



Off the Record

Volume 41, Issue 3

February 25, 2004



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Meeting: Wednesday, February 25, 2004, 8:30 to 4:00
Location: Holiday Inn, 3805 Murphy Canyon Road
Reservations - Contact Linda Maczko @ (858) 534-3995
On-line RSVP: http://www.sandiegoarma.org/arma_registration.htm
Door Prizes: To be Announced

Is Your Company at Risk? A Mock Trial Presentation By John C. Montana



San Diego ARMA Chapter's February 25th seminar and vendor exposition will provide an informative educational event that covers the merits and the importance of properly managing records. Our featured speaker is John C. Montana, Attorney at Law, a nationally recognized records management and legal consultant, author and speaker. His publishing work includes reviewing and editing *The Legal Requirements for Business Records and Legal Requirements for Microfilm, Computer and Optical Disk Records*. Please join us and our host vendors to welcome the return of John Montana for a seminar that **is a must** for all knowledge and information users and managers in both commercial and government sectors.

Mock Trial Presentation

Given the advent of computers, the Internet and paperless information technologies have transformed both business and government information management practices. Many cases re decided on the basis of documents uncovered during discovery. Records retention schedules and records management practices are increasingly coming under scrutiny. Our speaker Mr. John Montana will provide his renowned "mock trial" presentation intended to introduce the attendee to the trial process, and information management's role in it.

In a compressed format, the attendee will be led through the major stages of a trial—discovery, pre-trial proceedings and the trial itself, in a factual setting where records and information management practices are the key issues. E-mail and electronic records issues will be addressed during the course of the trial. Seminar participants will serve as the jury and determine the outcome of the trial. The trial *is not rehearsed, nor is the outcome predetermined!!* Attendees will get a taste of how attorneys attack these issues in a live setting and see how witnesses respond.

Who Should Attend?

This seminar is a must for records managers, lawyers, legal administrators, information systems personnel, computer and technology specialists, web/internet administrators in both the public and private sectors and all records personnel.

Meeting Agenda:

- 8:30-9:15 AM Registration, Breakfast & Expo
- 9:15-10:30 AM Morning Session I
- 10:30-10:45 AM Vendor Expo & Networking
- 10:45-12:00 PM Morning Session II
- 12:00-1:00 PM Luncheon & Expo
- 1:00-2:25 PM Afternoon Session I
- 2:15-2:30 PM Vendor Expo & Networking
- 2:30-3:45 PM Afternoon Session II
- 3:45-4:00 PM Vendor Expo

Member: \$75.00 Non-Member: \$85.00

Continental breakfast served in the morning. Italian buffet luncheon will feature several Entrée choices, Dessert, Coffee and Iced Tea. An afternoon break will include beverages and cookies.



For information regarding vendor exhibit opportunities contact Laura Avilez at 619.542.6842 or mail to: lavilez@symitar.com

Please register early as seating is limited.

RSVP to Linda Maczko by phone: 858-534-3395 or mail to: lmaczko@ucsd.edu.

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Off the Record

Association of Records
Managers & Administrators
San Diego Chapter

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Off the Record is a semi-monthly newsletter of the San Diego Chapter for the Association of Records Managers and Administrators.

This newsletter is published to inform the members of activities of the Chapter, and disseminate news and opinions of Board Members, or Chapter Members. Opinions are those of the author, and do not necessarily reflect official policy or opinion of ARMA, the San Diego Chapter of ARMA, or its members. Your statements and articles are solicited.

Email articles to clacy@sddpc.org. Articles submitted by 1st day of month are considered for that period's newsletter.

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Contact Laura Avilez at (619) 542-6842 for further information.

Package Deal: 1/2 page ad in all the year's Issues of *Off the Record*, one vendor table at one of the San Diego ARMA meetings, and a membership in San Diego ARMA - all for \$650.

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President's Message

Whether you are a current ARMA member, thinking about becoming an ARMA member – or just finding our Newsletter on the website....**HAPPY NEW YEAR!!!**

I wish you the best of prosperity, health and happiness for the coming year.

Two items that I would like to talk about in this issue....

One is Records and Records Management...
A Purpose-Oriented Approach to records management...

Changing the role of record-keeping from reactive to proactive.....I would like to list four points of interest.

- The concept of a "record" inclusive of records of continuing value (archives) stress their use for transactional, evidentiary, and memory purposes, and unifies approaches to archiving/record keeping, whether records are kept for a split second or a millennium.
- A focus on records as logical rather than physical entities, regardless of whether they are in paper or electronic form.
- Institutionalization record-keeping professional's role requires a particular emphasis on the need to integrate record keeping into business and societal processes and purposes.
- Archival science is the foundation for organizing knowledge about record keeping. Such knowledge is revisable but can be structured and explored in terms of the operation of principles of action of the past, the present and the future.

The Second item for this newsletter would be John C. Montana, a renowned speaker since 1990. John is an attorney licensed in the state of Colorado. He is a legal records management and legal consultant. He has participated records and information projects for corporations and business entities in a number of industries, including petroleum, mining, law firms, finance and not-for-profit companies.

Some of his books are: "Managing the Law of Technology"... "The Perilous Future of Decision Making in Information Management"... "Developments in the Law of Electronic Commerce"... "The Legal System and Knowledge Management"... "The Law and Records :Rarely the Twain Shall Meet"

These and a total of 24 books are available at the ARMA bookstore – at the ARMA International website.

ARMA San Diego is extremely fortunate to be able to have John Montana host our February all-day Seminar. His knowledge and expertise will be certain to be a "plus" for our San Diego attendees.



Are You Too Casual About E-mail?

Most companies deal with e-mail overload from spam as well as important business e-mails. One e-mail archiving vendor has calculated that in one year, one thousand users can generate a terabyte of e-mail, and 12,000 users can generate enough e-mail to fill the Library of Congress. In many companies, overloaded e-mail servers cause frustration, missed communications and business slowdowns.

The challenge has been made tougher by a variety of regulations that affect any e-mail that could be considered a business record: the Sarbanes-Oxley Act, SEC and NASD rules, the Gramm-Leach-Bliley Act and HIPAA, to name a few. These rules generally require retention and tracking of records including e-mail.

"Most people aren't aware that e-mails are records and that companies have an obligation to protect and manage them the same way they do records in any other format," says Diane Carlisle, director of professional resources at ARMA International, the record management-focused trade association based in Lenexa, KS.

Such requirements put more pressure on already overburdened e-mail servers. "There's an internal tension between the desire to comply with regulations and keep e-mails that must be kept for legal reasons, versus the IT department's desire to clean out mailboxes," points out Erica Rugullies, analyst at Forrester, Cambridge, MA. "IT has a huge pain point in supporting the huge volumes in e-mail databases as well as in archives."

Some e-mail archive software offerings attempt to provide the best of both worlds: They promise to save e-mails in a way that meets regulatory requirements while at the same time reducing the cost of e-mail storage by transferring archived e-mails to less expensive storage media. The new regulations don't specify any particular kind of technology solution. To be sure that your company is fully compliant, legal counsel must thoroughly review relevant regulations and your company's measures to address them. This article looks at key e-mail retention issues and hardware and software intended to offer automated solutions.

Delaware Investments Does a Double Take on E-Mail

Delaware Investments, a Philadelphia retail and institutional investment concern, was struggling with e-mail storage issues. Not only were its volumes of e-mail messages reaching 10,000 to 18,000 per day from some 2,000 customers, but there was a rise in storage-hogging attachments such as mutual fund prospectuses and life insurance presentations.

"The system ended up getting clogged with a lot of large files," recalls Michael Lebieczinski, assistant vice president.

To offload the larger files onto less expensive magneto-optical storage, and thus reduce the total cost of e-mail retention, in July 2001 the company implemented eConserver e-mail archiving software from Ixos (www.ixos.com), San Mateo, CA. The effort succeeded in that today, less data is stored in the e-mail servers, while the offline archive holds one and a half terabytes of e-mail data. E-mails that include attachments are replaced with stub e-mails with the attachments saved offline. When a user clicks on the stub, the system retrieves the attachment.

"Without the archive, many of those e-mails would either have been deleted, which would potentially have opened us up for litigation, or those items would still be in the e-mail system, which would have increased the load on the system and required us to buy additional storage and tape backup," Lebieczinski says.

Soon after Delaware Investments implemented its archive, a new and potentially disruptive e-mail challenge came along in the form of new record retention rules from the Securities and Exchange Commission and the National Association of Securities Dealers (the company is subject to both).

"The toughest part is interpreting the regulations and transferring them to a detailed schematic of what we're required and not required to do," Lebieczinski says. The firm relied on in-house counsel, industry advisory services from analysts such as Gartner and Meta and internal research to try to ensure compliance while not going overboard.

The company is continuing to use the Ixos software to archive all customer e-mails for seven years via monthly backups. It's looking into ways to save all e-mails, not just what's in the e-mail servers at the end of the month. It's also looking into full-text indexing and search to make old e-mails easier to find and retrieve. The company is evolving its compliance efforts as the SEC and NASD requirements become more clearly defined. "It's still very murky," Lebieczinski notes.

E-mail Becomes a Record

"E-mail originally was a transitory message vehicle through which lunch appointments were made," notes Randolph Kahn, founder of Kahn Consulting (www.kahnconsultinginc.com), Highland Park, IL, a consulting firm specializing in the legal, compliance and policy issues of information technology and business records. "Now it's become a ubiquitous and critical business tool through which all business happens."

A survey of 1,018 businesses conducted by AIIIM and Kahn Consulting in the third quarter of 2003 confirms this point. The survey found that 93 percent of businesses use e-mail to answer customer inquiries, 84 percent use it to discuss business strategy, 71 percent to negotiate contracts, 69 percent to exchange invoices and payment information and 44 percent to file documents with official bodies.

The survey further found that 60 percent of businesses have no formal policy for e-mail retention and 54 percent do not tell employees where, how or by whom e-mail messages should be retained. Of the companies that do retain e-mail mes-

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sages, only 37 percent retain messages according to their content, 31 percent keep e-mail indefinitely and 26 percent retain it less than 120 days.

To tell the difference between e-mails that are records and those that are not, "the main thing you want to look at is, does the e-mail or any information in that document relate to an official transaction or decision by the company?" says Carlisle of ARMA.

Haphazard policies and lack of employee training are a real problem, says Carlisle. "When IT people or anybody in the company is looking at setting up a process for managing e-mail, you can't set those guidelines that are appealing to people but wrong, such as deleting all e-mails after 30 days," she says. The retention schedule must follow long-standing requirements, rules and legislation.

The SEC Cracks Down

When the SEC last year fined five broker/dealers — Goldman, Sachs; Salomon Smith Barney; Morgan Stanley; Deutsche Bank; and U.S. Bancorp Piper Jaffray — \$8.2 million for having inadequate procedures and systems in place for the retrieval of e-mail, the agency demonstrated that it is serious about enforcing its rules 17a-3 and 4. These regulations require broker/dealers, banks, securities firms, stock brokerage and other financial institutions to archive customer account records for six years and customer communications for three years. (The National Association of Securities Dealers applies the same requirements to companies under its jurisdiction in its rules 3010 and 3110.)

Kahn points out that although \$8.2 million may not mean much to such large and prosperous organizations, "the economic damage caused by the penalty pales in comparison to all the bad press and negative exposure of having your name in the major media every day for failure to follow the SEC rules. The SEC was intent on making people understand that failure to follow the policies and the law for whatever reason was not going to be tolerated."

The SEC rules require that customer records be preserved in non-rewriteable storage media and that they be indexed. There must be an audit trail for any changes made to originals and duplicates, and the audit system must be available for examination by inspectors.

Davenport & Co., a Richmond, VA-based broker-dealer with 400 employees, has been archiving e-mails for the past two and a half years using Email Xtender from Legato (www.legato.com), a Mountain View, CA-based division of EMC.

When Davenport implemented the software in 2001, "regulations were being thrown about regarding capturing e-mails, archiving them and being able to easily search based on certain criteria," says Jeff Joyner, network manager. The company was already using Legato's DiskXtender software, so the e-mail module was a natural add-on.

Email Xtender archives Davenport's daily volume of 10,000 e-mails, compressing it to about 150 MBs of storage. Indexing is handled automatically as the e-mails are captured according to the "sent to" field, the "sent from" field, the subject line, the cc: field and the body text of the e-mail, as well as certain attachment types. Users can search words or phrases in the content or any of the header fields.

During a fourth quarter 2001 audit, an SEC compliance officer told the firm it was ahead of the curve, that it was doing things that larger firms had not yet implemented. At this point, the compliance department is satisfied with the e-mail retention program.

Other Regulations

All large, publicly traded companies are subject to the Sarbanes-Oxley Act of 2002, which has several requirements, mostly around financial reporting. "Sarbanes-Oxley doesn't explicitly address e-mail, but it is so broad reaching that I do have clients asking about how they should be thinking about Sarbanes-Oxley with regard to e-mail," says Rugullies of Forrester. "My recommendation to them is to keep e-mails for seven years because the regulation requires communications of certain types around audits to be kept for seven years."

Carlisle of ARMA points out that while Sarbanes-Oxley is in the spotlight right now, there are more than 8,500 state and federal level regulations that affect records management. "From a management perspective, any of these requirements can get a company into as much trouble as a Sarbanes-Oxley violation can; most of them come with both fines and jail time," she says.

For example, the emphasis of the Health Insurance Portability and Accountability Act is on privacy and protection of patient records. To the extent that patient records are exchanged via e-mail, healthcare providers, insurance providers and those that work with them may be affected.

Like Sarbanes-Oxley, HIPAA's effect on e-mail has not been spelled out or become the subject of enforcement, so it is subject to interpretation. In fact, many regulations and laws affecting e-mail as records have yet to be clearly interpreted and defined by the regulating bodies. "I advise people to read the law and formulate the company's interpretation of that law, which is not always easily done," says Julie Gable, a records management expert and principal of Wyndmoor, PA-based Gable Consulting. "The difficulty is that usually a law or regulation is issued, then some guidance might come out after that or a comment period might take place, then there might be a racheting back of the severity of the rule."

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This sort of evolution in interpretation has already taken place with the 404 provision of Sarbanes-Oxley, which originally required companies to document all internal controls and was later revised to govern only financial controls. Further down the road, there will be test cases in which companies are penalized for not following the rules properly. But, Gable points out, "you don't want your company to be the test case."

Companies in all fields would be well advised to come up with an e-mail retention plan. "In most industries, while there isn't a specific mandate that says 'thou shalt keep e-mail,' there are a variety of laws that require the retention of business records," says Kahn. "If a law says 'thou shalt keep records,' a regulator or a court doesn't care that it's an e-mail record. Today, not only is e-mail a vehicle through which most business happens, but it has replaced the traditional business record."

Some e-mails can be destroyed as long as this is done according to an established retention and disposition policy. "The complicating factor that many people don't recognize is the requirement for companies to be able to stop destruction of records, whether they be e-mail, paper records, microfilm or whatever format, in case of litigation," says Carlisle. "Even if a record under normal circumstances would have lived out its full retention requirements, if there's litigation looming on the horizon, the company has a clear obligation to put on a litigation hold, which means they suspend destruction of those records until the litigation is resolved."

How Much Can You Automate?

A basic principle of records management is that you decide whether something is a record based on its content. This is not always simple to do for people or for software. "The e-mails that say, 'Do you want to have lunch?' are junk," points out Julie Gable. "The e-mails that say, 'Do you want to have lunch and discuss compound 234 that's looking unstable under high temperatures?' are important and should be saved."

Most experts agree that you don't want to leave the chore of identifying which e-mails are records and properly retaining them up to the end user. "While an end user presumably knows what's a record and will be responsible enough to keep it, the reality is that that just doesn't happen," Rugullies says. "Some users don't even know they're creating records that they should be keeping. Others may, for some reason, choose not to keep records or indicate that a particular document is a record. Sometimes software makes it too difficult to send a document into the repository — it's much easier to just share it among the workgroup and move on with life."

One alternative is to set up automatic classification rules centrally in e-mail archiving software. These rules operate invisibly to the end user so they're not disruptive, nor is the company relying on individual efforts for compliance. But can you trust the auto-classification features of e-mail archiving software to properly identify and store every record?

According to Gable, auto classification software works well when you have fewer than ten categories. "But in most real-world settings, you have far more than ten categories of records," she says. "The auto classification technology and methodologies are getting much better and more sophisticated, but right now I don't think they're as robust as they need to be to handle an entire enterprise of e-mail."

Carlisle has a similar take. "I think everybody wants this to be an automated solution. My understanding is that for smaller scale systems, automatic categorizing can be effective, but for the larger ones, it's difficult to get these tools to be scalable. The more volume you have to deal with, the more difficult it is to train the system." With more documents come more subtle iterations. Invoices that always follow a certain format are easy to categorize and easy to extract data from. But unstructured correspondence or information is much more difficult.

Although some argue that the to, from, date and subject fields at the top of e-mail messages provide a head start with categorization, it's a limited head start, according to Carlisle. While those categories are important, key decisions about how long you have to keep e-mails and whether or not they're records need to be based on the content of the record itself.

According to Rugullies at Forrester, many companies are insecure about auto-classification of records. "They're either archiving everything or not archiving anything yet, and only a few are using the rules engines that come with these message archiving products," to establish which e-mails are retained for how long, she says.

San Francisco-based employment and labor law firm Littler & Mendelson plans to use e-mail archiving software for e-mail records, yet it will rely on people to identify which e-mails are records. Attorneys at the firm will soon start copying e-mails into an iManage WorkSite Communication Server from Interwoven (www.interwoven.com), Sunnyvale, CA.

"The reason we see value in this application is that attorneys frequently provide services to our clients through e-mail, and it's not unusual for that e-mail to be the sole record of the services we provide," says Michael Williams, CIO. "The e-mail server alone is not a very effective way for us to manage client records." The iManage software lets attorneys route documentation, advice and communication directly into the client folder, while at the same time just continuing to use e-mail as usual.

Littler & Mendelson's main goal is to protect client records. The firm maintains all paperwork and electronic content for the length of the client relationship and a number of years afterward. In addition to helping meet regulatory and legal e-mail

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guidelines, the software will make e-mails easily shareable and searchable. When attorneys leave, their replacements will be able to find client records in the iManage repository rather than wading through their predecessors' e-mail inboxes.

The iManage software is easy for attorneys to use — they simply copy e-mails to a client matter number at a particular e-mail address. iManage will automatically route it electronically to the proper location in the content management system that corresponds to that client and matter number. "For an attorney, it's a normal metaphor to think of copying to a folder," Williams says.

Do You Need Records Management Software?

One question is whether e-mail records are best kept in e-mail archiving software or a broader records management solution. Opinions vary, and again the regulators haven't expressed a preference for a particular technology solution.

In companies where e-mails are all one record type with one retention period - for example in the securities industry where most e-mails are customer correspondence that must be kept for three years — an e-mail archiving system should suffice. But for more complex needs, a more sophisticated records management solution might be appropriate. "The e-mail messages that a drug company deals with are not likely to be all of the same record series, therefore they won't all have the same retention period," Gable says. If an investigator sends the drug company an e-mail about a patient involved in a drug trial who's experiencing nose bleeds, that's an adverse reaction that's regulated by the FDA, and it probably needs to be kept in a formal records management system.

Records managers tend to feel that e-mail retention ought to be tied into an established organizational retention policy and retention schedule, with a unified categorization scheme. "There should be one coding system or set of categories you use across all your document or e-mail software, so that regardless of whether a record was in a document management system or an e-mail archive, you would know by the code everything to do with accounts payable, regardless of which system it was in," says Carlisle. The record retention rules would apply to these metadata.

Because e-mail is only a piece of the bigger records management puzzle, an e-mail archiving system alone is probably not enough, she says. "You need to have a management system that looks at e-mails as records and part of an established organizational retention policy and schedule," says Carlisle. "You'll find that in either records management software or records management capabilities that have been integrated into enterprise content management systems. The system needs to have a unified document or categorization scheme, retention or disposition schedule and one set of categories you use across all your e-mails, documents and other content."

What to Look For in E-mail Retention Software

Assuming you do want to look into e-mail archiving software that addresses compliance issues, here are some features to look for:

Records management features or the ability to integrate with records management software.

Automated destruction schedules. "I'd want the system to automatically calculate for me which documents or records are eligible for destruction and coordinate with the legal and financial people to see if there's a litigation hold that needs to be placed on them," says Carlisle. "I'd want some capability to be able to document the destruction of those records, if and when that's been approved. I'd want control capability throughout that process, so that I can stop it."

Flexible rules that can be changed on a dime. The software should have a flexible rules engine that lets an administrator set retention rules centrally and be able to change them as regulatory rules are modified.

Efficient retrieval. It's not enough to just be able to retain e-mail messages; regulators will expect companies to be able to quickly retrieve specific e-mails. "If you can say 'we have a billion e-mail messages here in this data storage archive,' but you haven't categorized them and made them retrievable, you haven't really met the retention requirement," Carlisle says. "The point behind retention is to be able to retrieve and view the information."

Monitoring. Some regulations require that e-mails be reviewed or spot-checked for inappropriate material before they're sent out.

Storage capability for handling large volumes. E-mail use is only going to grow. The software should support multiple storage options, including disk, optical, tape, write once, read many tape and emerging devices, such as the EMC Centera and Network Appliance NearStore.

Comprehensiveness. The software should be able to capture and archive, as indexed records, all e-mail messages entering and leaving the organization, as well as messages between users on an individual e-mail server and across internal e-mail servers.

Internet access. End users should be able to access the archive through a browser or through the e-mail client.

Audit trail. Administrators or auditors should be able to track access to archived records.

Search features. The software should either contain or integrate with search software that provides full-text search and discovery of specific archived e-mails and attachments.

Management. The system should have tools for sampling and managing the compliance process.

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"Take your records manager to lunch," says Carlisle offering last words of advice. "Teamwork and communication between the IT department and records managers is important. I look at it as a partnership between the records management expertise and the IT expertise in a company. The records management side brings a managerial perspective and the IT side brings in the technology solutions."

Resources

ARMA International www.arma.org
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 Documentum www.documentum.com
 Entelagent www.entelagent.com
 iLumin www.ilumin.com

IMR www.imrgold.com
 Ixos www.ixos.com
 KVS www.kvsinc.com
 Legato www.legato.com
 ZipLip www.ziplip.com



E-Mail Archiving Products

This article appeared in the February 2004 issue of *Transform Magazine*.

Company	Product	E-Mail Servers Supported	Features	Storage Media Supported
Documentum Pleasanton, CA (division of EMC) www.documentum.com	Records Services for Email	Microsoft Exchange, in Q2 will support Lotus Domino/Notes	Archives messages to a Documentum repository, applies records management software acquired from TrueArc. Stores attachments as separate but linked and tagged records. Applies business rules for content sampling, notification and exception handling.	Supports all types of storage
Entelagent Aliso Viejo, CA www.entelagent.com	Smart Agent Messaging System Online	Microsoft Exchange, Lotus Domino/Notes, Unix Sendmail, Bloomberg Mail	Helps securities broker/dealers conform to SEC and NASD rules. Rule-based lexicon quarantines incoming and outbound messages that contain certain word combinations for supervisory review.	WORM, DVD, CD-ROM
Legato Mountain View, CA (a division of EMC) www.legato.com	EmailXtender	Microsoft Exchange, Lotus Domino/Notes, Unix Sendmail, Bloomberg Mail	Addressed NASD 3010. Samples e-mail according to rules about lexicon (for example, securities dealers aren't allowed to use the word guarantee). Questionable messages are flagged and provided to a reviewer. Maintains audit trail.	WORM optical disk
iLumin Reston, VA www.ilumin.com	Assentor Enterprise	Microsoft Exchange, Lotus Domino/Notes, GroupWise, Sendmail, Bloomberg Mail	Supports SEC archiving, NASD and NYSE supervision requirements. Natural language content analysis flags suspect content in e-mails and instant messages. Discovery tool calls up e-mails for legal, regulatory purposes. Full-text search	WORM, online media including NetApp SnapLock, EMC Centera Compliance Edition, Permabit Permeon
IMR Englewood, CO www.imrgold.com	Alchemy Mail-Store for Exchange	Microsoft Exchange	Rules engine, full-text indexing (including attachments), data compression, support for Sarbanes-Oxley	WORM, hard disk, CD, DVD
Ixos San Mateo, CA www.ixos.com	eCONserver for Microsoft Exchange and Lotus Notes	Microsoft Exchange, Lotus Domino/Notes	Modules specifically geared toward SEC 17-14, NASD 3010/3110 and NASD 440. Integration with Convera RetrievalWare search engine and with Ixos Enterprise Content Management	WORM, CD-R, DVD-r, SAN, HSM
KVS Arlington, TX www.kvsinc.com	Enterprise Vault	Microsoft Exchange	Provides sample e-mails for review. Search and retrieval of needed records. Offline access to archived e-mails.	Grau Data Storage IVD. Plug-ins being developed with other storage providers.
ZipLip Mountain View, CA www.ziplip.com	Unified E-mail Archival Suite	Microsoft Exchange, Lotus Domino/Notes, Novell GroupWise	Said to collect all enterprise-wide e-mail through a central gateway and to capture blind carbon copies of e-mails. Support for SEC17a-3/4, NASD 3010/3110, Sarbanes-Oxley, HIPAA	WORM, tape, NAS, SAN, DVD-R library

Compliance Simplified

It helps to sort out the difference between mandatory and optional compliance. It is mandatory for affected organizations to comply with all laws and regulations germane to their industry. Standards, on the other hand, are always optional. As the chart shows, ISO 15489 is a standard for establishing records management programs. It provides helpful guidance, not strict dictums. Department of Defense 5105.2 is a standard and test program for records management products vendors wish to sell to the U.S. Defense Department and other agencies that have opted to make the standard part of their purchasing process. The DoD certifies records management products and records management/document management pairings that pass its testing regimen. Again, business is free to use DoD as a de facto standard for short-listing products, but buyers need not comply with anything.

With that one exception, it is important to know that when it comes to rules and regulations, businesses are compliant, products are not. Before embarking on a compliance odyssey, remember that despite their apparent diversity, virtually all regulations have commonalities. For one thing, no law stipulates that companies must use electronic technologies; the choice to do so is always optional. For that matter, all laws are technology neutral, since no authority wants to dictate a particular solution in an age when new tools are evolving every day. Most laws are purposely vague and broad; otherwise the rule makers would have to list every possible contingency, leaving loopholes. And rarely, if ever, will a regulation or law tell how to accomplish compliance; the intention is that methods remain flexible and appropriate to the size and resources of the complier.

So, where to begin? Current best practice favors compliance approaches that are based on risk mitigation, where compliance is attained in phases. In this scenario, affected companies determine which rules apply to their businesses (usually with legal assistance), and identify where their greatest risks are. A publicly traded drug company, for example, would be subject to Sarbanes-Oxley and 21 CFR 11, as well as all applicable FDA regulations.

In this initial phase, prevailing advice is to form a team of stakeholders who can formulate the company's interpretation of the applicable regulations and drive progress in attaining compliance. At this stage, outside perspectives on industry practice may be helpful in avoiding white-knuckled decisions. SEC 17a-4, for example, states that "Every member, broker and dealer shall preserve for a period of not less than six years, the first two in an easily accessible place, all records required to be made...." One financial services firm interpreted "easily accessible" to mean accommodating two years' worth of its paper records onsite, while others took a less literal view based on retrievability and response time from an offsite storage provider.

Executive sponsorship at the initiation stage is a must for success, because compliance is a top-down effort and a culture change that requires commitment of financial and human resources. In fact, the silver lining in many new regulations is the ready-made business case for improving certain aspects of operations that may have languished far too long.

The next phase is to assess what is already in place: policies, procedures, technologies and people. The assessment's outcome is a list of where the company is vulnerable with regard to regulatory and statutory requirements. Each risk on the list is then prioritized as high, medium or low, depending on the consequences associated with it and its probability of occurrence.

One common error at the assessment phase is to focus on technology deficiencies. A recent example was Sarbanes Oxley's Section 404 on management assessment of controls, which fueled speculation that only technology could remove occurrences of human error and led to the appearance of many "SOX-compliant" software solutions. The SEC's final rule on 404 narrowed its scope to internal controls over financial reporting, and SOX does not specify any one method or particular technology for accomplishing this. Presumably, controls on financial reporting could be as simple as double entry of data or multiperson checking of manual reconciliations.

In the planning phase, the team can begin to estimate what it will cost to mitigate each risk and how long each effort will take. Priorities plus costs plus compliance deadlines equal a structured compliance plan that functions as a roadmap. What sounds simple really isn't, particularly in very large enterprises with multiple business units and locations that operate with decentralized authority. In these cases, headquarters would do well to formulate an overall compliance policy and a phased compliance methodology with templates and instructions that

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Compliance Simplified

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other units can use.

Whatever the compliance approach, it is worthwhile to document all aspects of the process, and it is here that collaboration tools can be of use in facilitating review activities. Document management products can function as repositories for finalized policies and procedures, and Web-based content management tools can aid in posting compliance guidelines to sites accessible by all employees. But as always, it is the cart that determines what horses are needed, not the other way around.

Unfortunately, compliance is not a "once and done" undertaking. In some ways it is a moving target, because important changes occur after a law first appears, usually in the form of final rules and enforcement guidelines than can clarify how given agencies will interpret the regulations. Eventually, most laws will have test cases that provide further enlightenment by showing what the regulator considers a violation. The goal is to make sure that your company isn't the test case.

Julie Gable is an independent consultant in Philadelphia (jgable@gableconsulting.com).

Leading Compliance Standards, Laws and Regulations

This article appeared in the February 2004 issue of *Transform Magazine*.

Item	Definition	Affects	Highlight	Comment
ISO 15489	Standard from International Organization for Standardization	Whoever opts to adopt it	Part 1 - Provides guidance on design of records systems for public and private organization; Part 2 - Outlines methodology to facilitate records system implementation	Not mandatory. Useful for developing records management systems for paper and electronic records.
DoD 5015.2, version 2	Military standard for selecting software; de facto standard	Vendors of electronic records management software and document management products paired with RIM software	Testing and certification program for software products	Many government entities required RM software to comply with this standard. For a register of DoD certified products, see http://jitc.fhu.disa.mil/recmgt
HIPAA	Law	Health plans, including employer-sponsored health plans, and all healthcare providers that transmit patient information electronically for claims, benefit eligibility, referral authorization, etc.	Privacy rule, effective April 14, 2003, protects "individually identifiable health information," that is, any data identified by name, social security number, address or birth date whether it is electronic, paper or oral. Also requires patient notification of privacy policies.	Security rule, effective April 21, 2005, requires best practices for assuring that electronic patient data is confidential, available as needed and maintained with integrity intact.
SEC 17a-4	Industry Regulation	Financial services such as brokers, dealers, exchange members	Gives retention periods for securities broker/dealer records/ stipulates requirements if electronic record-keeping systems are used.	Does not make technology use mandatory; Mentions imaging but does not stipulate it a the only usable technology.
21 CFR 111	Industry regulation	Pharmaceuticals	Requirements for those who have chosen to rely on electronic documents in fulfillment of FDA requirements.	FDA currently reexamining 21 CFR 11. Amended guidance issued in February 2003 narrow interpretation, eases enforcement of certain aspects.
Sarbanes-Oxley	Federal law	All publicly traded companies, public accounting firms, auditors, brokers, securities analysts	For public companies, provides requirements for audit committees, financial reporting, insider trading, executive loans, change disclosure and management's assessment of controls.	Final rules for particular sections emerging, for example Section 404 now requires assessment of financial controls rather than internal controls; Deadlines extended to 2004 for large companies, 2005 for small companies.

Sarbanes-Oxley One Year Later

When passed, the Sarbanes-Oxley Act of 2002 was heralded as a solution to a wide range of perceived corporate abuses. When fully implemented, it probably will be such a solution, at least in part—the standards of conduct and disclosure it mandates and seeks to enforce undoubtedly will eliminate many past problems. From a records and information management (RIM) perspective, however, things are a bit different.

A year after its passage, Sarbanes-Oxley continues to provide more questions than answers for those seeking guidance on compliance issues for their records and information programs. This situation persists because Sarbanes-Oxley's fundamental emphasis and implementing regulations focus primarily on procedural requirements, certifications, and required disclosures as the tools through which to gain compliance, rather than on required recordkeeping and paper trails.

Make no mistake—the former are powerful tools. The Act's financial statements certification requirement, for example, provides a strong incentive for those executives who must sign to ensure that the statements are correct. In similar manner, Sarbanes-Oxley's Corporate and Criminal Fraud Accountability Act of 2002 provisions, which mandate criminal penalties for improper document destruction, will make midnight shredding runs a far riskier proposition for those who seek to cover up evidence of wrongdoing.

The reality is, however, that although Sarbanes-Oxley is fundamentally about records and information—its whole purpose could be characterized as ensuring that corporate accounting records are accurate and complete, and fully disclosed—it doesn't actually say much about records. The certification of financial statements is a good example: If the certification turns out to be false, the certifying executives certainly will find their necks on the line. In view of this consequence, it would be nice for executives to know what constitutes adequate due diligence and what documentation of due diligence they ought to create.

No such guidance is forthcoming, however. CEOs are on their own as to what ought to be done. Should certifications make it to court, as surely they eventually will, the issue of just what the CEO reviewed will come up, as will the paper trail the CEO used to document that review.

Other provisions give rise to similar issues. Criminal liability is mandated for improper shredding, but no light is shed on what constitutes a Sarbanes-Oxley-compliant records retention program. Other matters similarly imply some sort of documentation or some way of managing records without giving any hint as to particulars. In each case, the comfort level records managers are used to—a legally required record set, described in detail, with stated retention period—is absent.

Future regulations, or amendments to the act may provide more detailed guidance on these matters. It is also plausible that future developments will be more of the same certifications, disclosures, and mandated outcomes, with little or no direction as to their implementation or recordkeeping.

Back to Fundamentals

Where does this leave RIM professionals or corporations seeking guidance on developing records and information programs that are responsive to Sarbanes-Oxley issues? On their own—but that may not be a bad thing. Even without legally mandated requirements, there are many things that can be done, and the lack of stated standards gives corporations some leeway in how to do them. In such cases, standards of reasonableness taken from a variety of sources can be used in place of the legal standards absent from Sarbanes-Oxley.

The first thing is to look to fundamentals. For example, Sarbanes-Oxley mandates penalties for improper records destruction. This points to an obvious starting place: Is the records retention program sound? Is it structured and implemented so that suspicions of improper activity are unlikely to arise? This might be a good time to review the records program from a forensic standpoint and make sure that it passes muster.

Similarly, Sarbanes-Oxley is about ensuring full and accurate audit of accounting records. Although RIM professionals have no control over accounting record content, they do have control over the management of those records. Well-managed and well-organized records facilitate Sarbanes-Oxley compliance because they foster the financial transparency that is the act's goal. Improved records management translates directly into increased compliance and decreased likelihood of violations or allegations under Sarbanes-Oxley.

Finally, the act's current structure offers RIM professionals the opportunity to weigh in on an important aspect of corporate compliance: documenting due diligence on the act's many certifications, procedures, and implementing regulation. One example is the review process for financial certification. The CEO certainly can't look at everything, or even a small fraction of all financial data. Therefore, a winnowing process will need to be developed and documented, as will compliance with that process, to demonstrate that the CEO did his or her best to gain full understanding of the corporation's finances prior to certifying them.

Not only is this an entirely records-oriented process, but new and highly valuable records will be created as a result. RIM professionals can and should be intimately involved, thereby gaining the opportunity to address an issue with a high profile among top management. Other areas of Sarbanes-Oxley afford similar opportunities.

A Watchful Eye

The final thing that information professionals must do is keep a finger on the law's pulse. Sarbanes-Oxley is very new. More regulations are a certainty, as are court cases, professional standards, and other events that will influence future directions. Any compliance decision made today that is not directly mandated by Sarbanes-Oxley itself—and most RIM decisions fit this description—must necessarily be considered provisional. As more is learned about how the law operates in the real world, and in the courts, provisional decisions undoubtedly will undergo revision.

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Distance Learning



Education Corner by Benay Berl

We all know that we need to educate ourselves to keep our RIM ca-

reers vital.

Of course, we are all very busy and have no "extra" time.

To solve the tug between job, home, and education, consider these options:

A 3 day seminar offered by Steve Gilheany February 20, 21, 22. This RIM weekend course, held in LA, titled *Document Management and Document Imaging*, will give you more information that you ever thought you wanted. Contact Steve at

www.stevegilheany@WORLDNET.ATT.NET

If you don't want to leave town – go on-line – consider these advantages:

Flexibility of format

Comfort – work in your pajamas, at your desk, let your imagination take you

More available programs

Accreditation\recognition\higher pay

**San Diego Community College District –
online Distance education classes**

Classes offered over the internet in many subjects

This Spring starting February 2nd –

www.sdccd.net, click on online class schedule, Go to Computer\Business\Technology, RM 205.

I'll be teaching the section at City College this semester. If we have talked about it before, and you are ready to begin, contact me at bberl@sdccd.net.

ARMA online classes - details on www.arma.org

1-2-3 Guide to Organizing Files and Records

RIM – Basic Elements

Vital Records

There is an abundance of information about seminars & web seminars, home study, conference, ISG, and Rim certification

Of course, sometimes it is fun to meet and mix with the RIM community. No better way than to attend our BIG BIG event of the year, our all day seminary, this year in February with John Montana. If you have never been to one of his presentations, you are really missing something.

Come say hello at the meeting – I'll be at the Education Table prior to the start of the meeting

Benay Berl, Education Chair

ISG



ISG by Tracee Hughs



San Diego ARMA is proud to announce it's first Industry Specific Group—LEGAL

What is ISG?

ISG stands for Industry Specific Group. Each ISG addresses the needs of a specific industry.

Who is ISG for?

Anyone who is interested in establishing a network of professionals working in similar industries facing similar needs.

Why would you want to participate in an ISG?

An ISG is a group formed to focus on the specific needs of a particular industry (i.e., Legal Services, Government, Utilities, Pharmaceutical, to name a few). The ISG program provides a forum to exchange the information for the benefit of all.

How do you find out more about ISG?

Contact the ISG coordinator, Tracee Hughs, thughs@rdbl原因.com or visit the Education and ISG table at the next ARMA meeting.

When does the ISG—Legal meet?

ISG Legal will meet at 11AM on normal meeting dates at the Education / ISG table outside the meeting room.

I facilitate change.

I protect vital assets.

I ensure compliance.

I reduce risk.

I manage information.

I AM A RECORDS MANAGER

As a records management professional, I have the vision to see what is ahead, the patience to work in a demanding environment and the ability to achieve my organization's strategic initiatives.

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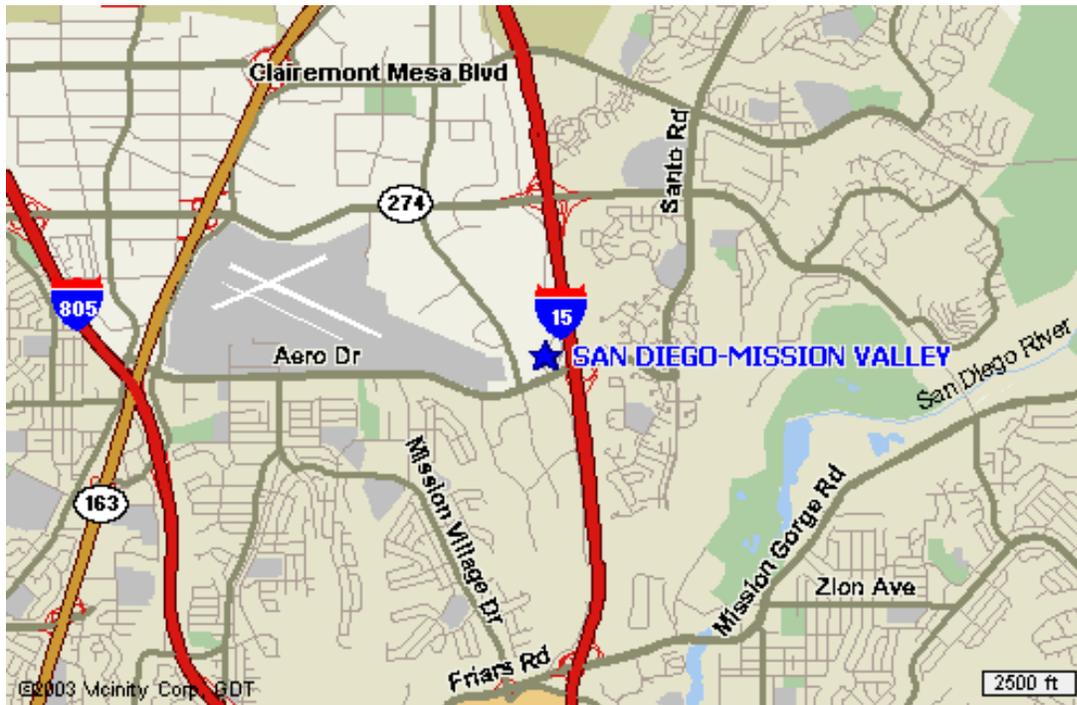
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February Registration Form

Holiday Inn
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 858-277-1199

**A Mock Trial Presentation
 Featuring John C. Montana
 Wednesday, February 25, 2004
 8:30 to 4:00**



Bring Gently used books for a chance to Win a PRIZE. We are collecting books for victims of the San Diego fires.

To Register: FAX this form to [Linda Maczko](mailto:lmaczko@ucsd.edu) at (858) 534-6523, or Call Linda @ (858) 534-3395, or Email : lmaczko@ucsd.edu **NO LATER than 3:30 p.m., Friday, February 20, 2004.** Cancellations later than 48 hours prior to the event will be billed to the person registered. If not sending advanced payment, cash or check payment required at registration.

Lunch (please circle)	Member \$75.00	Non-Member \$85.00	Vegetarian Yes
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Name: _____

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Sarbanes-Oxley One Year Later

(Continued from page 10)

Currently, corporations are in a transition state with Sarbanes-Oxley. Those seeking to gain compliance will have to make some of their own rules. It is clear that some actions must be taken, but those actions are not clear. Clarity requires a systematic analysis of the RIM demands made by Sarbanes-Oxley and a self-motivated push toward meeting those demands. Only then can a corporation claim to be compliant with Sarbanes-Oxley.

Taken from The Information Management Journal, July/August 2003. Author is John Montana, J. D., a records management and legal consultant and principal of Cunningham and Montana. He may be contacted at johnmontana@qwestinternet.net.

FYI

Here's the URL to a very important site—the **Chapter Connection** on the ARMA International Website!!

Go to <http://www.arma.org/intranet>

Click on Chapter Connection



Check out this URL to find out about ARMA Webinars / Calendar of Events

<http://www.arma.org/resources/calendar.cfm>

FREE TRAINING CLASSES!!

Centers for Education and Technology (CET), a part of the San Diego Community College District, is offering free training classes in a wide range of topics. Their Business Information Technology courses include offerings in HTML, XML, Java programming, JavaScript, UNIX, Cisco, Oracle, Linux, Visio, A+ Training, TCP/IP, MS Office and many others. These courses are offered at several campuses throughout the city.

Please take a look at their web site,

<http://www.sandiegocet.net/index.php>, for class and registration information.

Check out vital information you might have missed!

http://www.arma.org/learning/seminar_archive.s.cfm

This is a link to ARMA Audio and Web Seminars that you might have missed.



The ARMA Conference for 2004 is in Long Beach, CA.

CHECK IT OUT!!

Make your plans now!!



Happy Reading!!

[RIM and Privacy: The New Business Imperative](#)

[HIPAA Privacy Essentials](#)

[Sarbanes-Oxley Act 2002 Materials](#)



Membership



Membership Corner

By Linda Maczko



H

ello, this is my first year as the Membership Chair. I'm still getting my feet wet with trying to devise new and better ways to reach out to our current membership as well as bring in new members.

ARMA luncheons are a wonderful way to meet interesting people working in different area of the business world such as law, pharmaceutical research, computer technology and government, all sharing information. And our February seminar promises to be a captivating one.

You can help our chapter grow by the power of one. So if you bring a friend to our next luncheon, and maybe they'll tell two friends, and so on, and so on.

See you there,

Linda Maczko
Membership Co-Chair



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