Defensible Disposal Dialoginar

RANDOLPH KAHN: An innocent technology guy sits in his office innocently doing nothing bad except today he has a problem. His problem is he ran out of space. I got new information being created by the bucketful. What do I do with it? Well, he looks at his servers. They're full up. He does what all technology professionals either do or think about doing. Runs through his system, recycle, recycle, recycle. Makes space for new stuff. No harm, no foul, I'm innocent. It's all good. Really? It's all good really? Really? Wait, when you went to that system and you blew away content in wholesale fashion and didn't even consider your legal obligations. Didn't think about what was in there that was of record value that you had to retain in accordance of a while myriad of laws or your preservation obligations that you need to preserve and lock down stuff for audit, litigation and investigation. Did you think about that? You the innocent technology? Well, actually, in my case, in the real life case it's a court case. It's a court case that says you the innocent technology, wait stop. Not innocent at all. The actions of you, if we already know that we have a lawsuit, rises to the level of being destruction of evidence, so before you clean house, I guess the question is do you really have authority to do it in a legally, defensible kind of way without creating an incredible headache for you and liability for your company? That's the question. My mission today is to demystify and explore defensible disposal with information life cycle governance. You know, one of the things that strikes me about corporate America or even organizations around the globe is that they have to deal with an incredible amount of stuff, stuff that grows exponentially, more and more stuff and all kinds of systems, all kinds of technologies. Indeed there was a statistic from IDC that sort of contextualized the point to me. This year in 2001, according to ICD, there was 988 exabytes of new data. According to ICD next year, there's gonna be 1,800 exabytes of new data. How in the heck are organizations gonna continue to function, be faster, better, cheaper and legally compliant and nonetheless run their business efficiently with so much stuff?

DEIDRE PAKNAD: The answer is they aren't. They aren't going to be compliant. They aren't going to be able to manage, spend appropriately without some real change in the way they govern that information, the way they coordinate the stakeholders who either the obligation for the information or who value the information, or the IT organization who are responsible for managing it. Unless there's some real change in behavior, some real change in process, there is no way a company can continue to manage that increase in information volume without breaking the bank. The great example of my customer I talked to quite recently the data grew 875% in five years. The budget was flat. What other function, what other function has an 875% increase in load and zero increase in budget? No other business function. And yet our IT organizations face exactly that challenge.

RANDOLPH: Whose problem is it?

DEIDRE: It is the enterprise's problem. We, I think, traditionally think of IT as something isolated. We think of legal as another isolated activity where the lawyers in the litigation department are worried about legal holes and are sending notices out to people. And we think of records management as largely physical activities and scheduled publishing. What I think companies haven't done a lot of in the past is understand the dependencies that legal has on IT, that records management has on legal and IT, the coordination required across the stakeholders. It's an enterprise problems, it's not a departmental problem, right? How much information we have, how long we need to keep it and when we can dispose of it is a problem that belongs to all three of those stakeholders, and frankly belongs the fourth and probably the most important, which is the business, the people whose job it is to use capital, to drive increases in revenue and returns to shareholders. And when they overpay for information management or they overpay for risk management, right, it's taking away really from the efforts and endeavors for the business. So, I think it's an enterprise question now where it used to be a departmental question in the past and that's a shift, I think, in practice and in habit. Let me point to a statistic from the CDOE benchmark report on information governance that came out a couple weeks ago. It was a survey of records, legal and IT stakeholders, asking how do we dispose and one of the maybe startling statistics there 100% of the IT organizations use quotas to control data volume. Seventy-seven percent of them said I can't act on the retention schedule I have. We don't use it in IT to manage information or data, but 85% of the retention schedules or the respondents said their retention schedule applied to all electronic information. It's a huge policy gap.

RANDOLPH: One of the things that strikes me about IT organizations is they take two really diametrically opposed positions as it relates to retention, neither of which work, right? So, there are the IT folks that say you know something let's get rid of everything tomorrow, right? Driven by storage budget limitations or, in fact, system functionality issues, right? And there are those that take a totally different perspective, maybe driven by a legal driver or litigation on the brain or simply, you know, we have endless storage budgets. Let's just go ahead and spend it, which is let's keep everything forever. From my perspective, neither of those are tenable. So, whether it's, you know, a different kind of rule that says UIT, this is what you need to keep. This is how long you need to keep it. However, you position those, however you can those, they absolutely need to have guidance going forward that says UIT department, this is how you can dispose of this stuff defensibly and not worry about it. What do you see IT departments to do to actually effectuate that?

DEIDRE: I think IT departments are hungry for that. They would love to know what specifically do you want me to keep and what specifically do you want me to dispose. The problem is legal doesn't send hold notices to IT. They send it to business people and the retention schedule, it's on the Internet in a 103 page PDF file. So, how would an IT person who was, for example, decommissioning a server want to know do they need to keep all that data forever or not? How would they figure out the answer to save or destroy? How would they? I think the fact is neither legal nor retention management or the compliance team is providing IT with precise and specific instructions. We're not actually telling them what we'd like them to do. And another important link is there. We need to tell them what we have obligations for and we need to tell them what has value and if the business and the legal and the compliance functions actually provide clarity, clear instructions to IT, they can make good, efficient, defensible positions about what to dispose.

RANDOLPH: On a going forward basis, it's my belief that, and we've talked about this idea, that from a, you know, an IT functionality issue, you can't keep everything forever and it seems like we're in agreement about that and I think that that's the easy part. The next question to my mind is who is gonna solve that problem? You've talked about the enterprise but, more practically, I think in my mind, in the old days, you know, 24 months ago the idea of people solving these problems struck me as really probably how it was gonna happen, right? You know, so in the world of people processed technology, I was a believer that I need people to do it. Increasingly, I'm of the belief that you seek to use people as little as possible and you rely upon technology because everybody's full up, everybody's got a full-time job, everybody doesn't want to become an overnight records manager of a whole boatload of gunk that they don't understand and so, you know, as I have evolved my own thinking, I'm at this place that says let's use technology more than people to the extent, you know, possible. Any thoughts about that?

DEIDRE: One of the other statistics from that benchmark report was that 70% of companies use people glue as the actual choice of answers, systematic linkage, corroboration, consistent corroboration, but 70% shows people glue is the way they associate their legal obligations for information, the value that of that information to the information (indecipherable) itself. So, if you play that out in a company that has 1,000 matters, which would be most of the Fortune 100, 1,000 matters and let's say 5,000 share point sites and let's say a couple 200 repositories of unstructured data and maybe 800 business applications worldwide and let's say 100,000 employees operating in 20 countries, it's gonna take a whole lot of people to associate what's changed in the matter to what's changed to the system to what's changed in the way of the business thinks about the information and what laws changed in those 20 countries. In fact, it's not really feasible. You don't have enough people to glue all that together, right? The organizational issues, the people issues are real, and I think until the different organizations actually view themselves as mutually dependent, right, their success is interlinked, so too their failure. Until those stakeholders come together and the people processes do weave together, their technologies won't weave together. So, silos that behave, for example, a legal department that thinks only about it's own management of a legal holds process is likely to choose, for example, legal holds software that doesn't do anything to enable IT to dispose of data defensively or not make mistakes, right? And that same system won't do anything to enable the records management organization to override their retention schedule and, therefore, disables the schedule, right? On the other hand, when you bring the people together and you've got a legal organization that thinks about my process for preserving evidence in litigation is fundamentally coupled to the RIM process and the IT process. So, I'd better choose tools that enable me and enable them or at a minimum don't disable them in getting their job done, right? So, I think it's both the organizational alignment and a set of tools and technology that allow those organizations to be efficient in their own processes and efficient in the enterprise context.

RANDOLPH: I'd like to switch gears just for a moment based upon one of the points that you made just to explore this idea of sort of the information ecosystem and this idea that the proactive records and information management piece is inexplicably linked truly to the litigation response piece, right? Because, from my perspective I think many organizations fail to see it that way. You know, if you really bad upfront manage your information proactively it's not gonna make it a pleasant, wonderful, sexy, enjoyable experience trying to find all the stuff that's potentially relevant in a short period of time, cough it up and produce it to the other side. It's gonna be miserable. It's gonna be miserable and expensive.

DEIDRE: I totally agree with you. I think the secret weapon in the RIM organization is the information inventory that you often see in the course of establishing or developing or enhancing a retention schedule. Unfortunately, more often than not that inventory gets done and then goes away and you end up with a schedule and what the schedule most often doesn't say is where we have this information for the 13 years we're gonna have it. If the retention process, the records and the information management process evolved to identify not only what these class of information, but who this particular business team, and where these 12 systems that might be file share, share point, structured application in a file drawer. If the RIM process included what I'll call moderate retention enablement, then you'd have an incredibly fertile ground for the legal department to say okay not only do I know I need these custodians, these employees in that organization, but I quickly have a map of what they have and where they put it, which links directly to the systems themselves. Add automation, I'm auto-propagating the whole directly to the source system and the records are flagged on hold in the record systems, and the employees got the right notice.

RANDOLPH: If you were going to give an IT organization or an information management department three things, three practical things, that they could do this year to help them on their way, start to fix that problem, whether it's, you know, a piece of technology or simpler rules. I like simpler because in this world things have gotten, from my perspective, on the retention side, way too complicated. So simpler retention rules or training or I'm not sure what but, you know, I can certainly give you my top three, but what would your three things be to make the process easier?

DEIDRE: I would start with the dialogue between those three stakeholder organizations and that dialogue can be the breakthrough, really the drive change and a path towards sequential changes that add up to defensible disposition. I think the next piece would be to, and again this is people in process, is to look at the litigation profile of the company. Look backwards two years at where the big cases are and where the big collections are and zoom in there. Those are the data sources and the departments and the piles of stuff that presents the greatest risk to the company and without doubt also the greatest cost to the IT organization and go clean that up. Look at whether there is any actionable retention instruction for any of that content, right? Probably there isn't. So you can, I think, instead of having to boil the ocean for the entire enterprise, you zoom in on where risk is concentrated and cost is concentrated and knock off some quick wins, cleaning up some of that stuff. I think the next piece I would add to that is when the legal department, the RIM organization or the IT organization thinks about their responsibilities are related to information. They need to think about that not in the context of their department or their tasks. They need to think about that in the context of that consumer contributor model. Think about it in the context of the enterprise. In other words, choose the right answer for the company.

RANDOLPH: We've been talking about defensible disposal and one of the things that strikes me about the conversation, it's very easy to blow stuff away right? IT departments can do it. They can clean house usually at the click of a button, maybe at the click of a couple buttons and smashing up some discs, but any event they can do it, right? The issue is how do IT department, more fundamentally, how does the enterprise or how does the organization or the company sleep at night, right? The idea is in today's environment blowing away stuff without regard to what it is creates a liability. It creates a liability because, well I don't know what it is, right? Did I have retention obligations that required this stuff to be around for X period of time and I've, you know, failed to do that and that's every organization has that, right? That's the first thing. The second thing is was there threatened or imminent audit, litigation or investigation and if there was did I look? Well, if you blew stuff away in wholesale fashion obviously you didn't look so that creates liability. Maybe there's personal identifiable information or personal health information that requires disposal in a particular kind of way and I guess increasingly we're asking IT to throw off the vestiges of the old management, which is I baby-sit a box, I baby-sit a pipe, I buy a particular application. We're saying take stock in the actual content. Take stock in what this stuff is to our organization. They fight it tooth and nail, but from my perspective they have to start to own that first of all content is king and they are in some respects a manager of that content. What do you think about that?

DEIDRE: Legal? What specifically, not generally, what specifically do we have obligations for? Are they regulatory or litigation or investigation-based? What specifically do we have an obligation to keep? Business, what do you value? What's of value to you in running your business? Specifically, not generally, not my stuff, but my marketing campaigns for at least a three-year period because that's the product life, for example, in this market specifically. IT should be the beneficiary, the chief consumer of that input but they can't offer it from my perspective. They can't and they shouldn't. In some senses the notion that IT is going to be the information manager, the contextual information manager, is like asking to restripe the cat or turn the cat into a dog. I think this is in some sense is too much to ask, to ask an enterprise to reinvent what the IT organizational function is. On the other hand, the business, the marketing team in North America Credit Card, they know full well what's of value to them. They need it every day to do their job. And the lawyers who are fielding the credit card complaints, they know exactly what the obligations are. Maybe don't communicate them very well, but they know what they are. And the records management teams, they've always been cataloging what are our regulatory obligations and record obligations for this information. Now, they don't work well together. They haven't' coordinated that, they haven't coalesced that into anything actual by IT, but they could, they could. This is where our software comes into play. It would actually enable each of those stakeholders to do their job, but do it in the context of the enterprise. Connect the dots so that I can associate that share point server with that business team that has that stuff in it that's subject to these legal holds and it's regulatory obligations. And when do those obligations end, when does the value end? IT has actual guidance on what to dispose and when and what not to dispose.

RANDOLPH: How do I move forward and feel like I'm gonna build a program and inculcate this proper management style going forward that is really people processed technology? Any thoughts that maybe help organizations sort of forge ahead?

DEIDRE: One of the things we found in the benchmark report really echoes what you've just said, right? The enormity of the effort was cited as the biggest handicap as companies make an effort to move forward. But what was telling about that at the same time was when we looked at how people justified the effort and we looked at who was on their governance committee, what we found is it was predominantly legal, justifying predominantly on risk reduction. And their #2 complaint, the #2 barrier for moving forward was lack of budget. I think what needs to happen is we need the CIO at the table. Information life cycle governance is a question of how do we govern the life cycle of information? So, if we don't have the CIO at the table, we've left out perhaps the most critical stakeholder, the guy with all the information, right? And it comes to end of life, well that's his job too it turn it turns out. More importantly, he's the beneficiary of end of life information and he benefits from extraordinary cost reduction, real cost reduction. Back to the 875% gross with zero budget growth, right? The CIO, the IT organization really benefits materially and economically from throwing data away. Get them at the table and you'll find that it's not so enormous when you have the people whose job and skill set it is to manage the information environment, a very dynamic and complex one, they do have skills to bring to the table here and because there's economic return for their participation, the budget comes along with it and it gets a little simpler, a little less complex when you have the right set of people at the table.

RANDOLPH: There's no question that records retention is not super duper sexy, right? And it's perceived as a cost center by many executives. You can call it whatever you want, you can call it broccoli for all I care, but if you create rules that are based upon legal requirements, legal considerations, business needs and you bake those into the systems, it allows the company, it allows the organization to clean house, what we call, you know, defensible disposal, and not worry about sleeping at night and worry about being the next news story, right? This is the world we're in. I need to clean house. I need to do it based upon rules that have business needs and legal requirements baked into so I the legal department, I the records management department, I the IT department can clean house in the ordinary course of business and not worry about it.

DEIDRE: I think policy and execution of policy are separate activities. So the rule of development, if you will, the policy for what we're gonna retain for regulatory purposes, what we need for business reasons, what we need to hold for legal reasons, those decisions are made outside of the IT organization, right? And those are business decisions that reflect legal requirements, maybe global legal requirements, for companies and fairly dynamic business requirements. I think you enable those decision-makers to make decisions with the maximum amount of context. In IT, I think you focus on how do you execute those decisions. How do you execute those rules? Not so much how you write those rules because I don't think the IT organization can ever have enough context, precise context, about what those legal obligations are, how they intersect business value. I think in the IT organization, you focus on how do I create a very efficient mechanism to execute the policy choices and the decisions we've made about what to keep and dispose on as broad a base of information as you can?

RANDOLPH: I would reading the CGOC's information life cycle governance report that you did recently and it's a terrific, it's a terrific insight into what organizations are thinking about and what they're doing and some of the realities based on the information management landscape. Can you sort of offer up just briefly an overview of the survey and who was involved and what you learned?

DEIDRE: So, we went out to the COGC community and we focused on asking an equal number of RIM leaders, IT leaders and legal leaders a long set of questions about their information governance objectives, their perceived benefits from an IOG program, the perceived barriers. The interesting things that came out of that, there was a lot of common perspective on what the objectives are, defensible disposal. Ninety-eight percent of the people who responded said defensible disposal. There was a lot of commonality in where people are today. Twenty-two percent can defensively dispose of information today and most of that is paper, right? So, we all know we want to go the same place. We're all starting from, you know, not a great situation today. Where there was a lot of disconnect, which was revealed in the survey, was the perceptions in legal, RIM and IT about how we got from point A where we are to point B in defensible disposal. The issues kind of broke down into two different areas. They were organizational, so there was consistent response, I think it was 85% of the people who felt that systematic corroboration across the three stakeholders was both the most important thing, the most important enabler, and the single biggest challenge they experience today. There's great recognition that those teams don't work well enough together today. That's the good news, right? The bad news, I think there that came out was who should take the lead and how they should lead. There was real disconnect. So, 60% of the records and information management professionals thought this position was their responsibility and IT thought exactly the opposite. It's either everybody's responsibility or nobody's responsibility, but what was clear was there no clarity of whose responsibility it is. About a quarter of the respondents said the current organizational model and responsibility model works, which means three-quarters of the people thought we really don't know who is responsible for what, right? Which is another important thing. The executive committee and the sponsorships, as I mentioned earlier, left out a really important stakeholder, the CIO, in the equation in the mix, which is kind of the call to action for the report actually. It's legal, the risk reduction objective is absolutely valid. It's incredibly important. Defensible disposal is absolutely the right goal, but you can't get there without brining in the CIO, and I think that is echoed in almost every finding in the report and in every dimension of that finding. The call to action is GC and CIO need to have a real partnership in reducing in costs and risks to their organization.

RANDOLPH: So, thanks so much for joining me today in our dialogue. It's been great talking to you. It's been great seeing you again and I really appreciate it.

DEIDRE: My pleasure, Randolph, it's good to see you as well 1206lm01