

New Jersey Law Journal

VOL. CXCI—NO. 11 — INDEX 936

MARCH 17, 2008

ESTABLISHED 1878

LEGAL TECH

Trends in Electronic Records Management

E-mail systems might not be the best storehouse for client info

By Eric Mosca

Law firms are facing a proliferation of e-mails and other information in electronic format. While e-mail has gotten the majority of the attention, all forms of electronic documents are growing at an ever-quickening pace as users get more comfortable with functioning in an electronic format and due to the ease of creation. In many firms this has led to electronic records creation outpacing the firm's ability to prescribe definite ways of managing this content in a compliant manner. Larger firms have implemented document management systems (DMS) and even records management systems (RMS) for some, but these systems compete with individual attorney strategies for capturing important attorney and client work product. A short list of other areas where electronic content typically resides in many law firms includes local hard drives, network shares, CDs and DVDs, removable drives, e-mail inboxes and home computers.

This electronic content is considered "unstructured" due to the fact that even if the attorney who saved it can locate the information (not a certainty), it is not tagged with client or matter metadata that would allow the firm to apply future disposition decisions to this material or locate it in the event of

Mosca is the Director of Operations at InOutsource, a records management consulting firm based in Thorofare.

the client leaving or if the firm is faced with litigation related to the representation. This information often becomes effectively lost to the firm. If information cannot easily be located by attorneys for answering client inquiries or reusing past work product, it has lost much of its value.

Technology departments and their internal champions have traditionally had client satisfaction as their top priority. For attorneys the demands of external clients were paramount, while IT departments viewed the attorneys as their clients. It is no surprise that technology implementations were rushed to meet client demands. These clients were often from technologically advanced industries and led the introduction of new forms of electronic content to law firms, at least in part. Attorneys are also under continual pressure to develop their practices and manage the equivalent of smaller business entities. This brought a myriad of approaches for managing electronic content to many firms. Reflecting individual personalities, there were attorneys who sought to foster collaboration amongst their legal team using network shares, and later, software solutions, while others worked hard to maintain complete, redundant copies of everything under their sole control. As best practices for managing electronic content began to develop, many firms realized that it takes a firmwide, consistent approach to records management to make working in this medium efficient and to protect the organi-

zation from risk.

Regardless of storage location, the dominant transmission medium for electronic documents is e-mail. Even as this area took the bulk of the attention regarding electronic content, it has changed the least. The ease with which information can be sent and received has contributed to the problem and the proprietary nature of e-mail inboxes has been a major factor in administrative struggles to control this entry and exit point. Many attorneys are receiving hundreds of e-mails per day and do not enjoy the administrative support that physical incoming snail mail has traditionally had.

It is surprising that many firms have brought about change in other areas while e-mail management has changed little. The implementation of document management systems to manage electronic documents brought the fundamental concept of tagging documents with metadata to the law firm's records. Litigators, at least, were likely to be familiar with this concept due to the prevalence of litigation support databases that tagged important documents with key words for easier retrieval at a later point. Once documents were associated with a particular client matter number in the DMS, they could be secured in a consistent manner and much more easily shared with the appropriate legal team. Records management systems brought about the ability to apply retention policies to electronic content along with a host of physical records management capabilities. These RMS' also enable a firm to apply litigation holds

and suspend document destruction as well as apply ethical walls when necessary.

We have finally reached a time where the technology is capable of respecting records management best practices, but only if appropriate levels of compliance from end users are achieved. Attorneys and support staff need to be given clear direction on how all information in the law firm should be managed. Drawing clear distinctions between tools for creation and communication and acceptable storage areas is a first step. E-mail systems such as Outlook are not an appropriate repository for important client or internal communication. This interface allows a variety of views and has become a favorite working area for many attorneys, but lacks a number of key features. E-mails in Outlook, GroupWise or Lotus Notes are not secured, cannot be selectively suspended from deletion, and are not easily shared without additional actions. With varying degrees of success, only DMS and RMS vendors have respected stringent security needs and created environments that foster collaboration.

Many firms are struggling with exactly where all of this electronic content should reside once they accept the fact that it cannot live on local hard drives and within the firm's e-mail system. The industry is at odds over whether document management systems can be expanded in scope to handle additional content like e-mails and imaged versions of hardcopy files. Many are advocating a migration of final "records"

over to a records management system that can be slimmer in profile by ignoring various iterations of documents and focusing on the final version that would be analogous to the official physical file.

Large-scale implementations have yet to prove which systems will be able to offer the speed and scalability to manage millions of documents and e-mails and still respect granular security needs. Firms are achieving compliance with records management goals in a variety of ways, but all solutions must share similar features: Such as:

- Electronic content is classified according to consistent firmwide parameters no matter which system it resides in.

- Content is associated to specific client matters and can have retention rules applied, ethical wall security if necessary, and alteration and destruction can be halted automatically in the event of a threat of litigation.

- End users are clear on exactly where information can be located. A single point of reference is most intuitive for many attorneys. This is best achieved through managing all electronic content in a single system or grouping content from disparate systems through Microsoft SharePoint or a similar solution.

- Compliance must be easy for the firm's end users. The proposed solution cannot be more difficult than what the users are currently doing. Additional benefits like ease of collaboration and speedier access to information must be a tradeoff for asking them to take more

in-depth steps to classify electronic content.

New technology will always be coming into law firms. These new records, be they digital voicemail messages, video depositions, records of firm Web site changes or collaboration portals, will need to be considered from a records management perspective. Procedures and policies that protect the firm from risk and support the firm's vision for servicing clients must be what dictate how these new records are handled. Technology should not be the driving factor, but a solution for implementing and supporting policy decisions.

Legal opinions and bar association guidelines will offer support for these goals as they have over the last few years. The Amended Federal Rules of Civil Procedure made it clear that electronic information must be preserved with metadata intact and the *Zubulake v. UBS Warburg* decision clarified that organizations must have procedures in place to halt destruction and writing over of backup records. These clarifications are not great changes in commonsense standards but attracted a great deal of attention because they showed the consequences of poor records management. Basic principles for securing and classifying information have not and will not change greatly over time. A consistent approach to addressing these new challenges and keeping solutions in line with overall records management goals will ensure that we don't move backwards in our progress. ■