

Containing Future E-Discovery Risk and Cost: The Impact of Electronic Records Management Systems

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Agenda

- The Context and Business Case for Electronic Records Management Systems (“ERMS”)
- Case Studies Demonstrating ROI
- Practical Suggestions for Selecting and Implementing ERMS Solutions




But first—a look back...



THE WISDOM OF THE ANCIENTS



THE WISDOM OF THE ANCIENTS,
PASSED ON FROM GENERATION TO
GENERATION, SAYS THAT WHEN YOU
DISCOVER THAT YOU ARE RIDING A
DEAD HORSE, THE BEST STRATEGY
IS TO DISMOUNT.

The top portion of the image features a blue, ethereal background. On the right side, there is a glowing, semi-transparent sphere. The background is filled with a pattern of binary code (0s and 1s) that appears to be receding into the distance, creating a sense of depth and digital connectivity. The overall aesthetic is futuristic and high-tech.

IN THE BUSINESS WORLD,
A RANGE OF FAR MORE
ADVANCED STRATEGIES ARE
OFTEN EMPLOYED,
SUCH AS....



1. BUYING A STRONGER WHIP.



2. CHANGING RIDERS.



3. THREATENING THE HORSE WITH TERMINATION.



4. APPOINTING A COMMITTEE TO STUDY THE DEAD HORSE.



5. ARRANGING TO VISIT OTHER COMPANIES TO SEE HOW THEY RIDE DEAD HORSES.



6. LOWERING THE STANDARDS SO THAT DEAD HORSES CAN BE INCLUDED.



7. RECLASSIFYING THE DEAD HORSE AS "LIVING-IMPAIRED."



8. HIRING OUTSIDE CONTRACTORS TO RIDE THE DEAD HORSE.



9. HARNESSING SEVERAL DEAD HORSES TOGETHER TO INCREASE THEIR SPEED.



**10. CONDUCTING A
PRODUCTIVITY STUDY TO SEE IF
LIGHTER RIDERS WOULD IMPROVE
THE DEAD HORSE'S PERFORMANCE.**



11. REWRITING THE EXPECTED PERFORMANCE REQUIREMENTS FOR ALL HORSES.

Electronic Records Management Systems

A Considered Approach to Dismounting
a Dead or Dying Electronic Records
Management Horse

Part I: The Business Case for ERMS Solutions

- ERMS Definition and Drivers
- Legal, Compliance and Business Benefits of ERMS Solutions
- Practical Tips on Exploring ERMS Solutions

ERMS Defined

- **Electronic Records Management:** “[U]sing automated techniques to manage records regardless of format. ERM is the broadest term that refers to electronically managing records on varied formats, be they electronic, paper, microform, etc.” (NARA)
- **Electronic Records Management System (“ERMS”):** A system consisting of software, hardware, policies, and processes to automate the preparation, organization, tracking and distribution of records regardless of media.” (ARMA International)

ERMS Landscape

- The volume of unstructured information is exploding
- Social media and new media have expanded the scope and complexity of electronic information management
- Decreased storage costs have fueled a culture of over-saving
- Tools for managing unstructured information have been immature, and unavailable to knowledge workers

ERMS Drivers

- Information overload estimated to cost the U.S. economy a minimum of \$900 billion per year in lowered employee productivity and reduced innovation
- Similar impact globally
- Poor records management has resulted in severe harm to reputation (Wall St. Journal RIM Wall of Shame)

ERMS Drivers

- Companies typically misfile 3-5% of their records
 - 1.76 hours per day: Searching for and gathering information
- Average cost to recreate a lost document is ~\$180/document
- Large organizations lose or misfile approximately one million records per year, at an annual cost of \$5 million/year

ERMS Drivers

2011 RIM Study: Records Management Landscape

- Access to records across enterprises remains poor
- Goal of an enterprise-wide ERM system is popular, but difficult to achieve
- Compliance and reduced storage costs are biggest drivers for ERMS
- Companies are “over-saving” information, resulting in increased cost and legal risk

Legal and Compliance Benefits of ERMS Solutions

- Assists organizations in complying with a multitude of records retention requirements
- Increases ability to promptly and properly comply with requests for information from regulatory authorities
- Enhances ability to meet data privacy and security obligations (access rights, audit trails, etc.)
- Eliminates the use of backup tapes as a poor substitute for ERM

Legal and Compliance Benefits of ERMS Solutions

- Reduces risk of sanctions for legal hold violations and/or failure to timely provide relevant records and information
- Lessens risk of an incomplete or inaccurate record of organizational activities
- Enhances argument that helpful records and information should be admissible in evidence

Other Business Benefits of ERMS Solutions: Preservation of Corporate Knowledge

- Preserves institutional knowledge, especially with employment mobility and downsizing
- Safeguards vital corporate records and enables continuity of operations in the event of emergency or disaster
- Provides a legally defensible basis of not keeping everything forever! (U.S. Supreme Court in *Arthur Andersen* case)

Other Business Benefits of ERMS Solutions: Enhanced Information Sharing

- Promotes knowledge-sharing, and improves staff access to needed records and information
- Increases confidence in integrity of corporate records, leading to wider recognition of their information value and more effective use of them
- Avoids “re-creating the wheel” (*e.g.*, by permitting use of prior contract as basis for new contract)

Other Business Benefits of ERMS Solutions: Improved Decision-Making and Responses

- Enables swifter, more effective, and comprehensive “evidence-based” decision-making
- Facilitates faster, more accurate responses to customers and shareholder inquiries
- Provides management with better data on number of records created, searched and retrieved, and turnaround times, which allows new metrics to be defined, tracked and reviewed in order to facilitate targeted improvements

Other Business Benefits of ERMS Solutions: Financial Benefits

- Savings in staff time required to file records and information
- Savings in staff time required to retrieve information
- Savings in staff time required to re-create the wheel

Other Business Benefits of ERMS Solutions: Financial Benefits

- Reduction in on-site and off-site storage cost
- Reduction in e-discovery costs
- Reduction in FTEs dedicated to file management functions

Part II: Case Studies Demonstrating ROI

- Records management in the news
- Organizations that paid a price for poor records management
- ERMS solution success stories

Legal & Reputational Reasons: Records Management in the News

- Reported shredding of documents to obstruct justice (Enron)
- Falsification of financial statement (WorldCom)
- Judicial sanctions imposed for destruction of royalty records (Walt Disney Company)
- Allegations that CEO ordered destruction of documents relating to governmental investigation of securities trading (ImClone)
- Criminal trial for destruction of audit records (Arthur Anderson)

Organizations that Paid a Price for Poor Records Management

- **Who:** UBS Warburg LLC
- **When:** July of 2004
- **Claim:** During an ongoing gender-discrimination lawsuit (*Zubulake v. UBS Warburg*), UBS Warburg deleted relevant e-mails despite court order; failed to locate, preserve records and produce e-mail and other documents in a timely manner
- **Consequences:** Ordered to produce relevant documents and pay for re-deposition of some witnesses and to pay specified legal expenses of the plaintiff

Organizations that Paid a Big Price for Poor Records Management

- **Who:** Lucent Technologies Inc.
- **When:** May 2004
- **Claim:** Lucent provided incomplete records in response to a Securities and Exchange Commission investigation
- **Consequences:** \$25 million fine

Organizations that Paid a Price for Poor Records Management

- **Who:** Philip Morris USA/Altria Group
- **When:** July 2004
- **Accusation:** Deleted e-mail that was over 60 days old for more than two years after a legal order to preserve all documents relating to litigation. Failed to follow the company's internal procedures for document and e-mail preservation.
- **Consequences:** \$2.75 million fine

Organizations that Paid a Price for Poor Records Management

- **Who:** Banc of America Securities
- **When:** March 2004
- **Claim:** Violation of Exchange Act record-keeping requirements, including failure to produce e-mail records in a timely manner and failure to preserve documents after SEC staff request
- **Consequences:** \$10 million fine; censure

ERMS Success Stories

- Type of Business: Fortune 100 Manufacturing Company
- Key Goals: Reduce Cost of Litigation Management
- Challenges Faced: 20 Global Outside Counsel Law Firms needing Access to the Same Company Documents
- Demonstrated Success: ERMS system devoted to Litigation Hold Management – Estimated Annual Savings of \$10M

ERMS Success Stories

- Type of Business: Fortune 500 Pharmaceutical Company
- Key Goals: Manage Offsite RIM Storage Costs
- Challenges Faced: Several Silos of Information, and Large Amounts of Printed Documents and ESI Inherited in Merger
- Demonstrated Success: ERMS empowered Company to successfully complete a Print and Electronic Legacy Information Disposition Project, resulting in significant risk and cost reduction – Estimated hard ROI of \$3M per year in global storage costs alone

ERMS Success Stories

- Type of Business: Fortune 1000 Technology Company
- Key Goals: Ensure regulatory compliance and protect key IP assets
- Challenges faced: How to apply controls and manage all PII and IP information – structured and unstructured
- Demonstrated compliance and reduced loss of intellectual property and PII data breaches

Part III: Practical Recommendations for Selecting and Implementing ERMS Solutions

- Carefully identify candidate vendors and consultants
- Identify business and legal requirements
- Develop detailed, phased project implementation plan looking for quick wins for management

Your ERMS Requirements?

- Record retention and preservation
- Search and retrieval
- Records categorization and classification
- Integration of RIM, privacy, litigation and security requirements

Basic Functionality for ERMS

- Chain of Custody – Authenticity, integrity, accuracy and completeness of the information
- Capture of relevant metadata and embedded data (Track changes, speakers' notes, etc.)
- Auditing and tracking of changes to data in regulatory and auditing contexts (SOX; 21 CFR Part 11)

What Basic Functionality is Required from ERMS?

- Record security – Digital signatures
- Records retrieval – Key word vs. concept searching
- Record disposition – DOD Standards

Key Considerations in Solution Selection

- Initial costs
- On-going costs
- User acceptance -- Extent of cultural adjustment
- Legal defensibility
- Records management capabilities
- Data protection, data privacy and data security
- E-discovery functionality
- Solution maturity

Solution Roadmap

- Selecting the right ERMS Solution involves:
 - Assessing your needs
 - Picking your battles
 - Understanding your options
 - Testing the contenders

Vendor Recommendations

- Look for Systems that:
 - Are owner-customizable as to Features and Functionality
 - Focus on the entire RIM lifecycle
 - Allow for easy identification and disposition of records when no longer needed
 - Supports exporting in a variety of formats

Questions to Ask about ERM Solutions

- What is the vendor using to manage print and ESI Records?
- What are references for other similar successful implementations?
- How do they differentiate in risk and cost reduction versus their competition?

Resources

- Review relevant standards and determine vendor's compliance with same (*e.g.*, DoD; ISO; ANSI/AIIM/ARMA)
- Attend ARMA annual conference and trade shows to meet with vendors and explore their products
- Review information rating and ranking technology solutions (*e.g.*, Gartner, Forrester)
- Consult with trusted advisors who have deep expertise assisting clients with technology solutions
- Ask your network about experiences with different vendors

Technology Selection & Implementation: Needs Assessment and Project Planning

- Identify business requirements for immediate and long-term e-mail information and records management needs through workshop sessions with stakeholders from IT, Legal, Records Management, and business units
- Develop and continually refine a detailed project plan for the vendor RFP process and selection, proof-of-concept, budget planning and approval, and implementation planning
- Architect preliminary design specification for use in creating RFP
- Develop a preliminary budget

Technology Selection & Implementation: Needs Assessment and Project Planning

- Questions to Ask for Needs Assessment:
 - What are our current and future anticipated needs from an ERMS?
 - What records do we want to capture and manage using our ERMS?
 - What formats do we use now, and which are we likely to use moving forward?

Technology Selection & Implementation: Needs Assessment and Project Planning

- Questions to Ask for Needs Assessment:
 - What is our legal framework and how does that affect our decision?
 - How do we use records now and how do we anticipate using them in the future?
 - How should records be organized and indexed to facilitate retrieval?

Technology Selection & Implementation: Needs Assessment and Project Planning

- Questions to Ask for Needs Assessment:
 - How do our records fit into our current workflow?
 - How will we need to modify our workflow to accommodate each ERMS under consideration? At what points in our workflow will we need to capture records?
 - How will we dispose of records in our ERMS? Will the system allow us to transfer, convert and/or migrate easily?
 - Will the new tools integrate easily with our existing IT architecture, tools and RIM workflows (Don't let tail wag the dog).

Technology Selection & Implementation: Vendor RFP Process and Selection

- Carefully prepare detailed user scenarios as basis for vendors to demonstrate how their solution meets your company's critical business requirements
- Develop and finalize the vendor RFP
- Select the vendors for RFP participation and issue the RFP to selected vendors
- Develop a scorecard to measure RFP responses

Technology Selection & Implementation: Vendor RFP Process and Selection

- Score and assess the RFP responses and select finalist vendors to invite for vendor demonstrations
- Develop a vendor demonstration model/ framework to direct finalist vendor demonstrations
- Conduct vendor demonstrations to understand, assess, compare, and document vendor capabilities and costs
- Select vendor to perform proof-of-concept using vendor solutions in your unique environment

Technology Selection & Implementation: Proof- of-Concept

- Develop critical success factors (*e.g.*, usability, etc.) that should be vetted during the POC
- Identify the POC participants
- Make reasonable adjustments to the conceptual model and policy/ business decisions based on solution capabilities

Technology Selection & Implementation: Proof-of-Concept

- Ensure legal involvement in the execution of the POC
- Assess how the vendor solution performs against the critical success factors of the POC
- Seek budget approval for selected vendor or otherwise determine next steps

Technology Selection & Implementation: Implementation Plan

- Develop detailed project plan, including project timeline and milestones, for implementation of pilot test of the selected vendor solution
- Revise requirements and/ or business/ policy decisions based on lessons learned from pilot
- Develop and implement enterprise communication plan as to changes
- Develop plan and schedule for full roll-out of selected vendor solution

Technology Selection & Implementation: Deployment

- Invest in training
- Invest in coordination with IT and business units – Systems and business analyst involvement
- Implement compliance monitoring plan
- Invest in constant process improvement

Lessons Learned from Prior ERMS Solution Implementation Projects

- Define “success” at the start
- Incorporate stakeholders and business units throughout at all key points in project
- Focus on defining business and legal requirements
- Require vendor to show you that solution does what it purports to do
- Invest in rigorous project management in all phases of the Project

In Summary....

- The right ERMS Solution can enhance a company's ability to create a records management and e-discovery architectural framework that:
 - Is reasonable and legally defensible
 - Is able to manage information that needs to be retained for business, legal, and/ or historical reasons
 - Is user-friendly
 - Reduces time and cost of records management and e-discovery for e-mail and Microsoft Office content
 - Treats records management and e-discovery as a repeatable, verifiable, and measurable business process



Sacred Records Management Truth

The Value of Information is
Proportionate to its
Accessibility

Be Strategic – Remember the Big Picture

