

## When The Context of Information Became King: Managing Logical Connections Between Company Records Has Become as Important as the Content Itself

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There is no question that the application of technology to every facet of business has been the major force of change to the way business gets done. Within our transformed business environment has been the growth of certain technology that makes business happen “faster, better and cheaper” among and between businesses and individuals. Whether we recognize it or not, transacting business and performing simple administrative business processes have been made simpler and can happen more expeditiously by you and your colleagues almost without any thought. By harnessing various types of communications technologies we can do real business almost instantaneously and just about anywhere. Adding insult to injury, we seem to be moving to even faster and more immediate ways to make business happen. If e-mail is too slow, you could use Instant Message, voice mail or Short Message Service that allows text messages to be displayed to your cellular phone. But just because its fast doesn't mean that it is better or even sufficient. But more about that in a minute.

Once upon a time, there was a contracts administrator whose job it was to make sure that all contractual relationship went through his/her office and was formalized in a real paper agreement with handwritten signatures. That person or his/her job function likely still exists, but all around the company there are a bunch of rogue employees who “innocently” circumvent and undermine the rules of good business. Without thought or concern employees have glommed onto new ways of transacting business that if thought about for the briefest of moments would not even get over the lowest and most accommodating bars.

It has become commonplace to have business relationships formed and business transacted without any human contact and formalized in a purely electronic form. While doing business electronically is generally allowed, that does not mean that the way your are allowing it to happen is good business or legally sufficient in a particular case. The substance of a major transaction is negotiated in a series of e-mails, each one subtly changing the subject or terms of the deal. A business executive receives regulatory approval for a major project from the state by voice mail. An executive signs an employee contract in electronic form with an electronic signature. A services contract is negotiated and acted upon that is merely a series of e-communications. A sales person gets a purchase order for a shipment of goods via a handheld computer. Engineering design details for a new product are exclusively retained in an internal discussion database. The boss confirms a salary increase to you via text message on your cellular phone.

What's the big deal, you say. Perhaps an example will help make the point. Today an employee receives the following four e-mail messages from you. The first advises that “at your request Steve is available to be on the project team.” The second asks you to “please provide approval to the revised proposal.” The third invites you to a company holiday party. The fourth asks, “did you see Lily Stanley today?” In a hurry, the recipient sends a message to you stating, “Looks great.” What is the significance of the message “looks great,” and how will you know as to which message it relates? Perhaps, the message is appended to the previous message as a reply. That might be

helpful and make clear to which the message related. However, what happens if several different points are being addressed in the e-mail to which a response is sent. On the other hand, and equally as likely however is that you probably have no definitive way to prove which message the “looks great” response relates. Arguably, the message could be interpreted several ways. Here are just a few. Steve, the superstar of the group has been committed to head up the project team. Your response is an approval for the revised proposal to move forward authorizing the additional work. You will be at the holiday party. I think Stacie is really cute.

For argument sake, let's assume that the response “looking good” relates to the proposal. Based upon the message the subject of the proposal is acted upon. In that instance, the series of messages could in deed legally bind the parties to a contract extension. That's right a contract could have been formed. That's not to suggest there aren't real “proof” issues with this electronic “contract” but rather that seemingly casual messages can and will have legal significance.

You get the point. The whole company is doing business, real substantive business with all the technologies provided to the employees. The technologies used lulls us into believing that the response is casual, but the impact or ramifications are quite the opposite. Business is done with these technologies all day, every day and few are thinking about how they will protect the company if and when a dispute happens.

Not only does the content of the messages matter, but so does the context matter. Evidence of the timing of the event matters. The identity of the sender and recipients matter. System access and security matters. Proof of integrity matters. Trustworthiness matters. Frankly, a whole host of very unsexy things matter. The worst part is that just about no body is paying attention to such “details,” that ultimately impact the company.

Every day that more business is done with these technologies is a day that is screaming for those old fashioned controls to be applied to the new way of doing business. Maybe we need an e-contracts administrator to gather up all those bits of company record that together make the e-contract. In any event, if business is being done differently then there should be new rules to make sure the company has developed and taught the employees the new rules to protect its interest when doing business in this new way.

You could do the company a real service if you developed some simple rules that ensure the company is retaining whatever significant business content it needs, no matter where it is located or in what form it is found.

The following is the beginning of the roadmap to help you navigate the issues:

- Rules and policy needs to be developed before particular technology is purchased and implemented.
- Business interests need to be balanced against legal issues.
- Rules need to reflect the business environment realities and technologies used today.
- Companies need to retain the business content they will need to protect their legal and business interests.

- Increasingly the contextual nature of content needs to be captured to ensure the complete record is retained.
- Develop rules about what to keep
- Develop rules for where to retain it
- Develop rules for how to protect it
- Develop rules to ensure the content retained has evidentiary integrity at the time of capture into the future
- Develop rules for dealing with new contextual complexities

Perhaps one of the greatest challenges is not knowing which electronic information should be considered a record for purposes of retention. However, equally as daunting is the complexities of developing rules and implementing technology that captures the context of the content. It seems to me that if you are going to be sued for sexual harassment or breach of contract, at least you should know which email message formed the basis of the claims. Imagine being sued by Stacie for “looking great” when your response really meant that you would be delighted to come to the holiday party.