Overcoming the Data Obesity Crisis

GETTING TO DEFENSIBLE DELETION

The gross accumulation of information with no exercise of defensible deletion has led Corporate America to a data obesity crisis. And data obesity, like human obesity, is responsible for a host of health issues for businesses, including non-compliance, unnecessary data storage costs, inefficiency and, as is the focus of this paper, the high cost of litigation and responding to government inquiries. According to Transparency Market Research, the e-discovery industry, including software and service, is expected to grow to $9.9 billion in the next three years. The fuel for this growth is the accumulation of nonessential, redundant and worthless information businesses horde.

DEFENSIBLE DELETION IS THE ANSWER

In document discovery, only one out of every one thousand documents collected and reviewed are relevant[1], and for every 1,000 pages a company has, an average of 90% have no regulatory requirement or valid business requirement to be retained.

When companies shrink the universe of information available for collection and review, they reduce the costs and the risks of document discovery. The Supreme Court[2] has spoken clearly on the legality and merits of disposing of records and information in the normal course of business. The courts recognize that it is impossible for a company, no matter its size, to retain all the information created in the course of business.

Beyond the impact on litigation, defensible deletion yields a host of other benefits. It makes finding critical information easier and more efficient, reduces the risk of a data breach and violations of privacy regulations and reduces storage costs.

THE DEFENSIBLE DELETION ROADBLOCK

There is overwhelming agreement from Chief Legal Officers, Chief Information Officers, litigators, analysts, jurists, bar associations and even technology and e-discovery experts on the tremendous value of defensible deletion. So why isn't every company systematically deleting legacy and redundant information in the normal course of business?

Defensible deletion begins by recognizing the fundamental difference between true records and information. True records – sometimes a form or single document but most often a logical collection of information – record the business activities and transactions of an organization. True records tend to have long-term value and **must** be retained to meet regulatory requirements or to support valid business needs. Some information, while not a record, may have reference value and should also be retained for some period of time. *But the majority of information created could and should be eliminated shortly after creation.* Businesses tend to do a poor job of separating the wheat from the chaff; however, so true records get mixed with general information that has no value.

In the end, businesses keep everything, everywhere for a very long time, making themselves vulnerable to crushing document discovery when litigation or a regulatory investigation occurs.

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[1] Litigation Cost Survey of Major Companies Statement Submitted by Lawyers for Civil Justice Civil Justice Reform Group U.S. Chamber Institute for Legal Reform For Presentation to Committee on Rules of Practice and Procedure Judicial Conference of the United States 2010 Conference on Civil Litigation Duke Law School

[2] Arthur Andersen LLP v. United States

GETTING TO DEFENSIBLE DELETION

Every company is capable of breaking free of the data obesity problem and getting to defensible deletion. Once a company decides to make a change, the following four steps lay out a practical and proven process they can follow:

1. **CREATE A RECORDS INVENTORY**: A comprehensive Records Inventory is the cornerstone of an effective records management or information governance initiative and connects retention rules to where the information lives making defensible deletion possible. True business records must be retained to meet regulatory requirements and to support the needs of the business. But companies seldom have an accurate inventory of what records they have or where they have them. An inventory of all record types used within the company – including the media and applications where each record type exists – must be developed. This inventory should identify which departments use and have access to records, where records are stored, the media used, how records are accessed, who they are shared with inside and outside the company, their reference value and the specific elements the records contain that make them personally identifiable or sensitive.

2. **MAKE THE RETENTION RULES ACTIONABLE**: The retention schedule or rules should include record type names and descriptions, retention periods that are clearly defined, a trigger event that starts the retention clock for each record type and the supporting logic behind each retention decision.

3. **INVOLVE BUSINESS PEOPLE**: Technology only gets you so far; business people will determine the ultimate success or failure of any governance program. While many companies have a records retention schedule, they are often confusing to business people and impossible to incorporate into IT systems. A successful initiative involves business people in the development of the records inventory and in determining the true value of information. And it is important to regularly communicate and train employees on records management and information governance policies, what is expected of them and the consequences of not complying.

4. **LEVERAGE TECHNOLOGY**: With a comprehensive Records Inventory and actionable retention rules, companies can leverage technology to execute the defensible deletion of eligible records and information. New technology makes the process faster, more thorough and more accurate and it makes it possible to automate the execution of policies going forward.

CONCLUSION

Every company, large or small, benefits from the defensible deletion of legacy and redundant information for which there is no legal or business requirement to retain. Through ongoing defensible deletion, compliance with regulations around retention and privacy is easier, data storage costs are reduced, efficiency improves and document discovery is substantially cheaper and less risky.

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