

**e-Records
Conference
2008**

**A Practical Guide for
Managing Digital Information and
E-Discovery**

A Conference for Texas State Government and Universities

**Sponsored by the
Texas State Library and Archives Commission (TSLAC)
and the
Texas Department of Information Resources (DIR)**



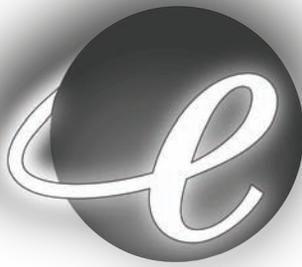
www.tsl.state.tx.us/slrn/conferences/erecords.html



Conference Agenda

Registration and Exhibit Area Open	8:30 - 9:00 a.m.
Welcoming Remarks	9:00 - 9:15 a.m.
Brian Rawson, DIR Executive Director and State Chief Technology Officer	
Peggy D. Rudd, TSLAC Director and Librarian	
<i>Featured Speaker—Barclay T. Blair, Director of IT Compliance Practice, Kahn Consulting, Inc.</i>	
Records Management and Cognitive Dissonance	9:15 - 10:30 a.m.
Break and Exhibit Area Open	10:30 - 10:45 a.m.
The Intersection of RIM and E-Discovery	10:45 - Noon
Lunch (provided) and Exhibit Area Open	Noon-1:00 p.m.
<i>Afternoon Session</i>	
RIM Team Building	1:00 - 2:30 p.m.
Break and Exhibit Area Open	2:30 - 2:45 p.m.
Seven Keys to Achieving Information Management Compliance	2:45 - 4:00 p.m.

*The exhibit area will be open during registration, the mid-session breaks, and lunch.
Please visit the exhibits to learn more about related products and services.*



Welcome from TSLAC and DIR

The Texas Department of Information Resources and the Texas State Library and Archives Commission welcome you to the e-Records Conference 2008. Since the year 2000, we have co-hosted this conference for state employees who are involved in managing electronic records and it is often a “Sold Out” event.

This year’s conference is for those responsible for and interested in developing a cross-functional approach for managing electronic State records. A systematic approach to managing digital information using recognized records management principles is the key to finding information when you need it.

The speaker, Barclay T. Blair, is a consultant and internationally acclaimed speaker and author specializing in the compliance, policy, and management issues of information technology. He is the co-author of *Information Nation: Seven Keys to Information Management Compliance*, and is Director of the IT Compliance Practice at Kahn Consulting, Inc. in Chicago, Illinois.

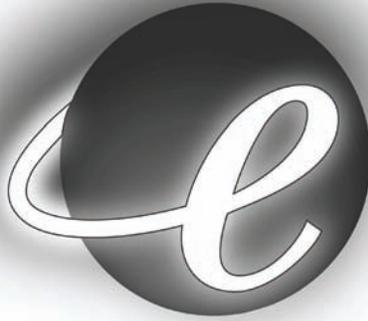
Over 60 state agencies and state universities, twelve exhibitors, and more than 300 attendees are expected.

A good representation from legal, Information Resources Managers (IRM), information technology staff, Records Management Officers (RMO), and other records management staff are registered to attend. Attendees will be Executive Directors, Chief Information Officers and Chief Technology Officers, General Counsel, Records Management Officers and staff at all levels of management, legal, human resources, technology, records management, public information, and many others interested in the issues surrounding electronic records management.

The location and date for this conference was set nearly a year ago. Hurricane Ike’s tear through Texas in mid-September had far-reaching consequences. We are proud to say that we have the good fortune to book the e-Records conference in the brand new AT&T Executive Education and Conference Center at the edge of the University of Texas campus in downtown Austin. They are just now having their grand opening events. The AT&T Center worked with us and made this possible on our budget.

Welcome, and enjoy the conference.





Agency Notes

Sponsoring Organizations

DIR

As the chief technology office of the State of Texas, DIR's mission is to support the effective and efficient use of public funds by promoting and achieving a shared vision where the state maximizes the value of its technology investment by identifying common areas of interest, using technology to advance agency-specific missions, and preserving flexibility to innovate.

DIR is responsible for managing consolidated data center services, providing enhanced and expanded telecommunications services, assisting agencies in providing secure, reliable, statewide IT operations, developing and implementing statewide security policies, standards, guidelines, and procedures, negotiating and managing statewide agreements for quality IT products and services, and managing the TexasOnline project, among others. To read more about DIR, visit our Web site: www.dir.state.tx.us.

TSLAC

The Texas State Library and Archives Commission (TSLAC) is responsible for providing guidance and recommendations to uphold select legislative mandates. The division charged with coordinating the e-Records conference is State and Local Records Management (SLRM). SLRM assists Texas governments in establishing and implementing records management programs. Serving exclusively state agencies and local governments, the division offers training classes, consulting services and forms needed for all aspects of records and information management. Whatever the situation, SLRM staff are always close at hand, ready to help. To find out how SLRM can help you, visit our Web site: www.tsl.state.tx.us/slrn.



Speaker Notes

Barclay T. Blair

Barclay T. Blair is a consultant and internationally acclaimed speaker and author specializing in the compliance, policy, and management issues of information technology. Mr. Blair advises Global 2000 companies, software and hardware vendors, and government agencies on a broad range of information management compliance issues. Mr. Blair is an executive editor of the American Bar Association's PKI Assessment Guidelines, participated in the development of a protocol for secure, digitally signed documents, and is the author a draft ISO standard addressing long-term electronic records preservation.

Mr. Blair has written and edited dozens of publications, speaks internationally on information management compliance matters, and is an instructor at George Washington University. Mr. Blair has edited and contributed to several books, including: *Email Rules* (AMACOM Books: 2003); *Secure Electronic Commerce* (Prentice Hall: 2001); and *Professional XML* (Wrox: 2000). Mr. Blair is the co-author of *Information Nation: Seven Keys to Information Management Compliance*, published by AIIM International in 2004, and *Information Nation Warrior* (May 2005).

Mr. Blair has presented to industry groups such as the American Counsel of Life Insurers, American Bar Association, BNA Litigation Forum, the World Wide Web Consortium (W3C), ARMA International, AIIM International, Society of Quality Assurance, the PKI Forum, the National Automated Clearinghouse Association and at the Managing Electronic Records conference. Mr. Blair is frequently interviewed by media outlets such as Wall Street & Technology, Compliance Reporter, and US News and World Report.

Mr Blair is Director of the IT Compliance Practice at Kahn Consulting and may be contacted at: bblair@KahnConsultingInc.com or 403-234-9347.



Exhibitor Contact Information

The Texas State Library and Archives Commission (TSLAC) and the Department of Information Resources (DIR) would like to thank the following vendors for participating in the 2008 conference.

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Please visit the exhibit area to learn more about products and services available.



Feature Presentation

Part 1:

Records Management and Cognitive Dissonance

Barclay T. Blair, Kahn Consulting

KAHN CONSULTING, INC.



Texas State e-Records 2008 Seminar

**Records Management and
Cognitive Dissonance**

Barclay T. Blair
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A physiological conflict resulting from
simultaneously held incongruous
beliefs and attitudes

Merriam Webster Medical Dictionary

experienced by organizations

experienced in records management

leads to inaction

recognize it
understand it
avoid it
treat it

cognitive dissonant #1

we are going to make major changes

we are going get RM right
we are going to manage our risks
we are going to fix e-discovery
we are going to do Legal Hold

we aren't going to bother the employee

and especially not the executives

employee's won't listen
its not part of their jobs
nobody cares
we can't make them do it

we are going to make major changes

but

we can't bother the employee

debate and dither

do what we did in the 80s and 90s

write policies put them in a binder
and call it done

no employee impact

another form of inaction

seriously evaluate the “dissonant”
“cognitions”

for most organizations, the answer is yes
(nearly $\frac{3}{4}$ making major changes)

can we make changes we need without
employee impact?

smart tools
role-based
behind the scenes
let IT do it
just keep everything forever

is changing employee behavior a bad thing?

is it really not possible?

can we really not trust employees
"to get it right?"

you trust employees to
handle billions of taxpayer money
protect citizen's lives
manage natural resources

but let's not trust them to make a decision
about whether to keep or throw away an
email message

who manages your information today?

who "declares" a paper document?

"major" changes include changes to the way
employees work

information management is unique

everyone has a viewpoint

it affects everyone's "personal" space

especially executives

we are going to make major changes

BUT

we can't bother the employee

we cannot be successful in compliance
without relying on employees
and making changes
to the way they work

break down the problem

assumptions

identify
prevent
treat

cognitive dissonant #2

we want an "enterprise" approach

uniformity
consistency
economies of scale
risk management
efficiency

we have never done anything like this on an enterprise scale

governance structure
culture
tools
resources
audit and enforcement mechanism
policy templates and processes
etc.

questions and options

is enterprise consistency necessary?

yes
eventually
in key areas

option 1
phased approach
pilot
group by group
learn and improve
gain credibility

option 2
stop and build the capability
policy governance process
reporting relationships
new groups?
new roles?
new technologies?

we need an enterprise solution

but

we don't have enterprise capabilities

you can't take an enterprise approach
unless you have the enterprise
infrastructure to support it

other scenarios

we have to fix the problem

but

we can't spend any money

We think training is "critical to our success"
(2/3)

but

we aren't doing it, or it isn't working (<20%)

when is a glitch not a glitch?

FAA Glitch Causes Flight Delays
WSJ, August 27, 2008

London Exchange
Paralyzed by Glitch
WSJ, September 9, 2008

Single Web Hit Led to UAL Glitch
WSJ, September 11, 2008

is it "just a glitch?"

or is it dissonance?

“treating” RIM
cognitive dissonance

challenge the assumptions

seek to root out and resolve

evaluate each competing idea

fight inaction

a useful concept to help us get better

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Texas State e-Records 2008 Seminar

Records Management and Cognitive Dissonance

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Feature Presentation

Part 2:

The Intersection of RIM and E-Discovery

Barclay T. Blair, Kahn Consulting



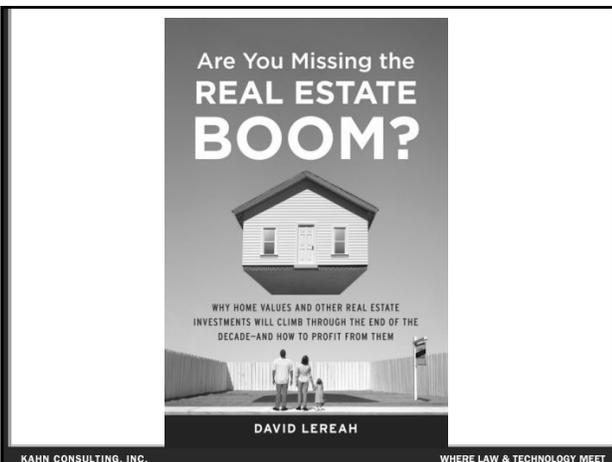
Texas e-Records 2008 Seminar

The Intersection of E-Discovery and Information Management

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What Does Our World Look Like?

"FBI Looks Into 4 Firms at Center of the Economic Turmoil"
New York Times, September 23, 2008

"States Ramp Up Probes of Auction Rate Debt Mess"
Los Angeles Times, April 17, 2008

"Cuomo Starts Criminal, Civil Probe of Short Sellers"
Bloomberg, September 27, 2008

"The FBI Ramps Up: Mortgage-Fraud Probes Go Bigtime"
The Wall Street Journal, September 24, 2008

"FBI Investigating Companies at Heart of Meltdown"
Washington Post, September 24, 2008

What is Happening Out There?

"Instead of obtaining a copy of all e-mail files, county staffers suggested that residents would need to sit at each official's computer and manually check the e-mail received."

County Can't Deliver Email to Public, St.
Petersburg Times

What is Happening Out There?

- Meltdown at County Recorder's Office
 - Headliner News
- Staff Grilled on Records Fray
 - Gurnee Review
- FOI: E-mails Should Be Public
 - Record-Journal

What is Happening Out There?

- E-Mail Gray Area of Virginia's FOI Act
 - Times-Dispatch
- State Sued For Deleting E-Mails
 - Sacramento Bee
- County Can't Deliver E-Mail to Public
 - St. Petersburg Times
- Records Purged From Computer
 - Fayetteville Online

Much has changed recently



What can we expect?

- More or less litigation?
- More or less complexity?
- More or less scrutiny?
- More or less funding?

But what hasn't changed?

- The fundamentals of information management
 - Where is our information?
 - What is it?
 - Who controls it?
 - Why do we have it?
 - How long should we keep it?

Digital Data Drive Up Legal Costs

"87% of lawyers who responded to the survey said electronic discovery is too costly . . . A fundamental problem stems from companies' not considering the retention of information."

Wall Street Journal, Sept. 6, 2008

But what hasn't changed? (cont'd.)

- The need to create an environment that is "litigation ready"
 - Retention schedule
 - Records and Information Management Policy
 - E-Communications Policy
 - Legal Hold Policy
 - Supporting procedures
 - Governance around information management
 - "E-Discovery Liaison"

"Nearly 75% of respondents have made, or are planning to make, major changes to the way they manage information."

GRC, E-Discovery, and RIM: State of the Industry 2008

(Available at, <http://www.kahnconsultinginc.com/library/KCI-GRC-RIM-EDD-survey.pdf>)

Knowing About The Problem Is Not Enough



Inaccessible versus Accessible

- Can you:
 - Provide your lawyers with information needed to specify systems that are “reasonably accessible” versus those that are not “reasonably accessible”? {FRCP Rule 26(b)(2)}
- Are backup systems for business continuity or archiving?

Identify Responsive Sources

- Can you:
 - identify, by category or type . . . sources containing potentially responsive information”? [FRCP Rule 26(b)(2)]

Provide the Other Side with Information

- Can you:
 - enable the opposing party to “inspect, copy, test, or sample . . . electronically stored information,” and to translate, “if necessary, [that information] into reasonably usable form . . .” {FRCP Rule 34(a)}

Develop an E-Discovery Plan

- Can you:
 - help your lawyers “develop a discovery plan that takes into account the capabilities of their computer systems,” as contemplated by {FRCP Rule 26(f)}

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We Rely on People

- IT and Legal coordination
- The entire organization needs to be involved
- “Innocent” actions can have painful consequences

“Intel’s general counsel stated that e-mails for 151 employees who were to have been instructed to retain them as possible evidence . . . were lost by virtue of a single IT manager misreading a spreadsheet where the employees’ names were first distributed”
Bloomberg News

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Process: Mismanagement is Getting More Costly

- “Discovered tapes were not clearly labeled as to their contents, were not found in locations where the email backup tapes customarily were stored, and many of the tapes were in a different format than other email backup tapes.”
- “Lawsuits these days require companies to comb through electronic archives and are sometimes won or lost based on how the litigants perform these tasks.”
 - How Morgan Stanley Botched a Big Case by Fumbling Emails” Wall Street Journal

“NASD Charges Morgan Stanley with Destroying, Failing To Provide, E-mails to Claimants”

“In May, Morgan Stanley agreed to pay a \$15 million fine and to reform its e-mail retention practices, resolving Securities & Exchange Commission Charges.”

Digital Discovery & E-Evidence

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Technology: Don't Store, Just Because You Can

- "The program ...is aimed not at consumers, but at sales staff, accountants, and others who need to mash up data from different sources to solve business problems."
 - NY Times, 9/2/07
- "Instant Messaging is invading and changing the workplace. Employees started to sneak instant messaging into the office in the late 1990s, but now companies are endorsing it."
 - WSJ, 7/24/07
- "Facebook Gets Personal With Ad Targeting Plan"
 - WSJ, 8/23/07

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New Business Methods Require New RIM Rule

- "...In an employment discrimination suit ... the employer sent the policy to the employee via a mass email containing two links to the policy."
- "It did not require any further action"
- "The employee claimed that he received a large volume of mass company emails daily and that he could not specifically remember the arbitration policy."
- Although an email 'tracking log' indicating the time and date that the employee opened the email, the employer could not prove that the employee had actually read the email or clicked on the links.
- The court determined that the mass email did not constitute sufficient notification and further admonished the employer for not taking 'the incredibly simple and inexpensive step of configuring their system to log when and if employees clicked on the links.'
 - Campbell v. General Dynamics Gov't Sys. Corp

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Select the Right IT for the Job

- Are you using the right tools?
- Separate storage from backup from archiving from data warehousing

"Respondent's failure to retain all responsive e-mail was attributable to the following causes:
-certain backup tapes containing responsive e-mail could not be located in the storage facilities;
-certain backup tapes were damaged, contained data or media errors, or otherwise could not be restored;
-and Respondent failed to create or properly maintain backup tapes for certain time periods."
-SEC v. J.P. Morgan

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Educate Lawyers and Get IT Involved

- “The data . . . temporarily stored in defendants' website's random access memory ("RAM") constituted 'electronically stored information' and was within the possession, custody, and control of defendants.”
 - Columbia Pictures Industries v. Bunnell, U.S. District Court for the Central District of CA

Take Control to Preempt Discovery Issues

- “Most people who often work away from the office have come up with their own solution... use an on-line storage service...”
 - “Ten Things Your IT Department Won't Tell You” -- WSJ, 7/30/07

Email Must Be Managed

- Email provides benefits
 - Can speed decision making
 - Increased citizen communication
- However, email is also used casually
- As a result, personal and public records are often intermingled in the government email system
- What is the boundary between the two - how do the courts decide?

“E-mail may include transmissions that are clearly not official business and are, consequently, not required to be recorded as a public record.”
State v. City of Clearwater, 2003 Fla. LEXIS 1534 (Fla., 2003)

Just What is a “Personal” Email Message?

- Arapahoe County, CO case
 - public records include “the correspondence of elected officials, except to the extent that such correspondence is . . . without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds”
- Although intimate, the “e-mails involve[d] the expenditure of public funds, and thus, are public records subject to disclosure under CORA.”
- The court made this determination because:
 - the email messages were sent while the individuals were working;
 - were sent over a county email system for which the county paid monthly fees to use;
 - and were sent over county-owned pagers - all activities that incurred the expenditure of public funds.

Mandate How to Retain and Preserve

- “...Plaintiff seeks to compel the re-production of electronically stored information previously produced...in hard copy...” *Scotts Company v. Liberty Mutual*
 - Are TIFF images good enough?
 - Paper printouts of e-records?
 - Will we need metadata?

FRCP 34 ... (1) to produce and permit the party making the request...to inspect, copy, test, or sample any designated documents or electronically stored information ... or data compilations stored in any medium from which information can be obtained - translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample ... which are in the possession, custody or control of the party.

Follow Your Own Rules

- “Fluor’s ... policy provided that backup tapes were recycled after 45 days. If Fluor had followed this policy, the e-mail issue would be moot. Fluor does not explain why, but it maintained its backup tapes for the entire 14-month period.”
 - *Murphy Oil v. Fluor Daniel*
- “It makes little sense to go to all the bother and expense to get electronic information only to have it excluded from evidence...”
 - *Lorraine v. Markel*

Expect Courts to Get More Sophisticated

- “Allegations that a defendant downloaded trade secrets onto a computer provide a sufficient nexus between plaintiff’s claims and the need to obtain a mirror image of the computer’s hard drive.”
- The court:
 - Provided detailed guidance for the mirror-imaging
 - Required the party hire a qualified computer forensics expert
 - Required defendants to produce hard drives including from home computers
 - Ameriwood Industries, Inc. v. Liberman

Understand and Control all Content

- “Best Buy officials are conceding that ‘human error’ and employee ‘confusion’ were the reasons customers were shown a site displaying higher brick-and-mortar prices ... this issue has come to haunt the \$31 billion retailer, after the Connecticut Attorney General’s Office launched an investigation into the chain.”
 - Ziff Davis
- Radiologists are turning to iPods to deal with the hassles of managing medical images. Two radiologists recently developed open-source software . . . to display and manipulate complex medical images on the popular portable devices called iPods.
 - “iPods Store Medical Images,” eWeek

Address Employee Conduct

- “A growing number of Internet-literate workers are forwarding their office e-mail to free Web-accessible personal accounts.
- “It is a battle of best intentions: productivity and convenience pitted against security and more than a little anxiety ...
- “DeKalb Medical Center in Atlanta started monitoring its staff use of Web-based e-mail, it found that doctors and nurses routinely forwarded confidential medical records to their personal Web mail accounts — not for nefarious purposes, but so they could continue to work from home.”
 - “Firms Fret as Office E-Mail Jumps Security Walls,” New York Times

This is not the time to “clean house”

- Anybody remember Arthur Andersen?
 - “It might be useful to consider reminding the [Enron] engagement team of our documentation and retention policy. It will be helpful to make sure that we have complied with the policy. Let me know if you have any questions. Thanks. Nancy.”
- Tell employees this is not the time to be “helpful”
- This is not the time to “catch up” on disposition

Move carefully

- Consider the potential legal impact of making major changes to your environments
- Plan and document approach to M&A integration
 - Decommissioning systems
 - Combining systems
- Document, document, document

Understand and “map” your ESI “sources”

- Close the gap between IT’s understanding of your information and Legal’s understanding
- Take a risk-adjusted approach
- Focus on “litigation likely” systems
 - Email
 - Shared Drives
 - “Unstructured repositories”
- But, be ready for increasing interest in “structured” systems too



Feature Presentation

Part 3:

RIM Team Building

Barclay T. Blair, Kahn Consulting

KAHN CONSULTING, INC.



Texas State e-Records 2008 Seminar

**Information Warrior:
Building Your RIM Team**

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How is the Industry Doing with Information Management?

- "All 19 Federal Departments and agencies reported at least one loss of personally identifiable information since January 2003."
 - **Committee on Government Reform**
- "The payment-processing concern may have put the personal information of as many as 40 million consumers at risk . . .there is going to be a flood of lawsuits by both consumers and businesses."
 - **Security Breaches Of Customers' Data Trigger Lawsuits," Wall Street Journal.**

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How is the Industry Doing with Information Management?

- "Internal Revenue Service Needs to Remedy Serious Weaknesses over Taxpayer and Bank Secrecy Act Data"
 - **Government Account Office**
- "Radiologists are turning to iPods to deal with the hassles of managing medical images. Two radiologists recently developed open-source software . . . to display and manipulate complex medical images on the popular portable devices called iPods."
- **"iPods Store Medical Images," eWeek**

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How is the Industry Doing with Information Management?

- “Experts say hundreds of thousands of computers each week are being added to the ranks of zombies, infected with software that makes them susceptible to remote deployment for a variety of illicit purposes . . .”
 - **An Army of Soulless 1's and 0's,” New York Times.**
- “The personal data of Medicare patients is at risk because Centers for Medicare and Medicaid Services has not held its network contractor to its own security standards.”
- **“GAO Report: Medicare Patient Data Vulnerable,” Ziff Davis Internet,**

How is the Industry Doing with Information Management?

- A California state court has issued a preliminary injunction ordering a former Kaiser Permanente employee to stop directing visitors to her Internet blog to other Web sites containing patient information that the health plan itself had inadvertently posted online.
 - **“California court orders medical records unlinked from blog,” American Medical News**
- “Only seven percent of corporate counsel attorneys rate their companies as prepared for new Federal Rules of Civil Procedure as they pertain to e-discovery, while more than half are not aware that the new rules go into effect on December 1, 2006.”
 - **Association of Corporate Counsels Survey, October 2006**

What is Happening?

- Simple lack of coordination and communication
 - Overwriting of backup tapes
 - Keeping the wrong record
 - Keeping incomplete records
- Build a team
 - IT
 - Legal
 - Tax
 - Audit
 - Compliance
 - Business owners

Balancing Stakeholder Needs

- What does IT want?
 - Less stuff to store, system efficiency
- What does legal want?
 - Get rid of everything
 - Keep everything forever
- What does sales and marketing want?
 - Everything accessible all the time

For Example: Sarbanes-Oxley

"In the middle of this increasingly ugly brawl of analysts, brokers and lawyers is the CIO, the person who is ostensibly the steward of all corporate data."

CIO.com

"CIOs need to rethink their responsibility as companies fight to restore investor confidence in financial reports."

Information Week

- An unprecedented level of alignment between:
 - IT practices and business practices
 - Technology management and financial management
 - Security capabilities and compliance requirements.

Who is an Information Warrior?

- Anyone who shares responsibility for the development, implementation, management, and administration of an information management policy or program.
- Examples:
 - An IT system administrator drafting an email, privacy, or security policy
 - A finance executive working on Sarbanes-Oxley compliance
 - An information security officer auditing data security practices
 - An HR professional providing feedback on the company's electronic communications policy



Who Needs to Be on the Team?

- Information Technology
- Legal
- Business
- Records



Using the Warrior Model

- Your role and responsibilities
- The role and responsibilities of other Warriors throughout the organization
- How your skills and expertise can help, and where and when you need the expertise of others
- How to ask the right questions
- Where to go for answers
- How to communicate both needs and solutions



Warrior Quadrant 1: Information Technology



Warrior Quadrant I. The IT Quadrant

- Take control of IT today
 - Where warriors need to be involved
 - Policy should drive technology
 - Take control at the frontiers

- Bridge the gap between policy and IT management
 - IMC and internal controls
 - Internal controls frameworks
 - COBIT Framework
 - COSO Framework

Due to storage limitations, U.S. intelligence deleted volumes of terror-related intelligence information before it had even been translated or reviewed.



For Example: Email Administration

Storage Admin View

Compliance View

users	content
capacity	policies
mailbox size	regulations
attachment size	accessibility
server patches	electronic discovery
throughput	monitoring

What We Need to Ask in the Digital World

- Where is the "Record" today?
- How many parts does it have?
- Who needs access to it?
- What should they be able to do with it?
- What is the risk of loss or theft?
- What can you prove?
- Can you make the regulators or courts understand your system and why it is trustworthy?

An Information Security Intelligence Test

 **Has your credit card number been STOLEN on the Internet?**

/

card number expires

Warrior Quadrant I. The IT Quadrant

- Build compliant IT systems
 - System trustworthiness
 - Record trustworthiness
 - Completeness
 - Format
 - Integrity
- Don't reinvent the wheel
 - Evaluating best practices
 - The benefits
 - Sources of best practices and industry standards

AFD Fund v. United States
Testimony about the use and management of the company's databases was essential to the admissibility of electronic billing records as evidence.



Warrior Quadrant 2: Legal



Warrior Quadrant II. The Legal Quadrant

- Translate law into IT reality
 - IT management is central to compliance
 - New technologies mean new legal considerations

"I am extremely troubled by the fact that the court order to disable Internet connections in the Department of the Interior... has caused a disruption in the Internet access at Indian schools in South Dakota, and across the country. Even more troubling is the fact that the students, faculty and administrators impacted by this disruption are in no way involved in the lawsuit, which is the catalyst of the court order."

Letter from Tom Daschle, U.S. Senate, to the U.S. Department of the Interior



Warrior Quadrant II. The Legal Quadrant

- Address legal issues throughout the information lifecycle
 - Manage unstructured content
 - IMC intentions matter

"Thus, the court has already found, as a matter of fact, that Rambus anticipated litigation when it instituted its document retention program."

Rambus v. Infineon



Warrior Quadrant II. The Legal Quadrant

- Assess your e-discovery readiness
- Ensure responsibilities are clear
 - Legal holds
 - The legal hold notice
 - Prepare for tomorrow - today

"Although it did not do so willfully, maliciously, or in bad faith," the defendant allowed e-records required to be preserved in the context of the lawsuit to be "destroyed during routine deletions of computer information."

Applied Telematics v. Sprint



Practical Issues

- E-Records laws are generally very accommodating from a technology perspective
- But, “admissible” does not mean “acceptable” or even “credible”
- What does “reasonable” mean in the information management world?

Warrior Quadrant 3: Business



Warrior Quadrant III. The Business Quadrant

- Making the case for Information Management has never been easier
 - The changing environment
 - Taking advantage of the current climate
 - The stick (FUD)
 - The carrot (faster, better, cheaper)

Expectations have changed. Today's organizations face a whole new set of expectations from the public, share-holders, regulators, courts, lawmakers, customers, partners, auditors, and boards about the way that information is managed. Today, good information security practices are directly connected to good business management fundamentals.



Bringing Business Savvy to Security

- Economic models
 - ROI, TCO, Total Cost of Failure
- Project Management
- Change management
- Internal customers



Warrior Quadrant III. The Business Quadrant

- Align IM program with business goals
 - Organizational goals and priorities
 - Good governance and good security
 - Information is an asset
- Manage change
 - Educate executives and middle management
 - Eliminate resistance through widespread involvement

The U.S. Justice Department found that a major defense contractor mistakenly charged the U.S. Air Force \$106 million dollars for work on a commercial air-liner and the testing equipment used in its development.



Warrior Quadrant III. The Business Quadrant

- Build and manage an your team
 - Establish strategic and tactical goals
 - Pick low hanging fruit first
 - Establish the lines of communication
 - Establish a clear decision-making chain
 - Find a great project manager
- Run security like a business
 - Know your customers
 - Understand and balance business needs and risk management needs

Taking down the smaller problems first can help to build a track record of successes and grow "political capital" for when it comes time to tackle the big problems.



Working in the Real World



Issue #1: Electronic Signatures



IT: What is going to generate the least number of calls to the help desk?



Legal: What will be legally sufficient?



Business: What will our customers like, and will it help grow our business?



RM: How do we retain it?

Frequent users (or, power users) may be turned off by overly tedious procedures. Allow those users a less tedious procedure for accomplishing a given task.

Golden Rules of User Interface Design

Issue #2: Metadata



IT: How can I avoid the cost and performance issues of storing unnecessary data?



Legal: What are the courts and regulators looking for?



Business: Can I quickly find the business information I need?



RM: How can I classify information for business, legal, and other purposes?

In some types of records management systems, retaining excessive metadata can needlessly increase costs of storage and complexity of a records management system. Therefore, establishing standard metadata criteria (i.e., what information will be preserved and in what form) can also result in substantial savings in retrieval and storage costs.

The Sedona Guidelines

Issue #3: Data Encryption

 IT: How do I balance system performance and encryption strength?	<p>"At ChoicePoint, the weak link in the chain of authorizations, authentications, passwords, access controls and data warehouse administrations was the business process." Wall Street Journal</p>
 Legal: What will courts and regulators view as reasonable encryption procedures?	
 Business: How can I avoid a bottom line impact from security breaches?	
 RM: How will encrypted data and keys be managed and accessed over the long term?	

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Issue #4: Backup Tapes

 IT: How do I provide access to obsolete tapes in a business that keeps everything forever?	<p>"Although it did not do so willfully, maliciously, or in bad faith," the defendant allowed e-records required to be preserved in the context of the lawsuit to be "destroyed during routine deletions of computer information." Applied Telematics v. Sprint</p>
 Legal: Can I product specific content for a court or regulator in a short period of time?	
 Business: Can I keep the business operating effectively, even in a disaster?	
 RM: How do I classify, manage, and dispose of records stored on backup tapes?	

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Issue #5: Instant Messaging

 IT: How do I manage yet another potential enterprise security vulnerability?	<p>'Intercept' means the aural or other acquisition of, or the recording of, the contents of any telecommunication or oral communication through the use of any electronic, mechanical, or other device. New Hampshire State Law 570-A:2</p>
 Legal: Can we legally intercept and monitor IM conversations? Is IM less problematic than email?	
 Business: How can I ease communication inside and outside the company?	
 RM: Do I need to retain IM conversations?	

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Learning From Users



Frequently Asked Questions

Support

- » software & drivers
- » ask Compaq
- » reference library
- » forums & communities
- » support tools
- » warranty information
- » contact support
- » parts
- » give us Feedback

» warranty upgrade/warranty extension

FREQUENTLY ASKED QUESTIONS - SEARCH RESULTS

Compaq FAQ: Where do I find the "Any" key on my keyboard? (FAQ2859)

The term "any key" does not refer to a particular key on the keyboard. It simply means to strike any one of the keys on your keyboard or handheld screen.

Created: 10/8/2001 2:13:42 AM
 Modified: 10/25/2002 11:07:05 AM
 Author: Silevna

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Texas State e-Records 2008 Seminar

**Information Warrior:
Building Your RIM Team**

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Feature Presentation

Part 4:

Seven Keys to Achieving Information Management Compliance

Barclay T. Blair, Kahn Consulting

KAHN CONSULTING, INC.



Texas e-Records 2008 Seminar

Seven Keys to Information Management Compliance

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Taking the Long View

“Consider a future device for individual use, which is a sort of mechanized private file and library. It . . . is a device in which an individual stores all his books, records, and communications, and which is mechanized so that it may be consulted with exceeding speed and flexibility . . . It consists of a desk, and while it can presumably be operated from a distance, it is primarily the piece of furniture at which he works. On the top are slanting translucent screens, on which material can be projected for convenient reading. There is a keyboard, and sets of buttons and levers. Otherwise it looks like an ordinary desk.”

- *Imagined as a solution to what was then considered the “massive task of making more accessible our bewildering store of knowledge.”*
- The Year? 1945

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Information Management Fundamental #1:

What do we keep?

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Fundamentals of Information Management #1

We cannot keep everything forever.

We Cannot Keep Everything Forever

- Ever increasing volume
 - Yes storage costs are dropping, but acquisition cost is only the beginning
- Reduced system functionality
- Harder to find the information of value
- Some information has little value, or even negative value
- The law does not require it

Fundamentals of Information Management #1

We cannot keep everything forever.
We cannot throw everything away.

We Cannot Throw Everything Away

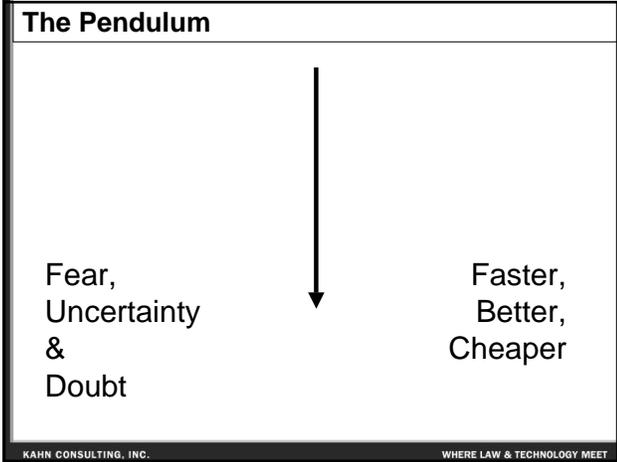
- Information is the lifeblood of our business
- We cannot make good decisions, forecast, analyze, serve customers, etc, without our "corporate memory"
- The law requires retention of some information
- Our own legal interests (e.g., contracts) depend on good documentation
- People move on, positions do not

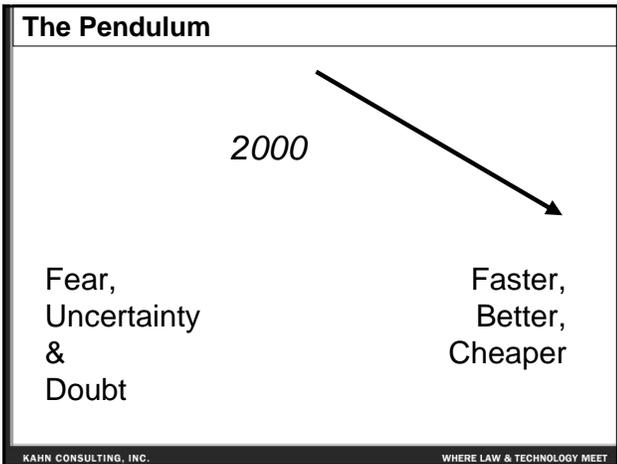
Fundamentals of Information Management #1

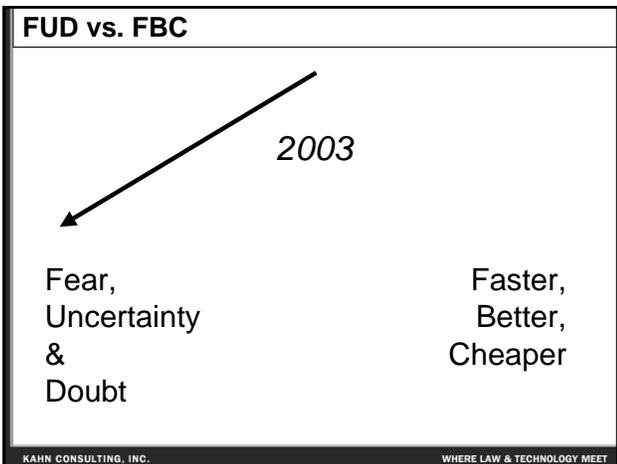
We cannot keep everything forever.
We cannot throw everything away.

Information Management Fundamental #2:

Tell Both Sides of the Story







Today?

Fear,
Uncertainty
&
Doubt

Faster,
Better,
Cheaper

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At Your Organization?

Fear,
Uncertainty
&
Doubt

Faster,
Better,
Cheaper

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Fear, Uncertainty, Doubt

- Fortune 10 Company
- "Growing External Compliance and Risk Elements Associated with Information"
 - SOX
 - Information Privacy
 - Information Security
 - Costs Associated with Legal Hold and Discovery Events

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Faster Better Cheaper

- “Maximize the Net Present Value of Information over its Lifecycle”
 - Pace of business slowed down by cumbersome or non-existent information protection capability
 - Some employees spending >40% of time collecting and organizing data
- Planned return: 1.5 billion over 5 years, plus year over year gains
- Competitive advantage for 5-7 years

Total Cost of Failure

- Total Cost of Failure
 - Models for calculating the cost or value of technology investments cannot express the value of compliance
 - What is the cost of failure?
 - Likelihood, Frequency, Magnitude

Fear Uncertainty Doubt

- Protect the Brand Committee

Perfection Is Not Expected - But



The Upshot

- At the most basic level, whether for legal or business purposes, all organizations have a need to answer the same information management questions:
 - What information do we have?
 - What is it?
 - Where is it?
 - How do we get to it?
 - How should we protect and manage it?
 - How long should we keep it?

**Information Management
Compliance**

What is Information Management Compliance

- Moving “compliance” beyond “regulatory compliance” into information management
- “Compliance” is conformity with some criteria
 - Laws & regulations (Sarbanes Oxley, CDPA)
 - Industry standards (ANSI, ISO)
 - Company policies (RM, Email, Privacy, IT Security)
 - Best practices
- Applies to all activities affecting an organization’s information assets, throughout their entire lifecycle
- People, policies, tools, technologies

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Seven Keys to Information Management Compliance

1. Good policies and procedures
2. Executive-level program responsibility
3. Proper delegation of program roles and components
4. Program dissemination, communication, and training
5. Auditing and monitoring to measure program compliance
6. Effective and consistent program enforcement
7. Continuous program improvement

“A corporation can act through natural persons, and it is therefore held responsible for the acts of such persons . . . on the other hand in certain circumstances, it may not be appropriate to impose liability upon a corporation, particularly one with a compliance program.”

U.S. Dept. of Justice

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Participation

- Rank your organization from 1-5 on each of the 7 keys as we go through them

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KEY #1: Good Policies and Procedures

- Policies and procedures are the foundation of IMC
- In the context of IMC, they provide the *criteria* that the *program* itself must comply *with*.
- Policies make a statement to the world
- Policies and procedures are different

Laying the Foundation of IMC

- Do the courts and regulator really care about policies and procedures?
- Increasing sophistication
 - Regulators
 - Law Enforcement
 - Judges
 - Special Masters
 - Adverse Parties
- No more “don’t ask, don’t tell”

1. Establish a Directive Infrastructure

- Policy
 - Standard
 - Control
 - Guidelines
- Do not mix directives designed for a general audience and a specific audience
 - e.g., password directives
- Ensure that it is clear at which level compliance will be measured

1. Establish a Policy Infrastructure

- Principle
 - Guiding philosophy for information management at the highest level
- Policy
 - Top level corporate guidance for entire entity
- Standard
 - Minimum standards of behavior for the department - may also be directed at employees at a high level
- Control
 - Behavioral – employee directives
 - Technical - administration and management
 - Physical - security etc.
- Guideline
 - Guidance to departments, employees, etc. on how to comply, best practices etc.

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Examples

- Principle
 - "Information must be managed in a manner that maintains its integrity by protecting it from unauthorized alteration throughout its lifecycle."
- Policy
 - "Information at our Company whether created or received, must be properly managed. In this regard, it is the responsibility of all departments and Reporting Units to maintain the Accuracy of information throughout the lifecycle of the information."
- Standard
 - "Employees may not move or store any e-mail message, whether Record or Non-Record, outside the Company e-mail system."
- Control
 - "The email system should be configured in such a way that employees may not export .pst files outside of the Company e-mail system."

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2. Be Precise with Definitions

- Record: the central definition in IM
 - Critical because IM has a behavioral aspect - in other words, we partly depend on employees to make "wheat and chaff" decisions
- Definition should be broad enough to encompass all the information you need to retain without being so broad that employees cannot understand or apply it in practice.

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Defining "Record"

- There is a hierarchical element to the definition
- For example
 - Information
 - Data, documents
 - Record

Defining "Record"

Elements of a definition: Define what we retain and why we retain it

1. Information is limited to "recorded" information
2. Information serves as evidence of something
3. Information serves both a legal and a business purpose
4. Media-independent
5. Information is intentionally or purposefully retained
 - Critical component for the digital world, because:
 - The ability to make infinite perfect copies of an electronic file
 - The ease of instantly disseminating perfect copies to people around the globe at the touch of key
 - The difficulty of tracking versions of the same file without special software
 - The ease of altering a digital file, both inadvertently and intentionally

Defining "Record" – A Definition KCI Often Uses

- A **"Record"** is information recorded on a tangible medium and intentionally retained and managed as evidence of an organization's activities, events, or transactions because of its ongoing business, operational, legal, regulatory, and/or historical value.

3. Retention vs. Preservation

- Establish a clear separation between Retention and Preservation
 - **Preservation.** All information relevant to anticipated or pending litigation, audit, or investigation must be preserved, and not altered, destroyed, mutilated, concealed, or falsified. A concern that information may be needed for such proceedings is never an acceptable reason for altering, destroying, mutilating, falsifying, or making them unavailable.
- Make both of them a part of the IM program

What We Need to Ask in the Digital World

- Where is the Record today?
- How many parts does it have?
- Where are the parts?
- What can you prove?
- What is the context?
- Can you make the regulators or courts understand your system and why it is trustworthy?

4. Backup vs. Retention

- Backup is not records retention
- Backup systems are for business continuity
- Retention is for supporting business and legal obligations
- Backup does not easily support the same goals

KEY #2. Executive-Level Program Responsibility

- The ship is steered from above
 - Consistency
 - Resource allocation
 - Motivation
 - Delegation
 - Influence
 - Accountability
- Management structures are changing
 - Responsibility for information, not just systems
- Companies and executives pay the price for their failures

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A Court Looks at Leadership

- Do the courts and regulators expect CEO's to care about IMC?
- In *Danis v. USN Communications*, the court enumerated the CEO's failures as follows:
 - The CEO "personally took no affirmative steps to ensure that the [document retention] directive was followed."
 - He did not direct that the company "implement a written, comprehensive document preservation policy, either in general or with specific reference to the lawsuit."
 - He "did not instruct that any e-mail or other written communication be sent to staff to ensure that they were aware of the lawsuit and the need to preserve documents."
- As a result, the CEO personally fined and sanctioned

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Key Planning Questions

- Are the right executives involved and do they understand the problem?
- Is funding adequate?
- Do employees understand that senior management sees this as important?

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From the Email Files

Category: Product

Overview: John has done an outstanding job at shrinking the human brain. Never one to avoid responsibility, John decided to be the first candidate for human brain reduction. John currently houses the world's smallest human brain.

Explain: Through a rigorous and detailed regimen, John managed to complete his brain reduction in a short two years. By starving himself of any intellectual challenges and pushing responsibility to others, he has managed to invoke severe atrophy within his brain. Thus reducing it to one tenth of it's original volume.

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KEY #3: Proper Delegation

- Responsibility must be delegated only to those individuals with appropriate training, qualifications, and authority.
- Training and certification should be standardized
- Broad and deep IM/RM committees are required
- Who should be responsible for carrying the ball?
 - Peers or functional units may develop, but do not enforce policies
- Mandate must be clear and real (i.e., funded)

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Delegation Makes Compliance a Team Sport

- The CEO "exhibited extraordinarily poor judgment by delegating . . . to an in-house attorney with no litigation experience nor experience in developing a retention program"
- The Attorney did "nothing to ensure that all. . . employees who handled documents that might be discoverable were aware of the lawsuit and the need to preserve documents."
- The Board of Directors did not take "any active role in implementing a broader preservation policy," and did not follow up with the CEO "to determine if their directive had been implemented."
- "This myopic view begs the question of who was supposed to see to it that the 'people down in the trenches' actually carried out the task."

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Who Do You Involve?

- The IMC "Warriors"
- A Warrior is anyone who shares responsibility for the development, implementation, management, and administration of an information management policy or program.
- Examples:
 - An IT system administrator drafting an email, privacy, or security policy
 - A finance executive working on Sarbanes-Oxley compliance
 - An information security officer auditing data security practices
 - An HR professional providing feedback on the company's electronic communications policy

Who Do You Involve?

- Information Technology Warriors
- Legal Warriors
- Business Warriors
- Records Management Warriors



Key Planning Questions

- Do you have the right project team?
- Do you have the right "run" organization?
- Do you have the right governance structure?
- Do you have a clear mandate?

Scope

- Storage management
- Privacy information management
- Business continuity and disaster recovery planning
- Information security
- Application development and integration
- Information Technology purchasing and acquisition
- System configuration and management
- Customer relationship management
- Content/document management
- Business process management
- Legal Hold
- Enterprise portal management
- Knowledge management
- Data warehousing
- Data mining

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KEY #4: Program Communication and Training

ATTN: All Employees
 RE: Corporate Efficiency

The Executive Records Management Committee has decided that in order to save money and cut down on office clutter, we will be destroying all files that reside in gray filing cabinets. Consequently, we request that all employees IMMEDIATELY remove all files in gray filing cabinets in their vicinity and place them in industrial shredders that will be provided.

Only gray filing cabinets are affected by this directive. Blue and tan filing cabinets are exempt. Thank your for your cooperation.

Executive Records Management Committee

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KEY #4: Program Communication and Training

- Rules, Train, Audit
- "I thought this was all entirely appropriate until I received a subpoena."
 - David Duncan, WSJ May 15, 2002

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Key Planning Questions

- Do you have a structure in place to approve, implement, and train on directives?
- Have you established an employee acknowledgement process?
- Do you document the delivery of training?

KEY #5: Auditing and Monitoring

- Information management auditing and monitoring
 - Audit: what happened?
 - Monitor: what's happening?
 - Can't measure it, can't manage it
- Murphy Oil v. Fluor Daniel: had to search 20 million pages of e-mail because they failed to follow their own policy
 - Estimated cost: \$6 million and 6 months

Key Planning Questions

- Do you have directives in place regarding monitoring?
- Do employees understand the situation?
- Have you evaluated different legal jurisdictions?
- Have you integrated IM into Corporate Audit?

KEY #6: Effective and Consistent Program Enforcement

- IMC recognizes that employees will violate policies and procedures.
- The reasons that Information Management program violations occur vary, and include the following:
 - Lack of awareness
 - Confusion
 - Inconsistent enforcement and lack of oversight
 - Willful acts

Do the Courts Care About Enforcement?

"[U]nder the hospital's operating procedures, a patient's case history is to be dictated within 48 hours of admission. Dr. M, however, failed to follow the hospital's guidelines . . . this called into question the trustworthiness of the discharge summary form that eventually was filled out for him.

- Kentucky Cent. Life Ins. Co. v. Jones, 1993 U.S. App. LEXIS 21976.
- Failure to enforce the policy called the admissibility of critical medical records into question
- Failing to enforce the policy perhaps worse than having no policy at all

Key Planning Questions

- Have you integrated IM into HR?
- Do you have escalation and incident procedures?
- Do you have consistency across the enterprise?

Key #7: Continuous Program Improvement

*From: Drug Company
Sent: Monday, February 24, 12:37 PM
To: 669 customers who take Prozac
Subject: Dear Medi-Messenger User*

We're listening! This week, [our Company] relaunched Prozac.com with a new navigation and feel. . . .

- FTC investigation of big drug co. for failure to follow privacy policy
 - FTC concludes company failed to:
 - "provide adequate training..."
 - "provide appropriate oversight..."
 - "implement appropriate checks and controls in the process"

Key #7: Continuous Program Improvement

- Key Planning Questions
 - Do you have an "evergreen" process for IM, or is one planned for the IM run organization?
 - Have you evaluated relevant industry standards?
 - Have you benchmarked against similar companies?

Seven Keys to Information Management Comp

- | | |
|--|---------|
| 1. Good policies and procedures | 1. Rank |
| 2. Executive-level program responsibility | 2. Rank |
| 3. Proper delegation of program roles and components | 3. Rank |
| 4. Program dissemination, communication, and training | 4. Rank |
| 5. Auditing and monitoring to measure program compliance | 5. Rank |
| 6. Effective and consistent program enforcement | 6. Rank |
| 7. Continuous program improvement | 7. Rank |

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Texas e-Records 2008 Seminar

Seven Keys to Information Management Compliance

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Feature Presentation

Survey:

**GRC, E-Discovery, and RIM—
State of the Industry**

Barclay T. Blair, Kahn Consulting

GRC, E-DISCOVERY, and RIM: State of the Industry

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A KAHN CONSULTING, Inc.
Survey in association with:

- ARMA International
- BNA Digital Discovery and E-Evidence
- Business Trends Quarterly
- The Society of Corporate Compliance & Ethics

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This Survey Report and additional charts are available at:
<http://www.kahnconsultinginc.com/library/surveys.html>

Overview

Governance, risk management and compliance (GRC), records and information management (RIM) and electronic discovery (E-Discovery) are three of the information management compliance (IMC) topics most written about, talked about, and blogged today. It appears that these three overlapping disciplines are driving significant organizational change, policy and procedure development and technology investment. But, what do these concepts really mean? More importantly, how do these concepts affect you and your business?

Kahn Consulting, Inc., in association with ARMA International, BNA Digital Discovery and E-Evidence, Business Trends Quarterly, and the Society of Corporate Compliance & Ethics, created and distributed a survey to over 400 organizations in fall 2008.¹

This groundbreaking survey was the first to take an integrated view of these three critical disciplines. The purpose of the survey was to gain an industry perspective on:

- Maturity of programs in each area
- Major challenges that organizations face in each area
- Industry views on the relationship between the three areas

¹ Please cite this survey as, “*GRC, E-Discovery, and RIM: State of the Industry*—A Kahn Consulting, Inc. Survey in association with ARMA International, BNA Digital Discovery and E-Evidence, Business Trends Quarterly, and the Society of Corporate Compliance & Ethics.”

Key Survey Findings

1. *Most organizations are actively addressing GRC, RIM, and E-Discovery.*

Over 90% of respondents indicated that their organizations are actively addressing GRC, RIM and E-Discovery issues. On average, nearly three-quarters have made—or plan to make—major changes in these three areas in the past or next 18 months.

2. *Most employees have little understanding of their GRC, RIM, E-Discovery responsibilities.*

Less than one quarter of organizations surveyed believe that their employees understand their GRC, RIM and E-Discovery responsibilities and how to fulfill them. Only 9% of employees have a good understanding of how GRC impacts them; only 15% understand their Legal Hold and E-Discovery responsibilities; and only 21% understand how information should be retained and disposed of. Although 67% of those surveyed state that employee training is “critical to their success,” the low confidence in employee awareness indicates that most organizations have more GRC, RIM, and E-Discovery training to do.

3. *GRC is here to stay.*

Most respondents view GRC as a valuable, integrated program rather than a product or a fad, which would seem to indicate that GRC is here to stay. In addition, 70% view RIM as becoming part of an overall GRC program, and 75% see GRC as reducing the difficulty and expense of E-Discovery.

4. *GRC is more driven by legal concerns, while RIM is more driven by business issues.*

E-Discovery and fear of a compliance failure were top factors driving organizational GRC efforts, each cited by about 55% of the respondents. In contrast, operational issues are the focus of RIM efforts--such as operational efficiency (78% for RIM and 56% for GRC) and cost reduction (67% for RIM and 39% for GRC).

5. Organizations are focused on making policy changes first.

In the GRC arena, policy development is the highest priority among respondents; a majority (61%) has planned, or is planning to write new GRC policies. Similarly, the short-term E-Discovery focus of the respondents is in the policy area. About 63% have or plan to develop Legal Hold and E-Discovery policies and procedures, while 52% have or will engage in a “mapping of sources” exercise to identify potentially responsive information.

6. Although organizations have a better understanding of E-Discovery, they still face significant operational challenges.

Only about one-third of organizations expressed lack of clarity of E-Discovery obligations as a significant concern. The fact that 70% made or will make significant changes in E-Discovery has undoubtedly resulted in a greater understanding by many organizations of their E-Discovery obligations. Nevertheless, over three-quarters of respondents have indicated that the volume of information in their organizations represents a substantial challenge.

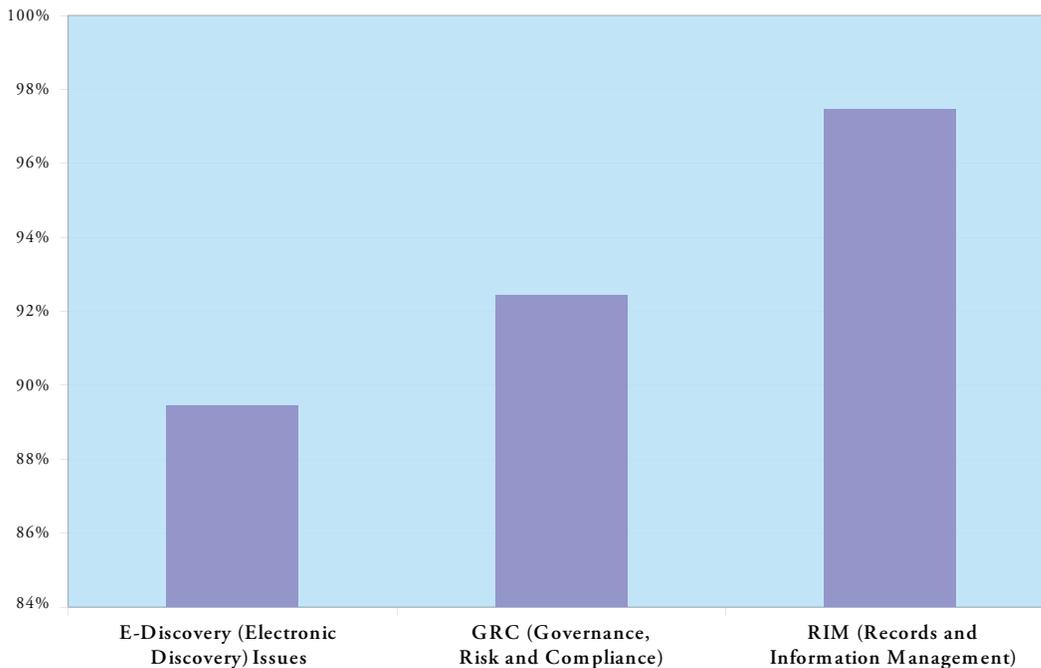


Detailed Findings

1. Most organizations are actively addressing GRC, RIM, and E-Discovery.

The vast majority of respondents (average of 93%) report that their organization is actively addressing GRC, RIM and E-Discovery. Furthermore, an average of 74% report that their organization had made changes within 18 months, or will make changes within 18 months, in the three areas. On average, large organizations are more active than small organizations. This may be explained by the factors driving the changes (see below). Larger organizations tend to be driven by legal and regulatory factors, which mandate changes, while smaller organizations more commonly cite operational factors.

Companies Addressing IMC Issues

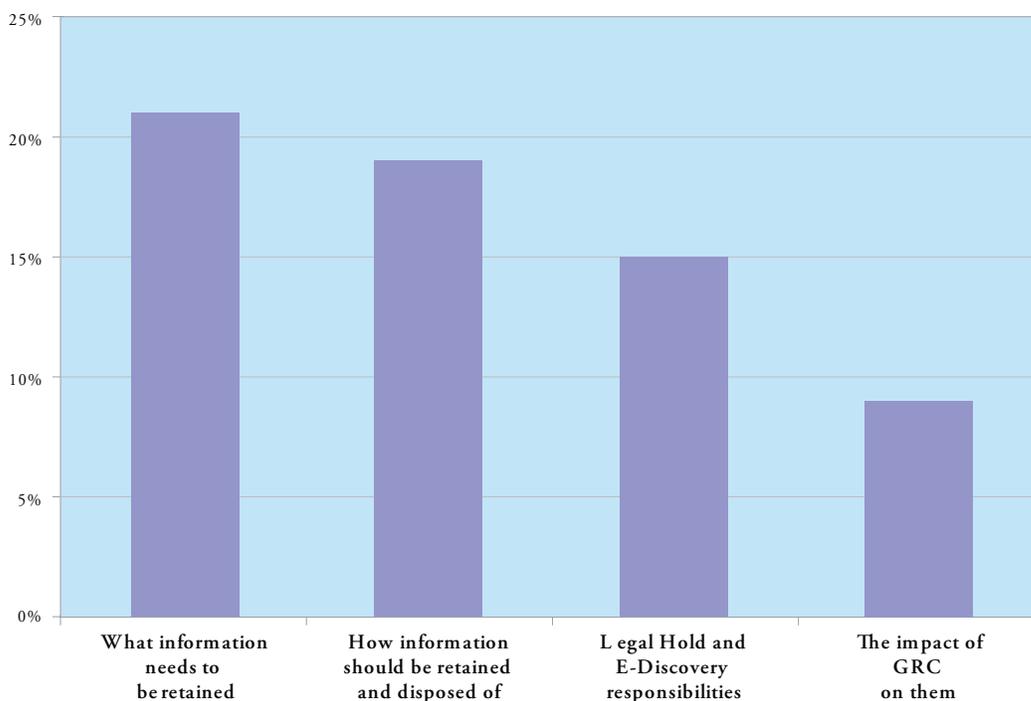


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2. Most employees have little understanding of their GRC, RIM, or E-Discovery responsibilities.

When asked about GRC, RIM, and E-Discovery, at best, only 21% of the organizations believe that their employees understand the responsibilities and how to fulfill them. The average ranking among the concepts was 15%. As might be expected, the more complex the concept, the lower the understanding. About 20% understand record retention ideas. 15% are comfortable with legal hold and E-Discovery responsibilities, while only 9% understand governance, risk management, and compliance concepts.

Employee Understanding of Responsibilities



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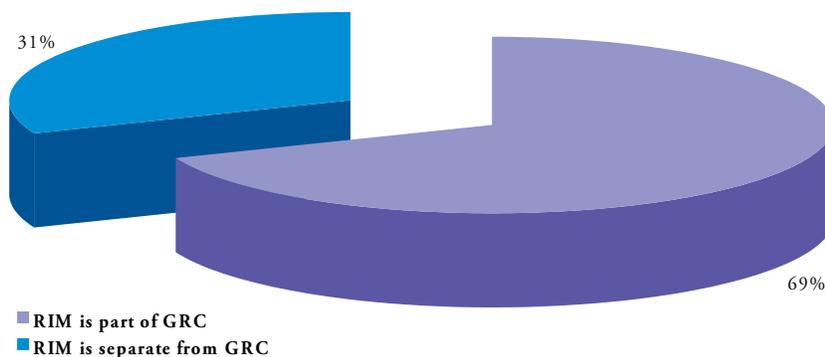
Much higher levels of employees have “some” awareness of their obligations. About 61% responded in this manner when asked about RIM issues, 44% for Legal Hold

and E-Discovery, and 41% for GRC. Although 67% of those surveyed state that employee training is critical to their success, the low confidence in employee awareness indicates that most organizations have more GRC, RIM, and E-Discovery training to do.

3. GRC is here to stay.

The vast majority of respondents (75%) view GRC as “a coordinated program involving people, processes and technology.” More than half (54%) viewed GRC as a valuable concept, representing the future of how GRC concepts will be addressed. Almost all respondents view GRC as a process rather than a product or a fad (only 3%), which indicates that the GRC methodology will most likely be utilized for the foreseeable future. Most respondents, when asked about the relationship of RIM to GRC, answered that RIM should be considered as an integral part of GRC. These replies outnumber the position that RIM should be a separate program by more than a 2 to 1 margin.

Relationship of RIM to GRC



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4. *GRC is more driven by legal concerns, while RIM is more driven by business issues.*

E-Discovery, operational efficiency, and fear of a compliance failure were the top factors driving organizational GRC efforts, each cited by about 55% of the respondents. Increasing regulation and a desire to integrate and simplify governance, risk management and compliance were the next biggest drivers, at 47% and 49%, respectively. Only 9% stated that they were not undertaking significant GRC efforts. The high correlation between E-Discovery and GRC is reinforced by respondents' belief that GRC can help reduce the difficulty and expense of E-Discovery (75% positive response v. only 6% negative response).

Top GRC Drivers

1. E-Discovery
2. Operational efficiency
3. Fear of compliance failure
4. Desire to integrate and simplify GRC

In contrast to the factors driving GRC efforts, RIM drivers are more focused on operational issues, such as operational efficiency (78% for RIM and 56% for GRC) and cost reduction (67% for RIM and 39% for GRC).

Top RIM Drivers

1. Operational efficiency
2. Cost reduction
3. Electronic discovery
4. Increasing regulation

When the data is broken down by organization size, smaller companies were driven by operational factors, while larger organizations cited both regulatory and operational reasons for utilizing GRC. Operational efficiency, cost reduction and a desire to simplify and integrate GRC (along with E-Discovery) were most often cited by smaller organizations, while E-Discovery and fear of a compliance failure and increasing regulation were most often cited by large organizations.

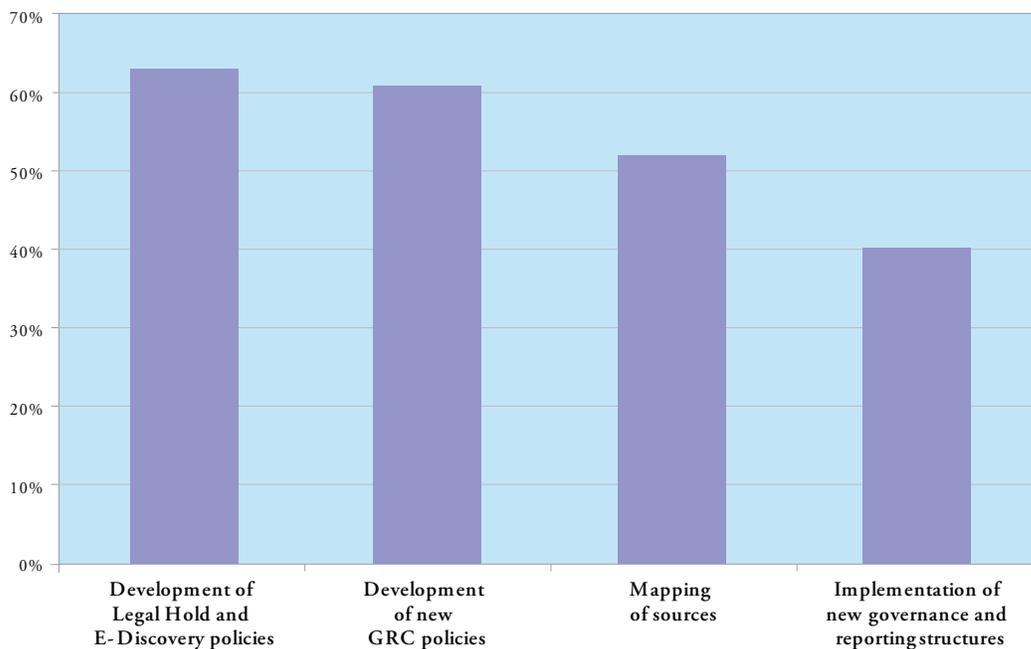
5. *Organizations are focused on making policy changes first.*

In the GRC arena, policy development is the highest priority among respondents; a majority (61%) has planned, or is planning to write new GRC policies, followed

by changes to governance/reporting structures (40%). About a quarter to a third of respondents plan more direct investment in GRC, such as hiring personnel, buying software, or hiring outside organizations to support GRC.

Similarly, the short-term E-Discovery focus of the respondents is in the policy area. About 63% have or plan to develop Legal Hold and E-Discovery policies and procedures, while 52% have or will engage in a “mapping of sources” exercise to identify potentially responsive information. More externally-focused activities are reported less frequently, such as implementation of E-Discovery data collection/production tools (36%) or implementing matter management software (26%).

GRC/E-Discovery Activity



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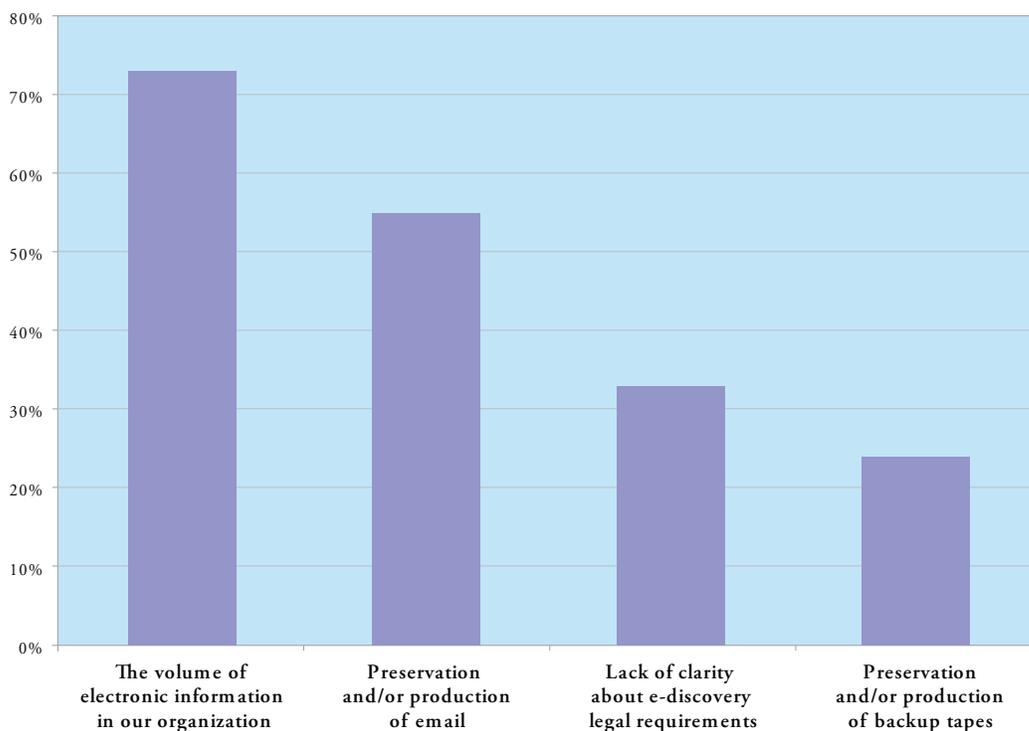
This policy focus is evident when companies were asked about the role of RIM in E-Discovery. The majority of respondents see the most significant role of RIM in E-Discovery as providing a policy foundation for E-Discovery (39%), although

close behind at 33% is the role of RIM in simplifying E-Discovery. This is consistent with (a) the heavy policy emphasis of organizations in the area of E-Discovery activities, and (b) the fact that locating (and preserving) information is such a critical aspect of E-Discovery.

6. *Although companies' understanding of E-Discovery has increased, challenges remain.*

The volume of electronic information represents the greatest E-Discovery challenge to the respondents (73%), followed by preservation/production of e-mail (55%). While it might otherwise be surprising that only 33% viewed lack of clarity about E-Discovery requirements as a significant challenge, the fact that 70% of respondents have made or will make major changes in the E-Discovery area in the relatively short term has probably resulted in the education of companies on E-Discovery requirements.

E-Discovery Challenges



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Conclusion

GRC, RIM and E-Discovery are ideas which have captured the attention of organizations. The majority of organizations has undertaken, or plans to undertake, projects in these areas. GRC, in particular, has been recognized as providing a valuable model of organizational governance, both in its own right and as a means of facilitating E-Discovery. RIM professionals, in fact, view their discipline as an integral part of GRC.

Significant work, however, remains to be done in order for enterprises to realize the full value of these concepts. A minority of employees understand their responsibilities under the three areas. Many E-Discovery and RIM challenges were identified by participants. Although companies have made a good start in their quest for information management compliance, the finish line is still distant.

About Kahn Consulting, Inc.

Kahn Consulting, Inc. (KCI) is a consulting firm specializing in the legal, compliance, and policy issues of information technology and information lifecycle management. Through a range of services including information and records management program development; electronic records and email policy development; Information Management Compliance audits; product assessments; legal and compliance research; and education and training, KCI helps its clients address today's critical issues in an ever-changing regulatory and technological environment. Based in Chicago, KCI provides its services to Fortune 500 companies and government agencies in North America and around the world. More information about KCI, its services and its clients can be found online at: www.KahnConsultingInc.com.

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About the Survey Partners

ARMA International is a not-for-profit professional association and the authority on managing records and information—paper and electronic. Established in 1955, its approximately 11,000 members include records managers, archivists, corporate librarians, imaging specialists, legal professionals, IT managers, consultants, and educators, all of whom work in a wide variety of industries, including government, legal, health-care, financial services, and petroleum in the United States, Canada, and 30-plus other countries.

ARMA International publishes *The Information Management Journal*, the only professional journal specifically for professionals who manage records and information on a daily basis. The award-winning *Journal* is published bi-monthly and features top-drawer articles on the hottest topics in records and information management today, as well as marketplace news and analysis. The association also develops and publishes standards and guidelines related to records management.

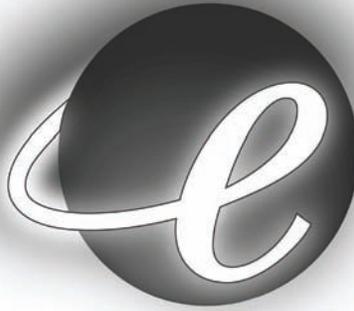
BNA Digital Discovery and e-Evidence is a compelling new information service on the evidentiary value of electronic data in litigation, providing in-depth intelligence and insights from leading courtroom and computer forensics experts. The service is published by BNA, the largest independent publisher of information and analysis products for professionals in business and government.

Business Trends Quarterly magazine provides senior level business and technology executives with in-depth analysis of, and key insight into, market trends and innovative technologies. BTQ establishes a dynamic forum where business strategy experts and IT decision-makers unite to analyze existing enterprise systems and challenges from an IT solutions standpoint. BTQ continues to supply senior-level decision-makers with on-demand, real life business experience and leading industry research to address the needs of a diverse and consistently changing marketplace.

The Society of Corporate Compliance & Ethics (SCCE) is dedicated to improving the quality of corporate governance, compliance and ethics. SCCE's roles include:

- Facilitating the development and maintenance of compliance programs;
- Providing a forum for understanding the complicated compliance environment;
and
- Offering tools, resources and educational opportunities for those involved with compliance.

SCCE exists to champion ethical practice and compliance standards in all organizations and to provide the necessary resources for compliance professionals and others who share these principles.



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