



- ### Why The Perfect Storm?
- Sheer volume
 - Textual nature
 - Ubiquity
 - Ability to be retained and re-transmitted
 - Relative low cost
 - Ability to document casual conversation, damaging statements
 - i.e. Learned casual behaviors brought forth into business records

- ### The Focus
- Think about how and where you learned to write a business letter.
 - Think about how and where you really learned to send email or do instant messaging.
 - Which process is instinctively more formal and considered?

Some Additional Focus

January 7, 2005 The Globe and Mail
“Blackberry battle chills Bay Street gossips”
“CIBC is suing six of its former employees, alleging that they took confidential information and orchestrated a ‘calculated scheme’ to recruit colleagues to Genuity while they were still working for the bank.”
“The reality is, virtually every message sent and received through a company-issued BlackBerry is retrievable.”

- And if it can be retrieved, then should it be?

Messaging Systems

- Email
- Instant Messaging
- Collaboration Tools
- Online Meetings
- Portable Devices
- Voicemail
- Telephone Calls (Including VOIP)
- Facsimile
- Unified Messaging

Synchronous versus Asynchronous

- Synchronous = “at the same time”
 - Telephone, Instant messaging
- Asynchronous = “at different times”
 - Email, Voicemail, Facsimile

Email

- Communications that create unique documents to transmit between individuals or between an individual and a group.
- Generally, communications happen asynchronously and each transmission is a unique document.
- Email may also contain embedded or attached documents that can exist apart from the message carrying them.

Instant Messaging

- Communication in real time (synchronous) between individuals or small groups.
- Communications are typically not individual documents; rather, they are more conversational and free-flowing.



Web-based IM

- Most functionality of client IM
- Also on web-enabled cell phones
- Multiple IM clients



Workgroup and Collaborative Information Systems

- Shared information and discussions
- Document editing / redlining
- Elements of document management systems
- Contain series of communications or iterations over time
- Can be more damaging than standard email because discussion is encouraged
- Difficult to manage

Online Meetings

- Voice and textual / graphical meetings hosted over a network.
 - “Webinars”
- Audience participation through written / text or verbal questions.
- “Offline” discussions between participants while conference is going on.

Mobile Messaging Devices

- Smartphones
- Cell Phones
- Text Pagers
- “Convergence”



Voice mail and Telephone Calls

- With the exception of certain regulated industries and call centers, we rarely look at this as a record.
- But what happens when voicemail is delivered to your email system?



VOIP

- Voice Over Internet Protocol
- Vonage, Skype, Yahoo!, others
- Generally, computer to computer voice calls, but can be out to POTS or in from POTS
- Sometimes offers voicemail
- Generally can be blocked by firewalls
- Some capability to record and retain voice, or at least voicemail
- Generally associated with text instant messaging systems



Introducing....

- Social Networking!!!
 - Facebook
 - Twitter
 - MySpace
 - LinkedIn



**So How Do We Decide
What is a Record?**

- Content only?
- Participants only?

How Do We Capture the Record?

- Simple:
 - Email = Documents
- Harder:
 - IM = Transactions
- Very Hard:
 - Collaboration = Multiple media types, documents, transactions, all needing to be synchronized.

**Where Does a Synchronous Record
Start and End?**

- Telephone: Off-hook to on-hook?
 - But what about calls that are conferenced?
 - Whose “hook” counts?
- IM: Start to finish?
 - But when does an IM start and when does it finish?
 - And what about multiple topics or participants?

Policy Elements

- Define what constitutes a record for the organization.
 - Content?
 - Participants?
- Define how a record is to be retained.
- Link to other policies.
 - Appropriate use
 - Copyright

Policy Elements

- When are files to be transmitted?
- What about collaborative drafts?
 - When should they be maintained?
- Who edits an IM transaction to distill the record?
- What happens to attachments?
- How do we authenticate messages?
- When do we encrypt messages?

Policy Elements

- What about “disappearing” messages?
 - Can we create them?
 - Should we receive them?
- Who gets a mobile messaging device?
- Do we address third party email and IM systems?
- What about “archiving” messages?
 - Where does that happen?
 - Who should do it?

Other Considerations

- Most organizations with Internet access for employees are likely to have unsanctioned IM installations in place (or access to web-based IM).
 - Who are these people talking to?
 - Are they creating records?

The Future Storm is Now

- Unified Messaging Systems
 - Your voicemail messages and facsimiles are delivered to your email system.
 - Does this fundamentally change the way we think about voicemail?
 - Why now? Or Why not?
 - What if this system also delivers a transcript of your IM sessions to your email inbox?

“The World is Flat”

- Best-seller by Thomas L. Friedman
- Work is being done globally and in real time, 24 x 7.
- Globalization 1.0: Countries globalizing
 - Driven by horsepower and power in general
- Globalization 2.0: Companies globalizing
 - Driven by reduced cost for transportation and telecommunications
- Globalization 3.0: People globalizing
 - Driven by software and bandwidth
- What are the implications for records?

People Globalizing

- Heterogeneous tools for communicating
- “Placeless” work
- “Stateless” work
- “Timeless” work
- Employees as free agents / more contractual workers

The Ongoing Storm

- Difficulty in determining who owns the record
- Increasing sources of records
- Fewer textual records
- More records created and retained away from centralized management
- Records on mobile devices / devices not owned by the employer

Digging Out

- Clear contractual expectations about record ownership, creation and retention with outsourcers and contract employees
- Implementation of intuitive, easy to use software tools and controls to retain records in all forms
- Clear direction about where records need to reside and what can be retained by the employee

Questions?

Resources

- John Montana, "E-mail, Voice Mail and Instant Messaging: A Legal Perspective", Information Management Journal, January / February, 2004.
- "Legal Obstacles to Email Destruction", <http://www.armaedfoundation.org/images/LegalObstaclesToEmailDestructionV634.pdf>
- Flynn & Kahn, Email Rules
- Flynn, Instant Messaging Rules
