

FINAL TRANSCRIPT

Thomson StreetEventsSM

****ACCA - Creating a Blueprint for an Effective Records Retention Program**

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PRESENTATION

Carl Liggio - *Association of Corporate Counsel - Founding Member*

The appointed time has come, so maybe we can get started. This is Carl Liggio on the call and doing -- leading us through this area is Ken Rubin. He's the Executive Vice President, Iron Mountain. This is and is becoming a very important topic, the whole issue of records management. Whenever issues have previously existed, the Sarbanes-Oxley legislation, the changes in the sentencing guidelines and litigation generally have made the whole question, the whole series of issues with respect to document retention, very important. And if anyone had any doubt about it, all they need look at is a couple of the recent opinions where Altria and UBS got hit with some fairly significant sanctions in the litigation arena.

With that, Ken, why don't you take over and start leading us through this?

Ken Rubin - *Iron Mountain - EVP*

All right, Carl, I appreciate it. Thanks, everybody, for joining us. And I will acknowledge the fact that I have the dubious distinction of being in the records management industry for about 20 years, helping companies directly and indirectly develop and implement records management programs. In fact, most of that time was way before it was in style to do it. And my company, Iron Mountain, has about 50 years of experience seeing what works and what doesn't work with companies.

So in this session what we hope to do is to be able to leverage some of the learnings that we've had for your behalf and, in order to do that, what I'd like to do is quickly set the stage in terms of the context of how we got ourselves in this situation, what are the trends and implications, we'll color that pretty quickly. And then what I'm really looking forward to doing is to sharing with you sort of a 10-step construct regarding how to implement a legally credible records management program. And these steps are rooted in what we've learned through our direct experience and through the successes and failures of some of our clients over the years.

And I'd like to just point out that each of these topics can really stand alone into these 10 steps as a session unto itself, but we don't have time for all that today. So what I'm really going to try to do is really try to communicate the basic principles and basic concepts that you can use to build upon when you think about records management and relating to your organization as a blueprint. Carl and I, Carl really represents you here. He's been a general counsel in Ernst & Young for 20-plus years, I believe, and Carl will be chiming in with some of his insight and commentary during this session.

In terms of logistics, what I'll do is I'll prompt you to follow along by slides and I'll mention what slide we're on to help you follow along. So I'm now on the trends slide.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Just one second, Ken. I should have mentioned this earlier; we've gotten some questions from you. I'm live online with my email system. If you have questions that you want to pose, if you could send them to me by email and we will try to cover them either in a separate Q&A or as we go along. The email address you should have on the notice for the meeting, but it's cliggio@mcandl.com. And with that, Ken, why don't you start with the program?

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Ken Rubin - *Iron Mountain - EVP*

Great, thanks. So, I'm on the trends slide, everyone. And basically for -- we've been on a trajectory for quite a long time, I think, to put us where we are today, which is having records management be sort of a forefront issue.

And the three trends that have been in confluence together have really been led by the technology trend and which gave, as a result, a regulatory trend, and then the ensuing litigation trend. But the proliferation of our computerization has really created a new category of records, electronic records.

And these records are different than the records that we're used to in that they don't have the same level of immutability. They are -- they have susceptibility of being manipulated, they are not -- although they are treated equally in the law, the record keeping systems that we have today don't treat them as records. And of course these records are fully discoverable and they need to meet all the admissibility standards regarding evidence, but we're not really ready to deal with these issues.

The system treats them as -- tends to treat them as data and not records and the records were created by processing systems and not records management systems; they have little ability to be able to classify and retrieve records, they can't administer easily records retention programs, and the records are really disbursed all over organizations.

The end result is that these records are not as credible as the records we are used to, and because of that, the regulatory trend heated up and our government, in an effort to protect you and I, began to raise the bar in terms of storage, archiving, a lot of regulations around how to treat these electronic records so that they would be authenticated in the archiving and records management processes.

Some of the laws are very explicit and they deal at the industry level and some of them are less explicit and implied, as they are in Sarbanes-Oxley. Of course, many of the plaintive attorneys out there began to target email in particular and electronic records as they realized that companies were somewhat ill prepared for managing electronic records. And frankly, some of the discovery laws, and Rule 26 in particular, has begun to shift the burden, the financial burden of discovery to the defendant, which results in an increased amount of velocity in the litigation area.

So these three trends were in confluence with one another and would have...

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Ken, I need to interrupt you for a second because I'm getting a bunch of emails that people cannot see the slides. And, Karen (ph), are you on right now? Can you maybe give them a -- I started to respond individually, but I've gotten so many emails it may be better if you could just come online and explain to everybody how to pick up the slides.

Unidentified Company Representative

Hi, this is Karen. You can actually just click on the slides and follow along. And soon after the webcast is over we'll have a PDF copy of the presentation online.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Would you explain to them where they should click on the web page to get the slides so that may be what the problem is when people are not finding the right spot on the web page.

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Unidentified Company Representative

There is a link on the web page that reads as Course Materials and the title of the webcast is Creating a Blueprint for Effective Records Management Program. So just click on that title, you'll be presented with the PowerPoint presentation.

Ken Rubin - Iron Mountain - EVP

All right, shall we continue?

Carl Liggio - Association of Corporate Counsel - Founding Member

Yes, let's go for it. And if people still are not getting the slides or not able to find them, if you can get back to me again then we'll try to figure out what the issue is.

Ken Rubin - Iron Mountain - EVP

Okay, thank you. Let's continue. So these trends that were in motion have been ignited by a series of triggering events on the next slide. And the triggering events really served as a catalyst to take records management from sort of a backroom administrative issue to the forefront. And these trends namely were the -- obviously the tragedy around September 11th gave us a wakeup call and alerted us to the importance of our records and our vulnerability.

A series of high profile corporate malfeasance events really demonstrated the linkage between records management and how it can impact a company's reputation and the resulting regulatory activity around Sarbanes-Oxley and other regulations gave us more of a mandate to do something about it. And then, of course, we have newsmakers like Elliot Spitzer going industry to industry really putting a flashlight behind companies' records management programs and causing us to really rethink our investment in that area.

As a result, today this is a forefront issue and it has moved from the backroom, so to speak, to the boardroom. And really, on the next slide the consequences for corporations, for the first time there's a very explicit link between records management and ethics and the increased costs of not having a solid records management foundation have become front and center. And I'm not just talking about the settlements and fines, which by themselves have increased. You may recall not all that long ago that Bank of America got fined I think about \$10 million for not being able to respond on a timely basis to some subpoenas. But it really reflects in a company's stock price.

And when it gets to that level and companies see themselves in the newspaper and executive liability is in the picture, the reputation damage potential is so high in this area that records management just has to be paid attention to. So it's no longer administration but it's really now a compliance issue.

So on the next slide, records management compliance really presents some real challenges for us because our experience is, and if you're like most organizations, you have not had a long tradition of investing in records management. It's also challenging because it's broad; it affects all your business units, it affects the broad employee base in your organization. You'll find that your records are all over the place, they're dispersed into little information silos, electronic silos, warehouses, et cetera, and the systems that hold these records are not designed for records management and they were designed for transacting business.

And your organization in general is not tuned to taking on these enterprise-wide issues, as most organizations tend to operate more in functional silos. And most significantly is the fact that the accountabilities around records management are also dispersed in the organization and it's not often easy to identify who is the owner of records management in the organization, who has the ultimate responsibility and accountability. So when you think about it from all these perspectives, it's a real challenge.

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And on the next slide I wanted to call out the fact that email challenges themselves, which is such a key area now because we regard them as high exposure records, presents its own set of challenges, which are related but also have some unique characteristics, which we're going to talk about in this session. But most significantly is the fact that email is just exploding all around us. It's growing, according to IDC, at about 50% a year. But almost at every measure that you wish to look at it in terms of mailboxes or emails per day or users, et cetera, the volume of email is just astounding and it's really intensifying the challenge.

One of the most subtle and misunderstood concepts around email management is the fact that email is not a record itself; it is a transportation device, it is the envelope, and it is not a record type.

And trying to manage it as a record type is fraught with risk because within email itself you can just as easily have a contract transmitted by email as you could your company's announcement of their annual Christmas party. So that is an issue which we have to wrestle with and be able to understand in terms of managing the official records versus what's called the unofficial records.

Email is also the communication weapon of choice by employees and it's very casually used and obviously it's highly sought after as a litigation target by plaintive attorneys. Email also is oftentimes managed outside the reality of IT functions backup procedures.

So, many companies that we've seen have spent a lot of good work and effort trying to manage their email and to apply retention and to apply proper archiving processes only to find out their IT group is sort of undermining that objective by backing up everything, storing it on backup tape where it sits, seemingly in perpetuity, all discoverable at the same time. So one of the challenges is rationalizing your archiving and records management program against your IT disaster recovery program.

And one of the last challenges that hopefully will change in months and years ahead is the fact that many of the solutions available today are not ideal and are imperfect and you will be confronted with a series of tradeoffs when you think about how to actually implement email because of some imperfections in the available technology.

Carl, do you have anything you want to add here?

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Yes, actually two things, Ken. One, we're still -- apparently some people are having some problems getting to the slides. If you get to the page, scroll down the page to where you sign into the program. Scroll down the page until you get to the place where it says Course Materials, then the next line is Creating a Blueprint for an Effective Records Management Program. And if you click on that, you'll be able to get the PDF file come up with the slides that Ken is talking from right now.

On the email component, I think this is probably one of the biggest problems that people have today in terms of the email records, what's going into them, and it's something that I think it's very important the companies focus on how they're going to handle them, how they're going to retain them, and how they're going to manage them. And I think later, Ken, we can come back to some of the things that are in the market that people can do for that. But why don't we move on right now?

Ken Rubin - *Iron Mountain - EVP*

Okay, thank you. So, I've talked about just a very few minutes the overarching trends, the implications and some of the challenges that we're facing dealing with building a legally credible blueprint for records management. But now what I'd like to do is talk about this blueprint and talk about these 10 steps individually as a way to help communicate sort of the path to progress forward.

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Carl Liggio - *Association of Corporate Counsel - Founding Member*

Ken, can I ask a question first before you get into it because this leads into your 10 steps and helps with the framework. I've done a lot of records management things over the years and when I was general counsel at Ernst & Young I had to deal with the problems. And one of the biggest issues I found was trying to figure out, besides from a business standpoint what we needed, what legal -- what were the legal requirements? Because we would operate around the world, we operated at the state levels, we operated at the municipal levels, we operated at the federal level, how do you go about finding out what you're legally required to keep as opposed to what you need from running the business? And I think that's an important thing for you to identify for us before you start with the compliance program.

Ken Rubin - *Iron Mountain - EVP*

Okay. Well, just to lay the context here, there are about 13,000 laws and regulations which impact record keeping and an organization's options for sort of a source of that information are actually fairly limited. One option is to go to a law firm and have them do primary legal research, which tends to be very expensive and time consuming. There are various associations that have industry-specific retention guidance, but they have to be tailored to your organization.

And this may a little bit of a self-serving statement, but in 1996 I believe, when we began to get increasing questions from clients about that same issue of legal research, we built a consulting group and amassed a compilation of all the laws and regulations, which is sort of the underpinnings of our legal -- our records management consulting services today. And it's a pretty widely used system. In fact, I think more companies use this legal research behind their retention programs than any other source.

But the important points are that you do need to balance the legal requirements against your operation requirements and we advise that you default towards your legal requirements. And ask your business units to justify overriding them with your operation requirements so that your ultimate policy has the longer (ph) of your legal and your operation requirements.

So with that, I'm going to move ahead into the 10 steps. I think one of the essential concepts to just introduce the 10 steps is that a records management program is a compliance program and, as such, it shares many of the characteristics and attributes of other compliance programs. It should not be treated as a policy. And many of the records management programs that we see have unfortunately emanated from corporate legal departments and they are very policy-oriented and are not really programmatic, if I can use that term.

So the attributes that really support a compliance program, the first one is consistency and in records management terms you want to make sure that that means you have consistent policies and procedures regarding retention and destruction and access and security and use of information and you should consolidate things as much as possible to be consistent. You need to have the right accountabilities in place and the right audit abilities in place. You need to further adoption through training and education and a rollout program that's maybe familiar to you from other corporate programs in your organization. And these are the pillars of a compliant program and, in fact, not just a compliant program, but often just a corporate program.

One of the things that I'd like to point out here especially is that many companies I think set out to build a platinum-grade records management program. And what we think the target should be and what our advice is that what you really want to do is you want to be able to demonstrate that your company has made a good faith effort to implement a records management program. You have all the trappings, you have the policies, you have the documentation, you have the training, you have the audit ability, you have all those things in place and can demonstrate you've done a reasonable and prudent job. If you ever have a problem that pops up later on, you will be in a much stronger position to defend the fact that it was not a case of your being willfully blind, but you just had the sort of one bad apple situation and that it was not an indictment of your company's intent. So that's sort of the same which goes along with building a compliant program.

The first step on the next slide is really to make sure that you organize for success and that you want to make sure that you have all the accountabilities and roles and responsibilities identified in your organization. And we tend to recommend that organizations

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think about this in four different layers. The first and top layer is sort of a steering committee, which really forms an oversight role and the governance role.

And the steering committee really should be comprised of the primary stakeholders vis-a-vis records management; those are IT, legal, compliant, sometimes tax, and we also recommend that you have your major business units represented on this steering committee. And this is the policy-setting group and the group that adds championship to the cause and finds resources and supports it.

Under that group you need, according to our experience, somebody who wakes up in the morning every day with the sole mission to implement your company's corporate records management program, a dedicated czar of records management.

And this person works with a working project team that represents a cross-functional team to help get this information packaged, programitized and rolled out into your organization. Out in the business units and departments you need arms and legs of the program to actually function as an extended arm and liaison of the program to help inculcate your users with records management, apply training and to implement the program in general.

And lastly, we really think that accountability can be made down to the individual employee level and we think that through a certification program, which is one in which an employee acknowledges and clicks or signs the fact that they have received your company's policy, is important. It's a very explicit statement that your company makes that you're serious about records management. And many companies do similar sorts of things with issues such as privacy and sexual harassment and items such as those. so, ensuring accountability is sort of the first step.

When most companies begin to tackle this issue and they look at their own organization against this level of accountability, they may feel like they're a little light and you may feel the same way when you look at your own organization. AIIM, which is the Association for Image and Image Management, on the next slide, recently did a study and some of the key themes of that study I think resonate really well with me because we see it every day is that the legal function is underrepresented in records management leadership and policy setting, training/education is under-invested in, and the audit function is not really well engaged. Three important statements and three important success factors in records management. In fact, only half of the records and information managements themselves even receive training in a company's records management program and a third of the auditing function is engaged as part of the standards of sort of internal audit. So there's a long way to go on those fronts.

Step two here is really around getting yourself a good policy foundation. And since consistency is everything, the advice that we give is that you try to move towards a singular policy that is all-encompassing, regardless of record type or media or format or geography because the law is agnostic about those issues and your policy should be as all-encompassing as possible. Most -- the key areas of a policy that are important to nail down is really the controlled access and use side of things, which really relates to all of the nomenclature, naming conventions, access procedures, security authorization, setting expectations around privacy and appropriate content and limitations on personal use, those sorts of issues.

In the area of retention/destruction it's about defining what is a record. Obviously the records retention policy itself and the process for destroying records and approval of such and the methodology behind that, as well as confidentiality, these are the topical issues that should be determined in your policy scope and you should move to as uniform a policy as possible, only really localizing as necessary.

Carl, do you have anything you'd like to add at this point?

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Carl Liggio - Association of Corporate Counsel - Founding Member

Ken, I'm sorry. I've been trying to respond to people who're still having problems. Why don't you go on and I'll come back to something a little bit later?

Ken Rubin - Iron Mountain - EVP

Okay. So the third step is really -- on the next slide is assessing your starting position. In order to really improve your program, you need to get a really clear sense of your status quo, your as-is condition. So we recommend that you do that by looking at a few different sort of checkpoints.

One of the important checkpoints is firstly to inventory all of your data repositories; where are your records, how many systems contain your records, your servers, your email systems, your document management systems, your content managements, your web applications and your paper record archives. Get a real landscape view of where all your records are, what volumes there are. You're going to want to understand the capabilities of the systems that manage those storage areas; can you query and search and implement a retention program.

You're going to want to look at the various policies you have in your organization to understand the gaps in the policies and how consistent they are amongst themselves. You're going to want to look at the high risk areas that you have in terms of key records groups that you want to pay special attention to that pose special risk to your organization. And lastly, I think you want to look at in earnest at how much sponsorship you really have towards records management and how seriously your company is taking it because, as we all know, if you don't have true legitimate senior level sponsorship from a program of this sort, it's really not going to go anywhere.

On the next slide, one of the things that I would just call your attention to is that we often get asked to help a company's starting position. And one of the areas that we probe on behalf of our clients is the health and well being of their records index. That is the descriptive information about the records and frankly, this is called metadata, but it's really the information about your records that you need in order to implement a record management program. So, by looking at this index, you can really tell a company's ability to implement their policy and whether their policies, in fact, are being implemented.

In this particular example on the slide, and for those of you having trouble with the slides, I'll try to describe it a little bit. But basically it shows the -- it shows the percentage of records that have destruction dates assigned to it or properly described or have a records classification or departmental level ownership. And you can feel well assured that if your records -- if only half of your records have a destruction date assigned to them or have a records classification assigned to them, that you're not going to have an easy time implementing your policy, regardless of how technically accurate your policy is. So that's just an example of how assessing your program can give you insight as to where you need to shore it up.

Once you've assessed your program, one of the things that you should do is begin to build your project plan and to begin to establish more of a phased process. We highly encourage organizations to think of this as a series of incremental steps as opposed to attacking this in one fell swoop. And I'll describe sort of the hierarchy of phasing using Maslow's -- using Maslow as an analogy. If you remember Maslow's hierarchy of needs from high school or college, you might recall that the first order issues that need to be satisfied before you can attack the second and third layer issues. In records management terms, the first layer issues all relate to understanding and getting control over your information assets; what systems are they in, what security, really getting your arms around all the different data repositories you have and getting control of them.

Once you have that, you can begin to focus on building the indices necessary to implement your program in accordance with your policies. And you can do that on a siloed (ph) basis or an individual data pool basis. And once you have layers one and layers two under control, then you can begin to think about integrating it. We've seen companies try to move from point 0 essentially to full, what's called in some IT circles, information lifecycle management, and it's really just too big a step and

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companies don't get momentum in their programs and they lose steam and they don't really get great results. So we really encourage you to think about phasing this and to use these sort of concepts as a way to help (inaudible) your planning process.

Once you have a program plan together and you've phased it out, step five really is to develop a cornerstone of your records management program, which is your retention policy itself. And we have seen hundreds of retention policies and virtually every permutation of them and how they're implemented. And I would say that the key advice that I would give to you today really is that you should design the retention policy for implementation and avoid making it overly legalistic and overly granular. You're better off establishing fewer broader categories of records that really map up against the records that your employees use and the emails that they use and the electronic documents they use so that they can understand it.

The ideal policy, as I mentioned a little bit earlier, does balance your legal and operation requirements. We see many retention policies that aren't properly cited, aren't even based on the law or based on operation requirements, and in this case we recommend that you default towards your legal requirements, properly cite the laws and regulations and then entertain with your business units their requirements and they have the opportunity to override the legal requirements with appropriate justification.

You're going to want to build in an update process into your policy. A retention schedule is not static. Your organization enters new business lines and acquires new systems all the time and your policy has to be built to be maintained. It should be media independent and it should be adapted for email so that you have an email version of your retention policy with the same retention period, it's just an adaptation of it which reduces the number of record classes to what's likely going to be used in an email setting.

And lastly, your policy should be very explicit around setting up a destruction review process. The workflow involved with recognizing what's eligible for destruction, running it through the appropriate approval cycle at your company, and measuring -- ultimately measuring the timeliness of that would be the desired outcome. We see a lot of companies, frankly, that have put a lot of effort in the retention policy itself, only to find that it breaks down in implementation because they haven't designed a process to approve it and things get backed up and not enough information gets approved because it's not a clean workflow.

Carl Liggio - Association of Corporate Counsel - Founding Member

Ken?

Ken Rubin - Iron Mountain - EVP

Yes?

Carl Liggio - Association of Corporate Counsel - Founding Member

Just a second at this point. There's a theme, which I should have really brought up earlier, that's important. All of these points that you made are very critical to an effective system. But there's one issue that everybody needs to focus on because I think it's the issue that I've found over the years is probably the biggest problem to a records retention policy and that is the failure to involve the end user in what they need to run the business. And implicit in everything that you've said so far is that, but it's a point that needs to be reiterated, that when you're putting together a records retention policy, it has to be more than meeting all these criteria. There's an additional element. That element is that the end user has access to and use of the records that the end user is going to need to run the business. And I think -- I've seen at times when people started to develop document retention policies, they've done all these fine things that you've outlined but have failed to take into account the users' needs. And so I want to stress that.

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Ken Rubin - *Iron Mountain - EVP*

All right, thank you, Carl. It is a theme of this whole presentation is that you want to design with implementation in mind and when you're designing with implementation in mind, it's built around the users and their personas and how they behave and how they think. So thank you.

One of the key aspects and I would say often overlooked aspects of a records retention policy -- and I'm on the next slide here -- is the issue of retention holds. And this group of attorneys obviously knows that it is critical that you suspend records destruction anytime you anticipate litigation for relevant records. But most policies don't do a very good job, we've found, in instructing the organization and building a process to actually do that.

So what tends to happen is that a series of email communications goes out and if company's feel like they lack confidence in their infrastructure in this area, they do what they think is the next best thing, which is to do nothing. They freeze all records destruction. And what you really want to do is you want to be able to continue destroying records in the ordinary course of business and selectively cull out the records, put them on so-called hold during the litigation matter, and then release the hold, have documentation and communication for all of the above as more of a systemic process.

There's been some recent case law on this, namely *Rambus vs. Infineon Technologies*, which in a decision found that Rambus, which was a chip-to-chip interface solutions company, was found guilty of (inaudible) documents because even though it formulated and instituted a credible records retention policy, it then proceeded to implement that retention policy and destroy records which was in judgment believed that they could have anticipated as being anticipated in litigation. And they had a judgment found against them. So even with all the good intentions of developing a records management program, doing it the right ways, you still need to really build in this hold process.

And in some systems it's very straightforward. In hard copy, paper records management systems, like we have at Iron Mountain, it's been around for a decade or two, it's pretty straightforward stuff. But in other systems, it's not as straightforward and what we recommend that you do is that you make sure that you have, even if it's a manual (inaudible) system, that you do a good job communicating and documenting the process so that you have a good foundation from which to talk about the records that you have or don't have when it comes under question.

Once you have built your records retention policy, including your hold provisions and procedures, the next step shifts into implementation. And we advise that in the process of implementing that you think about implementation in terms of what is achievable that'll give you progress and really what is the most important for you to do and to sort of index those two concepts to come up with your roadmap for what you implement. And on the achievability side of the spectrum, we think that the early -- our early advice is for you to apply your retention rules to your paper records using the technology that has existed for a long time, it's low level functionality, it's not sophisticated stuff, and just implement it.

And I believe that -- I'm surmising that people on this call might be a little bit surprised by this advice, thinking that it's obvious or your company has this under control and that it's just not -- doesn't raise to the level that should be in this presentation. But I can assure you from my vantage point in which Iron Mountain has 200,000-plus customers, that a shockingly low percentage of companies actually routinely destroy records through a policy-driven approach. And we have a very good cross-section of companies to look at in this area. And I believe that even legal departments believe that destruction is going on in the due course of business because they've put in force a policy, but if you look behind it, you might find just the opposite.

So we advise that when you start to organize yourselves and apply more resources that you put early focus on making sure you have this part of the process buttoned up. It'll give you progress going forward and give you some momentum and give you a win in -- an overall win. So that would be under the category of achievable results.

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On step seven, the next slide, really the focus in terms of your priorities shifts to what's the high impact. These are high risk records, as I've discussed, and I really want to spend a moment here to discuss some foundation concepts regarding applying retention rules to email because I do believe it's a hotbed of discussion and very much misunderstood. The first concept is that you want to apply the same retention policy for email as you have for your other records, and I've mentioned that.

The second concept is around really understanding and declaring what are official versus non-official records. The truth of the matter is that a very small percentage of your records in email are actually official records governed by your retention policy. The vast majority of your records are reference communications and things that are really considered data to be managed with the IT challenge, but not official records.

The official records, once you can declare and separate these, really should be moved to a record keeping system which is enabled with classification, put into folders and managed according to discrete retention rules for -- appropriate to that category. You cannot simply apply retention to email en masse and expect it to be sufficient. So the unofficial records would be managed through what is known as mailbox management techniques through your IT group, they would be backed up and put onto tape or whatever media they use, and the right approach is to then make sure that the rotational records, the rotations of the backup are in synch with the retention of your archival system for emails. So the combination of declaring the records, separating the non-records from the official records, classifying the emails and putting them into discrete buckets so that you can apply retention is sort of the basic concept here.

Now classifying email itself is not easy and there are a number of techniques available to you. Some are automatic classification; some are manual classification. Automatic classification works really well when you have homogeneous records. For example, in SEC terms, SEC is one of the few regulatory agencies that's been very explicit that says all email is subject to the same set of rules. So that it's pretty easy on a global basis to make the declaration type procedures.

But other types of email applying automatic classification techniques require logical intelligence, which is imprecise and tends to result in over-archiving. Likewise, user-dependent or manual drag and drop types of classification can be effective, but requires a big training -- an investment in training and education and it, too, is imperfect. So I mentioned in the front of this presentation that some of the options regarding implementation are still emerging and those are two examples of that.

And lastly, one of the things you really need to do is make sure that your IT group is onboard with your retention policy so that your backup program is not undermining your retention objectives.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Ken, the last comments that you made, I think about the -- such as the SEC treating emails as all part of the records, I think that has to be focused on by people because if you go back to the earlier statement that some emails might not be considered official records, you get into an environment where the SEC is conducting an investigation and there is no non-official record. And that's something that people have to focus on in their document retention policy.

Ken Rubin - *Iron Mountain - EVP*

Carl, thanks for pointing that out. I should clarify, when I said SEC, I really should have been more clear and that's that SEC as it relates to brokerage regulations and specifically 17a-4, in that regulation they treat records as -- all email records homogeneously. But in other venues, it's not treated the same by the SEC.

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Carl Liggio - Association of Corporate Counsel - Founding Member

Except when they issue a subpoena and at that point, they think that anything you created becomes an official record. Ken, I know we're on number seven, but one of the emails I've just gotten asks if you can go back to slide six and clarify the last two bullet points that you made. I think they'd like a little bit more of an explanation of what was intended by that. And since we're pretty close to it, I thought we should do it now rather than a little bit later.

Ken Rubin - Iron Mountain - EVP

Could you clarify the question, please? Or even read the question?

Carl Liggio - Association of Corporate Counsel - Founding Member

Please ask Ken to clarify the last two bullet points for step six.

Ken Rubin - Iron Mountain - EVP

Okay. The point I was trying to convey on step six is that the functionality to apply records retention rules to paper records already exists. It does not require a lot of innovative new technology to apply. Many of the records management systems that exist, many of the vendors that are storing paper records have these capabilities built in, so it's not an investment area and it's not a science project. It's just use the tools that you probably already have available to you. And so that's sort of a theme that I was trying to convey.

Shall we move on?

Carl Liggio - Association of Corporate Counsel - Founding Member

Yes, go ahead.

Ken Rubin - Iron Mountain - EVP

Okay. In applying the rules to email, I'd just call your attention to a slide entitled Email Retention Class Examples and I'm not going to spend a lot of time on this slide. I just wanted to give the group a visual on how a records retention class might lay out for electronic mail. So I'm now going to move to step eight, assessing risks for other records.

We focus -- one of the pieces of advice which I'm putting forth today is focus on what's achievable and what are high risk records in order to prioritize your effort because of the vastness of your records collections. But you have records outside of email and paper records that should be paid attention to. And it's not possible for us to give sort of generically valuable advice that's specific other than to tell you that you -- in the assessment phase, you should have identified all your repositories of information.

And what you should really do is sort of bubble sort them to understand what's achievable and what presents highest risk. And in general, the high risk records are very industry-specific and except for certain corporate records such as HR records or maybe even executive records, although senior executives tend not to actually develop -- generate that many records themselves, but those are the areas where we've focused on. And what you'd want to do in thinking about the ease of applying retention is just think about whether your records are homogeneous, meaning you can treat them as groups, or whether they're individual heterogeneous collections of records, which makes it harder to do and you have to apply special technology.

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On step nine, one of the themes of this presentation is that implementation is really important to the success of the program and that design is also important. But if you design without implementation in mind, you're not going to really have a tight program. So there are three aspects of operationalizing the program I wanted to touch upon.

Training and education is really key to any compliance-based program. And we recommend that you build an (inaudible) based training program that focuses on the record coordinator level or the administrative arm of your organization, as well as users. And even management, to some extent, to give them both information and education around records management. We've seen companies do some pretty interesting things through e-training and on their intranet's in this regard.

Secondly, engage your internal audit function. As the data suggested earlier in this presentation, only a third of you are actually doing that today and we believe that this should be incorporated to the standard audit procedures of a corporation and should be on the audit list. Some of the key audit points that they should pay attention to are the timeliness and efficiency -- more the timeliness and accuracy of the retention cycle, as well as the administration of training. And lastly, update and maintain your program periodically to keep in synch with the changes in your business and changes in the law.

Lastly, on step 10, any program of any magnitude and importance needs to be measured. We all know that. And in this case, we're actually sort of blessed with the fact that this is one of the few compliance programs, that at least I can think of, that has a payback to it. So not only is it the right thing to do from a business standpoint and not only is it the necessary thing to do from a compliance standpoint, but it is self-funding at the same time. And cost savings really come in a number of different areas, direct and indirect, but the cost savings really comes from better access to your records, lower discovery costs, cost avoidance on records storage and the cumulative effect of building up obsolete records and data, and the savings you can realize from lower IT and staffing costs associated with that.

So there're also some indirect savings, which are harder to measure, but one of the things that we've learned in our practice is -- and this is on the next slide -- is that most companies today have between -- can get rid of between a third and a half of all of their records today if they could only identify which half to get rid of. So by applying those sorts of numbers, most companies can get a two to three year payback on an investment in the program and enjoy really substantial savings beyond that and that's just on the storage piece alone, which is the easiest piece to manage, easiest piece to quantify, I should say.

So with that, before we move on to questions, I wanted to summarize by saying a few things. And these are sort of themes that have been mentioned in this presentation is that we think number one that you should focus on this as a comprehensive approach and focus on consistency. We see a tendency for companies sometimes to rush to the next compliance obligation and try to patch that hole, but we really think that foresight is best and for you to think maybe in terms of fixing the hole or the gap that you have to deal with, but do so with a long-term vision of building a comprehensive approach.

Secondly, we advise that you folks in the legal function should take more of a leadership role in the process. We at Iron Mountain see all sorts of different types of programs and I will say unequivocally that the best programs that we see are actually owned by the corporate legal function. And certainly not corporate services and not IT and not finance, but corporate legal, and that's very clear from our vantage point.

Thirdly, think in terms of developing as a program and not a policy and design for implementation. And lastly, developing a records management program, I've been talking about this stuff for 20 years; it has intrinsic value to it and always has. Even though you're being pushed by necessary compliance issues, it enhances the control and access of your information, it reduces rework, it improves internal and external customer service, it saves you money, and it's good business practice. So it's a valuable initiative to put some resources behind.

And lastly, look for help. There are plenty of companies around that have experience to help you. There are software companies, there are consultants, there are companies like Iron Mountain that are a little bit of everything, so rely on the experts. They can get you to pick up your speed, accelerate your progress and help you avoid mistakes.

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On the next slide, we just put together some resources that you can look at at your own leisure by hitting the ironmountain.com website. But there are a number of white papers and there's a survey there and there's a book on email management, which you can register for, and I believe it's free, it is free and it's a good publication. So feel free to use the website as a source of information.

If you have any future questions that you want to submit, you can submit them to this particular website and we'd be glad to respond to them. It's rmconsulting@ironmountain.com and we'll be glad to respond to your questions. There's also an 800 number there, 800-935-6966 extension 2800 and people who can respond to questions that may occur to you later on.

So with that, that sort of ends the formal remarks and prepared slides, but I think we'll open it up to Q&A. And I think, Carl, there have already been some questions submitted?

QUESTIONS AND ANSWERS

Carl Liggio - *Association of Corporate Counsel - Founding Member*

We only have -- unfortunately we don't have that much time. I will try to the extent that we can answer the questions online to do two things; to send an email response to the questioner and I'm going to work with Karen to see if we can also post the questions and the response on the website so everybody will have the benefit of it.

With that, one other announcement; there will be a replay of this available at 4 p.m. and it'll also be on ACCA's website for one year for those of you who want to go back over it.

A couple of other administrative matters here. One of the emails that was sent to me says that you can also find a significant amount of information at the ARMA International, the Association of Records Managers and Administrators, and their site is www.arma.org, so that may be another place that some of you will want to go to finding some of the information about this.

Ken, the last question that came to me, which I think may be a good place to start, is in your experience, who is typically the ultimate owner of the records management process?

Ken Rubin - *Iron Mountain - EVP*

Well, it really varies by company and it's subject to the individual culture of the organization. My own personal opinion on this issue is that it should be owned by corporate legal, but a strong steering committee, which is cross-functional, be represented by IT and compliance should really be projecting the company's policies and the leadership. So it should be seen as coming from the steering committee with a sort of behind the scenes ownership and facilitation by corporate legal. That's my personal opinion. I've seen it work well in other constructs, but I feel comfortable with that recommendation.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

I would add a comment that the ultimate ownership from a legal standpoint and compliance, I would agree with Ken. But if you don't have buy-in from the end users, I think you're going to end up with a very real problem and you need to make sure that the end users do have a participation in that process.

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Ken Rubin - *Iron Mountain - EVP*

Well, one of the -- one of the ways to do that, Carl and everybody, is to make sure that on your steering committee that the most significant business units and owners of the records themselves are full-fledged members of the steering committee. And that's a good way to make sure that they are engaged in the policy setting.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Here's one question that I've wrestled with for year. If a firm has a bona fide records management destruction program in place and only retains copies in electronic form after destroying the original records, are there any situations where the firms would be required to retain the original document?

And I'm going to -- let me just give a quick cut from my standpoint. If you're putting these into PDF files, the answer is probably not, except certain types of documents like contracts where you have the original signatures. Even though there are evidentiary rules that deal with that, I would think you'd want to keep those documents in their original formats. Ken, your views?

Ken Rubin - *Iron Mountain - EVP*

I would actually agree with that comment. I think that increasingly, electronic records are seen as best evidence, but for records that have intrinsic value to them, like contracts and things of that nature, titles and so forth, that it's safe to keep them in its original format.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Okay. We're about to run out of time and our hour's almost up. Let me just try one other quick question. What about the internal enforcement and auditing of records retention programs? What's your experience there and what are your views on that?

Ken Rubin - *Iron Mountain - EVP*

Well, I thought I mentioned during the presentation that the internal audit function ought to really take up the cause. Most companies don't do it and the companies that we see who do do it aren't necessarily measuring the right areas, in our opinion.

I think that the right areas to measure involve, number one, the participation level in the program. So large companies have a lot of business units, they want to make sure that they have broad participation in the program, they want to look at the level of accuracy of classification and destruction by looking at the indexes of the records systems, and they want to audit the training program to make sure that they have the right level of participation involved in training and that the certification program for employees is actually happening. Those are some thoughts I have on the audit points.

And with respect to the necessity to do it, like with most programs, if you don't inspect what you expect, it's not going to happen.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Okay. We now, I think, have run out of time. I just asked Karen whether we can run over or we have to cut it short at the one-hour point. If we do have to cut it, as I said, I promise everybody who sent in a question we will respond by email and we'll try to post the question and the response on the website. Karen, do we have to cut it off or can we try some more questions?

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Unidentified Company Representative

We can try some more questions, another five to 10 minutes.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Oh, okay. Great. One of the questions that I think is really one of the problems when you come to a document retention policy late is how do you get employees to go back through the thousands of word documents and emails created in the past five years on their computers and elsewhere to deal with it? Do you do a wholesale destruction? Do you try to sort things out? What's your view on that, Ken?

Ken Rubin - *Iron Mountain - EVP*

This is one of -- this is a really challenging issue. We would classify this issue as the sort of electronic back file issue of this pent-up volume of records and emails that you collect that you then -- once you have a policy, then how do you go backwards and apply them? It is frankly not reasonable to expect individual employees to go back into the annals of the company's history and with a pick and an axe go through each email and each document and figure out a policy and to apply email to it. It's just not a reasonable expectation, it's not going to happen, and you're not going to get the results.

So let me throw out some practical -- more practical advice in this area. Firstly, I think it's reasonable to expect that the steering committee puts forth some guidance around high risk records and you focus on -- you focus on individual departments or even individual people who you know play in those waters. And you provide a public folder system if it's electronic records and you encourage those people for the high risk records to classify those records and to put them in the public folder system, including a delete folder. And I would apply that same advice to electronic mail as I would to other forms of electronic documents.

If you're lucky enough to have or fortunate enough to have records, what I'm calling homogeneous records, ones that can be treated as a group in one system, you can apply some global rules to it. But the most challenging issues are these individual applications like spreadsheets and presentations and software applications where it's essentially a door-to-door search. And you're not going to get good results by going at it in its entirety. Give some rules; focus in on the important and that might be the most practical way to make progress.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Let me offer one observation on that. This sort of goes a little bit beyond that and it goes to your risk management side. There is a body of new software that is coming on the scene and this software is a search software mechanism that permits you to run the software on a whole series of files to find relationships between documents. It uses a form of artificial intelligence in the software. One of the companies that I have involved on and I'm on the board of, which is in the electronic discovery area, Theos, uses that software to help manage the electronic discovery.

In dealing with this sort of -- with the issue of the historical records and finding out what's in them and what you want to retain or not retain, I think people should start looking at this type of software. There are three or four companies that -- it's called conceptual or textual search -- conceptual software. It's based on concepts and it helps you put together the information that are in documents, finding relationships and patterns. It's a good risk management tool. And when you're going back historically over documents, it may be something that you want to use.

One of the comments that I got while we were talking on keeping the original contracts was that if you follow -- if you have a process by which it's done, that there is case law that allows you to destroy the originals. I agree there is case law out there, but I do not believe it is followed in all 50 states at the state level. And before you destroy originals, you need to know what is going to be the local rule in the states where you primarily do business. And you still have to worry about -- and when I was with Ernst

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& Young where we did business in all 50 states, the problem is we might be sued in one of those states where we didn't necessarily create the records. So you do have to consider that as a possible issue.

Let's see if I -- how do you suspend the document destruction policy during a lawsuit without stopping the whole program and how can you be sure you've stopped the destruction of documents that are going to be an issue and only those documents?

This question puts the finger on a very real problem, which anybody has, whether it's electronic records or the paper copy. Two years ago Judge Shearer Schindland (ph), who has written (inaudible) opinion from the Eastern District, she's in the UBS case, and who has spoken on the subject of electronic discovery, frequently -- in an ABA panel in Chicago commented that you should be able to develop policies. And so when I put the question to her, "Well, how do you develop the policies if you're in a business that constantly has litigation? Can you ever destroy anything?" And it admittedly stumped her and she didn't have any answer to it and she sort of fell back on, "Well, you're smart enough. You guys should be able to figure out how to deal with that."

I think it's a very real problem and, Ken, I'd be interested in your experience, particularly since you have -- you recommend documentation destruction problems, what, if anything, you've done to deal with this in a litigation context.

Ken Rubin - *Iron Mountain - EVP*

Okay. Well, my point of view and our point of view comes from more the execution side of it and how we see companies trying to execute than it does the interpretation of the law. So with that caveat, I would say that the companies that we see implementing this, what they do is they have -- they assign basically relevancy rules per matter or case and they go into their records systems and they cull out records, identify records that are related to the matter by a number of parameters, either department or employees involved or whatever criteria that they have, and they put a hold on those records through a system.

And, in fact, you can have the same record have multiple holds on it for different cases. And the rest of the records that don't have this tag on it are just destroyed in the ordinary course of business. And those that are holds, the holds are released with either a time (inaudible) that's pre-assigned or one that is -- or one that is ad hoc and that's the methodology that companies use.

I know that's sort of an operational answer, but for companies that don't have that technology, it's very difficult to do and I think it is a real problem. I don't know how you do it without being assisted by technology. And that's why I see companies sending out emails and sort of holding everything because they don't have the means to be selective. So that's one of the reasons why you'd want to -- it's one of the reasons for having a records management-enabled system.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

Another question. What do you think about auto-deletion of emails and is there really any true auto-deletion of emails?

Ken Rubin - *Iron Mountain - EVP*

The context here is that first of all, because email is not a record type, you can have all sorts of record types mixed in within email. A global decision to -- or a wholesale decision to delete email after 60 days or 90 days or whatever I think is fraught with risk because within that destruction, you are exposing yourself to spoliation (ph) destroying business records.

So most companies have some sort of auto-deletion program, but the recommendation here is that you couple that with a process to cull out the official records and move them into a system that can manage them. So you're really auto-deleting a lot of the reference materials and unofficial records and working drafts, but the official records, you're pulling them out into a record keeping system.

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So auto-deletion, we've seen companies that have had auto-deletion policies and felt uncomfortable with them and have actually sort of rescinded the policy and are now keeping everything until such a time that they can put in the system that I just described.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

A follow-on question to that is how do you reduce exposure when you have multiple copies of an email? One copy may be backed up by IT while another may reside on your servers.

My answer to that, and I'll be interested in yours, Ken, is lots of luck.

Ken Rubin - *Iron Mountain - EVP*

Well, once you have multiple copies, it makes it harder. I would think -- my advice is not get yourself in that situation and reduce that likelihood and you can do that if you follow some concepts. And the concepts are that you're -- the copies that I'm envisioning that are implied in this question would be backup tapes, server documents and email and stuff that might be on an individual person's PC. That's sort of a common scenario where you'd have multiple record types.

But if you synchronize your backup and your archives so that they are in synch, you've mitigated your risk. If you limit an individual employee's ability to archive their own emails on their own hard drives, you've mitigated that risk because really the best practice is that you want one record keeping system for the company, not multiple, and everything else is either a working area, a workspace area, or part of a backup process.

But as soon as you allow multiple record keeping systems, you expose yourself towards just an increased management challenge. So that's the best practice. It's hard to do and I've seen companies do things like reduce the size of the hard drive on people's systems and things like that. But the truth of the matter is you don't want individual employees walking around with company records on their laptops. It's just for working purposes, not official records. They can declare them as official records at some point in the work process, but while they're working on them, they're just working drafts.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

That leads to another issue on one question asking for some illustrative examples about rationalizing email, backup cycle and retention. And one of the things that I would warn everybody about in this modern day and age with backups and backup cycles and backup tapes, when you have a discovery demand made that covers your backup tapes and if companies have a process of recycling the backup tapes, some companies will run a 14 day cycle and on day 15 they're using the backup tape from 14 days ago, that could be a violation of a discovery request or a court order.

And what I would urge everybody to focus on is that once you get a document demand that could be perceived as reaching your backup tapes, you need to get to court pretty quickly to have that limited so you do not have to preserve the backup tapes on a regular basis. If you do -- as one of my colleagues told me in a piece of litigation he had, he started spending hundreds of thousands of dollars to have to buy additional backup tapes because they were not allowed to destroy the backup tapes because they had not been proactive in getting that limited.

So that's a very major problem. You need to think about it, you need to be aware of the discovery, the litigation context, that those backup tapes could cause problems for you if you don't get them carved out of the court order early on.

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Ken Rubin - *Iron Mountain - EVP*

One of the things that I would add to that, Carl, and we see this every day at Iron Mountain, is that if -- a company should not use -- should do everything possible not to use their backup as a de facto archive because once you get in that situation, we have clients call us all the time with very short timelines to unearth their backups, reconstruct them -- we have a data restoration service -- and to try to index those emails and make them searchable so they can respond in a very short timeframe. And it's very expensive to do that. It can range, not just with Iron Mountain, but in general the range is anywhere from 500 to \$2,000 a tape and a tape can hold something like 4 million emails I think. And it's not the way to go.

So one of the underlying tenets here is get a records -- get your records in a record system and don't use your backup as an archive because that's when you get those sorts of problems and that's very expensive when you multiply that times thousands of tapes.

Carl Liggio - *Association of Corporate Counsel - Founding Member*

We are about to run out of time, but I wanted to share one last comment on an email and I couldn't agree with this more. This is from one of our members whose specialty is records management. And he said in 25 years of records management experience you must have top-level management support, usually from the CEO, for the program. And yes, you need end user support. I can't say how much I agree with that statement. You'd better get the CEO and others onboard because if you don't, your records management program will not carry forward.

And on that note, I'm looking at the time and we are at the end of what Karen has given me that we have to cut off. So, Ken, thank you very much. It was a great presentation.

Everybody, thank you for listening. If you've got more questions, just send them to me. We will respond to you and your questions. Thank you.

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