

## Defensible Disposal

For every new technology used in business there is byproduct--new information to be managed. The number of new technologies and the amount of new information resulting has created a crisis of sorts. For most sizable businesses, there is so much digital information that they can no longer continue to be as efficient because finding the information “needle in the haystack” to deal with a customer’s question, address a business issue or respond to a lawsuit issue is a challenge.

“More than 3 years after the Sept. 11 attacks, more than 120,000 hours of potentially valuable terrorist-related recordings have not yet been translated ...and computer problems may have led the bureau to systematically erase some Qaeda recordings...[t]he investigation found that limited storage capacities in the system meant that older tapes had sometimes been deleted automatically to make room for newer materials, even if the recordings had not yet been translated.”

– New York Times 10/28/04

Technology is going to continue to evolve which means information will grow with it. According to IDC, there will be 1800 exabytes of new data in 2011 which is nearly 100% growth over 2010. Employees and the companies they work for were having a hard time managing information when it was just a fraction of its current size. Left unmanaged, the growing volume of information can and is causing system failures, increased storage costs, increased discovery costs, and the inability for users to find what they need to do their jobs. Today, it is even more important for companies to retain *only* the information required for statutory, regulatory and business needs. Information that has short-term value must be disposed of immediately when its value has ended. And yet companies fail to be proactive enough at cleaning house in a legally defensible way.

As the systems bog down from information overload, what technology professionals have been silently doing is purging contents in systems to make room for new information, sometimes

without regard to its business value or legal import. Indeed, courts have already made clear that “innocent” destruction of information needed for an existing lawsuit done by an “innocent” technology professional can be destruction of evidence for which there may be very serious consequences. Yet technologists continue to purge without knowing what they are destroying or if it is needed to satisfy a business need or legal requirement. Herein lies that conundrum facing every organization around the globe. How do organizations “clean house” and not worry about claims for destruction of evidence? The only way to purge content is to dispose of it pursuant to written retention policies which consider business needs, legal requirements and legal considerations (like statutes of limitation). Companies must identify the types of information that has long-term and short-term value. The policy rules must be developed in order to defensibly dispose of information. You can’t simply “clean house” because your systems are full, performance is deteriorating and you don’t want to buy more space. In the past, companies have done a good job at determining the value of paper information. Now, the same principles and rules need to be applied to electronic information. Most statutory or regulatory requirements (and business requirements) do not care what media the information

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## Defensible Disposal (continued)

is stored in or on; the information must be retained in accordance with the requirement. With information growing so fast, it is imperative that companies set retention rules on electronic information. The growing costs of storage and discovery, and the loss of productivity related to over retaining information must be controlled. Defensibly disposing of information in accordance with laws, regulations and business value is the only option that companies should consider. Information is a corporate asset and needs to be managed as such.

Don't take the position that because information is an asset that you should keep it indefinitely just in case you might need it someday. This position is not sustainable and only makes your "disposal" problem more complex and challenging down the road when you do wake up and find out that you just can't keep everything forever. At minimum, you will have everything but won't have any idea what "everything" really is – how does that help anyone?

Don't spend your money on the negative consequences of mismanaging information; spend it on proactively managing your information to avoid the painful and costly consequences. The time has never been better to defensibly dispose. Any other way just isn't worth the risk.