and find content from a different matter which may be useful for their current needs. Users' ability to leverage and reuse existing content, review research for similar issues, see how similar matters were resolved, and so on is greatly enhanced. "Horizontal" browsing is not really possible without these types of structures. Another result of these types of organizational structures is it can present data in meaningful, active ways only previously possible by running reports against various data stores. For example, it becomes easy to see what matters were opened in specific timeframes, who represented specific clients, who does the most work on a specific type of matter and so on.

Integration with Matter Management Systems

Aside from the pseudo user method of publishing exhaustive listings of matters as listed above, an alternate or additional publishing scheme can be used to manage matter workspace shortcuts in the individual human end users' My Matters containers. Here again, shortcuts can be organized in multi-level categories and subcategories if desired, creating levels based on data associated with the matter workspace itself or coming from a supplemental data store. This scheme can be used to continuously add shortcuts to a user's My Matters container as the new matters are created and assigned to them, as they enter time against the matter in a timekeeping database, or as they create documents associated with the specific client and matter metadata values. These are obvious ways of giving users a quick "go to" list of matters that are of interest to them, which can be continuously and automatically maintained.

By defining publishing schemes that create categories in a user's My Matters for matters that have key dates occurring in the near future, users can have a "To Do" list of matters maintained for them automatically.

Since data coming from external systems can be used to create and maintain these personalized structures, additional benefits can be realized for firms or practices that use matter management systems, especially those that track future event or task dates. Intellectual property and litigation practices commonly use these types of systems, as do real estate and immigration to a lesser degree. By defining publishing schemes that create categories in a user's My Matters for matters that have key dates occurring in the near future, users can have a "To Do" list of matters maintained for them automatically. Additionally, if the matter management system includes the ability to update the status of a task or flag a task after it has been completed, and the user provides this feedback to the matter management system when they have performed the task, the workspace shortcut can be removed automatically from the to do list category. In this way, the matter-centric structures can reflect a matter's progress in the matter management system, leading to better intersystem cohesion and coordination, and greater user efficiency.

Matter-Centric "Zone Control"

A workspace itself may contain different hierarchical structures or "objects" such as Tabs, Folders and Searches. Tabs may contain additional folders and searches, and folders and searches themselves may contain subfolders and subsearches in any combination. (Despite the fact that some exotic structures can be implemented, various best practices technical and usability concepts argue against implementation of these structures.) Typically, security settings applied to a specific object will regulate whether users have the ability to add, remove or modify the object, its contents, the structures under the object or those structures' respective contents. For example, a specific folder under a tab in a workspace may be set to allow specific users or

groups to add documents to and remove documents from the folder, and to modify the folder's security and metadata properties. The side effect of this is that those specific users or groups will also be able to add *ad hoc* structures to the folder, which may violate a firm's matter-centric architecture design guidelines.

To get around this issue, it is possible to define management "zones" within a workspace, where the creation of *ad hoc* structures may be permitted for specific dynamically-determined users or groups. These zones and the user and group permissions within them can be completely independent of the actual security applied to the objects. Structures created by users or groups other than those who are expressly allowed, or by users or groups that are expressly disallowed, will be deleted, and the content filed in those structures relocated to permitted locations within (typically) the same workspace. A specific user or group may be allowed to build their own structures anywhere within the workspace, and other users or groups may be allowed to build structures within a specific tab and so on. Zones may overlap or be subsets of other zones. Zone control allows for controlled flexibility in *ad hoc* workspace structures without affecting security.

MCC management tools can help system managers and administrators adapt to changing user needs, and soften or eliminate some of the perceived harshness of a centrally-managed MCC architecture.

Advanced Content Provisioning Strategies

Various tools are available to add documents to folders or provision the folders with the documents or content that should go into that folder. Provisioning jobs can run continuously to monitor how users are storing content within the MCC system, automatically adjust content placement and apply appropriate metadata and security values to the content based on the new filing location.

Managing Unfiled Content

MCC systems can be implemented to severely restrict users' ability to store content without storing it in a container (typically a folder). For a number of reasons, however, most commonly legacy or transitional needs, it is not unusual for users to have the ability to store content directly in a database, without "filing" it in a folder, or filing it in a legacy folder that exists independent of any matter-centric workspace. Unfiled content may also come into being (temporarily) if the MCC containers where the content was stored are deleted for one reason or another (such as zone control, as mentioned above).

Provisioning jobs can be run continuously, on specific schedules, or triggered by external events to:

Identify unfiled content

Identify where it should go

Move the content to the appropriate container

Refile the content to update its metadata and security to match the new filing location

These steps are fairly easy if the user has attempted to be accurate with the manually-provided profile metadata but can be problematic if generic metadata was used. Fortunately, if content was stored in a matter-centric container that was deleted, the metadata and security will probably be correct. In other words, if a user has profiled the document correctly, or the profile is otherwise correct, it is a simple matter to find the correct workspace and folder and add the document to the folder. If the profile is "generic," it still may be possible, with the correct tools, to attempt to identify a probable filing location for the document using full-text criteria from the document itself. For example, a document may be provisioned into an appropriate folder if the document contains unique client/matter information in the body of the document or the description in the profile.

Managing Misfiled Content

Similarly, it is possible to determine where content may be stored if the profile data, for one reason or another, does not match the folder where it resides. Care must be taken to ensure that this is genuinely "misfiled" content and not purposely nonconforming content. Misfiled content can be easily relocated to the appropriate location using the same type of process as the process outlined above, the only difference is how the job's defining data is gathered. In some situations, a single reprovisioning job can handle both unfiled and misfiled content. Before running these types of jobs, however, simple reports can indicate whether some users are developing their own "hybrid" filing schemes, and are purposely overriding MCC structural metadata with manually-applied metadata (if the system design permits this). If there are reasons for overriding metadata, this may be an indication that these users may need zone control of their workspaces to craft appropriate structures for their personal uses, or that fundamental workspace template design modifications are necessary to add these new structures to all appropriate existing and new workspaces.

MCC management tools can help system managers and administrators adapt to changing user needs, and soften or eliminate some of the perceived harshness of a centrally-managed MCC architecture.

Migrating from One Metadata Scheme to Another

It is not uncommon for a firm to realize, through analysis of actual document metadata — or through the epiphany of achieving a full understanding of the power of matter-centricity — that current (legacy) metadata schemes are no longer necessary and can be substantially simplified. Through a series of provisioning, refileing and reprovisioning jobs, it is possible to rapidly migrate documents from a legacy scheme to a new scheme without too much difficulty. Conceptually, the steps include:

Create folders for each unique legacy metadata value that will be preserved or for each grouping of legacy metadata values that will become a single new value, and provision these folders using one or more defined content searches. Note that multiple searches can be defined to provision any kind of folder, including full-text searches, to attempt to reduce the number of documents that require manually refileing due to having generic metadata values.

If necessary, refile the folder as part of the same job to update the metadata values on all of the content now stored in the folder to reflect the new values.

Note that this type of scheme can be optimized as part of a “cascading” provisioning scheme, where a folder with very generic metadata values (e.g., client and matter values only) can be provisioned first (or last) to contain all content for that matter (excluding content that is already in the workspace). The provisioning of subsequent folders can then move content out of this generic “catch all” folder, and move it to other more specific folders (refiling the content to update metadata if necessary). Any residual documents left in the generic folder will be ones that contain metadata values that are no longer supported, phased out but not reassigned to new values or too generic to be properly identified automatically.

Managing Unusual Tasks

Workspace creation and modification and all other aspects of MCC management are data driven. This means definitive information about matters, matter structure, metadata, security, user access and more must come from one or more data sources that have at least one distinct data element overlapping between any two sources. It is necessary to have some “linking” factor to identify the correct data from one data source based on how it relates to data in another data source. For example, Client, Matter, Matter Type and Responsible Attorney information may come from the accounting database. The Matter Type value can be used to issue a query to a different database to get structural information, client/matter values can be passed to an ethical wall database to get security values or to a time entry database to get data for workspace publication. While this provides for a great deal of flexibility in pulling data from completely different databases on different servers (e.g., accounting, time entry, conflicts, ethical wall, matter management and other databases) for different purposes and synthesizing this data in the MCC architecture, there are a number of pitfalls:

Garbage-In, Garbage-Out. It is not uncommon to start rolling out an MCC environment using data that has been meticulously entered into a database for years, such as matter types in an accounting system. But other than for perhaps casual management reports, this data has never been used for any substantive purpose. Such data can now be crucial to the initial template selection and, consequently, the structure and location of workspaces as they are created. If this data is incorrect, major changes and reworking of workspaces may be required. It is best to review the data first and perform trial roll-outs of new jobs before production.

Poor Data Capture at Matter Initiation. The garbage-in, garbage-out phenomenon can be caused by inadequate emphasis on correct data capture when new matters are initiated. To say that a specific matter will “probably” be assigned to a specific attorney or practice area is fine if the actual probability is high that the data is correct. However, if it is common in the firm for matters to be initialized then switched from one attorney to another (which may have little or no impact on the end result in the MCC system) or from one practice group to another (which may have a severe effect on the MCC system), special provisions will need to be made to correct the results of this inaccurate data input and how the

MCC environment is impacted by what can only be labeled a poor business practice. Too frequently the excuse for too rushed or too casual data entry during the critical matter initiation process is simply “we have always done it this way.” Sometimes a little care and consideration, possibly augmented with the application of appropriate technologies (such as business process management, workflow or matter intake and initiation systems), can go a long way toward eliminating unnecessary rework of MCC structures, reducing user frustration and improving efficiency.

The Matter of a Thousand Faces. While some MCC management tools support creating “hybrid” workspaces that allow a workspace to be “retasked” from one matter to another or one matter type to another, the reuse of an existing matter for a significantly different purpose can lead to MCC management issues, as well as possible records management and other administrative issues. For example, a matter can start out as a real estate matter and be initialized with real estate-specific structures and be used by the real estate practice group. Later, litigation may become involved with the real estate matter. Then, rather than creating a new matter (or submatter), the existing real estate matter is “extended” to incorporate the new needs for the litigation practice group and users. This can create unusual structural and security issues within the workspace which may or may not be easily be addressed depending on the MCC management tools being used. More severe situations can arise with “master” matters, that are really client-level workspaces (usually, of course, for very important or “anchor” clients), which attempt to contain multiple matters as some type of structural subunit of the master workspace. While “client-centricity” is more common in accounting and other non-legal professional services environments, it is difficult to mix fundamental organizational schemes without extensive exception handling, which can be difficult to administer over time.

Keep Your Balance

Keep in mind that these are generalizations that may present severe issues in some environments and may be completely irrelevant in others. The critical issues to consider are how to achieve a balance between data, process and the tools used, to efficiently maintain an effective matter-centric architecture. As the base platforms and tools become more powerful, new capabilities will arise to further enhance the power, flexibility and efficiency inherent in matter-centricity.



by Nikki Swartz, Freelance Writer

:: The Use and Misuse of Information

New Rules for E-Discovery

Last April, the Supreme Court approved amendments to the U.S. Federal Rules of Civil Procedure (FRCP) regarding e-discovery, which govern civil procedures in U.S. courts. The amendments apply not only to businesses, but also to any litigant in federal court, including nonprofit organizations, individuals and even the government itself, according to John Montaña, general counsel, Cunningham & Montaña Inc.

While the amendments will not change the way businesses do business, experts say they may affect the way they currently organize, maintain, alter, delete and archive electronic information. They also may make it easier and less costly for all organizations to manage and store such information.

“What they will do is impose a bit of order and reason on the process by which information is produced for lawsuits,” Montaña explained. “Depending upon how the courts apply the rules, there could be cost savings to litigants, since courts would be in a position to more actively limit discovery demands being made upon parties if the court determined that the costs were unreasonable compared to the benefits.”

The amendments aim to make the guidelines clearer for companies and, specifically, for those who handle discovery requests for electronic information, such as corporate attorneys, information technology departments and records managers. And they are dealing with these issues more frequently. In its 2005 Litigation Trends Survey, law firm Fulbright & Jaworski found that 90 percent of American corporations are involved in litigation, and the average \$1 billion U.S. company faces 147 cases at any given time. According to the survey, litigation costs these firms an average of \$8 million annually. In addition, e-discovery

was named as the top new litigation-related burden for companies with revenues of more than \$100 million.

Time will tell if the new rules will ease that burden.

The New Rules

Rule 16: The Pretrial Conference

First and foremost, the FRCP amendments introduce the term “electronically stored information” (ESI) into organizations’ discovery lexicons. What the term encompasses is not spelled out but can be interpreted to include everything from program files and voice mail to e-mail, websites and instant messages. The new rules recognize ESI as a category subject to discovery, distinct from paper documents.

Amended Rule 16 requires the two parties involved in civil litigation to meet in a pretrial conference within 30 days of the filing of the lawsuit to determine how to handle ESI. During this meeting, the parties must identify what data is “accessible” for the purposes of the legal proceedings, as well as agree on which records will be shared and in what electronic format (usually the original format in which the data is stored).

This meeting should establish the ground rules, or parameters, for the entire case concerning the production of ESI and the preservation of evidence.

“That conference is an opportunity to educate the court as to the realities of electronic discovery in terms of difficulty, cost and inconvenience and to give the court the opportunity to set reasonable discovery limits for the case based upon those realities,” Montaña said. “Smart litigants will plan to take advantage of this and begin to locate

personnel within their organization to assist in this process and begin to develop a plan for presenting the issues at the conference and educating the judge so as to obtain reasonable discovery limits.”

Rule 26: Privilege, Disclosure, Discovery Scope and Limitations

This rule addresses initial disclosures, discovery scopes and limits, and claims of privilege or protection of trial-preparation materials. It specifies that parties must disclose ESI as well as hard copies that may be used to support its claims or defenses.

Under this rule, parties must produce ESI that is “relevant, not privileged and reasonably accessible.” Rule 26(b)(2) recognizes that it may be especially costly and/or burdensome to access and retrieve certain sources of ESI and defines this information as “not reasonably accessible.” A party is not required to produce ESI from sources that are “not reasonably accessible” because of undue burden or cost, provided the party “identifies” by category or type those sources to the requesting party and justifies why they are “not reasonably accessible.” But, of course, a court can always order a party to produce the information anyway.

The Standing Committee Report provides several examples of “not reasonably accessible” data:

Magnetic backup tapes

Unintelligible legacy data

Fragmented data after deletion

Unplanned output from databases different from designed uses

However, the rule stipulates that a party’s identification of sources of ESI as “not reasonably accessible” does not relieve it of its preservation duties. In addition, not knowing the contents of media does not make it “not reasonably accessible.”

Even if a source of ESI is identified as “not reasonably accessible,” the requesting party still can access the data by showing “good cause” for doing so, or the importance of the information to the case. According to the rule, “The decision whether to require a responding party to search for and produce information that is not reasonably accessible depends not only on the burdens and costs of doing so, but also on whether those burdens and costs can be justified in the circumstances of the case . . . The requesting party has the burden of showing that its need for the discovery outweighs the burden and cost of locating, retrieving, and producing the information.”

To work out such issues, the new amendments ask parties to meet before the required pretrial conference to discuss details related to preservation obligations of discoverable information. Early discussion and preparation is critical; Rule 26 (f)(3) directs the parties involved to also create a discovery plan that may include:

Where discoverable data is located

How ESI is preserved

The time and cost involved in retrieving ESI

How ESI can be searched and retrieved

What data is privileged

In what format ESI can be produced

In addition, electronic files contain information not visible to the creator or reader that may be discoverable, such as draft language, editorial comments, embedded data and metadata. The rules provide little guidance as to this type of data, and so parties will want to discuss it during their early conference and add it to their discovery plan.

As for privilege, this rule requires that a party asserting a claim of privilege or protection after production give written notice to the receiving party. After receiving notice, each party that received the information must promptly return, sequester or destroy the information and any copies it has. The rule also acknowledges that the volume and informality of ESI make privilege more difficult, expensive and time-consuming.

Rule 37: Safe Harbor Provision

Rule 37(f) stresses the importance of establishing the routine, good-faith operation of an information system. “Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide ESI lost as a result of the routine, good-faith operation of an electronic information system.”

The rule creates a preservation “safe harbor” against sanctions for loss of electronic data due to the normal operation of computer systems no penalty is imposed for failing to preserve data in systems that routinely update or overwrite data. Also, the new rules do not hold a corporate defendant liable for failing to produce records if the company made a “good-faith” effort to set a retention/ deletion policy. It is important to note, however, that while a company can delete data according to its established policy, deleting information in anticipation of litigation is not acceptable.

How Will the New Rules Affect Companies?

According to *Computerworld*, some U.S. states — including New Jersey — already have implemented the new FRCP amendments. Others, such as California, Maryland, and Texas, either have existing e-discovery rules in place or have adopted some or all of the new rules.

No matter where a company is located, the new FRCP amendments will most likely affect it. However, according to independent consulting firm Socha-Gelbmann, many organizations are not sure how to handle e-discovery under the new rules. Many, especially those in industries where litigation is commonplace, are hiring experts to develop e-discovery strategies for them.

Certainly, the amended rules will raise the e-discovery stakes for all businesses. Every organization should take steps now to ensure that they are managing and saving ESI — and all potentially discoverable information — properly, in the event that it is ever involved in a civil case.

Experts say those steps include the following:

Make sure the entire organization is committed to meeting litigation requirements. A company’s compliance policy should cover the entire corporation — including every single employee

Document or put the ESI retention policy into writing. The new FRCP amendments mandate that saved data is preserved as well as disposed of in accordance with stated policies. In addition, implementing and following a written policy is critical to establishing “good faith”

Employ an electronic content management system that enables the company to collect and centrally control current as well as legacy data

Be able to identify what ESI is “reasonably accessible” and what is “not reasonably accessible”

Manage information — in all forms — as potential evidence. This requires a comprehensive data retention/deletion policy and an e-mail archiving system. Also, the automatic deletion function for e-mail must be capable of being disabled, if necessary.

Store only the data that is needed — not more or less — to avoid further legal liability

Catalogue legacy tapes and know what is there

Ensure outside counsel is aware of and understands the company's retention and deletion policy

Establish a scheduled, predictable routine for retention and deletion that is tied to the records management policy.

Above all, while companies should be prepared, they should not panic. Montaña said it is important to keep in mind that the changes to the Federal Rules do not represent a fundamental shift in the way things are currently done. Rather, they attempt to address, in a very general and tentative way, a few of the problems with e-discovery.

“They are very cautious changes, and subject in every case to the discretion of the judge handling the case,” he explained. “They will, at best, make discovery of electronic records somewhat less costly and difficult; at worst, they will accomplish nothing.”

Ultimately, Montaña said, the real effect of the FRCP amendments may in fact be determined by the courts and whether judges use the opportunity to control discovery.

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by David B. Steward of Blackwell Sanders Peper Martin

•• If It Walks Like a Duck

Voice Mail and Other Conundrums

Is voice mail a record? Many colleagues have posed this question. And since the heady days of digital recording of telephone calls, this issue has exploded to include instant messaging and other forms of digital and analog communication.

Foundation

Let's begin with a common understanding of some basic terms. What is a record? A record is any form of information that is created or received for business, legal, regulatory or evidentiary purposes.

The Cornell Law School provides a governmental definition for a record on their Web site (www.law.cornell.edu). According to United States Code (44 U.S.C. 3301), records are defined as

“...all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.”

Voice mail can be defined as any form of recording telephony. This can be analog or digital. Newton's Telecom Dictionary defines telephony as, “The science of transmitting voice, data, video or image signals over a distance greater than what you can transmit by shouting.” (Flatiron Publishing, New York, 1998). A voice mail system is defined in the same resource as “a device to record, store and retrieve voice messages.”

Whether the device is analog tape or bits in a CPU, any technology that records information transmitted by a human speaker can be called voice mail. The latest versions eschew stand-alone systems. Instead, messages are viewed and retrieved via integration with the e-mail management application.

In addition to voice mail, there are other technologies growing in popularity. Instant messaging is projected to overtake e-mail in volume. It is not unusual to see teens sending text messages to someone standing in the same room! Is the change in our communications environment so great that it can be deemed a paradigm shift?

What does all of this mean to the original question, “Is voice mail a record?” Any conversation concerning voice mail must be enlarged to include all such methods of capturing and retrieving information. Even devices as innocuous as an iPod should be considered. It is the ability of a device to capture data that is imperative to the original question.

Exploring the Issue

With this in mind, how does any data or information become a record? Isn't this a critical factor in determining whether or not voice mail is a record? Consider the requirements.

According to the definition of a record above, just about any “thing” can become a record. The critical element is “...materials, regardless of physical form or characteristics....” This even includes concepts which have innate value. Concepts of this nature are usually termed “intellectual property.” While most people think in terms of paper and files, any medium (including ideas) can become a record.

Why does it become a record? If anything can become a record, why isn't everything a record? There is a reason. Consider the rest of the

definition. It is the value of the item that determines the relevance. While the Cornell Law definition leans toward government as a deciding factor, the elements of legal/regulatory compliance, business transactions, operations or evidentiary are all reasons for declaring information to be of records value. And only one of these factors is required to change the value of information. For example, a document that demonstrates a business transaction but has no operational, legal or evidentiary value is still a record.

Keep in mind that the value of information and records changes as time and events change. Simple banter in an e-mail exchange can seem quite innocuous. But if the object of that banter feels that the content is harassing, those same e-mail messages can become evidence in a court case. And this is the core of the issue: The value of the content determines the records quality, not the medium.

Resolving the Issue

Once again, the question is posed, “Is voice mail indeed a record?” Yes, no and maybe. It all depends on the current and potential value of each message. No one can or should develop an opinion of records value based upon the type of media or application. The process of identifying records should be to examine the content of the information.

All of this applies equally to instant messages, text messages and any other content that potentially contains records-quality material. A colleague related a situation where employees were using iPods to download personal identity information from company systems for the purposes of identity theft. Again, any device that can store information can be a device that contains records.

A popular solution for e-mail management is to utilize e-mail archiving. This process reduces volume by de-duplicating messages. In other words, if more than one of the same message comes into the archive repository from different sources (users), the archiving software eliminates the duplicate message content. The message metadata (the “envelope”) is retained and a pointer connects the message metadata of multiple items to the single message content.

This is an efficient and beneficial strategy. But it should not be considered records management, as there are several missing elements.

A records approach begins with proper identification of the content. Consider the following example:

John Doe has a voice mail box on the company system. He’s like any other employee. Messages come in all day long; and some are as simple as sales calls or discussions about lunch; but others contain important details like contract negotiations and responses to bid requests. Still other messages are conversations about potential business deals, and there are exchanges with customers to clarify support expectations.

All of this goes into a voice mail archive system 10 days after the messages are received or sent. Duplicates are eliminated. The system creates a location for John Doe’s voice mail. Perhaps the company even purges messages at predefined aging intervals.

Looking at the example, where is the organization of messages by content? What if a lawsuit occurs concerning just one contract

conversation in one voice mail message? What if that same suit involves communication among multiple parties contained on multiple messages regarding the same contract? Identification and retrieval of these items is a labor-intensive job. Until it has been completed, the opportunity exists for some of the items to be deleted.

Thus, another need for the archive system is to secure selected messages against edits and deletion. This is known as a “legal hold.” Whether for legal, tax or regulatory purposes, a legal hold suspends any activities with select records until such time as those purposes have been satisfied.

Please don’t jump on the bandwagon of those who decide to “keep everything forever.” Aside from the cost and confusion associated with such a plan, courts are not impressed with organizations that put so little time into protecting their information assets. Precedent exists for courts to declare that such an organization has no program and to assess sanctions against them.

And does the company really want to preserve junk? What about the lunch messages? Is it possible that the content contained within a “keep it forever” system is just as likely to hurt the company as to help it?

Wrapping It Up

Everyone still uses paper to some degree. How does a company decide which paper to keep and which to throw away? According to the color of the paper? Imagine a procedure that stated, “All blue paper will be destroyed 30 days after it has been sent or received.” People would laugh at such a suggestion. The key is the content of what is on the blue paper.

But isn’t this the same approach that is most commonly used for voice mail and other digital communication systems? The example above concerning voice mail is equally applicable to instant messaging and text messaging. It’s also valid regarding any systems that have not yet been developed but will impact people’s lives and business operations in the years to come.

Who will do it? I suggest that the initiative is a joint effort between records/information management and information technology professionals. Consider joint planning on technology before it becomes a part of the information environment. Compile a checklist of issues that must be answered before anyone gets to use a new application. Before a single byte is stored, know who will use it, what it will contain, how it will be profiled and how long it must be retained. Determine what it will take to apply a life cycle approach to the content the day it goes online!

As incredible as it seems, a records professional once shared her strangest records scenario. Her eyes rolled as she admitted that a cat box — a used cat box — was declared a record! This cat box still had the fouled litter and any “other items” that were in it at the time it was seized as evidence. The law firm where she was employed really did have to retain and protect this item as physical evidence until the case was completed.

There is a lot that stinks and fouls information systems in most companies. Much of it exists in voice mail and other communication devices. While no one is going to volunteer to “clean” the voice mail box, it is better to scoop today than to live with the growing odor of a poorly managed system. Consider the old adage: “Control it, before it controls you.”

by Leigh Isaacs of Heller Ehrman LLP



:: Moving Records Out of the Back Room

What you are about to read will not be found on the cover page of a supermarket tabloid or on CNN. Nonetheless, Heller Ehrman's story should be EXTRA! EXTRA! newsworthy to you. It's about how our law firm's records department, historically plagued with being a back-office operation, has gradually worked its way to the front row.

Heller Ehrman is a multi-office firm with some 700 attorneys and an equal number of support staff. Prior to my current position as Firmwide Records Manager, my entire career had been in the legal services industry. But thanks to a twist of fate, I found myself in records management. I knew immediately that I had a lot to learn about files, folders, taxonomies and retention, and I needed to learn fast.

With so many valuable resources available, I went into a reading frenzy. And I sought out peers, peppering them with questions like: How did you come to be in records and in your current position? How long have you worked in law firms and in records? What are your challenges? Organizational structure? The kinds of technology you use? And throughout my exploration, I kept seeing this common theme: Records is not always recognized for the value it adds. It's usually viewed as an afterthought, a function people equate with such necessary evils as tax filing or dental hygiene.

The Typewriter Days

When I began my law firm career 22 years ago, managing records was pretty much a primitive process. Filing structure varied by attorney and/or secretary and usually consisted of a redweld bucket file and manila file inserts with labels hand-typed in no particular form from a typewriter. There was no structured records department. No records procedures or training. And no discussion of retention or risk management implications.

But over time, as the Information Age blossomed, awareness of the value and justification for organized records increased, and a new approach to file management, one of organized, standardized processes, began to emerge. Records departments were now dealing

with tremendous amounts of paper. But there was not yet an infrastructure to handle it. There were no WANs or LANs, and most electronic data and documents were maintained on floppy disk. Records staff accepted documents, and they filed them. This, along with file deliveries, file shifting, file room organization and offsite storage management, were the team's primary responsibilities.

Changes in technology brought about more changes for records staff. Roles began to extend beyond those of filers, keepers and retrievers of paper. Electronic records management systems drove the need to use and understand computers and to migrate away from hardcopy notebooks and index cards. Yet there was — and in many firms continues to be — a disconnect between the records departments and IT. And more often than not, the records department is aligned solely with operations.

One Table, Many Chairs

But at Heller Ehrman, we decided to do it a different way. Information technology, information resources (which includes records) and practice support are all collectively part of one organization that reports to the chief information officer. Information resources represents records, library, docketing and new business. The practice support department consists of software application and case management experts who assist with technology-related case management issues. This structure has allowed records to have a seat at the table. It has also given the opportunity for us to have a voice and participate in regular departmental meetings. Three big advantages of this structure are the ability to:

Establish communications and forge important relationships with others within IT and practice support

Remain up-to-date on current and proposed projects, allowing records personnel to interject and participate in projects when others may not intuitively think to include them

Know the "bigger picture" of departmental activities, projects and firm goals and objectives

Our firm has also established an executive advisory committee, led by the firmwide records manager, which focuses on records management issues and initiatives. This not only helps raise the awareness and importance of records to others, but also allows us to maintain a pulse of current issues throughout the firm and steer our focus and records resources in a direction best suited to the firm's needs and goals.

In addition, we've adopted the concept and use of practice services centers in addition to, or in substitution of, traditional case rooms. These centers are designed to be flexible workspaces for the management of active matters. Hard copy discovery documents are tracked and managed through our records management system (RMS) from the time of arrival until the close of the matter. The configuration provides that records and paralegals/case assistants work jointly to maintain the center and the fluid movement of files. Technology has also increased the visibility of records within the firm in ways that were unanticipated.

Because we work on many large matters staffed across several offices, we concluded it was imperative to have a user-friendly records management system that would provide access to information by all users. Our records portal allows any firm employee to access records information from any computer connected to the firm's network. A recent upgrade to the system has provided the ability to include more document-level information that is not only relevant to records staff, but also to those in charge of managing documents involved in active matters. So how has all of this contributed to records earning a seat at the table? Several initiatives have given records an opportunity to step forward and prove their value to the organization.

In mid-2006, we centralized our patent docketing process, incorporating a method in which documents would be quickly available and easily retrievable by attorneys and staff. Documents are indexed and imaged into our RMS. A dedicated records clerk was incorporated as part of the central patent docket process to assume the responsibility of coding and imaging the documents.

Extranet — Extra Advantage for Records

In addition, in late 2006 we launched our new extranet, called Heller Ehrman Advantage. How does this involve records? Our extranet was designed to leverage information that is contained within the firm's core systems, and one of those core systems is our RMS. Users are able to publish documents that have been electronically indexed and stored in the RMS directly to the extranet site, allowing both internal and external users to view them. Documents typically published to Advantage include, but are not limited to, pleadings, correspondence and agreements.

Even as our new extranet was being designed, few of us foresaw the impact and visibility it would provide to the records department. But having necessary information and documentation available on the extranet relied on having up-to-date, accurate information coded and imaged within the RMS. Thus, we quickly realized the value records could bring to the support of the process. Tasks previously performed by paralegals and case assistants could now, in many instances, be transitioned to records. With minimal direction, records is now able to code and image documents to the RMS and take that extra step to publish the documents to the extranet. Because this configuration and process has been so successful, Advantage is now used as a very effective internal case management portal and is not just for external client access.

It is clear that in such a situation it's advantageous for records to be considered an extension of the case team and kept apprised of activity and the needs and demands of the group. Paralegals and case assistants are then able to use their time to focus on those areas in which they bring the most value with billable activities.

Free-form databases have historically been used to manage our larger litigation cases. While they have provided much flexibility with generating daily reports containing pleadings and correspondence (daily distributions) and allowing for quick searching, sorting and retrieval of information, these databases are unregulated and difficult to monitor and manage. They often require a significant amount of assistance from practice support. There are no mechanisms in place to automatically monitor activity and retention of the databases and the information and documents contained within them. It is also less than ideal that these databases cannot be easily accessed across offices or by individuals working remotely.

It was determined that the same documents that were maintained within these databases could and should be indexed and imaged within the RMS. Issues with compliance were twofold. A majority of these databases were maintained by case assistants and paralegals. The time they recorded for document coding was frequently written off and never recovered. Additionally, it was not cost effective for the double-entry of data, so documents and images would be entered into the database but not into the RMS, thereby creating the risk of not managing documents properly.

Reporting for Duty

Heller Ehrman has developed a reporting system that leverages the information coded into the RMS that also allows for the generation of daily distributions, pleadings and correspondence indices. This system, combined with the additional document data allowed to be coded with documents in the RMS, also provides for detailed searching and sorting so that documents can be easily located.

Reports can be exported in multiple formats, including Excel, .tif, .pdf, .xml, .csv and Web archive so that information is easily distributed and available to those working from a computer or from a portable device. Subscriptions can be established to automate the report generation and export process, thereby providing users with flexibility on how they'd like to manage their workflow and report generation. Automating the process has the potential to save valuable time by alleviating the need to manually generate reports on a daily basis.

Data entered into the RMS is available in real time, so reports can be generated with up-to-date information immediately after entry. Once again, the records department has an opportunity to assume the responsibility for the processing and coding of documents to support the reporting process. Records also uses these reports to generate pleadings and correspondence indices for inclusion in the file when updates are necessary.

Records Arrives!

As we began working on the pilot of the reporting system, an attorney informed me, almost apprehensively, that having a records staff member appointed as a member of their case team would be critical to success. While he felt his request was an imposition, I instead realized that "records has arrived."

Leveraging information in our RMS also minimizes the need to send electronic documents individually. The former practice resulted in creating multiple versions of documents sent to multiple people, which in turn took up valuable space on our e-mail server. The need to send multiple PDFs via e-mail is alleviated by the reporting solution. Records and documents are held in one location rather than on various local and network drives, ensuring the more steadfast application of retention rules and increasing the ability to capture all documents in the event of a request for transfer of files or litigation hold. Our reporting tool also provides us with another avenue to close potential risk management loopholes by including our docketing department on distributions. Driving documents to the RMS for case management support helps achieve seamless records compliance without users realizing that they are complying with records and risk management procedures.

Of course, it takes a community to raise and support a records department; the records folks can't truly be successful in providing the beneficial and sometimes crucial key services if they are left to go it alone. So here are some key points to consider for fostering the visibility and value awareness of your records department:

Management support. If executive management doesn't recognize the importance and value of records, it's difficult to reinforce to others in the firm that records management is important. It's also next to impossible to get the support you need for initiatives.

Strong interaction with other departments. There is no limit to the benefit records can gain from establishing relationships and having direct communications with others. Law firm records managers need to forge partnerships with paralegal management, knowledge management, new business, docketing and various members of IT, including application services, network operations, practice support, training department and the helpdesk.

Visibility and exposure to those you serve. Don't be an island, and don't act alone; partner with the people you support. Take the time to find out how they work and what they need to make their jobs easier. Perhaps you can't accommodate every request, but you can try, and the realization that you are making an earnest effort to listen and establish methods that work goes a long way to fostering a collaborative relationship.

If you are a multi-office firm, your work doesn't stop at the firmwide level. Establish venues in local office in which to openly communicate with management.

Maintain support from, and a direct line of communication with, general counsel. Unexpected risk management issues arise frequently. Partnering with general counsel can speed resolution and allow records to act and respond quickly.

Build a knowledgeable, highly-skilled records staff. While it would seem to go without saying, it needs to be said: Your records staff needs to be educated and to buy in to the vision and direction of the firm. The phrase "put your money where your mouth is" has relevance. It takes a significant amount of investment to raise the awareness of the value that records can bring. You need to be able to support what you are marketing. Your records staff need to be problem solvers, communicators and trainers. They need to be

solution oriented and be committed to providing a high level of customer service. Records personnel are not merely movers of boxes and files. They are information workers who require sharp technology skills and a good understanding of case management.

Provide your records department with the information and training they need to do their jobs effectively. Records clerks should have not only knowledge of records management, but also of the work they are supporting. This puts them in a better position to make a positive contribution when there is a thorough understanding of the importance of their work and the relevance of each task they perform. Basic understanding of the litigation process can be the difference between a document being indexed properly or improperly. Also, it is critical that they are properly trained on the technology they are using.

Don't let setbacks derail you from your goal. Rome wasn't built in a day, and neither can we force individuals who have become accustomed to a way of working to change their thinking overnight. Find your champions. Remember them during times of discouragement, and leverage their support by encouraging them to speak to their peers.

Build a better mousetrap, the world will beat a path to your door. By doing your research in advance, having proper support and establishing key relationships, you increase your chances of building that better mousetrap. Although training and communications are key, there is no substitute for having the office chatter include discussions about how your solution really works.

We're still in the early stages of our quest to determine all the ways in which records can provide value. Next steps for the firm include the implementation of a document delivery solution that will make use of our existing multi-function devices to save scanned images of documents directly to our RMS. Once this is incorporated, the process of maintaining our existing initiatives (central patent docket, extranet and reporting) will evolve one step further by creating new efficiencies and allowing the entire process to move along more expeditiously.

Records continues to work closely with our end users to ensure that we are supporting their needs appropriately, and we're always on the lookout for areas where we can improve. Focus groups continue to be used as a tool to gather information and facilitate and encourage communication.

No Going Back to the "Back Room"

While records still performs all of the tasks our "ancestors" did years ago in the back room, new responsibilities and functions have thrust us to the front lines. And why not? It's clear that a records departments, if structured and utilized properly, can add tremendous value and cost savings to the organization. And from a records management perspective? It's great to have moved from "back there" to a place of prominence and respect "at the table."



by Carol A. Volle of K&L Gates

:: Staffing an Integrated RIM Program

Congratulations! You have a great records management program, a good DMS, a fairly phenomenal e-mail archiving system and some really stellar websites — all coordinated through different teams and individuals. To some extent, this autonomy has allowed each of these systems to succeed independently. But from the standpoint of quickly putting your hands on information relevant to a pending legal action, client query or regulatory investigation, these divergent systems can pose a significant risk to your firm. In this era of multi-million dollar legal actions decided largely on the ability of a business to provide accurate and timely records, it is critical that you develop a program that brings all divergent information systems together.

An integrated records and information management program (RIM) combines the structure of classic records management with your firm's dynamic digital capabilities. In a traditional records environment, programs are developed and implemented based upon the moment a record is declared. In an integrated RIM model, the life cycle of the information is reviewed and the data managed accordingly.

The focus is no longer on the final product or on its retention and disposition, but rather on the processes the information goes through on its way to becoming a record, as well as how each of these process elements are handled within the firm. This approach allows for the scheduling of versions and drafts once the final record has been declared, thereby ensuring the firm is only retaining the final record. It incorporates electronic messaging not merely as a subset of correspondence that must be destroyed according to an approved schedule, but as specialized media that must be managed within the parameters of its technology and the firm's approved retention policies.

While an integrated RIM program offers tremendous flexibility in meeting the firm's requirements for retention, production and disposition, it can pose unique challenges with respect to staffing and reporting.

People Who Make an Integrated RIM Program Work

While the individuals charged with developing and implementing a firm's integrated RIM program will primarily bear titles associated with "records," it must be understood that these individuals are required to work cross-functionally with technology, operations and records management. Their responsibilities would include all of the standard duties associated with a traditional records management program, coupled with an understanding of how the firm's different technological components fit into business operations.

Managers

Integrated RIM program managers often bear the title Records Manager. Depending on the size of the organization, they can represent individual office locations or entire firms. These managers have a unique skill set and often hold the designation of CRM (Certified Records Manager).

Those who hold the professional accreditation of CRM have worked in the records profession for a minimum of three years and have passed a series of rigorous tests that evaluate their understanding of all aspects of records and information management.

At this level, they have the ability to look at records and information management needs from a strategic perspective. Although not necessarily savvy in all areas of technology, at a minimum they have a basic understanding of the products utilized throughout their firm and spend a significant amount of time keeping up to date with rules and best practices that may impact how this technology is implemented.

Technical Support

An integrated RIM program requires the support of technical staff who focus solely on the information management needs of the firm. These specialists make an integrated RIM program so very different from the classic records management model.

Technology is often applied to records management processes. Whether it is electronic tracking or digital imaging, records professionals should be comfortable merging their firm's physical information storage with records management applications. In the past few years, however, there has been some debate over the level of involvement records personnel should have in making decisions surrounding the purchase and deployment of technology for other business activities that may not appear records-related at first glance. Accounting systems, conflict management systems and docketing systems are often viewed as "business" functions, and little consideration is given to their impact on the firm's records and information management requirements.

This is where having dedicated RIM specialists on the firm's IT team can prove invaluable. They should have an understanding of the firm's strategic vision and be able to translate that vision and its associated responsibilities to the firm's IT staff. These are the people who "speak tech" and can help translate for others involved in the RIM, IT and the business needs of the firm.

Often, those who fill this role are members of the firm's IT team "moonlighting" on behalf of the RIM team. While this scenario works, conflicts can arise when requirements of retention and disposition bump into the need to roll out an application in a short period of time. Regardless of where this technological assistance comes from, it is absolutely critical to the success of an integrated RIM program.

Operational Support

When all is said and done, it will be the highly-skilled core of professionals performing the daily operations of your firm's integrated RIM program who will make or break your system. There are a number of opinions on how best to staff these positions. Some firms will only hire "high-end" individuals with law or college degrees with the assumption that individuals with this educational caliber will bring a level of professionalism to their program that might otherwise be lacking. Some firms take the opposite approach and view these as very low-level, nonprofessional positions intended to be relegated to the basement or some other dark corner that is known as the "Records Center."

A middle of the road position is probably the best approach to staffing RIM personnel. While they need to be highly detail oriented as well as committed to performing quality work and maintaining a level of professional decorum, they need not be lawyers, as they will never be asked to perform the functions typical of an attorney. They should be committed to the success of the firm through their understanding of the operational requirements of their assignment. They need to be able to learn the processes and procedures for which they will be responsible, and to be able to explain them should they be questioned.

Additional Support

The size of the firm will dictate how much additional support is needed to ensure the success of an integrated RIM program. Larger organizations may need additional layers of management to support program implementation and compliance components.

Records analysts often appear in larger firms. They usually focus on supporting the technical aspects of the programs and providing management with the statistical analyses needed to support their requests for funding, staffing and technology. They also bring an understanding of the databases being used by the RIM program itself and are critical to auditing the program's various components.

Location, Location, Location

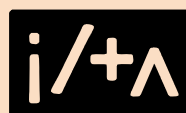
Placing an integrated RIM program within your organization should not be done without some serious thought. There may be a tendency to just "put it wherever records lived," but that may not be the best for the overall firm. Consider the following options:

Under the COO (Chief Operating Officer): This places the integrated RIM program solidly within the firm's administrative branch. Responsibilities are viewed on par with the library, facilities, mailroom, copy center, etc.

Under the General Counsel: For a number of reasons, this placement has its advantages. Many of the strategic initiatives developed under the integrated RIM program will require GC review and/or approval. Working under the direct approver should help expedite the process. Being located under the GC also provides a good location from which to institute audit and compliance components related to the overall program.

Under the CIO (Chief Information Officer): For an integrated RIM program, this may be the best operational model. Because so much of what is being attempted by your program requires the input and cooperation of the firm's IT team, being a part of that team with the support of the CIO makes being involved in all the critical technology decisions of the firm relatively easy.

There are, of course, other possibilities. What is truly critical is not where the program is established, but the team of individuals who support it. An integrated RIM program will succeed if it is staffed with the right people, with the right skills and with the right level of management support.



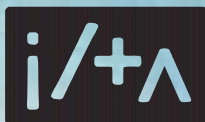
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