

IRCH Methodology for Creating Legally-defensible Retention Schedules

Presentation transcript for Donald Skupsky, JD, CRM, FAI

Webinar presentation on April 2, 2015

Welcome to our entire audience, I hope you're having a good day. We have a lot of information to cover today. The title of our presentation today is called "The IRCH Methodology for Creating Legally Defensible Retention Schedules," that's going to be the main focus of the beginning of my program. And then, as Andre indicated I will get into answers to some of the questions that came up during the course of the session, course of your correspondence earlier. So with no further ado, let's get moving along.

So the topics as I indicated are creating legally defensible retention schedules. Will talk a little bit about the method that we follow and why that is in my opinion, the best for creating legally defensible retention schedules. And to reiterate that I'll talk a little bit about defending the retention schedule and procedures in court, some of my experiences as an expert witness. And explain the methodology that an expert would follow in defending a retention schedule. Then I will get into a series of questions. I kind of lump them together into various topics. And hopefully we can deal with all those during the course of this one hour.

So what does it mean to create a legally defensible schedule and what's required? We believe in complete legal research. We have seen so many retention schedules where either the company or consultant or even a law firm has found that controlling or longest legal requirement and indicated that, that was the research and the company followed that provision as their legal requirements. But what about all the other dozens of legal requirements that also apply to those records. You may or may not know whether those had been researched adequately.

So if you get your arms around all the legal research then you have a much better opportunity to see that the whole spectrum of laws related to your records have been considered included in the project. And as you'll see later it is such a strong piece of evidence when you have to defend the retention schedule or retention period in court, especially if there's ever a claim that you're keeping records too long. Somebody might want to believe that you should keep it shorter or destroy personal identifying information sooner. And that may become a big issue in the future.

Our legal grouping method therefore are putting legal research together in logical grouping and then applying them to the same or similar records, promotes consistency, has a very clear methodology of how it's done, and is repeatable. Jumping ahead to the last point of my slide, it is the one feature that really helps you let you update your retention schedules each year.

Consistency is the key issue. I can't stress this enough. A consistency in how you treat records, similar records are treated similarly. We at IRCH have developed over the course of time a worldview and I'll elaborate a little bit more of how we approach these issues. We don't approach each issue fresh with fresh eyes as though we've never seen it before. We learned from our experience, establish a way of dealing with areas and consistently deal with it that way, unless there's a reason to do it differently.

It's also important to have a clear linkage between your records and the legal research. It's one thing to have a whole pile of legal research, and then a whole listing of records over on the side. If the two aren't brought together in a consistent way, that years into the future, you or your successor, if nobody knows what was the connection, you're not going to be able to defend yourself in court. And you'll have great difficulty of winning on this record retention issue.

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So what's a worldview that I'm talking about? And we've had this in effect since the mid 1980s. As I've been doing my records retention work and working with many clients. It's a standard way of looking at records. Those of you who are subscribers to Retention Wizard or Retention Manager, know we start with a set of general business records and it's standard. We pretty much keep that the way it is. It's rare that there's ever a change. It's a standard way of dealing with these common types of records. A lot of customization however goes into industry-specific records, but after we've worked in an industry, we start standardizing those.

You may have heard we're coming up with templates. Templates represent a pretty generic view of how we look at an industry. Obviously we can't customize it for everybody in a template. But we can give you a good starting point that you can complete the work of customizing, and take you much further than we've been able to take you previously.

The consistent view also looks at the purpose of the record. What it is used for, not what it is. So many people look at the title and try to classify it as this subject or that subject. We're looking at what the record is used for. It maybe referenced, for example. It's used to store information that you may be using into the future. But I've given you some examples related to contracts, and the world view would be pretty much like, a contract is a contract is a contract. We're going to treat all contracts the same, but many of these have different names. So we're all familiar with contracts, but a lease is a contract, a purchase order is a contract. And so they're all going to be treated the same way for the same purpose.

But most of you probably wouldn't consider advertising a contract. If you look around, except for a few limited industry specific requirements, they are not requirements for advertising. In the insurance industry, yes, they have very specific requirements. But most general industries don't have requirements on advertising. So how do we come up with our retention for that? We treat it as a quasi contract.

If you say your product or service does A, B, and C and a customer relies on that, you have formed a quasi contract based upon reliance. And therefore if your claims fail to be true, that person has the same types of rights they would have had if they had signed the contract with you. Your advertising people may not understand the ramifications of this, but I'm sure you will find situations where, what I have described is exactly true. Customers have claimed you had said such and such and now the product doesn't comply.

Stock ownership is another thing. There are few requirements related to stock ownership, but it's also a contract between the shareholder and the company. The company says, "We will pay you dividends. We will do things within our company to be cost-effective, so there's more profit, so that would be more dividends." Shareholders says, "I'll give you money in exchange for that and I'll take some shares of stock." And so it is a contract between the shareholder and the company, but there's also some additional regulation that comes into play. But I want to show you how we will look at a number of areas that don't seem to be the same or similar and find a similarity between them.

In the legal group index with legal research, those of you who again have retention manager or retention wizard get opportunities to look at this report. We have the opportunity here to describe a legal group. In this case ACCC000, generally our biggest legal group related to all the tax accounting laws that we normally would find in the various jurisdictions from a U.S. Federal

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in the states in the United States. Notice just in my initial list, using our LRBR codes with the postal abbreviations. We use U.S. for U.S. Federal.

There are not U.S. federal tax requirements. They have limitations of assessment. They have a few things related to payroll in particular. But in terms of general accounting, that is not their way of doing it, a couple of states do. And they have six year requirements, some have five year requirements. People ask me which laws do you have to comply with, you have to comply with all of them. And by organizing all the legal research, if some of the longest requirements get repealed or changed too shorter requirements, then the legal requirements period will definitely change. And therefore you can see how this all lines up, you can explain where the six year retention period came from that ultimately would be applied to your records.

This report is extremely powerful when you ever have to defend your retention schedule. Because it basically identifies you have done significant researched, you have done significant work. And therefore you'll take retention seriously if you made a recommendation. And this is the recommendation followed by your company, it was based upon very important issues.

So what is the linkage then between the records? Those again who have worked with our products have worked with this linkage all along. Those with retention wizard don't get to see all of it. For example, you don't get to see the retention rules and legal groups, but you'll be able to see ultimately how the record series matches the legal research. Those who are retention managers see it all.

So user records would be the old retention schedule, a listing of records the company has, a listing of an inventory for various departments. Those are all linked then to items in the standard record series and this is where you get your descriptions of records. The retention rules then will establish rules of retention very broad categories of record series. These tend to be more granular for the standard record series. The retention rules are very broader. And when I talked about buckets I will relate to these two. These are the little buckets, so the small buckets, the standard record series. More descriptions of records, more granular. These are the larger buckets, fewer descriptions of records but very broad.

Ultimately each relates to the legal group like I was showing you where we linked it to the legal research and we reach our conclusions. Notice going backwards if the legal research changes, the legal group could change, the rules could change, the standard record series could change, and the retention apply, the user record to their record titles can change. And that's pretty powerful when you do an update. We know all the types of records that are affected by those changes.

Okay, so what happens then when you have to defend the retention schedule in court? Well, I can say that IRCH Develop Retention Schedule has never been challenged in court. It's been asked for and questions have been raised for what some of our customers have said. But when the information on how the retention schedule was developed and an explanation was provided, the opposing party quickly realized it was futile to pursue this issue. And because anybody who has used our methodology or something very similar to it will show significant support for the retention schedule. So I can conclude that it legally defensible retention schedule will be upheld because it is significant. What we do is very much like the Cadillac of records retention.

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Courts will probably accept some other ideas that are lesser, but this is the only certain way. Now we have had issues that have come out in number of cases related to retention and other factors. And I have enjoyed the opportunity to be an expert witness now in about 14 matters. I'm going on my 15th currently.

And let me just explain what an expert witness does and how it relates to a records retention program. You need to identify an expert. Sometimes it may be the records manager in your company, that's the person who knows most about how the retention schedule is developed. Sometimes it's an outside party who developed it. We've run into situations where the current records manager was not involved in developing the retention schedule. And therefore I got involved in assisting the company and the lawyers in explaining how the retention schedule was developed.

If you are a new records manager, I strongly advise you if you've inherited a retention schedule that was developed by somebody else, to take the time and learn how it was developed that why those numbers are what they are. Because at some point you may be asked and be really good if you have knowledge of where it all came from.

Conflicts are an area that the lawyers are concerned about an expert should not be working for either of the parties in the litigation. They could represent the party whose side you're on, but that has to be revealed to the other side. And then if you've worked for the others parties you need to explain that, because maybe you have some insider information that wouldn't be fair for you to testify about.

Experts consult with attorneys, the experts aren't left alone. We work with the attorneys on our side because they help us focus on what are the issues in the case and what materials we have to look at. Because the next point and it's sometimes very voluminous. One expert opportunity I had, I had to look at 7,000 pages of transcript. The expert reviews the pleadings, the depositions, the documents. They could be a whole variety of things because we don't have the opportunity to... we weren't there when the events took place. So basically what we're doing is looking at what information is available and make you reaching our conclusions accordingly. An expert witness will then write a report with findings and conclusions.

In litigation, by the way, only an expert can express their opinions. If you're ever called to testify, you must testify about facts not opinions. An expert can speculate about opinions based upon information. They can be challenged how they formulate their opinion. So in reviewing a retention schedule I'll look at what was done, whether we developed it or not and somebody else developed it. And look at a variety of issues in making a decision. And then an expert could appear at deposition, could appear at trial. For the first time I did a telephone deposition. I've never quite done that with a court reporter in my office and the other parties on the telephone in a remote location.

So how would you specifically defend the retention schedule and how would I do that as an expert? At first you would explain the schedule and supporting documentation. And the key is what was in effect at the time in question. So we don't care what the current retention schedule is. If the matter in question came up in 2005, we need to have the retention schedule, the legal research, the documentation that existed as of 2005. That's why it's important to keep at least

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one set of the retention schedule procedures and documentation, including legal research how it was developed, even though you've now moved on to a new retention schedule.

Of course, users, your employees out there, should have the only the most current procedures because we want them to do the right thing according to current practices. But you as record managers, somewhere in your organization have to keep this full set of documentation to be able to show what the retention program was and how it was implemented. I don't have that specifically at this point on the slide. I actually do at the last point.

The implementation. The fact that you have a retention schedule, but nobody followed it doesn't mean you destroyed records properly under the retention schedule. Therefore you need to show that it was in fact implemented. You may have to explain the prevailing retention practices. So for example I was involved in an arbitration and one of the things that came up was concerned that a recommendation for six years was too long. My response was, "Gee, that's surprising." Because most the world believes the retention for accounting records should be seven years. And some of my clients want to do a 10 years.

I've never ever seen in 30 years an organization have a retention for accounting records less than six years. And therefore for somebody to say it should be shorter it's preposterous. So looking at prevailing practices of others is sometimes helpful.

Explain your procedures how you do things from the legal group. You may have to talk about that controlling law, what does it have to deal with? What was the longest legal requirements? These are state requirements in the accounting area that say we have to keep records for six years. And since that's for state income tax or other state tax purposes, that means all our accounting records would have to be kept for that period of time.

Need to show compliance with the retention schedule. It's really sad to develop and invest in a strong retention program and not follow it. You need to make sure its being followed. You need periodic audits. Beyond the scope of today's session, but those are all important things. But the key is to demonstrate consistency in your program, you're doing the same thing all the time. And consistent and systemic development and implementation in the program. If you do it all, it's documented, you'll be able to show it.

Just out of curiosity there were some questions about what type of expert experience I encounter, and I dealt with the structure records in litigation. What litigation was in progress? And one of more interesting questions is, when it was eminent, when it was about to happen. And we won big on that. By the way, in every expert situation, I've been on the winning side, partially because I won't take on a matter unless I believe in the merits of the case.

Failure to produce records after a subpoena was issued. Did the parties act properly or did they destroy the records properly on the retention schedule.

Support for retention program. Is this a good program or not? I've been asked to look at a retention period based on the claims the other party who said, "Records should have existed in one case." I supported a retention schedule and said that period was very reasonable and there are reasons why the company adopted it.

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What is a record? This comes up periodically. Questions of email always come up. Why should records be destroyed? I had a question in trial where I presented the retention schedule for the company and the attorney on the other side said, "Well, instead of destroying the records, why didn't you microfilm everything?" And I said, "Because that would be a bad idea." And he was astounded, he said, "Would it cost that much?" I said, "It would cost a lot of money, but why waste money of an organization?" A corporation has a duty to be cost-effective, comply with the law, and there's no reason to do this task because it would be wasteful. And we don't keep records by the way just because the other side would like us to have it.

And my favorite was bad government record-keeping practices, where we found actually the Colorado Bureau of Investigation have a head in a bismal system for a doing gun control checks on potential purchasers of guns. And someday, if anybody is interested in that, send me an email, I'll describe a little bit what happened in that case.

Okay, let's get on, that was half of my presentation. So the other half is, I want to deal with some of the questions that you raised leading up today's session and several of them might put into context. People have asked me about, how do you do records classification? Can computers do it? About the bucket theories, why do we have many records described in our retention schedule or few records? One said, "I have three, how do I match the legal research to that?" Difficult problem. I want to talk a little bit about unmanaged information. We had a couple of questions about big data and retention, how that all fits together. Email, as you'll see is also unmanaged, but it's a very special topic. And global retention schedules, how we approach that and what are some of the approaches you have available to you. And the pros and cons of each of those.

So let's get into bucket theories. For years at ARMA conferences, this was a raging issue where some people said, "We need a large number of small buckets, very granular that describe our records, 200 to 300, it may even be a small number." The largest retention schedule I ever saw allowed everybody to classify any record, any file they ever wanted over decades, and they had 23,000 items. It was our task to boil that down and we got it down under 400 in terms of classification. But these have many smaller buckets.

And then some people say, "We should have bigger buckets, broader buckets, hundred buckets or less." Three, I don't think I would have a cake. But we have done retention schedules with the record series in the '70s for simpler companies. But it tends to be more in the range of 150 to 250 and for very, very large complicated companies. If we can get it under 400 we're doing good.

So what then is the difference between all these record classification strategies? The small bucket theory is the traditional record series describing organizational records. That has been the traditional retention schedule several hundred items in it. Users would select from a few of the hundreds of items in determining what the retention would be for the records. So that's whether its paper or electronic world, the users would have to go to a list and assign a record series from hundreds.

But because these smaller buckets are more granular, they also do some classification. So you may have different entries for general contracts, and leases, and labor contracts, and employment contracts, and copy or equipment maintenance contracts. So you may have

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different classes of contracts, but they're all contracts, and treated the same way for retention. But you've also classified them into a deeper level. You said what this thing is with a little more detail than just a contract.

The bigger buckets that people have advocated is like a limited set of retention rules. Remember where I showed you in our scheme, we had record series, those are the small buckets. The big buckets are our records retention rules. So actually in working our system you end up having both systems, big buckets and little buckets and you can use those in different ways. User select from a hundred fewer items, and classification requires additional indexing because when you shorten the number of items, like the 3 or 10 or 50 as some people have advocated, then you have to give more information. So you're going to have to make at least the second index entry to classify it and of course that would be some other information that you might want for finding purposes.

So what is the approach we like? Well, we follow both of those, but we like one better. And I call it the fewer buckets for group or fewer bucket per person approach. So accounting, if you look at the entire retention schedule maybe use is 20 to 25 of the record series are buckets. Accounts payable, accounts receivable, payroll, accounting reporting, capital property, inventories, evaluation. And there's a variety of things there going to have, but it's 20-25 they use regularly. Accounting is not going to deal with engineering. The engineering part of the retention schedule, or the property management other than their rents due to be paid, they'll pay it. But not the contracts and things like that.

So they deal in their domain. Human resources deals in its domain. So they might have 30 to 40 buckets with personnel selection, employment records, health and safety, benefits. So I'm just putting some random numbers. And I put Joe and Sally over here. Oops, come on back Joe and Sally. I put Joe and Sally over here because these could be anybody else in the organization and it could be an individual. How many items in the retention schedule does an individual need? Ten, 15? They don't need 300. So how do we make this all work? And that is the fewer bucket per person or per group approach. So how do we do this?

It includes all the advantages of record series or retention rules. Departments and groups just select the relevant items. It's actually should be from the record series. So if there are 300 record series accounting would go out and just identify the 30 or 40 they used. Or human resources or Joe and Sally would just identify the ones they use. So users typically select from 10 to 35 items. And if for some reason a new records need shows up, they can pull from the full list over here. And they will be able to then search whatever they want.

Unfortunately many of the records and information management systems do not support this type of concept. Wouldn't it be nice for example, to be able to preselect the record series and when you log in under your ID, you will see the record series that are relevant for you that you work on. And the guy in the next booth could have a different set and the girl in the next booth could have a different set. And from that standpoint everybody can customize the ones that they initially see, or you can learn from experience if you start assigning documents you have to certain record series. Those become higher ranked, like in a Google search for example. And you would be able to see those types of records, series from the retention schedule listed first. And of course, you can go to the full listing.

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So what's the answer? It's not big buckets, it's not little buckets, it's the right number of buckets per person or group. And retention manager, you have the capabilities to doing all of this. I just wish the vendors would start heeding my request and make their software include features that would allow this to happen and we would see great improvement on acceptance of electronic document management and the application of record series in retention.

Okay, unmanaged information. I make the very bold statement at the beginning that record retention cannot be applied to one managed information, it just cannot be done. Some vendors claim they have technology, they can classify things using artificial intelligence. No way, no how. No system can identify what's the record. And no system can really apply retention other than in the most broad sense. This is an employment record because it came from an employee who works in human resources. The ability to identify what it is. How it applies to the retention schedule requires the following.

You need to identify, what are records? Machines can't do this, human beings can. Of all the stuff, what is the important stuff we need to keep? And what is the final version of the records? And what is the official version versus a copy? Employees know how to do this. They've been doing it all the time. I don't agree with any vendor who has said, "Oh, there's a computer system who can do this for you." Employees must do it. You then move the records to a record keeping system. Now in order to get employees to do these things, we've got to make it simple, efficient, and worth their while, like when they do it, they'll have better access to information. You classify the information by assigning it to a record series.

For purposes of retention we need two tests. Identifying what is a record and to classify to a record series. Retention is then applied indirectly through the record series. Once you put into the record series bucket, the documents you have, especially in the electronic world, will inherit the retention from that record series. But here's where I differ from a lot of other people.

Once you have moved the good stuff to a record keeping system, I want to destroy the rest. Because if you allow all this random junk out there, when you have no incentive for users to move the good stuff over to your record keeping system, and you'd be losing more and more records over time. And number two, this will make sure in litigation that records are identified, and preserved, and maintained, and all the other stuff is gone. Because if you talk with your attorneys you will find the biggest cost in many litigations today, is the cost of discovery, just identify and looking for, examining, searching, turning over to the other party. Any records and information in your possession that is relevant to the particular place.

And unfortunately the more stuff you have, the more costly it will be, even if you've done nothing wrong. You'll have to explain certain comments. You'll have to go through these tests. And in large situations with large companies or a large lawsuit, we're not talking about thousands of dollars. We're talking about hundreds of thousands of dollars that are just squandering going through all this junk. I am a believer that junk needs to be eliminated to force records to be kept and for the greater good of the organization. Okay.

Big data is another form of unmanaged information. I don't give a definition of big data, but it's all this material, that organizations will throw into some type of archive, some type of management system so it all could be search. We don't know what purposes the searches will be done in the future, but we'll preserve at all just in case. Look for trends, look for whatever.

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I have a nephew who was hired by an insurance company and it's not because he was looking for things in the insurance records in their big data. He was commissioned to look for anything useful that might be appropriate for the company to think about, or areas to invest in other than insurance. So big data is a very interesting and important area, but it has all the problems in concerns of unmanaged information. I mentioned litigation. Those advocates of big data, keeping it for long periods of time. It undermines the retention program because you can't place the retention on this stuff. Most of the systems don't allow it. They are happy to have random data that's unmanaged, unclassified, etcetera. And in my opinion it's a disaster in litigation, it's only going to get worse. Because you have all the stuff. You got to search it, etcetera. If you miss things, you've got a major problem.

I'll give you one solution and I've had discussions with companies about this. If you remove the personal identifying information from big data. So what does that mean? I as a customer go to your store and I buy a product. So you have my name, my address. How much I paid, whether I used a credit card, cash. And the product that was purchased, you also have information on the store location and things like that.

If you kept all my personal information, you have a transaction record which should be covered in your retention schedule. If it's put into the big data system and preserved like in a big archive. And so searches can be done at some future date, then you want to keep this for long periods of time, of course ignoring what the retention schedule because it's all potential reference and all potentially of value.

But if you remove my personal identifying information, my name, my address, my phone number, perhaps even a trace of my credit card number. You do know that was a transaction that took place on a certain date of this product at this location. And you have a lot of valuable information, but it's no longer a record of that transaction. You have stripped off the attributes perhaps that would make it a record in the traditional sense of that transaction. And you're left with some data that would be useful for your company for doing some analysis.

So what this does, it converts the previous records to miscellaneous data. And I'm pretty good with that because if a subpoena came in for transactions of Donald Skupsky for example. In the big data archive, you wouldn't be able to find anything. And therefore it probably is a defense against litigation and again still useful for a lot data discovery, not discovery, but data research purposes.

Which gets us to electronic mail. And also, electronic mail is unmanaged information. It's a junk that comes into your system. Some of you, not all of you. Some of you will manage in one level by maybe establishing set of rules. So emails from certain people with certain subjects will go into certain files and certain folders, and you'll have some ability to manage this. Unfortunately everybody manages it their own way. And this is not a good way of recording preserving records for the company. It is a tool of communication. So many people have said, how long do I keep my email? I keep telling them, email is not a record. Its a tool of communication, and that tool may contain some records. Or some of those communications may be of record quality.

So if I sent you a proposal, for example, to do some work, and you send me an email saying, "Yes, do the work." We have a binding contract. Your yes becomes a part of collection of email

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which includes my proposal, and your response, and together that forms a contract offer and acceptance. And therefore that would be a record. But in many cases people have informal content related to the email. They don't use punctuation well. They don't use grammar well. They don't say what they want. They don't reread it. And we have a lot of subjective information in our email, there rarely any procedures or controls on our email except for mailbox size. I have encountered so many other clients who are somewhere on the continuum of being concerned about the email problem to working toward a solution. While many are close to a solution, I haven't quite seen the perfect solution, but there are many that are a pretty far along in the process.

The key though is to determine that most emails are not records of the organization. Just as emails into a communication it's like picking up the telephone. We don't record those phone calls and make them records of the organization. Therefore the email, just because they were recorded doesn't make them a record.

Understand the distinction between a recording and a record. You get junk mail in the physical mail, it is recorded, and printed. It is not a record. And there's a huge difference between recording or recorded material and records. But in litigation, all recorded material is subject to discovery. That means that all the junk mail, all the information, all the drafts, all the emails are subject to litigation and subject to discovery in litigation even though it's not a record of your organization. You recorded it, it's in the control of your organization, how can you say that that recorded material is not accurate. But we don't want to put restrictions on employees because that will reduce the efficiency of employees.

First, the next thing to understand is the value of email. These are rough analysis and we didn't do a systematic study it's just my intuitive understanding of how this works.

What are records within an email? Most people are zero to five percent, I mean you ask them, they'll tell you, "Oh, yeah, all my emails are important." The reality is, only a few are really records of the organization in a traditional sense that document service evidence of transactions for example. A big area is work in progress maybe 10 to 30%. Those are you're building a building, you're hiring a person, you're revising a procedure, you're working collaboratively, and you're sending ideas back and forth. There is a collection of information. I would prefer a work in progress be taken out of the email system and managed separately.

And then, we would have a project manager for that project. It would be great if all the emails related to a project were coded in a certain way, so they automatically go into the collaborative work in progress section.

And then, when the project is done and projects do end. The project manager makes sure that any of those emails or attachments that are records, are preserved properly. And there's a full set of documentation. And then presses a button and all the work in progress for that project is destroyed. I know that's a real radical idea, even the concept of having a project manager is a radical idea, but it's the best idea I have on how to deal with a work in progress problem.

That 65% or so to a 100% of all our emails are junk. So if you start with the assumption that all email is junk, you're doing pretty well because you're right most the time. You always have to make sure that if it is a record it moves to the right place. So how do we do that?

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Define all email as non record material. Employees must manage the email records, not the recordings. Identify what's a record, a sign of record series plus retention period, and then store that preferably in an electronic filing system, like an electronic document management system or print and store it on paper files. I've reached the point that a shared server, for collaboration for department, is just not doing it. There's no retention, it's unmanaged, it just a common place to put stuff. And put junk in most cases. I'd look in for a better management about all of that.

And notice, this is the same formula for managing all records. If it's a record, it needs to be classified, put in electronic document management system, if its paper in a central filing system. That's fine too. And I want then the rest of the email to self destruct in 30 to 45 days. If it was 60 days, I'm okay. Ninety days I can live with. Work toward 30 or 45 days. Why that period? Because if an employee does not act on the email in 30 to 45 days, they never will. They need to identify what's a record and get it into the electronic record keeping system and they need to do it quickly.

Can you imagine employees who have never done any of this and they have three or four, or five years of email. And now they're told, "Identify the records in that system in your email and move it into a record keeping system." They will never do it and by the way that employee has probably moved on to another job. And all their old emails were destroyed and the company would have lost many of the records during that period.

Also the backups must have the same cycle of 30 to 45 days. It's extremely important on all these systems in the electronic record keeping world, email being a very important one, but all the electronic records. If you're going to adopt the retention program, identify records, move the records to electronic repository, assign a record series linked to retention, then the backups must reflect that same retention period. Therefore a very short cycle on backups is really desirable. Doing an annual backup just in case is a real bad idea and a lot of the IT professionals are starting to understand this.

Okay, now we're into our really last topic and we just have a few more minutes for this session. I think I'll be able to get it all in.

So we've had a lot of questions about establishing global retention schedule. Maybe your headquarters is in the United States or Canada, and you're doing business in Europe, and you have offices there. How do you apply retention? How do you establish a global retention schedule?

You have two options basically. One is to do complete international legal research and I probably should've said and manage the global retention schedule. And the other is to develop the U.S. and Canada legal research and retention. And manage the retention schedule within the United States and Canada and do an international review.

So what do I mean by these two options? Option one is complete international legal research. What are the methods of doing that? Subscription services. Information Requirements Clearinghouse does have an international law module. We do sell it as part of retention manager. We do advise clients though. It is not complete, we are using English translations. We

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don't have the resources nor are there enough clients who will pay the freight to do a complete legal research database.

But there are some companies that are working toward that goal and you have to inquire whether their research is complete or not. And we also have some international law firms who are active gathering legal research for use by all the lawyers in their firms throughout the world. And have some expertise in records retention. Those will not give you the legal research. They'll give you a legal opinion because the law firms don't want to give up control and possession of their legal research.

This method is expensive, you can spend 5,000 a country or more to acquire this information. And of course, when you do updates you'll be paying for that again. We have problems of the native language versus English translations. I can read English and I can read Canadian English too and I'm okay a little bit with U.K. English. But I don't read French and I don't do German or Russian or Chinese or Japanese or any of those. When you translate it into English, so you can work with it, those are interpretations. That is not the language of the law. It doesn't mean the English version says what the native language version says. So there's always risks there.

There's an issue of custom in practice. We in the United States and Canada have pretty standard views of how we deal with things like, statutes of limitation. And what if the law requires you to keep records doesn't establish a retention period? Why we do retention and things like that. Pretty common understanding of how that's done. That's our custom and practice.

In Europe they think of the world very differently. They don't have the level of litigation we do. They're very, very strong in Europe in privacy, much more than North America. Although we're starting to adopt some laws on privacy. And the difference is in a normal retention schedule there may be requirements to keep records at least six years. Under a privacy requirement in Europe, the law might say, "You cannot have the record longer than five years."

So how do you come up with a retention schedule, where you have the records at least six years, but not longer than five? That's a problem and that's a problem about managing an international retention schedule. Then you have the management of the research from all the different countries, and the changing, and updates, and as I've said translations and meaning, and the differences in the retention period. So Switzerland could have a 10 year retention period for [inaudible 00:54:08] tax records, which they do. And the United States and Canada could have a six year. Which one do you follow or do you make exceptions for each country, and how do you manage all that? By the way, retention manager does have a function called legal subgroup that can manage retention differences by jurisdiction.

Option two is what I really prefer, and that's the U.S. and Canada schedule plus international review. How would we do this? We've developed a U.S or U.S and Canada. The reason I do that is, United States and Canada their research is in English. Our research is complete in both of those areas, we fully understand what its all about, and we have common understandings. Therefore use that as the base. We can work with that. Retention manager has complete research in English language.

Send the schedule to your foreign officers who will forward to the local attorneys for review. Just about every foreign office will have a local attorney they work with. You send them the

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retention schedule, the base schedule. And let them review it to see if they should add on anything. The local country attorney may recommend a longer retention period for records, but never shorter. So if you say 6 years, then that country can adopt 10 years and keep the records in that country, but not shorter.

With one exception, in these privacy issues they may have to keep it shorter by law. And so as long as it's done in that country, that's fine. But under this scheme, central records management does not manage all these exceptions. That's a huge burden, it requires a huge number of staff, a lot of work. And as I've said previously, managing the legal research requires a lot of work that's very expensive. This method allows you to have U.S. and Canada, focus your attention on that. And countries outside of North America can make an exception. You'll have a way of dealing with it. You don't have to keep track of it, you might keep a file on all of that, but you don't have to build it into your full retention schedule. That's just an exception they do in that country. So that's the way I would handle it.

I know I've covered a lot of material for today's session. Please feel free to contact Andre for additional information about what we do and how we can help you. If you do have additional questions, feel free to send it to us. We'll try to answer everybody's question the best we can. And I truly appreciate all of you joining us today. I hope you got a lot of the session as Andre said, we will post the slides and the full presentation on our website hopefully in a few days.

Hope you all have a good day. And we look forward to meeting with you sometime in the future. We are planning future webinars on various topics that touch on records and information management. Thank you for your time and attention.



Please contact us if you are interested in future webinars
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