FINAL TRANSCRIPT

Thomson StreetEvents℠

**ACC - Corporate Protection Through Records Policy Enforcement

Event Date/Time: Oct. 13. 2004 / 11:30AM ET

CORPORATE PARTICIPANTS

Cherry Cox
Sallie Mae - Associate General Council

Tom Freeman
Reed Smith - Partner

Jeff Hatfield
Jordan Lawrence Group - Director

Charlie Brett
Xerox Global Services - Managing Principal

PRESENTATION

Cherry Cox - *Sallie Mae - Associate General Council*

Good morning, everyone. Welcome to the Association of Corporate Council webcast entitled Corporate Protection Through Enforced Records Policy. This program is presented by the Jordan Lawrence Group and my name is Cherry Cox. I am the Associate General Council for Sallie Mae. And I'll be your moderator for the web cast.

Today's webcast includes slides that can be downloaded from the ACC web site by clicking on the upper right hand corner of the ACC presentation page.

The presenters will prompt you when to move to the next slide.

If you experience any difficulties during the presentation, please contact ACC at 202-293-4103. Time will be available following our presentation for questions and answers. Please e-mail questions to web cast, that's W-E-B-C-A-S-T at JLGroup.com anytime during and after the presentation.

They will answer questions as they are received in the time allotted.

A recording of this web cast, along with bios of our presenters, will be available to ACC members later today. A transcript will also be available at the Jordan Lawrence Group web site. That's www.jlgroup.com.

Our topic today, Corporate Protection To Enforce Records Policies, is very timely. Records management has moved from a basement operation that was rarely given a second thought, to a Board Room issue many executives are struggling with.

Meanwhile, their companies continue to spend unnecessary money on fines, settlements, and lost litigation related to basic records control weaknesses.

Today's presentation will provide you with insights as to how to better protect your organizations from the dangers of having records programs that are not enforced.

Our presenters include Tom Freeman, a partner with the law firm Reed Smith. He will first review recent cases that are setting precedent in the courts and with regulators, drawing attention to the demands on executives to rework the corporate records program.

Jeff Hatfield, a Director of the Jordan Lawrence Group, will then explain concepts and insights critical to understanding when attempting to develop an enforced records program.

And finally Charlie Brett, a managing principal at Xerox Global Services, will conclude the presentation with a discussion on how technology actually supports enforcement once you have the correct records programs components in place.

I will now turn the presentation over to Tom Freeman.

Tom Freeman - *Reed Smith - Partner*

Thank you, Cherry. Good morning. We'll move forward to slide 3 here in just a moment.

Many companies are working diligently today to address the challenges of efficiently and effectively managing their records.

The good news is that many companies that did not have record management policies are now working to develop them. And the better news is that companies that already had record management policies are reviewing them and exploring ways to more effectively implement and enforce the policies.

Corporate management and corporate council are increasingly aware that effective and consistent enforcement of record management policies is as important, if not more important, than having a policy.

They are also more aware than ever before of the risks, including personal liability, and the expense that exists from ignoring or mismanaging corporate records.

As a result, companies are increasingly seeking solutions. They are implementing new systems and practices, applying new technology, and devoting more attention and money to the education and training of employees on this issue.

Today's program will focus on corporate protection through enforcement of record management policies. And I'm going to begin the program by discussing some of the recent examples of cases and government enforcement actions, which highlight the risks and consequences to companies of corporate records management programs that are ignored, mismanaged, not consistently applied, and not effectively enforced.

I'll then conclude with a brief discussion of some of the basic steps that companies can take in order to help mitigate their litigation risk and reduce expense through more effective records management programs, how a consistently applied record retention program can be used as a litigation management tool, and hopefully help your company reduce its litigation exposure and litigation expense.

My comments today will be followed a presentation by Jeff Hatfield of the Jordan Lawrence Group, who will speak to the importance of effective enforcement of records retention policy and strategies and tools for accomplishing that task.

And Jeff will be followed by Charles Brett, who will comment on the use of the technology in support of records management processes, the limitations of technology and the solutions, which technology can apply to the management of records, especially e-mail, which is an area of increasing concern for everyone today.

Starting then with the Zubulake case, which is slide 3, let me start with a discussion of a case, which I'm sure many of you are familiar with.

On July 20, in her fifth written opinion in what Judge Scheindlin described as a relatively routine employment discrimination dispute, Judge Shira Scheindlin of the U.S. District Court for the Southern District of New York imposed sanctions on UBS Warburg of destroying relevant e-mail messages during the pendancy of litigation.

Ms. Zubulake had filed her gender discrimination suit in August 2001 following her termination as an equities trader as UBS. Soon after receiving notice of the lawsuit, in-house and outside council for UBS has instructed personnel at UBS to retain relevant electronic information.

However, these instructions did not specifically mention UBS' electronic backup files, which stored deleted e-mails and were periodically recycled as part of the firm's normal data retention procedures.

From the description in the case file, the practices of recycling backup tapes in this case is similar to the practices commonly followed by many of the companies that I advise.

This failure to communicate, as Judge Scheindlin referred to it, effectively - the failure to communicate effectively the litigation hold regarding the backup tapes resulted in the destruction of discoverable electronic information when notwithstanding the litigation hold instruction, certain UBS employees deleted relevant e-mails.

While many of the related, while many of the deleted e-mails were eventually recovered, the data recovery, which had been ordered by the court, came at great expense and delay.

Judge Scheindlin concluded that the failures that led to the destruction of the - or the delayed production of relevant information significantly prejudiced the plaintiff such that sanctions were warranted.

The court was especially critical of the fact that many of the e-mails, which were deleted, were disposed of in defiance of explicit instructions not to do so.

Based on these findings, the court found that UBS' conduct rose to a level of culpability necessary to support sanctions. As a result, the court entered the following rulings.

First, having concluded that UBS was under a duty to preserve the e-mails and that it deleted presumably relevant e-mails willfully, the court decided that the jury will be given an adverse inference instruction with respect to the e-mails deleted after notice of the litigation was communicated.

Second, the court ordered UBS to pay the costs associated with any depositions or re-depositions in light of the recently produced information.

Third, UBS was ordered to pay all reasonable expenses including attorneys' fees incurred by Zubulake in connection with her motion for sanctions.

Fourth, the court ruled that Zubulake would be free to contribute evidence at trial of the testimony of UBS personnel, which was later contradicted by the belatedly produced e-mails.

And finally, the court ordered UBS to pay for the restoration of the remaining relevant backup tapes.

Zubulake 5, as this most recent order and decision is referred to, is a very important decision because of the notoriety of the case, as well as Judge Scheindlin's reputation. The opinion also provides important guidance for corporate and outside council on both electronic discovery issues as well as issues concerning effective record management.

In particular, the decision is instructive on the affirmative steps necessary to put into place that effective litigation hold and the importance of taking steps to regularly monitor the compliance of those the litigation hold to assure that all sources of the discoverable information are identified and retained on a continuing basis.

Jeff Hatfield will address these issues in some detail later in the presentation.

The case is also a significant reminder to corporate and outside council of the significant perils of failing to handle a litigation hold properly.

Move to slide 4, here.

One day after the Zubulake 5 decision had been delivered, a federal judge sitting in the District of Columbia imposed sanctions on Phillip Morris USA and its parent company, Altria Group, for destroying relevant e-mail messages in violation of a court imposed preservation order.

In addition to imposing monetary sanctions of almost $3 million, the court precluded individuals who had violated the litigation hold from testifying at trial.

The controversy in the Phillip Morris case arose after the court ordered a litigation hold requiring preservation of all documents or other records containing information, which could be potentially relevant to the subject matter of the litigation, a fairly common preservation order.

Despite this order, Phillip Morris neglected to modify its internal preservation procedures for 2 years. And this delay resulted in periodic destruction of e-mails older than 60 days.

Although Phillip Morris attempted to insulate itself from sanctions by attributing the non-compliance to an oversight in its internal procedures for document preservation, the court focused on 4 troubling inconsistencies.

First, Phillip Morris had belatedly reported its failure to comply with the court order.

Second, Phillip Morris had continued its monthly deletion of e-mails 2 months after discovering its non-compliance.

Third, Phillip Morris employees deleted e-mails not only in violation of the court order, but also in violation of the company's own document preservation and retention procedures. In particular the print and retain policy, which, if followed, would have ensured the preservation of the e-mails, which were found to have been irretrievably lost.

Finally, and what the court found most troubling, was that the employees identified in failing to follow the appropriate e-mail procedures were the key players who held some of the highest and most responsible positions at Phillip Morris, a party which the court described as a particularly sophisticated corporate litigant.

Although the Phillip Morris court declined to grant the government's request for an adverse inference instruction to the jury in light of the breadth of the issues involved in the lawsuit. The court nevertheless ordered that all Phillip Morris employees who failed to comply with the company's own internal retention program were precluded from testifying in any capacity at trial.

And imposed sanctions of $2.75 million based upon a sanction of $250,000 against each of the 11 corporate managers or officers who failed to comply with the company's print and retain policy.

What's particularly interesting to me about this case is the court's focus on the print and retain policy at Phillip Morris. Many companies today have adopted this type of policy as a result of the lack of tools to effectively manage their e-mail.

And this case certainly highlights the risk of this policy when it's not effectively followed and enforced.

Next slide slide 5.

Although another important decision this year, although less one that's less I guess gotten less attention, but has important lessons concerning the adoption of record retention policy and its management and enforcement during the pendancy of litigation, is Rambus, Inc. versus Infineon Technologies. At 220 Federal Rules decisions 264.

In Rambus, a defendant moved to compel the production of documents including documents relating to a plaintiff's record retention policy itself, alleging the plaintiff had improperly instituted the document-shredding program when litigation was anticipated.

The defendant presented evidence, including internal e-mails reflecting the plaintiff's shred day, which Rambus employees - during which Rambus employees had shredded approximately 20,000 pounds or some 2 million pages of hard copy documents.

The case is particularly interesting because of the court's discussion of the crime fraud exception to the attorney-client work product privileges. And it's also instructive on the risks of implementing a record disposition policy when litigation is anticipated.

Next slide, number 6.

Another recent case raising similar issues is the MasterCard International versus Moulton decision. In this case, the court sanctioned the defendant for failing to retain 4 months worth of e-mails sent and received after the plaintiff had filed suit.

The court granted defendants an adverse inference jury instruction stating that the very fact that the e-mails are missing leads us in the realm of speculation as to what they contained and in what manner they would have assisted plaintiff in litigating claims.

Obviously the impact and consequences of such an instruction on a jury and its coercive effect on settlement cannot be underestimated.

The Zubulake, Phillip Morris, Rambus, and MasterCard cases are all examples of the difficulties faced by companies and their council in managing record retention programs, especially electronic records during the pendancy of litigation and the importance of an effective management litigation hold.

The cases are also instructive on the increasing importance attached and the scrutiny applied by the courts, not just the existence of an effective record retention policy, but more importantly to the consistent application and enforcement of a record retention program, especially once litigation has commenced.

Next slide, number 7.

In this regard, let me mention that there are currently pending for comment proposed changes to the Federal Rules of Civil Procedure. And I would strongly encourage you to review them and submit comments because they will continue to be revised and massaged.

One change that's particularly relevant for our discussion today is Rule 37(f). I'll just show you quickly the 2 alternatives under consideration. Those are in slide 8.

You'll note in both of these proposed changes, the emphasis on, quote, routine operation of the party's electronic information system, closed quote, has a potential Safe Harbor from the imposition of sanctions.

Slide 9.

The inability of an enterprise to effectively locate and retrieve records in response to discovery requests during litigation or administrative proceedings can also have significant adverse consequences.

In an SEC enforcement action earlier this year, for example, a major securities dealer agreed to a settlement that included a censure and a $10 million civil penalty for violations of the record keeping and access requirements under the Securities and Exchange Act of 1934.

Which generally require broker dealers to preserve for a period of not less than 3 years originals and copies of all communications sent and received by the broker dealer including inter-office memoranda and communications relating to his or her business. And to promptly furnish such records to the Commission as requested.

In this particular case, the Securities Company repeatedly failed to furnish in a timely fashion electronic mail, including e-mail exchange relating to matters that the company officials knew were under investigation, compliance reviews. After the SEC staff had specifically requested them and compliance of supervision records concerning the personal trading activities of a former senior employee of the firm.

The order in this particular case highlights the challenges faced by broker dealers in the investment advisor market in responding to reaching books and records requests and administrative enforcement actions, as well as litigation subpoenas and the fact that significant sanctions can be imposed for the inability to retrieve in a timely manner records which a company is required to maintain and which are subject to a routine record retention program.

The case demonstrates the consequences of mismanaging the classification and tracking of storage at least to a storage vendor.

Here, hard copies records were miscoded, incompletely classified, and were destroyed by a third party vendor.

Let me conclude my portion of the program by sharing some thoughts on what I think you might, some steps you might undertake to proactively mitigate your potential litigation exposure and hopefully reduce your expenses.

I'm sure Jeff and Charlie will be commenting upon similar suggestions later in the program.

First, slide 10. If you don't already have a record retention program you need to develop one. Because having no formal policy is effectively the same as having a policy.

Without a policy employees are without a complete understanding of the legal and business issues of the company and are left with an unfettered discretion to make decisions that could significantly affect the company.

You're also virtually guaranteed to having consistent and ineffective management of your records. And as the cases that we just looked at today demonstrate inconsistency can be a lightening rod for the courts with horrendous consequences.

Second, if you have a policy you need to review it to assure that it's meeting your business needs and regulatory obligations.

Next slide, number 11.

Whether you're developing a policy on program or updating it, I'd urge you to seek the highest level of management commitment to the project.

In my experience, without such support attempts to develop a workable policy or effectively implement and enforce it will likely fail or at least flounder.

After obtaining management commitment and support, consider forming a team of among representatives of the business units in your company, the CIO or CPO, your in-house legal department, and you outside vendors.

Seek the assistance, support, and input from your unit manager, business unit managers, concerning the records you have. And how those records are being used in your business.

Give careful consideration to both the legal requirements, for which the records need to be kept, and how long they need to be kept, as well as the business needs for the records. Your business needs and the goals must be incorporated into the policy for it to work in practice.

Legal council can assist in your review and consideration of the retention periods to assure they satisfy your regulatory obligation.

Again, Jeff will address in more detail the importance of learning about your data including where it is, what it is, whose it is, and how it's being used.

Slide 12.

One of the most important things, or benefits, of adopting a team approach toward the development of a record retention program and a program for effective implementation and enforcement, is the development of a plan that meets your business needs, satisfies your legal obligations, but is also a plan that's workable.

Any record management program which cannot be applied consistently across all systems of your business, including your electronic data, is a program which is not only - is a program which will not only be ineffective, but it will likely increase your risk and expense because it will be enforced inconsistently.

Slide 13.

The challenges in this regard are significant. They can be daunting given the existing regulatory compliance requirements for record keeping and the increased attention to privacy issues and confidentiality issues, including the need to protect trade secrets and confidential legal communications and to allow efficient identification and collection of records during litigation and investigation.

Reduction of the burden and cost of record keeping are important goals of the record management program. However, there are also time and expense associated with developing and implementing an effective program.

Very often these expenses or costs can be offset by the savings that will be realized by more efficient disposition of unneeded records that have completed their lifecycle, as well as by reducing the time and expense of locating records, which are needed for business purposes or litigation.

Moreover, any costs incurred need to be balanced against the significant risks and sanctions, which your company will face if your policy is not enforced or is it enforced in an erratic or inconsistent manner.

Implementing and enforcing an effective policy is a process. You need to evaluate your greatest risks and weaknesses and move to address them first. Triage your system while moving forward with more global changes.

And finally slide 14.

Consider, for example, training and education programs for your employees as part of the implementation of the program. These programs, if done properly, can be an effective means of communicating the goals of your program, the risks associated with certain behaviors in the use of e-mail, for example, and for raising employee awareness and increasing responsibly and accountability of your employees.

With that, I'd like to turn things over to Jeff Hatfield of the Jordan Lawrence Group, who will talk in more detail about the challenges of implementing an effective record management program.

Jeff Hatfield - *Jordan Lawrence Group - Director*

Thanks, Tom.

As Tom explained, there have been so many instances where a company's failure to adequately enforce their record policies have led to very expensive and completely avoidable situations.

The interesting commonality among all these examples is that the records policies that were designed to help protect companies have actually hurt them because, as Tom said, the records policies were not enforced.

Earlier this year we conducted a survey of the corporate council with the ACC. And 65% of the respondents ranked litigation and discovery issues as the top risks related to record management. 80% of them said that they were less than satisfied with their current records programs.

For the past 18 years, the Jordan Lawrence Group has helped companies develop and enforce record management programs that help them meet 4 simple requirements.

Slide 16.

These requirements must be met in order to help protect the organization to be able to fulfill legal and regulatory demand as well as reduce legal risks and avoid unnecessary costs.

First, companies must be able to keep records long enough to meet their requirements. And these requirements may come from legal obligations. They might be regulatory in nature or driven by tax needs or may even come from everyday operational needs.

And companies must be able to retain their records long enough to consistently meet these requirements. However, this does not mean that companies need to over retain records. That only increases your legal risks and costs.

Over the past several years our clients have reduced the record volumes by an average of 53% once the current requirements, once the correct requirements have been identified and applied to the records.

Second, companies must be able to locate records quickly and effectively when needed. You obviously want to minimize records research and production for the everyday needs of the company.

In fact, approximately 35% of records research is unnecessary due to the high volumes of records available.

But more importantly, companies must be able to fulfill requests from courts and examiners. Courts and examiners are becoming less and less tolerant of delays. And they are instructing companies to use whatever means possible, regardless of the cost, to produce the requested records.

Failure to produce records has led to increased sanctions, adverse inferences, and unnecessary settlements. Only 20% of our survey respondents were able, said they were able to find records easily when needed.

The third requirement, companies must be able to destroy records when they become obsolete. The vast majority of companies created and retained by - the vast majority of records created and retained by companies become obsolete at some point. And once that happens it's in your best interests to immediately destroy the records and avoid the legal risks and unnecessary costs.

But destruction must be done consistently and non-selectively. You must have systematic procedures and methodologies in place to ensure this. And many of today's regulations dictate specific processes for secured destruction, which must also be worked into your destruction process as well.

And fourth, companies must be able to protect records when they're subject to existing or possible litigation or examination. Records must be identified and protected. And then removed from the normal destruction cycle until the matter has been closed or resolved.

Corporate council must have the ability to immediately and accurately send records, hold notices, to the areas of the company known to control the records needed. These notices must be then validated with compliance responses.

Our survey of corporate council showed that 70% of the respondents said some form of a hold notice to protect needed records. But only 8% said they require a response to the requests.

This means that most of the hold notices are not validated. And the outcome is that the requests are therefore not certain.

Those are the 4 record management requirements that any company must adhere to. They're very simple and straightforward. Yet there is no way in the world that you can consistently meet these requirements if you don't have 4 key pieces of information about your records.

And this information applies to all records regardless of the media type.

Slide 17.

First, you must know what types of records your company retains. These are the records that are created and retained at the department level and actually match the department's current operations.

Our survey showed that only 14% of the respondent companies have their records identified in standard classifications.

Second, you must know who controls or owns the records. When records are needed to be destroyed or protected, you must know who to contact and who is responsible for completing the required tasks.

Only 3% of the respondents in our survey indicated that they can easily identify who controls needed records.

Third, you must know where records are located. This includes internal and external storage facilities. It includes directories and server files for your electronic records. It also includes the location of backup dates and so on.

Companies spend hundreds of thousands of dollars searching for records. And these costs can be avoided or at least minimized if they're simply keeping track of where the records are retained.

And fourth, you must be able to determine when records are obsolete. This obviously allows your company to consistently destroy records in accordance with your policies. But it also allows you to be able to determine if records even still exist when they're requested.

Thereby avoiding wasting resources and your research and production efforts.

Now these 4 pieces of information must be at the heart of a records program. In order to have an enforced records program you must be able to first capture this information, standardize it, and apply it to the records throughout your company.

To remain in force, you must be able to monitor compliance with the full requirements and keep this information up to date continually.

Various technologies and software exists to help manage records, as Charlie Brett will explain next. But in order for technology to be effective, standardized information about the records must be in place first.

Not taking the time to first develop record standards and consistent requirements is similar to building a new record warehouse and filling it up with unlabeled boxes of records and shutting the doors.

Later when records are needed for research or for discovery, you can't find what's needed in a timely and accurate manner. And this is a situation in which many companies find themselves today.

While they've implemented plenty of great software for managing records, they're legal counsel still describe their research and production as fishing expeditions. They can't locate needed information and they're not sure what records actually exist.

So consequently companies default by keeping everything permanently or longer than necessary, which merely compounds the problems in discovery and research.

And these problems become expensive very quickly.

Slide 18.

There are several reasons why companies have trouble enforcing their record policies. And the first problem is that there is a focus on the documentation alone. Companies tend to focus the majority of their efforts and resources on merely writing the record program documents.

They write the policy. They spend years writing the record retention schedule. And then they don't actually implement it or apply it to their actual practices or keep it up to date.

And a policy that's not enforced is of no help. In fact, it can be more damaging than having no policy at all because your company has set an expected level of compliance with which you can't demonstrate consistency.

Our survey results showed that while 76% of the companies had a policy in place only 18% said it's actually enforced.

The second problem is employee discretion. Employees are allowed too much discretion in managing their records. Anytime employees are allowed to establish their own record type classifications outside the approved retention schedule or they're allowed to determine if and when to destroy records, there'll be inconsistencies.

And no matter how good your intentions, inconsistencies in record retention can lead to obstruction charges. Just like the Andersen case. Courts and regulators don't care about intentions. They're concerned about actual practice.

Corporate records management is possibly one of the only areas of corporate governance where the policies are set at the corporate level and it's then left up to the employees to interpret and determine how to comply.

Our survey results showed that employees are in compliance with the corporate record policies at only 9% of the respondent companies. 73% of the companies say they allow employees to destroy records on an as needed basis.

The third problem is inconsistencies across applications that retain records.

Companies have hundreds of record storage platforms with no single set of standardized and applied rules for retaining records. These platforms are silos. They include off-site storage warehouses, file rooms, imaging systems, hard drive, e-mail directories, and so on.

Each of our clients have an average of 120 platforms throughout the company that are retaining records.

Now, these platforms all operate independently because they must fulfill operational needs. They help in the day-to-day management and tracking of records and improve workflows. And they're very important. And your company probably would not be as efficient without them.

But to effectively meet records retention requirements they must all operate under the same set of guidelines that support your policies. Otherwise you're not in. You're not consistently in compliance.

And the fourth problem is that there's a disconnection between responsible parties.

There's often a disconnection between all the areas of the company having responsibility for a portion of the record management efforts.

The legal department's concerned about fulfilling the legal and compliance needs of the company. The IT departments are concerned about the logistics and the efficiencies of managing all the data for the rest of the company. And the business functions are concerned about having access to the information they need to do their jobs.

So just as there must be a common set of standards applied to the hundreds of platforms, the same must be true for these groups of people.

Each area of the company must understand the needs of the other areas. Otherwise, they end up working against each other despite their good intentions.

Fixing these problems is surprisingly easy when the correct approach is taken. We usually complete development implementation projects with our clients within 6 months and with minimal client resources.

But before undertaking development efforts, there's another important concept to understand - records must be classified and managed differently according to who has control over the records.

Slide 19.

Every record within any company falls under 1 of 2 classifications, inventory-tolerant or inventory-resistant.

Inventory-tolerant records are controlled centrally by the company. And this includes records in off-site warehouses, backup tapes, and most native electronic records.

Because they're controlled centrally, an inventory of the records is usually created in the form of a database. Your standards and requirements can be linked directly to the listing and control of records can be automated.

So you can easily find records when they're needed. You can flag the databases to hold and protect records when they're needed. And you can also systematically destroy inventory-tolerant records when they're no longer needed.

On the other hand, inventory-resistant records are not controlled by the company because they fall under the control of individuals. And these records include hard drive records, department records that are never inventoried, and so on.

Because these records are controlled by individuals, it's virtually impossible to establish automatic control over them as you can with inventory-tolerant records. Technologies are continually being developed, which will move more of these records toward the inventory-tolerant type. But for now, the best solution is to ensure these inventory-resistant records are included in your policies and retention schedules. And then shift the accountability and responsibility to the individuals controlling them.

And we do this for our clients by sending pre-scheduled notices to departments and employees with specific instructions regarding the management of the records they control.

The key to this process is in the required responses that confirm compliance from the records policy, with the records policy. These responses are tracked so that the company has a complete audit trail of compliance. And any areas not in compliance are flagged for further review and corrective action.

Slide 20.

Developing an enforceable record policy is easy when specific steps are followed. This is a process that Jordan Lawrence Group has been following for the past 18 years for over 800 companies of all sizes and industries.

Step 1, gather any available inventories of record then standardize the various formats.

All records that are centrally controlled by the company should have inventories maintained in some electronic fashion, even if it's a simple spreadsheet. And once inventories are collected and combined into one common format, begin fulfilling missing information.

Records inventories must contain at minimum record type names, department names, date ranges of the records, a single retention period, and a destruction date calculated from that retention period applied to the date range of the records, and a status field to indicate if the record must be protected due to litigation or examination requirements.

Step 2. Collect the 4 pieces of records information. What record types, what record types you have, who controls them, where they're located, and when did it become obsolete. And then set relevant standards around this information.

Start by developing a list of standard record types. And this should be the general classification of the records generated and used at each department. On average, our clients have 23 separate record types per department.

So this list doesn't have to be very large, but it should be specific enough to be useful to the department.

And once you have a list of record types, begin determining which individuals have ownership and/or control over the actual records.

Also determine where records are located, both the inventory-tolerant and the inventory-resistant records. And identify which of the platforms they're retained on.

Finally, determine what the various retention requirements are. But remember, this can come from many sources and it's not uncommon to have more than one requirement that should be applied to a record type.

So you'll need to determine what the rules are for selecting one specific requirement. Your goal should be to eliminate employee discretion by eliminating choices.

Step 3. Apply the standards and requirements.

Once you've identified the 4 types of records information, the what, who, where, and when, you can apply these records, you can apply these to the records and create the record retention schedule, the policies, and the procedures. And these are components that make up your overall records program and they ideally should be supported by a systematic enforcement hub that will maintain consistent compliance with your policies.

For the inventory-tolerant records, your standards and requirements are linked directly to the inventories. And the actual movement of these records can be tracked through automation.

For the inventory-resistant records, you'll need to set up a program of notification that will be sent to the records owners and departments instructing them to destroy records based on the retention schedule or to protect records due to litigation or investigation needs.

Now these notices will also require confirmation to document compliance or non-compliance. And with the resulting audit trail you can show that as a company you're consistent in how you communicate policy requirements.

Now this creates a much more dependable corporate position. And any employees acting outside the policy can be shown to be rogue employees.

Step 4, communicate the program to employees and train them on policy requirements. Train them on the procedures. Train them on the expectations of compliance as well as the consequences for non-compliance.

Step 5, select and implement additional technologies to support your program. It's important to understand that this should be the last step. And as we discussed earlier, software and technology by itself will not keep you in compliance or help you meet your record management requirements.

The appropriate standards and requirements must be loaded first. This is the only way to truly ensure consistent records policy compliance.

Once your program is developed and implemented, you must develop a plan to maintain all enforcement aspects.

Slide 21.

There are 3 requirements for maintaining an enforcement of your record policy.

First, continually monitor and audit the compliance. This requires reviewing compliance responses to notices and instructions for managing the records. It also includes auditing storage facilities and the records platforms to ensure records are being retained and destroyed consistent with your policies.

Second, continually reinforce the policies and the program through ongoing communications to employees and documented training and certifications, just as you would with any other corporate governance policy.

Third, adjust the program and the retention requirements to account for changes both externally and internally. There are frequent internal changes to your company's structure, to your operational requirements, to the different platforms and media decisions, and so on.

And these require proactive surveying of the departments and information gathering. Followed by adjustments to the records program.

Slide 22.

I've saved the best topic for last, dealing with e-mails. Charlie Brett will be speaking next and can provide more information regarding some of the current technological developments in this area.

However, from a policy enforcement standpoint, there is currently no single solution to controlling e-mail. Most companies are continually searching for that silver bullet for e-mail difficulties and it simply doesn't exist.

This is because e-mail is under the direct control of your individual employees. And it probably will be for the foreseeable future.

Of the available solutions, none are sufficient by themselves because employees can easily find a way to work around them.

Meanwhile, however, here are some of the insights we've gathered over the past several years.

First of all, e-mail is a communication tool. It's not a file management tool that many employees are using it for. This practice needs to change.

Also, the majority of e-mail within your company right now is junk or simply communications. It doesn't represent a real business record. Or the e-mail doesn't become material in nature until it's been requested by a court or examiner or something occurs to cause a suspected duty to preserve.

And since such a large portion of e-mail is not needed, there are some solutions your IT department can put in place such as auto delete function.

Obviously if you have this in place you'll need to develop a way to protect the remaining of percentage of e-mail that truly does need to be retained and represents a business need. 28% of our survey respondents are currently using this type of e-mail control.

Also, it's not always a good idea to control e-mail through space and size restrictions. This is similar to trying to free up warehouse space by randomly destroying boxes of records without regard to your legal requirements to maintain records consistently.

And finally, have an e-mail policy in place and ensure e-mail records are listed specifically on your retention schedule.

These are the inventory-resistant records and the scheduled notices and the response tactics we discussed earlier will help you enforce your policy requirements.

Now I'll turn the presentation over to Charlie Brett from Xerox Global Services who will discuss how technology helps to support your records policy enforcement efforts and how to select a solution that will best work for you.

Charlie Brett - *Xerox Global Services - Managing Principal*

Thanks, Jeff. And thanks everybody for attending. And also thanks to Tom for and Jeff for excellent insights from their particular viewpoints. This has been extremely informational to me as well.

I'm Charlie Brett. I'm a managing principal in the enterprise records management practice within Xerox Global Services.

And my topic of discussion will be around looking at some of the technology options and the emergence of technology and how technology can be used and leveraged to meet records, compliance, litigation, and other risk mitigation factors that a lot of firms not specifically in legal departments are faced with.

The current reality today in the technology landscape is there's a convergence and maturity going on. Many technology vendors have jumped on what we call the compliance bandwagon. Some will call them compliance or regulatory ambulance chasers. Trying to capitalize on recent developments such as Sarbanes-Oxley, Gram Lease Filing (ph), SEC 17A4, NASD 3010, HIPAA, et cetera, et cetera.

Not all of these vendors are successful in purveying these compliance solutions. I'd like to note at the outset that there is not such thing as quote, unquote, compliance solution in the market today.

As has been brought up by the earlier 2 presenters, meeting compliance, compliance legal, retention regulatory mandates is a multi-pronged effort with tech people process technology, technology being one part of that.

Especially around archival and true records management we're seeing that some of these tools that have been leveraged for litigation or records management such as litigation hold disposal suspension are now being seen in a new light to help meet some of these.

As well, we see a wider adoption across our customer base of broader enterprise content management technologies, which would generally include imaging, document management, archival, storage, workflow, and the like. It's coming to the forefront as companies seek to get a handle on implementing a solid records management strategy as they realize that records management in their organization does not exist in a vacuum. But includes a lot of disparate content from a lot of different contributors.

So, another reality today is that the volume of electronic content and lack of a corporate taxonomy or a more refined indexing structure have hindered a lot of companies efforts to implement a solid records management strategy.

Taxonomy management seen as a de facto requirement upfront to begin the organization of electronic records, this is from a starting standpoint.

Who has access? How are our documents named? Are there security classifications on our documents? How do they relate? How do they relate to file plans and classifications in our record schedule, et cetera?

Taxonomy is a very, very important step here.

In addition, a very promising new technologies that some people refer to as "RRM disk". RRM standing for "Right (inaudible) Read Many" are new products out on the market that we've seen from most of the larger storage vendors. It's a type of technology that meets for example SEC 17a-4 requirements for the immutable storage of electronic communications between brokers/dealers registered reps and customers as well as business as such.

This is the type of media that is electronic storage - magnetic server based storage but it is also immutable. So there's no chance to destroy, alter, or delete, falsify or manipulate some of the - for example under Sarbanes-Oxley makes provisions for this type of media.

So this is good news, especially as volumes of information keeps growing storage does become expensive. This type of technology however is very, very promising and the lets say two years that it's been readily available has become extremely popular.

We touch on operational versus compliance discovery technologies and differences between them. For example, ad hoc declaration of records versus the automated declaration of records where you're relying on users to declare a certain email or a document - declare that as a record versus having a system make the declaration activity based on meta-data that can be associated with the object itself.

So I don't want to sound too analytical about this. There are tools out there that are widely used in SEC 17a-4 regulation - to meet those regulations that will automatically capture email and declare as a record in bring into the specific storage area.

So in sum a single point of entry is also on the horizon that combining very solid records content, automation, classification tools are becoming to merge and become much more of a reality. This is good news. It allows organizations the ability to single source a lot of the their technology components as they try to enterprise requirements for content management, enterprise content, document management, records management and the closely related cousin of litigation and discovery processes.

So moving on to slide 25.

Records in content - in context as I had mentioned before records management is evolving with enterprise management platforms beginning to consolidate a lot of these functions. These are the tools from companies like ENC Documentum, BioNet Open Text, et cetera that are familiar to many of you. I would warn that there are still point solutions out there for say pure play records management that's designed to do one thing just to do records management.

That may be a good fit for many people but I will point out that there has been a lot of consolidation and mergers and acquisitions in this market and that many of the smaller pure play records management or point the email management vendors have been acquired over the last 12-18 months. So a little strategic vision here is probably warranted.

A subject that has been touched on a couple of times. Email and instant messaging as enterprise content can also require corporate classification and definition and without a doubt email generates headaches for many in the organization really based on sheer volumes of email, lack of enforcement and usage policies being all key pieces that cut across the organization from IT to messaging to human resources to legal compliance et cetera.

Further, the response to this is that enterprise content management, records management and storage infrastructures are evolving as an eco system these days providing single application and repositories for enterprise content and records management. Something to be on the lookout for is in the buzzwords that are circulating in the market is "information lifecycle management." The concept itself has merit in terms of using the value of business records to determine where they get stored. It's an evolving concept but something to keep an eye on right now.

As mentioned before, single sourcing is a reality. Due diligence is required on point solutions and services - advisory assessment services are still a crucial part of the equation not only for subject matter expertise but for integration and implementation of systems. This is where we have come to rely on one of our partners being Jordan Lawrence who work for several of these pieces.

As such many organizations are looking at a governance infrastructure model where varied compliance, regulatory and/or litigation projects are combined across a single infrastructure reducing costs and redundancies in the IT cycle.

So this is something that will be very attractive to folks in your IT department. Many large organizations - large enterprises have several disparate records content, imaging, email systems that are all containing some sort of record and generally have a lot of redundancy and duplication.

So you see a lot of IT organizations seeking to consolidate more on a one strategic platform that can be used for governance, compliance, litigation of records type of functions.

So moving on to slide 26.

Lets talk about briefly on this slide. How does technology enable this policy enforcement?

So when coordinated under a later strategy - now keep that in mind. A master strategy. Not just the technology strategy. Planning, specification and implementation processes and controls help ensure compliance.

Keep in mind that no single product will make you compliant but products and technology are enablers of the effort. Functions such as search and categorization capabilities. Integrated physical and electronic records management capabilities minimize complexities around how records are captured, indexed, stored.

These are terms for - lots of the attorneys on the call these are terms that are very familiar to you ultimately making the search and discovery process more streamlined and in addition faster implementation times, lower entrance costs are benefits from a standardized compliance/records framework for some organizations governed by SEC and say NASD 3010 and 3110 regulations, tunable supervisory rules sets for the supervision of communications as well as supporting technologies such as optical character recognition, intelligent character recognition which is the transformation of image based text or handwritten text into electronic text, email, archival and recovery from backup in mixing classification, taxonomy management tools and structures are all seen as necessary pieces of somewhat complex yet maturing puzzle of people, processes and technologies. Again, technology accounts for approximately one-third of what was required to get this done.

So moving to slide 27.

What are some of the results you can expect to see from a well planned and well implemented technology infrastructure?

Risk mitigation, constituent service, being your users, your employees and cost control, production control of all records with end-to-end reliable chain of custody, predictable and manageable production and destruction schedules are crucial benefits of implementing a formalized managed records control infrastructure.

As well today many organizations seek a tangible ROI or return on investment when implementing technology. So in the world of records litigation compliance many times ROI is seen as a must. It's the cost of doing business. You have no choice. It's how some approach this. This is somewhat true.

However, some items like avoidance, duplication across data stores, reduced response time, better collaboration and integration with broader content compliance initiatives all offer paybacks above and beyond doing it because you must.

Further, consistent predictable discovery production with consistent results across matters, enhanced data calling, search and review and better collaboration with internal outside counsel are additional benefits to be gained for this type of effort if properly coordinated and viewed within a larger records and content scenario. So again, strategies being key.

So to slide 28, best practices in conclusion.

In some as we've all discussed the complexity of tools and procurement processes is maturing though not necessarily straightforward to many of us. Overall, it is imperative to develop a comprehensive approach to records including physical, electronic and data center operations.

An organization must determine appropriate balances between business - between meta-data requirements and the flow of business as has been discussed before. You don't want to overly burden your employees - your staff with additional overhead and additional tasks that they have to go through to ensure that the complying. This is a delicate balance. Adjusting budgets to accommodate increased investment in diverse content, proactive categorization and storage is generally required.

With planning coordinated properly across business units and recognizing - also recognizing that consulting, subject matter, expertise and enterprise stakeholders sponsorship is required. We've heard this before that it is not an IT solution. It's not simply a legal solution. It involves many stakeholders throughout the organization and as litigation becomes more widespread, more on the radar screen these days and as it increasingly attracts large, large volumes of electronic records this is on the radar screen of many, many CEOs. So risk retention, regulation and response. Our advice is act now. Xerox Global Services does provides services and systems for many organizations who our advice is don't wait for the "event". Be proactive about this.

One thing you can do as Jeff had mentioned organizations must write, circulate and enforce policies and procedures. It may be an employee manual. It may be a handbook and some organizations it's advanced online learning and certification programs. Again, IT, legal, HR, management must establish strategic plans for multiple requirements. This is rarely done in a vacuum as most organizations are faced with parallel projects and don't be hesitant to engage with subject matter experts and advisors.

Companies who understand the technologies, the regulations and best practices to turn these challenges into successes and with that, I thank you all again for your time.

I will turn it back to Cherry Cox for the next session.

Cherry Cox - *Sallie Mae - Associate General Council*

Thanks Charlie. I also thank you Tom and Jeff for your great presentation. Now I'd like to have our presenters answer some questions that we received from our audience. Remember questions may be submitted to webcast at JLGroup.com.

Okay our first question. I think this is for Tom and Jeff but Charlie you may jump in here as well.

Has there been a reasonableness line drawn on the required extent of measures taken to verify and confirm compliance with records retention directives, i.e. litigation holds? At some point, it would seem to become overly burdensome to exert control over how individuals around a large company retain documents.

Jeff Hatfield - *Jordan Lawrence Group - Director*

This is Jeff. I'll take a stab at that first. I think that the question - it says in the right point. Obviously it's very difficult to try to control the entire corporation when you have thousands of employees. What I think the reasonableness line is can the corporation show that they are consistently communicating and consistently documenting and putting the right types of records management controls in place?

From our standpoint and from what we've seen and Tom I think you can probably add to this. You really have to show the consistently there and you have to be able to give the - provide the tools and provide the guidance to the employees and ultimately you're talking about impacting a lot of employee behavior. So it's something that doesn't happen overnight either. It's something that's an ongoing process.

Tom?

Tom Freeman - *Reed Smith - Partner*

Jeff, I'd agree with that. I think the lesson to be learned from the recent cases on this is that the courts are really punishing severely companies that do not apply it to the consistent approach in their handling of the records because it opens those companies up to all kinds of insinuations that they're doing something nefarious or improper and if you at least have a consistent system in place in that it's being applied consistently it may not insulate you. It may not prevent things from happening that allow records to be destroyed but it should at least insulate you from the imposition of sanctions in the context of litigation and let me just mention two points in addition that will capture a couple of other questions that came in.

One question raised the issue of well when does litigation hold come into place to customer complaints about a product are those sufficient to require a company to institute a litigation hold and I would say no. My advice to a client would not extend to far as to a near customer complaint triggering a litigation hold.

However, where it begins to blur is it can happen pre-complaint. It can be triggered by for example a letter from the lawyer on behalf of a customer and again I think at that point you need to take steps to implement some kind of reasonable hold. The other thing is I think that you absolutely have to have a litigation hold process in place that can be implemented quickly and effectively.

Cherry Cox - *Sallie Mae - Associate General Council*

Charlie, did you have any other comments?

Charlie Brett - *Xerox Global Services - Managing Principal*

No I think that was answered very well.

Cherry Cox - *Sallie Mae - Associate General Council*

Okay. Our next question. This goes to probably Tom and maybe Jeff.

Are you aware of any sources that can help us balance and identify the legal requirements not only from the U.S. but also in international markets? What kind of risk is there outside of the U.S.?

Tom Freeman - *Reed Smith - Partner*

Interesting question. Many of our clients which are multinationals are just beginning frankly to confront the issue of record retention requirements outside the United States and I guess to put it into perspective frankly there are relatively few legal requirements that apply to the retention of documents even within the United States. Outside of the United States there are a fraction of a fraction.

So there are very, very few but it is an increasingly important issue overseas especially given the context of litigation in the United States which now often involves documents which are maintained by companies outside of the United States. So the litigation hold obviously becomes important.

The other and perhaps more important issue I think today is that there are much more stringent privacy issues that involves records outside the United States than currently exist for records inside the United States and the handling of those records maintenance of confidentiality for employee records outside the United States even to the point of transmission of emails from countries outside the United States to their sisters or parent companies in the United States can implicate different rules and regulations.

So I can't point you to a single source on that other than perhaps the EU privacy directives for some insight into the privacy requirements for the handling of data in Europe and specifically for example emails.

In contrast to the United States where most companies have a policy advising their employees that they do not have any expectation with privacy with respect to the use of emails at work in the UK there is an expectation of privacy for an employee even in its workplace.

Jeff Hatfield - *Jordan Lawrence Group - Director*

I would agree with Tom that's been our experience as well. The key to remember going back to what I said earlier is determine what your policy is going to be and then apply it consistently. You might be have operations in 20 different countries but the

key to really making your program work is documenting what your requirements and what your decision process was to arrive at those requirements and then apply them consistently and manage them consistently.

In most cases, I think you'll find that you can do that with a handful of requirements that will cover all the different countries and as Tom said the different issues from one country to the next that makes it very rare there's a black and white issue. There's a lot of gray areas there so again your best bet is to find what is going to be most suitable document. The logic behind it and apply it consistently.

Charlie Brett - *Xerox Global Services - Managing Principal*

If I may. This is Charlie, I'll chime in on this one as well. As Tom had mentioned there are regulations by country such as the Privacy Act in the UK, the UK also has pro public records office. Germany has Demia (ph). Every country has different regulations for obviously how records are retained for regulatory or governmental guidelines.

It also becomes more complex when you have an organization that is a U.S. company but has subsidiaries and divisions throughout the world that you not only have to comply with say Sarbanes-Oxley regulations that we are counseling a lot with our clients in the U.S. but also be mindful of some of the retention restrictions in the host nation where a subsidiary is based and that works vice versa as well.

So organizations that have - that do business in the United States or that have say ADRs that are traded in the United States are also subject to the Sarbanes-Oxley regulations much as banks that operate in Europe whether U.S. or international banks will have to comply with newer regulations under Basal Two.

So it does - it gets down to country by country specific requirements. I don't know of a single source that includes that information but a good place to start would be the ARMA - The Association of Records, Managers and Administrators - which is a U.S. group that does keep an eye on international regs and their website is ARMA.org.

Cherry Cox - *Sallie Mae - Associate General Council*

Great. This is for Tom but I would like for Jeff and Charlie to weigh in on this one from a records management perspective. Here's the question.

We are considering scanning all of our documents and managing them electronically rather than paying a third party for records storage. With the Best Evidence rule how does the scanned PDF copy of a hard copy compare or fair under this concept with the courts?

Tom Freeman - *Reed Smith - Partner*

Interesting question and what I'm going to say is it all depends and it depends on what state you're in and what court you're in. There are laws that are out there. For example, The Uniform Business Records as Evidence Act.

There is a Uniform Photographic Copies of Business and Public Records as Evidence Act which various states have adopted so depending upon your state it may or may not be applicable but what these laws are basically attempting to do is to allow companies that wish to photograph microfilm, scan their records to treat those records as a "original document" and so there definitely is a move in that direction whether it's applicable to your company or where it may be applicable to your company is likely to depend upon what state you're in. Probably the best I can do unfortunately.

Charlie Brett - *Xerox Global Services - Managing Principal*

Yeah I concur with that. This is Charlie. I see a lot of organizations that will do lots of imaging not only say of say in an insurance case, new business and post-issue documents. The insurance application process or loan or mortgage application process has lots and lots of paper involved.

So a lot of times these companies will scan this and send the paper out to long term storage and then use TIFF the image format through their document records management system or PDF as another format as the original and I believe that's evidenced as saying that if this is the document that is used to conduct the business operation whether it be in its electronic form that that is where the best evidence comes in. Whatever the - I'm not an attorney but I see lots of our customers and organizations going to by those guidelines.

Jeff Hatfield - *Jordan Lawrence Group - Director*

I would agree. I would agree with both Tom and Charlie that's been our experience as well. The only thing that I think I would add from our perspective is that when you do have records captured and imaged electronically be very certain and very careful that those records are being maintained as the same way as their paper versions or any other electronic versions that may get copied off to other servers or they eventually find their way to backup tapes. Just make sure that in each one of those - those are the platforms I referred to earlier. Just make sure there's consistency across those platforms.

Cherry Cox - *Sallie Mae - Associate General Council*

Okay this question is for Charlie. What is meant by single sourcing and point solutions as mentioned by you in your presentation?

Charlie Brett - *Xerox Global Services - Managing Principal*

Okay. Good question. I apologize for using analyst speak. I used to work for an analyst firm. Single sourcing and point solutions. We would refer to a 'point solution' as say a company that has a product that just does email, archival and supervision say to meet SEC 17a-4 and NASD 3010 regulations. That's all they do. No real records management. No additional document management. That's what they're solely focused on. So that's what we mean by a point solution.

When I say 'single source,' that speaks directly to the ability to go to one vendor, service provider integrator to get products - technology solutions that are coming from a single vendor as opposed to buying document management from this vendor and records management from this vendor and imaging services from this vendor - a single object or single vendor - single sourcing is getting all that integrated from one single source so you're not kind of the way it use to be back in the late '90s - middle late '90s and even until a couple of years ago where Best Practices you went to best of breed vendors for their pieces. Now many of the larger content records providers have most of those components built-in already.

Cherry Cox - *Sallie Mae - Associate General Council*

Okay our next question. How long do you recommend that archived backup tapes of emails should be retained? I think this can go to all of us.

Jeff Hatfield - *Jordan Lawrence Group - Director*

This is Jeff. I would you know say it depends. It's the answer to a lot of our questions. It depends on what's included in the emails and what the legal obligations are and the business risks and so on.

Unidentified Audience Member

Yeah I don't think we can give you a simple answer to that. I guess my general recommendation that you want to keep those for the least amount of time as possible recognizing the business need for the records that may be on those tapes and any legal obligations that you may have to keep that data in light of the litigation hold but absent that you absolutely should be getting rid of those as soon as you can and if there's anything I could save you a world of hurt and money is to go down to your IT department today and make sure there're not keeping cabinets full of backup tapes for no good reason because some litigation you're going to spend a lot of money finding out that you shouldn't have kept those.

Charlie Brett - *Xerox Global Services - Managing Principal*

This is Charlie. Brad, I'd like to add something here to. Emails you can talk on and on and on about it day after day about the ramifications. One thing that we didn't go into it very deeply during the webinar. One thing that's very difficult about email and we hear this from lots of customers and folks that we're talking to is the notion of expungement of email which is complete obliteration of every instance, every version of specific object document record. With email that becomes very difficult.

Once you send an email you don't know where that email goes. You don't know where it's been forwarded. That's from a user and organization standpoint. If you are an organization you don't know if you're users have forwarded it to say their home address or their Yahoo address.

You don't know if you haven't clamped down on it that employees haven't copied that to a PFC file and stored it on their hard drive or written or sorted that on their hard drive and then copied it out to a flash drive. You know a little USB thumb drive.

You don't know what's on the backup tapes. You don't know what's been printed into en-files. So that's why email presents such dilemma for a lot of people but in the section I was speaking about in terms of technology.

If you do decide that email is a very critical or high risk area the ability to put in a mandated email archival system whether or not the users are aware that their email is being pulled in and archived or they do it themselves and you prohibit the use of PFC files or storing NSFs on the desktop that also eliminates possibilities that you have that will leave email lingering backup tapes for months and months and months but again I think I agree with Jeff and Tom. It's up to the tenor of the legal division. I run across plenty of companies that say they want to get rid of it as soon as possible. Others want to keep it just in case they're hit with something they want to know what's actually transpired. So it's another balancing act.

Cherry Cox - *Sallie Mae - Associate General Council*

Okay, we're going to ask one more question and then all the other questions that didn't get answered will be replied to offline via email and then we'll also include all questions and answers in the final transcript that will be posted later today. Here's the last question.

It is a problem to create a policy that requires a department head to give final signoff before document destruction, i.e. does this create a perception of inconsistency?

I was going to say Jeff you might want to-hello.

Jeff Hatfield - *Jordan Lawrence Group - Director*

I'm still here Cherry-

Cherry Cox - *Sallie Mae - Associate General Council*

Jeff you may want to weigh in on that one.

Jeff Hatfield - *Jordan Lawrence Group - Director*

Yes, I'll start off with that. The problem that you run into sometimes is that those types of signoffs and review activities become burdensome and they don't typically get carried out and with a lot of our clients that's the problem that they've run into in the past.

Most of our clients are asking certain areas of the company that might be under tighter regulatory scrutiny or posed greater legal risk to specifically review policies that review listings of destruction to prove that most areas are not doing that.

Once the policy in place there should be ways for corporate counsel, auditors, tax people to flag records that have to be withheld for litigation or examination and so therefore the worry about destroying things that are needed is eliminated so that whole review process doesn't have to happen with every single department in the company.

Cherry Cox - *Sallie Mae - Associate General Council*

Tom and Charlie do you want to weigh in on that one?

Tom Freeman - *Reed Smith - Partner*

I'd agree with that and don't really have anything meaningful to add. I think the key is if your system is setup so this is not perceived as an inconsistent pact I don't see any problem with having departments sign off.

Charlie Brett - *Xerox Global Services - Managing Principal*

Nor if it's certainly sanctioned that's with the schedule and the seriousness of the organization what has cast responsibility and accountability to.

Cherry Cox - *Sallie Mae - Associate General Council*

As long as you can enforce the department heads to sign off on it.

Charlie Brett - *Xerox Global Services - Managing Principal*

Right.

Cherry Cox - *Sallie Mae - Associate General Council*

And that's where you're going to come into some issues if everybody's not consistent with signing off timely or within the destruction parameters you may end up having a policy that's not enforced consistently and causes you more problems than if you just automatically have the destruction go out.

Charlie Brett - *Xerox Global Services - Managing Principal*

Exactly. Something we would recommend to is especially in organizations where there are many, many business units or departments that becomes - hopefully that can be centralized through the records management team. If there is a records management team as a clearinghouse for that to not only worry about their own storage but potentially they have physical storage with an outside vendor or they have - they're managing the electronic records management system.

Hopefully it's probably not the best practice to have. Barry's business units is making those decisions especially if there's a lot of complexity and when you're business units aren't always plugged into legal that well. So maybe best practice is to centralize.

Cherry Cox - *Sallie Mae - Associate General Council*

Okay we're out of time now and apologize if your question did not get answered online. However like I said we do intend to answer all questions. We will reply to your emails offline and we will also post the questions and answers on the transcript that be available later today on the ACC website. The transcript will also be available at the Jordan Lawrence Group website at www.jlgroup.com.

In addition if you'd like to talk to any of the presenters individually their contact information is available on the last slide in the presentation and they'll be happy to answer your questions whenever you call or email and on behalf of the Association of Corporate Counsel and the Jordan Lawrence Group, I'd like to thank each of you for participating in our webcast and have a wonderful day.

Thanks.
