

IBM DIALOGINAR #2: Information Lifecycle Governance

Randolph Kahn: A soldier comes back from war claiming to suffer from post-traumatic stress disorder. In the context of his claim, he sees a doctor who prescribes an anti-psychotic drug. Takes the drug, allegedly as a result of the drug puts on weight, and at some point suffers from diabetes. Let me go to the drug company for a moment. In the context of the pharmaceutical business, like many businesses, you make a product, you develop that product, and at some point people make claims. Maybe the product affected you; in the case of a drug, perhaps, it's a side effect, just like my soldier. In this particular instance, the event happened years ago. In the context of the lawsuit that now is in front of an American court, the issue is what evidence do we have that will ultimately make the point. In this case, interestingly, two pieces of evidence find its way into the court. One, a voicemail from years ago. Well, why did it exist? Two, a draft statement from a doctor who is involved in the development of the drug from years ago; a draft. Had the company been following its policies, doing what it should have been doing? Should the voicemail still be around years later? Should the draft document have been retained at all? The question is, what failed in the process in the context of information life cycle governance? My mission today is to demystify and explore information life cycle governance. Seems to me that most organizations are at the place where they need to make decisions about what information should live and what information should, at some point, die, right? Which is for most organizations a necessity, because in the end information is growing at such a fast rate that, you know, and it's not "the more the merrier," right? If you keep everything forever, you're not going to be an efficient business, you most assuredly are not going to be legally compliant because you're going to drop the ball in various kinds of ways, so it really is, you know, an environment now that says, you know, stuff comes into existence, it has a useful life, and then at some point in the ordinary course of business that stuff's going to go away, properly disposed of according to rules. Is that something that you think really is the underpinning of ILG?

Frank McGovern: It's a large part of it. The value of the information and understanding the value of the information, and making the determination – how long do we need to keep this? How long do we need to keep it to satisfy what maybe the government wants us, or

the, you know, what a law may call or a regulation may dictate, but how long we need to keep it just for us to do our business. But there are also some really valid historical reasons why we may want to keep it. So absolutely, you get your hands around that, get an understanding of that, and it allows you to properly execute a good, you know, disposition strategy.

Randolph: So to me, the idea of governance is to provide some controls around the information so that we can manage it in conformity with business needs, with laws, with regulations, and the way that I think about it, that's a people thing, that's a process thing, that's a technology thing. And you think about ILG and the governance part of ILG, do you think of it as really being a team sport, where it's really the, what the employees need to do and the processes that you build to allow both the people to do their thing, the technology, as well as a technology play. Is that how you think about it?

Frank: Certainly, certainly. But let me put a little bit of twist on this. The – ILG is not just pure technology; it is about process, it is about people, and it is about the technology. But I've got to tell you, one of the things that we've seen in the market, in the trend with a lot of the different customers is, how do you effectively enforce ILG? How do you ensure it's actually being carried out? Now, there's a lot of studies out there, we've seen firsthand evidence of our customers that have tried to put maybe a larger burden on the end user to participate in that whole process to support ILG. And what we're finding is, the more we can build it into the business process, the more it's under the hood, the more we make it, we hide it, then the higher probability it's done consistently and accurately.

Randolph: A couple years ago Kahn Consulting, my firm, did a study on governance risk and compliance – a GRC study – and one of the things that we learned from that is that employees fail miserably at records retention and they also fail miserably in responding to litigation response or producing stuff that's potentially relevant. On a going forward basis my view is that we have to rely upon people less and less and less because the reality is they have a full-time job, they're already full up, they're not going to become records managers and they're not going to do it for their stuff and the rest of the enterprise, so, you know, on a going forward basis, baking it into the system, I'm in total agreement.

Frank: But I don't want to tell you up front that there's no need for users; absolutely, the users play a key role. But I want to make sure you understand that there's – where we're really delicately trying to position ourselves with the users because we just have seen an overwhelming evidence that it just doesn't work if you put too much burden and too much emphasis on the users.

Randolph: There are folks that we deal with regularly who take this perspective that they can keep everything forever; we can just buy more systems and buy more storage and be an efficient business. And my perspective on that is that it really misses the point, right? There is information that has value, and that value may be short term, but at the end of its useful life, if you've built rules that are based upon legal requirements and business needs, it should go away at the end of its useful life. And to dispel this belief that you can be an efficient business by keeping everything, and it's really sort of an inconsequential storage cost, from my perspective misses the point. Are you seeing clients leaving that perspective that says "we'll just build bigger houses to store this stuff and bigger information parking lots to house this stuff and we'll get better search tools and it will be, the world will be a beautiful place"? Are they still insisting upon sticking with that belief?

Frank: I've seen a shift in that belief. Several years ago if you asked me that question, I would have responded to you, a lot of our customers are coming back telling us "storage is cheap; it's not a problem". But, two things have happened: Federal Rules of Civil Procedure is a, seems to be an awful lot of attention these days on the discovery. And people are starting to understand if you have it, it's discoverable. So why would you want to keep all kinds of content that you could have destroyed, and then have your lawyers go through it, you know, and paralegals go through that? A great case was, about ten years ago, a major industrial firm took a snapshot of nine legal discovery cases that they were working at the time. And they found that their lawyers and their paralegals and the external counsel were actually, was reviewing content and 70 percent of it was past its retention date. So if they had followed their records program, they never would have incurred those costs or those risks. What's also very interesting is, we have a customer who came to us and told us that they can't afford to keep everything forever, not because of the legal risk,

not because of the storage cost, but because of where this customer is located in the power grid, there's not enough power to power additional servers. So there's a lot of reasons now why we're seeing this. But, you know, it's, people are starting to get the message, that the old, you know, "let's keep it all forever" is not working. Not working.

Randolph: There was a case not long ago and there's been many cases like it in recent years where a litigant had millions of email messages on backup tapes and the backup tapes were in line to be overwritten and that never happened. In the context of the lawsuit, they argued, well, you know, "Your Honor, it wouldn't be fair to us if you forced us to restore those backup tapes and look at this stuff because it's going to be expensive". And the court said, "Well, give me an estimation of what it's going to cost". They said, "Well, we got an expert and they said it's going to be about \$6 million." And he said, "It's going to cost you \$6 million to look at roughly 20 million email messages? So go ahead and do it." You know, this is the deal. The world that we live in is if you're going to use technology every single day to be faster, better, cheaper, to make your business more efficient, your legal obligation is a corresponding obligation. When you have a lawsuit, if the stuff exists and is potentially relevant, do your discovery, right? And their response was, "Well wait a second, the intent of this stuff was for backup. You shouldn't make me do that". Now, with the new Federal Rules of Civil Procedure, maybe you have an out; I don't know that you do, but, you know, if it's inaccessible data, but the point is, if it exists and it didn't have to exist, you may have to do discovery on it, it may be a liability or burden, you know, waiting to happen. So my view is that if the rules allow you to get rid of stuff and for business efficiency purposes you're a more efficient business, you need to have the rules and you have to follow them.

Frank: I would agree wholeheartedly with you. I have often a lot of customers tell that, you know, they have their backup tapes and they're talking about mixing those up with their records. Backup tapes are for a purposes to restore a system, right; for disaster recovery, right? It could be part of a vital records program, but they're backup. They're not meant for long-term storage. So the organization needs to be able to come in and prove and say they're backup. They need to be able to defend how they use those as backup tapes. Have systems set up, have processes set up, audit and monitor what you do, because you may say yes, those are just backup tapes, but are they actually being used as

backup tapes or are they something else? You need to audit, monitor and report on those types of activities. So I think it's all part of a larger program, and if you do it I think you'll be in much better shape.

Randolph: One of the things that organizations and employees that work at organizations don't fully appreciate is this idea of life cycle. In other words, I'm going to come into existence and I'm going to have a useful life where I provide some business value, and maybe if it's important in the future I'll have some legal value, and then at the end of my useful life I'm going to go away. It's this idea that maybe the value of the information changes. And one of the things that we have tried to do is to make clear that just because something's in electronic form, or just because something sits in a particular system, doesn't mean that the value for that entire system or that entire kind of thing is the same. Are you finding that people are now beginning to appreciate that we do business in email and that in the email system, there might be email that's gunk, but there's also a lot of record or a lot of significant business value that we need to harness; do you think the companies and organizations are understanding that value as well as the change in value over time?

Frank: I believe they are, I really do. I've seen firsthand evidence over the last several years where companies used to look at email as a transport mechanism, but now they're starting to understand that it's really, they're really using that to conduct business that needs to be documented. I'll give you a great example. Let's talk about the U.S. Army. U.S. Army's engaged in combat operations. They use email to support and sustain some of those operations. Some of their records, some of those emails, some of those records are permanent. They have such great value that we want to keep them forever. So, there's a – people are starting to get the message; they're starting to understand that the value of email and the fact it has to be managed.

Randolph: One of the things I've seen over the last 24 months is companies are over the hysteria of not knowing how to properly respond to e-discovery; they're at this place where they're saying, "I'm looking in the marketplace for tools to take more and more and more stuff in-house, to allow us to do I – our IT department or our legal department in

context with our IT department in context with our reference management folks to take in-house the discovery and litigation response process because it's so darn expensive going to outsiders and consultants in every case; if I spend a few million bucks on each case, I have no ongoing value, all I have is a very expensive consulting fee and that's – the value to that organization goes away". So, I guess the question to you is, are you saying the law department or the compliance folks getting involved with the IT person just to say, "You know something, whether we can help or not from a budgetary perspective, let's deal with that", but having influence, perhaps, on the technology that's being bought, the functionality that they're looking for, to not only make the business better, faster, cheaper, but also to deal with, say for example, a discovery problem?

Frank: Sure, absolutely. You know, I've been in this business a fair number of years, and, you know, we used to go out and sell to the stakeholders, and a lot of times it was just IT. Legal was an afterthought, and sometimes in some cases, the business users were an afterthought. But lately what we've seen is legal take a very front position with this; they want to be involved the entire, you know, cycle of the purchase, the evaluation, because they get it, they understand it. And I think everybody else is starting to realize IT, the users, REM, you know, your records professionals, that if they all kind of work together, and they're all at that table together, that they'll probably have a much better outcome than trying to do it individually.

Randolph: Do you think that ILG is a team sport? So, I'm going to get my IT department together with my lawyers and my business folks and my records managers to solve these problems, or do you feel like it's an IT problem?

Frank: It's a team sport, it's a team sport. You've got to have your, you know, IT certainly, the underpinnings and the foundations of the technology to make sure it works. But IT doesn't understand the business value of the information, they need to go to the business users to make that determination. And the business users and the IT may not understand the legal consequences if it's not managed properly, and that's why you need to get the legal folks involved. So absolutely, it's a team sport.

Randolph: In today's world where every part of the globe has an increasing number of laws and regulations that tell you organization or properly managed information – maybe it's not the discovery problem in Brazil that it is in the United States, but they have their legal drivers. Are you seeing your clients that are perhaps multi-national looking at ILG and technology to solve these problems beyond our borders as not just an American legal problem but a world that has gone to electronic information with greater laws and regulations guiding it?

Frank: There are a whole host of regulations out there that many countries now are starting to adopt. They're international in scope, and they address the whole issue around managing information from when it's first created to ultimately when it's disposed.

Randolph: You know, one of the really great things that I see about ILG is it's a way for a company to look at what it's doing by way of information management and cost justify a technology purchase. If I can take something in house and save a boatload of dough, seems to make sense if I can look at the technology tools to make us faster, better, cheaper, and at the same time to maybe minimize the cost of responding to regulators or responding to requests for information responding to a lawsuit, I can cost justify the purchase of a piece of technology. Are you seeing folks increasingly sensitized to this idea, whether it's TCO that drives them or return on investment, that they're looking at the compliance and risk and governance kinds of issues as driving a technology purchase to solve that problem?

Frank: Sure. Just like any other activity within that company or within that business, they need to cost justify why they're buying technology. So if you're in a bank and you want to buy technology to improve the way you process your loans, or you're an insurance company and you're going to buy technology to improve the process, the way you manage claims, you want to be able to show and demonstrate, we're making the investment, and there will be a return on that investment. The same thing with information management. Companies now are starting to realize that there's a return on investment with that as well. That if they can manage the information, get rid of the junk, get rid of the stuff that they don't need, manage the stuff that they really do need, get rid of it when it's eligible to get rid of,

lower their e-discovery costs, absolutely. They look at all the different angles and the facets of where they can possibly save money to see a return on investment.

Randolph: Frank, thanks so much for talking to me today.

Frank: Yeah, it was a real pleasure. I get, I enjoyed this and I hope that some of our conversation will be useful to the folks that hear this.