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From Challenge to Opportunity:

Meeting Records Management Requirements
in the Electronic World

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Electronic information is becoming more and more integral to business. Financial transactions, engineering processes and even basic communication are a few examples of everyday business activities that take place via electronic media. Just as business activities are performed electronically, so too are the records that provide evidence of these transactions.

The movement toward electronic records offers unprecedented opportunities to improve business efficiency via cheaper storage, faster information retrieval and automation of records management workflows such as retention and disposition. But with new opportunities come new challenges, as the technical and business reality of electronic records and systems meets records management requirements that existed well before terms like "electronic records" and "digitization" became commonplace in business.

It should also be noted that challenges of applying established requirements to new media are not unique to organizations that successfully moved away from physical record-keeping in favor of a paperless office. Many organizations are subject to stringent internal administrative processes and external rules that require them to retain signed contracts, title documents and other core records in paper form. But the coexistence of paper and electronic content can add yet another layer of complexity to the otherwise simple tasks of identifying, retaining and eventually disposing of required business records.

A record can exist in any format or medium, and if it provides complete, reliable evidence of a given business activity, it must be retained for as long as necessary to meet the legal, regulatory and operational requirements associated with that activity.

So how does an organization reap the benefits of electronic records management while mitigating the compliance and practical risks introduced by those same electronic records?

The short answer is by returning to records management basics and applying the long established tools of the profession to the new electronic reality. The long answer requires a closer examination of the basic objectives of any records management program – whether paper-based, electronic or a hybrid of the two – with special emphasis on the obstacles that electronic records can pose.

New Challenges: RM Requirements in the Electronic World

Challenge #1:
Identifying Business Records

Organizing, accessing and managing records costs time and money, so it is important to exercise a certain degree of selection in applying the label of "record." Exact legal definitions of a record vary from one jurisdiction to the next, but the same basic theme applies everywhere. A record can exist in any format or medium, and if it provides complete, reliable evidence of a given business activity, it must be retained for as long as necessary to meet the legal, regulatory and operational requirements associated with that activity. Of course, not every document that an organization creates is necessarily a record for purposes of meeting those legal, regulatory and operational requirements. For example, duplicate copies tend to have limited evidential value as long as an original record is retained and available, and many draft documents cease to have value once they are superseded by a more complete, reliable version. An essential element of any records management program, then, is establishing and applying clear criteria for what constitutes a record of that organization's business activities and therefore must be retained.

This requirement is simple enough in principle, but retention policies can get messy in a collaborative business world where a single transaction can lead to multiple copies and competing versions of the same document. The potential for redundant information storage and version confusion grows exponentially in the electronic world, as each passing year increases the speed and sheet volume with which information and images can be copied, printed, scanned, distributed and read. Meanwhile, electronic file formats continuously evolve based on available technology and market demand. And as electronic communication tools become more interactive and dynamic in nature, it can be much harder to identify exactly when a given record became complete and unalterable for record keeping purposes.

Here are just some of the questions that routinely come up when applying records management requirements to electronic content:

— **Several copies and competing versions of the same electronic document are stored at various locations throughout our organization. Which copy and/or version is the official record?**
— **If a document is created electronically and printed to paper, which version is the official record?**
— **Can we scan paper documents into an electronic system and dispose of the originals?**
— **Who holds the official, original record of a string of email communication copied, forwarded and responded to by multiple parties within an organization?**
— **Which electronic file formats are acceptable and/or preferable for records retention purposes?**
— **How do we establish fixed, reliable records of rich media communications such as applets and streaming video, since such content is designed to be fluid and changing?**

None of these questions have a single answer that applies to every organization. Records are evidence of business activities, and any questions about how to provide the best evidence of those activities involves organization-specific analysis of the activities themselves, the roles of those who perform these activities and the legal and regulatory environment in which they operate.

Challenge #2:
Records Retention and Disposition

Records retention and disposal concepts appear deceptively simple. Every record that an organization creates must be retained for a given amount of time in order to comply with laws and regulations, as well as meet the organization's own internal needs for informational support. Establishing a records retention schedule should be a simple matter of reviewing legal, regulatory and operational requirements and coming up with fixed time periods for keeping records. Applying the retention schedule should be even simpler: records are created and kept for the specified time period. Once that time period expires, the records are destroyed.

But the temptation to oversimplify records retention poses the greatest risk for non-compliance with legal and regulatory requirement - especially when dealing with the automation capabilities of electronic records management systems. When combined with an effective records retention schedule and disposition process, electronic records management systems can streamline the process of retention and disposition while also improving compliance by ensuring more eligible records are captured. But automation capabilities are only as good as the level of planning and forethought that goes into development and implementation of those capabilities.

Electronic records management systems can often apply retention periods to fixed date triggers, but in the example of employee administration files, those dates are generally not known in advance. Although increasingly rare, a poorly designed electronic records management system can overlook event-based retention and instead begin counting retention periods based on the date a record is created. This means that an organization's records management staff will face the lengthy and tedious process of reviewing and overriding planned deletion of records whose rightful retention periods haven't even started. Even worse, systems could automatically delete those records in direct non-compliance with the organization's records retention program and the external laws and rules driving that program.

Human intervention can be even more important in vetting would-be disposition activity and capturing any records that are responsive to litigation, audits, investigation and other "legal hold" situations. Automated disposition processes cannot be expected to know when such a situation applies, nor can they take the place of the occasionally subjective decision making that goes into determining which particular records are relevant. Electronic systems can be an essential tool in legal hold and "e-discovery" processes, but any organization that allows electronic records management systems to apply retention periods, identify disposition dates and delete electronic records en mass introduces a host of legal risks ranging from non-compliance to obstruction of justice charges.

One of the best examples of how automated retention and disposition tools can challenge rather than improve records retention is the question of when the retention period for a given category of records begins. While some retention requirements start the moment a record is created, most real world records requirements depend on the some predefined trigger event. For example, many accounting retention periods begin to accrue with the end of the fiscal year to which the records related, whereas the retention period for an employee administration may not start until an individual's employment is terminated.

Challenge #3:
Storage and Retrieval

One of the most enduring practical challenges in the field of records management is to balance the competing needs of cost-effective record media storage with fast information access when it is needed. Traditionally, physical records management has focused on reducing the floor space and accompanying real estate costs that result from storing paper records. The situation with electronic records could not be more different. While electronic storage space is certainly not free, it is getting cheaper.

But cheaper storage does not always equate with cheaper retrieval and use. If anything, the perception of growing storage capacity has increased the tendency to make redundant copies, retain minor versions of working documents and save external reference information that has little or no value beyond its initial use. Anecdotal accounts from many TAB clients suggest that anywhere from 70 to 90% of the material occupying network servers consists of transitory or non-record material that does not need to be retained.

Unlike an overcrowded file room, excessive electronic retention does not generate tangible evidence, but is still a very real problem with measurable financial costs. Some of the financial and business problems associated with retaining too much electronic information for too long include:

— **Lost time and productivity.** Workers are forced to sift through irrelevant and redundant material to find what they need.

— **Unreliable decision making and business actions as a result of competing or contradictory versions of the same document. Depending on the particular business activities that an organization engages in, this unreliability can translate into anything from botched financial transactions to loss of human life.**

— **Increased risk exposure and discovery costs in the event of litigation, investigation or other legal actions.** For every spreadsheet, word-processing document, email or other electronic item that is retained unnecessarily, an organization increases not just the risk of a "smoking gun" but also the direct financial costs associated with having legal professionals review and prepare potentially relevant information.

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Challenge #4:
Long-term Preservation & Access

While one of the main goals of an effective records management program is to dispose of unnecessary material at the earliest opportunity, almost every organization will have some records for which longer term retention is needed. These records may include legal documents which protect long-term interests or mitigate long-term risk, operational data that is relevant for historical trending purposes, or archived valuable records that document the history of the organization even after all legal and operational requirements for retention have lapsed.

In applying this requirement to both paper and electronic records, the challenge is finding a secure, cost-effective method for ensuring that records are available and reliable for years, decades or even centuries.

In the case of electronic records, the challenge is more technical in nature. As technologies continue to evolve, an organization's hardware and software can quickly become obsolete or superseded by new solutions. Unless corporate and system-level plans are in place to address the issue of obsolescence, an organization could quickly discover that long-term legal, operational and archival information is no longer readable.

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Meeting the Challenges:
A Records Management Program Plan

Step 1:
Establish a Records Management Governance Program

A critical first step in the development of any records management program is the development and communication of a records management policy and other essential governance documents. This will outline the necessary steps required to enforce program requirements and facilitate everyday decision-making, including the questions relating to official record status as discussed under Challenge #1 above. While the exact structure and makeup of a records management governance program will vary based on the business priorities of your organization, there are basic steps that any organization can follow in establishing and applying standard program requirements and decision-making criteria. A typical top-down governance approach can consist of the following levels:

— **Corporate policy:** A clear, declarative policy that articulates the organization's overall definition of what constitutes an official record of the company's business activities. Such a definition should be principles-oriented, independent of concerns specific to any given medium or format and rooted in the language of relevant evidence laws and rules of court. Drafting such a statement may feel like an academic exercise, but a management-endorsed statement of high principles will serve as a yardstick for measuring development of more specific, practical governance tools later.

— **Corporate standards specific to the format and medium questions listed above**. For example, if your organization is struggling with the question of which electronic file formats are acceptable for records retention purposes, what are some of the specific criteria that a given format must meet in order to be considered acceptable? In drafting such standards, the challenge is to provide specific, tangible guidancewithout imposing undue restrictions on the development and implementation of useful technology.

— **Business procedures:** What are the specific processes and steps that an organization's staff must follow in order to apply corporate-level standards? While a corporate standard might prescribe that a document imaging system have certain quality controls, an effective procedure will outline the specific guidelines and allow imaged documents to replace originals for official records retention purposes.

— **System specifications based on applicable policies and criteria.** Once criteria have been agreed to and communicated, information technology operations staff and project teams must apply those criteria to specific systems and practices. Records retention requirements should be directly addressed in all stages of the information life cycle, from initial requirements to the procurement of products and services, development of system functionality, implementation, testing and maintenance.

— **User guidelines and training material:** All the policies, standards and system specifications in the world cannot help your organization comply with records management requirements unless system users know the steps to follow in applying basic requirements. For instance, part of the task in implementing a new email management system should be training users to recognize which emails need to be saved and filed as evidence of their own business activities.

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Step 2:
Develop and Implement a Records Retention Schedule

If your organization has not already done so, it is critical that you develop a formal records retention schedule and apply it to both paper and electronic records. Basic steps in this process are:

— **Perform extensive, documented research of the different statutes, regulations and other legal requirements applicable to your organization's business activities.** Research should address the amount of time that records must be retained, specifications on medium of retention (if any), and the specific events that must occur before records begin to accrue.

— **Determine internal requirements for collecting and retaining information in both paper and electronic form.** This information can provide an essential complement to legal research by helping identify the basis for categorizing records, practical requirements driving media choices, overall records retention duration requirements and specific business processes that help define when a retention trigger occurs.

— **Develop a standard records retention schedule based on the above inputs.** Such a schedule should apply records retention rules to flexible categories of record, which are defined based on the business functions and activities that your organization performs. The finished retention schedule should be endorsed as official policy by your organization's senior management and communicated to all personnel who create, receive or otherwise handle paper or electronic records.

— **Apply records retention rules, including associated categories and trigger events, to the design and implementation of physical filing systems.** File folder contents, folder label designs, filing sequences and inactive storage processes should all be designed to group and process files in direct accordance with records retention rules.

— **In purchasing or building an electronic records management solution, aim for an effective balance between automation and human intervention.** Exploit all opportunities to automate the identification of records that are eligible for disposal, but make sure that the overall system process provides for user input into whether specific trigger events have occurred. It is also critical that automated retention processes provide for the application of legal holds and other exceptions whereby records otherwise eligible for disposal must be retained until further notice.

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Step 3:
Design and Apply Electronic Retrieval Tools

Electronic records management systems bring unprecedented opportunities for automating the indexing and retrieval of important business information. Traditional paper filing and even some folder-based electronic filing options essentially require users to pick a storage location based on a particular retrieval element, such as file number, subject matter, business function, personal name, etc. A more robust electronic records management system offers a fresh alternative to such strict hierarchies through the use of meta data. Literally "data about data," meta data-based indexing and retrieval systems allow users to describe, save and search for records by any number of filing elements, where no filing element is subordinate to another.

This offers a sharp contrast to the top-down structure of more traditional folders and sub-folders. Designing a folder hierarchy requires careful decision making and universal consensus about the order in which content categories are broken down. Even then, there is always the risk of users being unable to locate a given sub-folder simply because they didn't understand the higher-level folders containing those sub-folders. Meta data removes this level of compromise, allowing different users to locate the same records with different search criteria.

While software offerings vary, most meta data systems offer a certain degree of customization in terms of fields and values, allowing businesses to index and search for records in accordance with their own unique business processes and information retrieval patterns. And the benefits of electronic meta data are by no means unique to electronic records themselves. Some electronic records management systems respond directly to the hybrid reality by storing and retrieving electronic content while at the same time indexing and tracking an organization's physical file holdings.

Step 4:
Plan for the Long-term

Meeting longer-term records retention requirements and preserving archival records requires a holistic approach that recognizes the hybrid nature of most organizations' documentary evidence. Such an approach must focus on preserving records of the past—including paper and other physical media—while at the same time keeping an eye on future technological developments. An effective retention and preservation program objectively assesses records for both their value to the organization and the physical and technological factors that impact the organization's ability to organize, access and manage them for decades to come. Here are just some of the critical elements that an organization should consider:

— **Formalize the criteria by which records are considered for archival preservation beyond their legally mandated retention periods.** Such criteria should include the historical and/or precedential value of the records for the organization, but they should also factor in financial costs and other practical challenges associated with achieving those longer-term preservation objectives. In the absence of an actual legal mandate to maintain records permanently, careful cost-benefit analysis may be necessary to determine whether preserving physical records or keeping electronic records accessible is worth it.

— **Implement strategies for ensuring the accessibility and usability of electronic content that acknowledge technological obsolescence.** If your organization has not already done so, it should bring together professionals from the worlds of records management and information technology to plan a regularly scheduled series of migrations of required informational content across software and hardware platforms. These migration practices should be crafted based on retention and other needs associated with specific content.

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Making it Work

For thousands of years, physical materials such as paper have provided a secure, durable medium on which to record human activity. The emergence of electronic records brings limitless opportunity for increased business efficiency, but also significant challenges to such basic records management requirements as information retrieval, records retention and disposal.
Those challenges can be daunting, but should an organization abandon the opportunities presented by electronic records management in favor of a more traditional approach?

The answer is no. Even if it were possible to pursue exclusively physical records management in the electronic age, the speed and dynamic search capabilities of an effective electronic records management system offer too many opportunities for any organization to ignore. But the movement towards better electronic records management does not have to mean abandoning the tried and tested advantages of physical records. By recognizing the challenges and opportunities associated with each medium, the Action Plan presented throughout this article constitutes a total solutions approach that responds not just to the long established objectives of records management in general, but also the physical and technical reality of managing records in a hybrid media environment.

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