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The San Diego Chapter of ARMA International is pleased to announce a special half-day seminar focusing on the understanding of basic computer and networking technologies, concepts, and operations to be able to inventory electronic records and establish appropriate retention periods.

The Chapter is very fortunate to have John T. Phillips, CRM, CDIA, FAI. Mr. Phillips is a management consultant, author, and educator who has assisted given information on the management of electronic records made the profession of Records and Information Management respected and well known for identifying cutting edge issues that face the information management professions.

In 2001 John was inducted into the ARMA International Company of Fellows. He was also awarded the Emmett Leahy Award for 2001 by the Institute of Certified Records Managers, for his outstanding contributions to the profession of Records and Information Management, for his outstanding contributions to the information and records management professions over many years.

The growing use of e-mail systems, corporate databases, legacy software applications, and desktop computers to create electronic records requires that these technologies be understood with respect to how data, documents, and records are created within the systems. Seminar attendees will learn to identify records within computer systems, create metadata for indexing records, establish filing schemes for documents, discover the locations of electronic records, and categorize, and classify electronic records.

MEETING AGENDA

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>9:00 am</td>
<td>Registration / Breakfast</td>
</tr>
<tr>
<td>9:30 am</td>
<td>Vendor Showcase</td>
</tr>
<tr>
<td>10:00 am</td>
<td>Morning Session</td>
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<tr>
<td>12:00 pm</td>
<td>Lunch</td>
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<tr>
<td>1:00 pm</td>
<td>Afternoon Session</td>
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<tr>
<td>3:00 pm</td>
<td>Vendor Showcase</td>
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1. Learn how to directly help IT personnel and document creators identify and locate electronic records within e-mail systems, enterprise business applications, and on personal computers.
2. Understand technologies impact records creation and filing location.
3. Learn how to use software document properties and metadata to inventory, categorize, and classify electronic records.
## President’s Message

**by David Taylor**

On **Tuesday, March 18, 2003** San Diego ARMA Chapter will host the most important event of the year – a half day seminar on “Managing Electronic Records.” We have a renowned speaker, John T. Phillips, CRM, CDIA, FAI conducting the seminar. He is a management consultant, educator, and an author. His technology and information management articles have been published in numerous professional journals and his presentations are widely respected and well known for sorting out cutting edge issues facing information management professions today.

Whether you have a document management system or not, this event is the one that can crystallize the key points and offer strategies to do your records management work better and much more efficiently. Mr. Phillips will be sharing his knowledge in approaches to IT personnel in order to get the information you need, help you understand the many different technologies that you can tap into, and how to develop, maintain and access current methods of inventorying, cataloging, and classifying electronic information.

This coming seminar is the fourth in a series of seminars that addresses managing information as an asset. Figure 1 Managing Information as an Asset depicts the various parts that go into managing information. San Diego ARMA decided to use this layout as a roadmap to develop the year’s seminars.

During the upcoming half-day seminar Mr. Phillips will be hitting many key points listed in the boxes below. Additionally, several vendors will be presenting their products and available to answer your questions.

This seminar is packed full of insightful information, good food, and a raffle for several prizes. This is one you’ll not want to miss!

---

### SEMINAR TOPICS

- **Managing Electronic Records**
- **Managing Information as an Asset**
- **Business Process Reengineering**
- **Business Process Redesign**
- **Correcting Management**
- **Data Mining**
- **Customer Relationship Management**

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RSI provides the most secure document destruction available

The absolute assurance that your material has been destroyed, and in a timely manner

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The absolute assurance that even though the material has been shredded, it will be recycled

The absolute assurance that private and confidential material will remain private and confidential!

Waste analysis and program design providing waste reduction and compliance with California Law (Assembly Bills 939, 75 and 2246).
may have already issued or in the future issue regulations that specifically address the scope of its jurisdiction over associated persons. Based on standard statutory interpretation, the scope of the new Board's scrutiny of "associated persons," unless otherwise specifically provided for in the statute, should be limited to those activities associated with the public accounting firm's auditing function or other activities that the Sarbanes-Oxley Act places under the jurisdiction of the new Board. These activities, and the scope of investigations of the Board, should suggest the parameters that attorneys working with public accounting firms should be concerned with.

Section 104 regarding the Board's ongoing inspections of registered firms includes: "a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers."

Section 105 regarding investigations of the Board includes: In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, ... of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

Q: Sections of the United States Code were updated based on the content of the Act. Can you cite specific sections (beyond Title 18, Chapter 73, §§1512, 1519-1520, 1102)?

A: Numerous sections of the United States Code were amended by the Sarbanes-Oxley Act. See listing of titles and sections compiled from Law Revision Counsel.

Q: If a firm registers, can the Public Company Accounting Oversight Board go back and inspect records from prior to when they registered? If yes, how far back can they go?

A: Specific document retention requirements under the law as amended by the Sarbanes-Oxley Act are effective immediately, unless otherwise specified in the

(Continued on page 6)
Sanction to be unnecessary or excessive. §107(c)(3).

Q: Are there any implications in the Act for control of reports and workpapers prepared by internal audit groups?

A: New Section 1520 of Title 18 of the United States Code refers only to audits and audit review papers. The SEC will issue rules to further define these requirements. New Sections 1519 and 1512 of Title 18 of the United States Code are not limited to these and cover any documents.

Q: Are there implications of retention of audit reports submitted to the company that were prepared by an outside audit firm for the audit they just completed for the company?

A: Sarbanes-Oxley imposes a retention schedule for registered public accounting firms that have conducted audits of publicly traded companies. See Section 103. The Act does not pose a retention schedule for these documents on the corporate entity; however, see Sections 1512, 1519, and 1520 regarding the potential coverage of all documents.

Q: What does the corporate responsibility disclosure statement include?

Q: Why is there a difference between the retention period of audit workpapers, 7 years in the Act and 5 years in the criminal section? Should a publicly traded company keep the records for a longer period of time?

A: Sarbanes-Oxley requires an auditing firm to retain audit workpapers for seven years, but it does not specifically address the retention requirement of these records by a corporate entity. However, in its Federal Register notice of proposed rules as required under Section 802 of the Act, the SEC, among other things, asks if there should be a “document retention requirement” for the corporate entity.

Q: Where does the Oversight Board funding come from?

A: Startup funds come from SEC budget. After the Board is set up, funding will be generated from collection of monetary penalties. See §109(c)(2).

Q: What or who is the managing agency of the Board?

A: The Board is a quasi-independent body with the SEC having some administrative review over Board decisions. See §107. The SEC retains the right to relieve the Board of its responsibilities to enforce compliance; the SEC may censure the Board or individual Board members. See §107(d).

Q: If the SEC has the power to override the Board’s sanction, how and when will the override be instituted? Will it be evaluated by appeal of sanctionee, or will all decisions made by the Board be reviewed by the SEC?

A: See §107(c). The SEC has the authority to enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board if the SEC finds the sanction to be unnecessary or excessive. §107(c)(3).

Off the Record
March 2003
New act has major impact on electronic evidence Several provisions of Sarbanes-Oxley govern document-retention policies.

By Michele C.S. Lange SPECIAL TO THE NATIONAL LAW JOURNAL

In response to the recent series of highly publicized business scandals, Congress passed the Sarbanes-Oxley Act. President Bush signed the act into law on July 30. See http://financialservices.house.gov/media/pdf/H3763CR_HSE.PDF. The legislation aims to strengthen accounting oversight and corporate accountability by enhancing disclosure requirements, increasing accounting and auditor regulation, creating new federal crimes and increasing penalties for existing federal crimes.

Ten tips for electronic record retention

Sarbanes-Oxley reinforces the reality that electronic data management should garner top priority for corporate leadership, corporate counsel and accounting/auditing professionals. The following 10 tips should be considered when developing and maintaining rules for electronic record retention:

Ø Make electronic-data management a business initiative, supported by corporate leadership.
Ø Keep records of all types of hardware/software that are in use and the locations of all electronic data.
Ø Create a document-review, retention and destruction policy, which includes consideration of backup and archival procedures, any online storage repositories, record custodians and a destroyed documents “log book.”
Ø Create an employee technology-use program, including procedures for written communication protocols, data security, employee electronic-data storage and employee termination.
Ø Clearly document all company data-retention policies.
Ø Document all ways in which data can be transferred to or from the company.
Ø Regularly train employees on the company’s data-retention policies.
Ø Implement a litigation response team, comprised of outside counsel, corporate counsel, the human resources department, business line managers and IT staff, that can quickly alter any document-destruction policy.
Ø Be aware of electronic “footprints”—delete does not always mean delete, and metadata is a fertile source of information and evidence.
Ø Cease document-destruction policies at the first notice of a suit or reasonable anticipation of suit. On a final note, make a practice of conducting routine audits of policies and enforcing violations.

Similar to other areas of the law, Sarbanes-Oxley embraces the issues developing around the proliferation of electronic evidence. With 93% of all business documents created electronically and only 30% ever printed to paper, corporations in the last few years have been compelled to address the retention of, and potential liability associated with, electronic documents and communication. Ten years ago, corporations tended not to keep many hard copies of documents because paper documents take up physical space. Now companies save nearly every electronic document and e-mail because it can be stored electronically with relative ease. In response to this techno-reality, corporations are implementing and enforcing document-retention policies more than ever before.

Yet the reality is that outdated e-mail, antiquated files and archival data stored on backup tapes or disks are often kept for months or years past their useful life. Case law reveals that unwieldy preservation of all electronic data and e-mail created in the course of business can come back to haunt a corporation when litigation ensues. For example, in Murphy Oil USA Inc. v. Fluor Daniel Inc., 2002 WL 246439 (E.D. La. Feb. 19, 2002), the court stated, “Fluor’s e-mail retention policy provided that backup tapes were recycled after 45 days. If Fluor had followed this policy, the e-mail issue would be moot.” As a result of Fluor’s unwieldy document retention, the parties spent considerable time and money arguing the discoverability of e-mail messages that should have been destroyed.

New retention requirements

Sarbanes-Oxley imposes new requirements on public companies and their accounting and auditing teams with regard to the retention and destruction of certain financial records. There are three provisions that deal with electronic documents and should be of concern to corporations: n Document alteration or destruction. Sec. 802 of the act amends the federal obstruction-of-justice statute by adding new offenses. First, people who knowingly alter, destroy, mutilate, conceal or falsify any document or tangible object with the intent to impede, obstruct, or influence proceedings involving

(Continued from page 4)
Sarbanes/Oxley and HIPAA Information

(Continued from page 5)

federal agencies or bankruptcy proceedings may be fined, imprisoned up to 20 years or both.

Mandatory document retention. Section 802 directs accountants to maintain certain corporate audit records or to review work papers for a period of five years from the end of the fiscal period during which the audit or review was conducted. It also directs the Secur-

ities and Exchange Commission (SEC) to promulgate, within 180 days, any necessary rules and regulations relating to the retention of relevant records from an audit or review. This section makes it unlawful knowingly and willfully to violate these new provisions—including any rules and regulations promulgated by the SEC—and imposes fines, a maximum term of 10 years’ imprisonment or both.

Obstruction of justice. Section 1102 expands the obstruction-of-justice statute that prohibits tampering with witnesses. Now acting or attempting “corruptly” to alter or destroy a record or other object “with the intent to impair the object’s integrity or availability for use in an official proceeding” is punishable with fines and/or imprisonment of up to 20 years.

Impact of the provisions

The impact of Sarbanes-Oxley on electronic-data management is basically twofold. The first part of section 802 places criminal liability on any person who knowingly destroys documents or objects relating to a federal agency or Chapter 11 Bankruptcy. Section 1102 prohibits people from corruptly altering or destroying documents with the intent to impair an official proceeding. The definition of “document” in these statutes is likely to be interpreted to include electronic-document destruction. Given its breadth, these provisions give the federal government authority to prosecute cyber-crimes and other computer hacking that results in information destruction relating to official proceedings.

Past case law reveals the federal government’s commitment to using computer forensic tools to bring hackers and cybercriminals to court. For example, in U.S. v. Lloyd, 269 F.3d 228 (3d Cir. 2001), the defendant was convicted under 18 U.S.C. 1030 on one count of computer sabotage for planting a computer-based “time bomb” in his employer’s computer systems. Computer experts were essential in recovering the evidence of the time bomb. Sarbanes-Oxley is likely to expand that governmental commitment to using computer forensic protocols to prosecute cybercrime.

Further, section 802 of Sarbanes-Oxley is likely to have a great effect on how accounting and auditing firms handle electronic documents. Most accounting firms already retain audit and review records for at least five years, so it is perceived that the second portion of section 802 might have minimal impact. Yet, section 802 specifically references the retention of electronic records that are created, sent or received in connection with an audit or review. This provision could require many accounting firms to retain more documents than they have in the past.

Further, the section 802 document-retention rules and regulations to be implemented by the SEC also could force accounting professionals to give more consideration to their current electronic-records policies. The breadth and depth of these rules remains to be seen.

In complying with the new provisions of Sarbanes-Oxley, accounting and auditing firms should consider electronic records when determining what should be retained and what should be destroyed. The financial industry is not the only business sector affected by the dangers of digital data, however. All business organizations should bear in mind that retained and deleted electronic evidence could become intricate minefields of unrecoverability. Even if information is effectively deleted and overwritten from a hard drive, this still does not mean that it is gone for good. Documents that have been copied to other media, saved in a routine system backup or e-mailed to anyone else have effectively been copied over and over again, creating numerous replicas of the electronic footprints.

Accountants and auditors

Accounting and auditing firms can mitigate the risk associated with electronic information management by creating a document-retention policy. See Daniel J. Pryk

we, “The Sarbanes Oxley Act Actives the Stakes for Electronic Records Management” Digital Discovery & E-Evidence, October 2002, at 1. The policy should start with an information inventory of the firm’s electronic framework, including documentation of all electronic hardware and software in use throughout the company (including cell phones, PDAs, laptops, etc.); all locations and storage formats of archived electronic data; and all methods in which data can be transferred to/from the company.

The bulk of the retention policy should include methods for classifying documents, determining retention periods, setting the retention schedule and procedures and selecting a records custodian. The policy should also create an index of active and inactive records and implement “log books” in which all destroyed documents are recorded. Most important, an organization must retain all relevant documents when it knows, or should have reason to know, that they will become material in the future.

(Continued on page 7)
**MEMBERSHIP**

Membership Corner
by Trey Williams

**MemberFest**

Share the Experience. Feel the Power. Reap the Rewards!!

Engage your peers in the power of connections by participating in Member Fest! This exciting new member-get-a-member program rewards you for sharing the ARMA experience with your colleagues.

Sponsor a new member in ARMA International and join an exclusive group of ARMA members in the CORE (Connecting Others through Encouragement and Recruitment) Club. Sponsor at least five new members and you may win great prizes!

The top three recruiters by June 30, 2003, will win one of the following prizes.

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A special thank you to our sponsor, ColorFlex, for making these prizes possible.

Chapters also win in this new program. Check the Recognition page for more exciting rewards!

How to Get Started

It’s as easy as 1-2-3.

1) Read the Official Rules, so you know exactly what to expect.

2) Make a list of colleagues whom you think could benefit from all that ARMA offers.

3) Fill in your Member ID# on the special Member Fest application and go for it!

All the materials you need to be successful are available in the Recruitment Kit or by calling ARMA’s Member Services Department at 800.422.2762.

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**San Diego ARMA**

**Next Board Meeting**

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**Sarbanes/Oxley and HIPAA Information**

(Continued from page 6)

In conclusion, the Sarbanes-Oxley Act compels public companies, corporate counsel and accounting/auditing professionals to consider the impact of electronic evidence in relation to certain financial records. No longer can e-mail and computer files be blindly destroyed.

Instead, balance must be found between appropriate destruction of stale and nonregulated documents and adequate preservation of potentially significant documents. Such balance is the key to effective electronic-document management and the protection of informational assets as required by this new law.

Michele C.S. Lange is a staff attorney for the electronic evidence services division of Kroll Ontrack Inc., based in Eden Prairie, Minn. Lange can be reached at mlange@krollontrack.com

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Final HIPAA Security Rule Published

The Centers for Medicare and Medicaid Services (CMS) recently announced the final rule on the Health Insurance Portability and Accountability Act (HIPAA) standards for the security of electronic health information. As published in the Federal Register, the rule specifies a series of administrative, technical, and physical security procedures for covered entities to use to assure the confidentiality of electronic protected health information.

According to Gartner Inc., the scope of the final rule is basically the same as the draft released in August 1998, but the long-awaited, revised, and now final U.S. healthcare regulation increases the flexibility of healthcare organizations to comply because the encryption of e-mail containing protected health information is no longer mandatory.

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Off the Record

March 2003

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FYI

Sarbanes/Oxley and HIPAA Information

The standards are separated into either "required" or "addressable" implementation specifications. Covered entities must implement required sections as written but for addressable sections, they can document why the implementation specification is not reasonable or appropriate to its circumstances and implement an equivalent measure, if reasonable and appropriate. To determine the reasonableness and appropriateness of an implementation specification, covered entities may consider criteria such as the "cost of security measures" and the "probability and criticality of potential risks to electronic protected health information."

Twenty-two of 42 implementation specifications are addressable, including those involving information technology security systems. The addressable implementation specifications include "integrity controls" and "encryption" related to the standard for "transmission security." At minimum, Gartner says, this approach will encourage tens of thousands of doctors in individual and small group practices to exchange unencrypted e-mails about routine appointment and prescription renewal requests with patients because such communications carry significant risks and benefits. In addition, emphasis will shift from e-mail security to content filtering because the real risk is authorized users doing things they should not.

The new flexibility should reduce the total cost of compliance for the United States by at least 50 percent, Gartner estimates.

Do you find yourself asking…

Why do I need to be concerned about HIPAA? How does HIPAA affect me? How will HIPAA affect my organization and my job?

ARMA International and Privacy Council will help you answer these questions and many more in the new webinar "HIPAA ... What EVERY Business Needs to Know!" This webinar will take place at 2:00 p.m. CST on Tuesday, March 4 and will feature Ryan Barker, Privacy Council’s chief privacy officer. Barker will discuss how the Health Insurance Portability and Accountability Act directly or indirectly impacts every organization and will help you gain an overall understanding of the HIPAA Privacy Rule. With the April 14 compliance date just around the corner, there is no time to delay in learning how HIPAA impacts your organization and in taking steps toward compliance.

More details are available at www.arma.org/learning/seminars/hipaa_webinar.cfm

2002-2003 Meeting Programs

March 20, 2003 1/2 Day Seminar June 19, 2003 Final Luncheon for the year

May 2 - May 4, 2003 / Los Angeles, CA
3 Day Document Imaging and Document Management Course.

For those persons who cannot attend the class, all of the printed class materials including the following 3 new papers (below) are available free on the Internet at: http://www.archivebuilders.com/whitepapers/index.html


[2] Two new one-page papers on storage and communications:


The paper on the ASCII encoding of text has been reformatted for clarity. If you have heard the term ASCII, and want to see a display of the ASCII organization of the Latin alphabet, this paper may be useful.


There is also a new Large Print edition of the 28-page Document Imaging Document Management site summary page that prints on 11 by 17 (A3) paper for people who would like to read the summary in LARGE PRINT.


A link to a demonstration site for multi-gigapixel grayscale images (including images of handwritten and hand drawn documents) is provided at: http://navigatela.lacity.org/samples/start/. These images are viewable over a dial-up Internet connection.

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To access a copy of the 289-page rule, go to www.cms.hhs.gov/hipaa/hipaa2/default.asp. (Web Posted 2/21/2003)

HIPAA Privacy Essentials

If you are responsible for bringing your organizations into compliance with the U.S. Health Insurance Portability and Accountability Act (HIPAA), you will find the expertise, guidance, and tools needed to navigate through this complex regulation in HIPAA Privacy Essentials from ARMA International and Privacy Council. HIPAA Privacy Essentials will help you determine which components of the HIPAA Privacy Rule apply to your organization, manage and prepare for a compliance program learn what information the Privacy Rule protects learn about other state and federal privacy laws affecting the healthcare industry

The information is provided in your choice of formats: an online course or printed publication. The informative and interactive online course quickly gets you up-to-speed on how the HIPAA Privacy Rule impacts your organization and has been pre-approved for 7.5 education credits for certified records managers. All users will receive a course certification upon successful completion of the course. Registration and other details are available at www.armaelearningcenter.org.

HIPAA Privacy Essentials is also available in a printed format, complete with a CD-ROM that also contains the HIPAA ruling and privacy resources in PDF format. You can customize electronic versions of the tools to meet your specific requirements. For more information or to order this publication, go to www.arma.org/bookstore/product_detail.cfm?itemID=1202.

HIPAA Privacy Implementation Guide

After you've completed HIPAA Privacy Essentials, you'll be ready to jump into the Implementation Guide, which walks you clearly and concisely through the entire process of setting up a HIPAA privacy program, from self-assessment to hiring a compliance officer, implementation, and training. This publication has many helpful tools, including training slides, assessment worksheets, and sample documents that will save hours of work.

HIPAA Privacy Implementation Guide includes a CD-ROM version supplemented with various tools and privacy resources in PDF format, which you can customize the electronic versions of the tools to meet your specific requirements. This publication is also available in ARMA's Online Bookstore. Go to www.arma.org/bookstore/product_detail.cfm?itemID=1202.


Two new one-page papers on storage and communications:


This paper shows a total of 39 image segments comparing the same handwritten text or hand drawn line art repro-duced in both grayscale (8-bits) and in black & white (1-bit). Cost comparisons for digital storage are estimated. This paper is designed so it can be used as a model for archivists, librarians, and records managers to conduct grayscale vs. black & white research with their own documents at: http://www.archivebuilders.com/whitepapers/2205_6p.pdf


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Next to be implemented in the HIPAA Privacy Rule is "encryption" related to the standard for "transmission security." At minimum, Gartner says, this approach will encourage tens of thousands of doctors in individual and small group practices to exchange unencrypted e-mails about routine appointment and prescription renewal requests with patients because such communications carry minuscule risks and significant benefits. In addition, emphasis will shift from e-mail security to content filtering because the real risk is authorized users doing things they should not.

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1) Read the Official Rules, so you know exactly what to expect.
2) Make a list of colleagues whom you think could benefit from all that ARMA offers.
3) Fill in your Member ID# on the special Member Fest application and go for it!

All the materials you need to be successful are available in the Recruitment Kit or by calling ARMA’s Member Services Department at 800.422.2762. The kit contains:
- Campaign brochure/application - new members must submit this special application form, complete with your Member ID# in order for you to receive credit
- PowerPoint presentation explaining the benefits of ARMA membership

The best approach is to share your own experience and reasons for being a member - make a list to share with others. We have also gathered some helpful Recruitment Tips from many of the association’s leaders for you to use.

**Most of all, have fun!**
mandatory document retention. Second, \( \approx 802 \) directs accountants to maintain certain corporate audit records or to review work papers for a period of five years from the end of the fiscal period during which the audit or review was conducted. It also directs the Securities and Exchange Commission (SEC) to promulgate, within 180 days, any necessary rules and regulations relating to the retention of relevant records from an audit or review. This section makes it unlawful knowingly and willfully to violate these new provisions—including any rules and regulations promulgated by the SEC—and imposes fines, a maximum term of 10 years' imprisonment or both.

Obstruction of justice. Sec. 1102 expands the obstruction-of-justice statute that prohibits tampering with witnesses. Now acting or attempting “corruptly” to alter or destroy a record or other object “with the intent to impair the object's integrity or availability for use in an official proceeding” is punishable with fines and/or imprisonment of up to 20 years.

Impact of the provisions

The impact of Sarbanes-Oxley on electronic-data management is basically twofold. The first part of \( \approx 802 \) places criminal liability on any person who knowingly destroys documents or objects relating to a federal agency or Chapter 11 Bankruptcy. Sec. 1102 prohibits people from corruptly altering or destroying documents with the intent to impair an official proceeding. The definition of “document” in these statutes is likely to be interpreted to include electronic-document destruction. Given its breadth, these provisions give the federal government authority to prosecute cyber-crimes and other computer hacking that results in information destruction relating to official proceedings.

Past case law reveals the federal government's commitment to using computer forensic tools to bring hackers and cybercriminals to court. For example, in U.S. v. Lloyd, 269 F.3d 228 (3d Cir. 2001), the defendant was convicted under 18 U.S.C. 1030 on one count of computer sabotage for planting a computer-based “time bomb” in his employer's computer systems. Computer experts were essential in recovering the evidence of the time bomb. Sarbanes-Oxley is likely to expand that governmental commitment to using computer forensic protocols to prosecute cybercrime.

Further, \( \approx 802 \) of Sarbanes-Oxley is likely to have a great effect on how accounting and auditing firms handle electronic documents. Most accounting firms already retain audit and review records for at least five years, so it is perceived that the second portion of \( \approx 802 \) might have minimal impact. Yet \( \approx 802 \) specifically references the retention of electronic records that are created, sent or received in connection with an audit or review. This provision could require many accounting firms to retain more documents than they have in the past.

Further, the \( \approx 802 \) document-retention rules and regulations to be implemented by the SEC also could force accounting professionals to give more consideration to their current electronic-records policies. The breadth and depth of these rules remains to be seen.

In complying with the new provisions of Sarbanes-Oxley, accounting and auditing firms should consider electronic records when determining what should be retained and what should be destroyed. The financial industry is not the only business sector affected by the dangers of digital data, however. All business organizations should bear in mind that retained and deleted electronic evidence could become intricate minefields of liability. Even if information is effectively deleted and overwritten from a hard drive, this still does not mean that it is gone for good. Documents that have been copied to other media, saved in a routine system backup or e-mailed to anyone else have effectively been copied over and over again, creating numerous replicas of the “electronic footprints.”

Accountants and auditors

Accounting and auditing firms can mitigate the risk associated with electronic information management by creating a document-retention policy. See Daniel I. Prywes, “The Sarbanes Oxley Act Raises the Stakes for E-Records Management” Digital Discovery & E-Evidence, October 2002, at 1. The policy should start with an information inventory of the firm's electronic framework, including documentation of all electronic hardware and software in use throughout the company (including cellphones, PDAs, laptops, etc.); all locations and storage formats of archived electronic data; and all methods in which data can be transferred to/from the company. The bulk of the retention policy should include methods for classifying documents, determining retention periods, setting the retention schedule and procedures and selecting a records custodian. The policy should also create an index of active and inactive records and implement “log books” in which all destroyed documents are recorded. Most important, an organization must retain all relevant documents when it knows, or should have reason to know, that they will become material in the future.

(Continued on page 7)
New act has major impact on electronic evidence

Several provisions of Sarbanes-Oxley govern document-retention policies.

By Michele C.S. Lange SPECIAL TO THE NATIONAL LAW JOURNAL

In response to the recent series of highly publicized business scandals, Congress passed the Sarbanes-Oxley Act. President Bush signed the act into law on July 30. See http://financialservices.house.gov/media/pdf/H3763CR_HSE.PDF. The legislation aims to strengthen accounting oversight and corporate accountability by enhancing disclosure requirements, increasing accounting and auditor regulation, creating new federal crimes and increasing penalties for existing federal crimes.

Ten tips for electronic record retention

Sarbanes-Oxley reinforces the reality that electronic data management should garner top priority for corporate leadership, corporate counsel and accounting/auditing professionals. The following 10 tips should be considered when developing and maintaining rules for electronic record retention:

Ø Make electronic-data management a business initiative, supported by corporate leadership.
Ø Keep records of all types of hardware/software that are in use and the locations of all electronic data.
Ø Create a document-review, retention and destruction policy, which includes consideration of backup and archival procedures, any online storage repositories, record custodians and a destroyed documents “log book.”
Ø Create an employee technology-use program, including procedures for written communication protocols, data security, employee electronic-data storage and employee termination/transfer.
Ø Clearly document all company data-retention policies.
Ø Document all ways in which data can be transferred to or from the company.
Ø Regularly train employees on the company’s data-retention policies.
Ø Implement a litigation response team, comprised of outside counsel, corporate counsel, the human resources department, business line managers and IT staff, that can quickly alter any document-destruction policy.
Ø Be aware of electronic “footprints”—delete does not always mean delete, and metadata is a fertile source of information and evidence.
Ø Cease document-destruction policies at the first notice of a suit or reasonable anticipation of suit. On a final note, make a practice of conducting routine audits of policies and enforcing violations.

Similar to other areas of the law, Sarbanes-Oxley embraces the issues developing around the proliferation of electronic evidence. With 93% of all business documents created electronically and only 30% ever printed to paper, corporations in the last few years have been compelled to address the retention of, and potential liability associated with, electronic documents and communication. Ten years ago, corporations tended not to keep many hard copies of documents because paper documents take up physical space. Now companies save nearly every electronic document and e-mail because it can be stored electronically with relative ease. In response to this techno-reality, corporations are implementing and enforcing document-retention policies more than ever before.

Yet the reality is that outdated e-mail, antiquated files and archival data stored on backup tapes or disks are often kept for months or years past their useful life. Case law reveals that unwieldy preservation of all electronic data and e-mail created in the course of business can come back to haunt a corporation when litigation ensues. For example, in Murphy Oil USA Inc. v. Fluor Daniel Inc., 2002 WL 246439 (E.D. La. Feb. 19, 2002), the court stated, “Fluor’s e-mail retention policy provided that backup tapes were recycled after 45 days. If Fluor had followed this policy, the e-mail issue would be moot.” As a result of Fluor’s unwieldy document retention, the parties spent considerable time and money arguing the discoverability of e-mail messages that should have been destroyed.

New retention requirements

Sarbanes-Oxley imposes new requirements on public companies and their accounting and auditing teams with regard to the retention and destruction of certain financial records. There are three provisions that deal with electronic documents and should be of concern to corporations: n Document alteration or destruction. Sec. 802 of the act amends the federal obstruction-of-justice statute to add new offenses. First, people who knowingly alter, destroy, mutilate, conceal or falsify any document or tangible object with the intent to impede, obstruct, or influence proceedings involving
Sanction to be unnecessary or excessive. §107(c)(3).

Form refers only to audits and audit review papers. The SEC will issue rules to further define these requirements. New Sections 1519 and 1512 of Title 18 of the United States Code are not limited to these and cover any documents.

A: Sarbanes-Oxley imposes a retention schedule for registered public accounting firms that have conducted audits of publicly traded companies. See Section 103.

Q: Where does the Oversight Board funding come from?

A: Startup funds come from SEC budget. After the Board is set up, funding will be generated from collection of monetary penalties. See §109(c)(2).

Q: Where is the Oversight Board located?

A: New meeting location: Marriott Courtyard – Kearny Mesa! Join us on March 18th at our new meeting location: Marriott Courtyard – Kearny Mesa!

RSVP to Trey Williams: 858-748-1100 x209 twilliams@corovan.com

We are collecting books for READ/San Diego. Books collected will either be resold and the money donated to the program or used for instruction.

To Register:

Call Trey @ 858 748-1100 x209, or Email: twilliams@corovan.com

March 2003

Member Non-Member Vegetarian $25.00 $30.00 Yes

March Registration Form

March 18th at our new meeting location: Marriott Courtyard – Kearny Mesa!
may have already issued or in the future issue regulations that specifically address the scope of its jurisdiction over associated persons. Based on standard statutory interpretation, the scope of the new Board’s scrutiny of “associated persons,” unless otherwise specifically provided for in the statute, should be limited to those activities associated with the public accounting firm’s auditing function or other activities that the Sarbanes-Oxley Act places under the jurisdiction of the new Board. These activities, and the scope of investigations of the Board, should suggest the parameters that attorneys working with public accounting firms should be concerned with.

Section 104 regarding the Board’s ongoing inspections of registered firms includes: “a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.”

Section 105 regarding investigations of the Board includes: In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, in violation of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

Q: Sections of the United States Code were updated based on the content of the Act. Can you cite specific sections (beyond Title 18, Chapter 73, §§1512, 1519-1520, 1102)?

A: Numerous sections of the United States Code were amended by the Sarbanes-Oxley Act. See listing of titles and sections compiled from Law Revision Counsel.

Many of our readers have requested information on both of these topics. I’ve included information about both that I hope you will find valuable. Please let me know either via email or phone if there are topics that you’d like to see in the newsletter.

Sarbanes-Oxley Webinar Update

Back by Popular Demand ...

ARMA International’s Sarbanes-Oxley Act of 2002 Webinar (audio conference combined with a web presentation) held in December 2002 attracted 270-plus participants. Due to the success of the first Webinar and many requests to repeat it, ARMA will host a second Sarbanes-Oxley Webinar, which will include any updates to the law, in March. The date and time will be announced soon.

Questions & Answers ...

Below are some questions from attendees of the first Sarbanes-Oxley Webinar and the Sarbanes-Oxley session at the 2002 ARMA International Conference & Expo in New Orleans. The answers to these questions were provided by Webinar leaders Frank Moore and Rae Cogar. Moore is director of the Government Relations Public Policy Practice Group for Smith Bucklin and Associates, which represents ARMA International in Washington, D.C. Cogar is a consultant specializing in the management of corporate records, an attorney, and chair of ARMA International’s U.S. Government Relations Committee (GRECO).

Q: Related to “associated persons,” under conducting investigations by the Board, how do you perceive an attorney’s relationship when working with public accounting firms? Are they then considered an “associated person”?

A: The term “associated persons” relating to public accounting firms and the investigations to be conducted by the Board and an attorney’s relationship when working with public accounting firms can be found in the Act’s definition of “associated person” in section 2. This definition includes any professional who, in connection with a public accounting firm, is involved in or otherwise participates in the public accounting firm’s activities. The Board has broad discretion in determining what activities are associated with public accounting firms for purposes of the Sarbanes-Oxley Act.

BRING A GUEST TO THE LUNCHEON

Come to the Luncheon—1st time this year!

You will receive a Blue ARMA Card Collect these ARMA Cards till the end of the year!

For the person who has the most Cards collected, our ARMA Reward will be...

( Drum roll! )

A $50 Gift Certificate to any Westfield Shopping Center!

Questions? - Call Trey Williams @ 858-748-1100 x209

(Continued on page 6)
Don’t Miss our 1-Day Seminar!

President’s Message
by David Taylor

On Tuesday March 18, 2003 San Diego ARMA Chapter will host the most important event of the year – a ½ day seminar on “Managing Electronic Records.” We have a renowned speaker, John T. Phillips, CRM, CDIA, FAI conducting the seminar. He is a management consultant, educator, and an author. His technology and information management articles have been published in numerous professional journals and his presentations are widely respected and well known for sorting out cutting edge issues facing information management professions today.

Whether you have a document management system or not, this event is the one that can crystallize the key points and offer strategies to do your records management work better and much more efficiently. Mr. Phillips will be sharing his knowledge in approaches to IT personnel in order to get the information you need, help you understand the many different technologies that you can tap into, and access current methods of inventorying, cataloging, and classifying electronic information.

This coming seminar is the fourth in a series of seminars that addresses managing information as an asset. Figure 1 Managing Information as an Asset depicts the various parts that go into managing information. San Diego ARMA decided to use this layout as a roadmap to develop the year’s seminars.

During the upcoming half-day seminar Mr. Phillips will be hitting many key points listed in the boxes below. Additionally, several vendors will be presenting their products and available to answer your questions.

This seminar is packed full of insightful information, good food, and a raffle for several prizes. This is one you’ll not want to miss!

RSI is a national leader in environmental services
RSI provides the most secure document destruction available

The absolute assurance that your material has been destroyed, and in a timely manner
The absolute assurance that you will not find your information in your competitors office
The absolute assurance that even though the material has been shredded, it will be recycled
The absolute assurance that private and confidential material will remain private and confidential!

Waste analysis and program design providing waste reduction and compliance with California Law (Assembly Bills 939, 75 and 2246).

RSI Consulting Services
22524 Ventura Blvd., Suite 23, Woodland Hills, CA 91364 (818) 865-0620
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<th>Person</th>
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<th>Iron Mountain</th>
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**Managing Electronic Documents**

The San Diego Chapter of ARMA International is pleased to announce a special half day seminar focusing on the understanding of basic computer and networking technologies, concepts, and operations to be able to inventory electronic records and establish appropriate retention periods.

The Chapter is very fortunate to have John T. Phillips, CRM, CDIA, FAI. Mr. Phillips is a management consultant, author, and educator who has clients, management consultants, and authors. He has worked for the University of Tennessee, Union Carbide Corporation, and Lockheed Martin as a contractor to the US Department of Energy, as well as state governments and additional private corporations. His technology and information management articles have been published in many professional journals and his presentations are widely respected and well known for identifying cutting edge issues that face the information management professions.

In 2001 John was inducted into the ARMA International Company of Fellows. He was also awarded the Emmett Leahy Award for 2001 by the Institute of Certified Records Managers, the profession of Records and Information Management, for his outstanding contributions to the information and records management professions over many years.

The growing use of e-mail systems, corporate databases, legacy software applications, and desktop computers to create electronic records requires that these technologies be understood with respect to how data, documents, and records are created within the systems. Seminar attendees will learn to identify records within computer systems, create metadata for indexing records, establish filing schemes for documents, and discover the locations of electronic records repositories. By concentrating on learning how specific document creation and storage technologies are used in the workplace to create and file electronic records, RIM practitioners can then better communicate the need for managing electronic records to users and computer systems personnel. Technologies covered will include e-mail, enterprise business applications, data formats, media formats, databases, data warehouses, Internet Web sites, Intranet Web sites, e-commerce, and remote application service providers.

- **Learn how to directly help IT personnel and document creators identify and locate electronic records within e-mail systems, enterprise business applications, and on personal computers.**
- **Understand technologies impact records creation and filing location.**
- **Learn how to use software documentation and metadata to inventory, categorize, and classify electronic records.**

**MEETING AGENDA**

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**President's Message - Don't Miss our 1-Day Seminar**

Sarbanes/Oxley and HIPAA Information

FYI

MemberFest Information

Distance Learning

January ARMA Reservation Form

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