

Making “the Right” Decision at the Information Lifecycle Management Crossroads



Moving to a Needs-Based Approach

Author: Dennis Kennedy, Legal Technology Expert and Information Technology Lawyer

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Introduction: Moving to a Needs-Based Approach

The world of information lifecycle management (ILM) is constantly evolving and there is much evidence that “business as usual,” ad hoc and reactive approaches will no longer work well in today’s environment. Decision-makers have arrived at an ILM crossroads. You can continue to go down the same path that is reactive and limited in scope or you can rethink your current strategy and explore an upfront investment that provides long-term savings and other benefits.

Why? Because the current approach you take to records and electronic discovery management may make your work more difficult than it needs to be.

First, decision-makers focus on their specific perspective of each individual issue, such as electronic discovery or regulatory compliance, rather than stepping back to see the bigger integrated picture. Second, decision-makers tend to think in terms of vendor products or services rather than the specific problems and needs of the business. Third, decision-makers are often swayed by the sweet sounds of “solutions” and forget that information lifecycle management (“ILM”) is not a fixed destination, but a path they will travel for years to come, with many changes and challenges. In fact, some experts suggest that it is realistic to expect full-blown ILM projects to take five to ten years. Much can and will change in that time.

Is there an ILM path we can take that is integrated, needs-based and takes a long-term, forward-looking approach that will give us better results, meet the compliance and other demands placed on organizations today, and make our lives, corporate and individual, easier? There is, and this white paper will introduce you to a second generation of ILM.

The ILM Crossroads: Moving from ILM 1.0 to 2.0

Strong forces – corporate governance and compliance requirements, electronic discovery demands, policy and procedural mandates, storage costs and capacities, business intelligence and knowledge management wish lists – have come together to push ILM to the forefront in many organizations. These organizations have learned that trying to impose ILM on top of unorganized systems and procedures with minimalist or piecemeal approaches in a time of crisis or after problems have already occurred is costly and counter productive. It may also have dire consequences, as we read in the newspapers on a regular basis.

These forces have brought people dealing with ILM to a crossroads. One path is to continue with first-generation ILM approaches – ad hoc, after-the-fact, hit-or-miss and vendor-focused, but targeted at problems that actually have occurred, thus benefiting from the learning of actual experiences. The second path, more appropriate today, is to move toward second generation ILM approaches – needs-based and built on integrated business, compliance and policy rules from the beginning, and with a long-term, forward-looking outlook in which upfront investments are traded for long-term savings and other benefits.

We will discuss the second path, currently less-traveled, gaining increasing consideration. In this second generation of ILM (“Information Lifecycle Management 2.0” or “ILM 2.0,” for short), we flip the traditional approach on its head. We will consider the benefits of ILM 2.0 approaches, look at the stages and processes in these approaches, and suggest some options to consider and action steps to take as we seek to transition from information understanding (ILM 1.0) to information governance (ILM 2.0).

An Overview of ILM 2.0 Approaches

ILM 2.0 approaches are characterized by:

- **Needs-based Focus** - Needs-based focus that addresses corporate governance, regulatory and other compliance issues and policy and procedural mandates rather than “solution” or vendor-specific approaches that require an organization to fit its policies and procedures to someone else’s approach.
- **Flexibility** - Flexibility and adaptability to adjust to changes in regulations, procedures, rules, technology and other variables.
- **Multiple Priorities and Uses** - Consideration of business and other priorities and multiple uses of information rather than letting one priority, such as future litigation needs, drive the entire process.
- **Actionable Use** - Focus on the actionable use of information rather than vaguely defined goals. For example, treating information with an eye toward how it might be used in the future as evidence in a case rather than considering data as amorphous electronic discovery fodder.
- **Cost Control** - Emphasis on cost control at all points, especially saving storage costs, reducing duplication of efforts and improving searchability and usability of information when it is needed.
- **Upfront Investment** - Upfront investment in policies, procedures and systems with an eye for benefits in terms of cost control and ROI over the long-term rather than putting off the day of reckoning and dealing with unexpected costs as they arise.

Surveying the Current Landscape

Electronic discovery deservedly gets much attention these days. However, there is a growing trend to treat electronic discovery as just one part of records management or ILM. In fact, regulatory compliance requirements and policy requirements for companies may now be a higher priority and have more urgency. Expect new developments to continue this trend.

Electronic discovery management most often takes the form of defensive, protective and often reactive measures. There has been a heavy emphasis on document retention (or more accurately, document deletion) policies and preparing for intensive and expensive litigation. Lately, we see decision-makers question this approach because universal deletion policies can delete exculpatory material or material that explains the context for decisions or actions. Universal retention policies may have adverse business results or make day-to-day work more difficult or costly.

In contrast, compliance requirements focus on current and future behaviors, and may even conflict with purely litigation-directed approaches. Compliance efforts might require that, for example, you preserve all relevant messages in accordance with specific regulations to safeguard consumer, privacy or other interests. Appropriate procedures might require monitoring, pre-review and other measures that simply are not part of a litigation-centric approach.

Similarly, internal policy requirements will also concentrate on behaviors and actions. The emphasis here is on ensuring that trade secrets, sensitive or non-public information is not released to unauthorized users, and on general enforcement of Internet and email usage and other public communications policies. Again, monitoring, pre-review and other measures will be appropriate and approaches that emphasize document retention will not specifically address these issues.

In addition, as companies increasingly turn to data mining, business intelligence and knowledge management tools, an aggressive document deletion policy might well vitiate the benefits of these approaches, costing much in the way of lost potential, while having only speculative and unquantified benefits in litigation matters.

Any ILM system will be an effort to get control of a growing avalanche of information. According to the Radicati Group, in 2004 the volume of person-to-person emails was sixty-four billion emails each day. Expect that to double in five years. Add to that ten billion instant messages per day, a number that is rising ever more rapidly than email. The typical employee's email account sends and receives an average of 19.5 megabytes of data each day. The monthly storage costs alone for that data for a company with 1,000 users will likely exceed \$300,000. These numbers help you appreciate the enormity of the effort required by any ad hoc, after-the-fact approach to ILM.

Finally, we see an increasingly regulated environment. Sarbanes-Oxley and HIPAA are perhaps the best known of these compliance requirements, but the CAN-SPAM legislation is an example of the willingness of legislators to quickly enact legislation to address politically popular issues involving technology and data. There is little argument that legislators are enacting these laws with little familiarity with the underlying technology issues or the actual compliance costs. Unintended consequence abound.

In this environment, there will be a premium placed on flexible, scalable and targeted approaches. Traditional ILM created difficulties in each of these areas. ILM 2.0, on the other hand, offers a forward-looking approach that lets organizations establish a flexible structure for current and future regulatory compliance, policy management, audits, investigations and litigation by capturing, preserving and accessing unstructured data and reviewing and producing relevant documents and data with reduced costs and risks.

Bringing Together the Litigation and Compliance Perspectives

There are two clear perspectives on ILM. These approaches have begun to evolve in different directions and it is essential to bring those two perspectives back in line. In the litigation-directed approach, the focus is placed on litigation preparedness and defending the company, with compliance, policy and other business issues given a secondary priority. Lawyers and the needs of lawyers play a dominant role in formulating these approaches. Litigation tools often become the tools of choice.

The corporate perspective places the emphasis on compliance, policies and business issues. Litigation and lawyers play a much smaller role in the decision-making and a different set of tools may be used.

The fact is that these two approaches must be harmonized. They should not exist in isolation. Properly understood, they inform each other and considering both perspectives, and the interplay between them, will allow you to improve your efforts and results.

What are ways that we can see these approaches working together? In a litigation-centric approach, a company might direct its efforts at limiting the amount of “bad” information that would be available in the event of an unforeseen litigation matter, often by acting as if all information is presumptively bad. By bringing in the corporate perspective, better targeted efforts can be made to retain useful information and weigh and manage likely risks. In response, lawyers can introduce the increasingly useful notion of treating information as potential electronic evidence. The result might well be the development of a system that keeps information useful to the business while managing all records in a way that makes them admissible as evidence if the need later arises.

ILM 2.0, with its emphasis on flexibility and process, creates an environment where the different perspectives on ILM can work together and be harmonized.

ILM 2.0 – Needs-Based Action Areas

ILM is often seen as a massive undertaking requiring heroic efforts, large expenditures and specific, expensive products and services. In many cases, the effort becomes vendor-driven and the processes of the organization are tailored to fit the vendor’s products, not vice versa. The enormity of the projects often leaves a trail littered with failed and unfinished efforts.

In ILM 2.0, focus changes to the actual needs of the company, viewing ILM as an adaptive process involving a series of manageable projects. ILM 2.0 also emphasizes actual, tangible benefits wherever possible.

Consider the following four key ILM needs:

- **Capture** - To capture information and store it in effective and reusable ways.
- **Preserve** - To preserve information in archives that keep information for necessary periods while still keeping the information readily available.
- **Act** - To act on information for a variety of purposes, including electronic discovery and compliance monitoring.
- **Reduce** - To reduce costs wherever possible.

Capture - Of the four needs, most organizations are probably doing the best at capturing information. Through backup procedures and other efforts, they are saving most of the information in the organization. However, there can be leakage in any number of ways (e.g., home computers, notebook computers, and Internet email accounts). Storage, however, continues to grow and often the approach is simply to make a copy of everything, with no additional processing. Often, you can make improvements in the usability and reusability of saved information.

Preserve - Archiving is something different from simple backup. Archiving serves many purposes, including disaster recovery and off-site backup, that may conflict with litigation-oriented ILM. Most organizations do not take advantage of the benefits of having a well-designed archive and may treat this data as “out of sight, out of mind.” However, archives must be monitored carefully to ensure that compliance requirements for preserving data are met. In addition, having archives that can easily be used for other business or electronic discovery purposes can have great benefits.

Act - Too often we think of ILM only in terms of what gets deleted and when. In fact, the power of ILM is that it will let us monitor, review, prevent and pre-review actions that might otherwise cause problems. In other words, ILM can give us actionable information and a means to act on it and with it. Imagine a system that identifies sensitive information in a sent email, intercepts it and forwards it to a reviewer before it passes outside the corporate firewall.

Reduce - With the drastic drop in price per gigabyte of hard drives, it is easy to believe that the cost of storage is getting close to zero. However, businesses store massive amounts of data and the overall costs can be quite high. Consider the earlier example of how it might cost more than \$300,000 just to store a month’s worth of email.

Taking advantage of ILM to get rid of duplicate or unnecessary files and reduce the amount of data you are actually storing can bring significant cost savings, in some cases by more than 50%. Making information more findable or easier to act on might bring other efficiencies. If we begin to focus on needs, we can make better decisions about ILM. We will also move away from trying to wedge our processes and needs into vendor-driven “solutions.”

Practical ILM 2.0 Approaches

The biggest change you will see in an ILM 2.0 approach is the emphasis on the front-end of the process. Investigation, needs assessment, project management and even investment or ROI analysis will become early priorities. Planning, both strategic and tactical, will become greater priorities than in the more reactive world of ILM 1.0. You will also want to look toward team-oriented approaches where all of the constituencies are heard and play some role. Electronic discovery concerns will not be the overriding concerns and motivation, although they will obviously play a major role.

You can expect more balanced approaches based on business needs and a lessened dependence on single-vendor “solutions” based solely on what you have done before.

Flexibility - Watch for alternatives that let you adjust to changes in laws or requirements. Pay attention to service level agreements, exit strategies and routes to move between vendors wherever possible. You do not want to be trapped in incompatible environments in an area where you are likely to see significant changes in the industry.

Actionable Information - You may be seeing ILM and electronic discovery in too passive a way. The power of ILM is how it can be used for the good of the business. Investigate your alternatives for ways to act on the information you have. Can you monitor specific compliance behaviors? Can you automatically identify emails with sensitive information and route it for review before it passes beyond the firewall? Can you generate information needed by lawyers for discovery review easily and quickly and then build the intelligence that you learn about privileged or redacted documents back into your system to save time and costs in the future? What are other ways that you can use an archiving system, de-duplication processes or other features to produce information that a business can use more effectively?

Multiple Priorities - Information seldom has only a single purpose. In fact, the value of information largely depends on its context and it can have different meanings in different contexts. Are you considering all of the purposes your information might be used?

Cost Savings - Here is the under-appreciated way that ILM can help you. Studies show that an astonishing amount of email in any organization is spam, jokes and duplicate forwarded emails, often with many copies of each. It is easy to understand how cleaning those items out will give you an archive of information that is “clean” and much easier to work with, making review in electronic discovery easier. However, cleaning out that material may well result in significant reductions in the amount of data stored and the storage costs incurred that may well improve the short-term ROI on ILM projects.

Pay Now or Pay Later - The newspapers regularly carry stories of the massive costs, including criminal prosecution, attributable to poor ILM that occurs in electronic discovery, handling compliance issues and other uses of data. If you talk to any group of general counsel, you will probably hear at least one story of several million dollars spent on electronic discovery to search for information in ways and places where no relevant information could be (or was) found.

These are “focusing events” for many companies and they change their approach to electronic discovery as a result. There is no question that ILM 2.0 involves more upfront investment than ILM 1.0, but the costs over time, and the reduced risks, may be worth the upfront investment many times over. Note, too, that focusing on using ILM to generate cost savings may help cover the costs of the initial effort.

Moving Forward

Where do we look for help in moving to ILM 2.0, if it makes sense for our organization? RenewData, ranked among the top five providers in the Preservation Archiving / Electronic Discovery category in the 2005 Socha-Gelbmann study of electronic discovery vendors, is one example of a service provider moving into the ILM 2.0 territory. However, remember that ILM 2.0 is needs-focused rather than vendor-focused. Let's look briefly at some of RenewData's offerings as examples of ILM 2.0, but your answers will be based on your needs and the tools that best fit your needs.

ActiveVault - ActiveVault takes an ILM 2.0 approach to archiving. You see dynamic de-duplication to streamline backup processing and reduce storage costs. Filtering and search tools allow you to act on sensitive data and reuse archived when you need it. Sophisticated extraction tools focus on getting just the types of data you want.

ComplianceNOW - ComplianceNOW focuses on email policy compliance and archiving. It allows you to capture and preserve email while supervising and auditing compliance matters. In ILM 2.0 fashion, it can reduce email archive storage requirements, generating helpful cost savings.

PreservationNOW - PreservationNOW focuses on legal review. It lets legal professionals capture, preserve, search and review enormous volumes of data, treating it as evidence and allowing them to act on the information they get.

These are three examples of the types of tools you will want to consider when moving your organization toward an ILM 2.0 approach.

Conclusion

Although the world of ILM is constantly evolving, there is much evidence that "business as usual," ad hoc and reactive approaches will no longer work well in today's environment. Decision-makers have arrived at an ILM crossroads. You can continue to go down the same path or you can choose the ILM 2.0 path this paper outlines.

In ILM 2.0, the focus changes to ILM approaches that are needs-based, built on integrated business, compliance and policy rules from the beginning, and have a long-term, forward-looking outlook in which upfront investments are traded for long-term savings and other benefits. This paper is meant to be a road map to help you choose the path you take.



9500 Arboretum Blvd Suite L2-120 / Austin, TX 78759 / www.renewdata.com
512.276.5500 Office / 1.888.811.3789 Toll Free / 512.276.5555 Fax

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About the Author

Dennis Kennedy (dmk@denniskennedy.com) is a well-known legal technology expert and information technology lawyer. An award-winning author with hundreds of publications on legal and technology topics to his credit and a frequent speaker, Dennis was named the 2001 TechnoLawyer of the Year and 2003 Contributor of the Year by TechnoLawyer.com for his role in promoting the use of technology in the practice of law.

His blogs, DennisKennedy.Blog (www.denniskennedy.com/blog/) and Between Lawyers (www.corante.com/betweenlawyers/) are among the best-known and most influential of the legal blogs. His website (www.denniskennedy.com) has long been considered a highly regarded resource on legal technology and technology law topics. He is also a co-founder of LexThink!, a conference and consulting group that focuses on innovation in the professional services industry (www.lexthink.com). Dennis also co-writes a popular column on electronic discovery technology issues and provides educational seminars on electronic discovery topics.

He is a member of the ABA Law Practice Management Section's Council and is an editor and board member of the Law Practice Today webzine (www.lawpracticetoday.org). Dennis received his J.D., cum laude, from the Georgetown University Law Center in 1983 and B.A., magna cum laude, from Wabash College in 1983.

About RenewData

RenewData® is a leader in Information Governance™ solutions, providing compliance, preservation archiving and electronic discovery solutions for corporations and law firms to manage email and user files—as evidence. RenewData's superior legal expertise and market-leading extraction and archiving technology enables companies to migrate from reactive to proactive data management for litigation and investigations.

RenewData is ranked as one of “Top 5” electronic discovery service providers by the 2005 Socha-Gelbmann Electronic Discovery Survey Report. RenewData has grown from 16 employees in 2002 to its current roster of 210 employees. RenewData's headquarters are in Austin and has regional offices in Minneapolis, New York, Houston, Los Angeles and Washington D.C. For more information, visit <http://www.renewdata.com> or call 888.811.3789.

Glossary

ActiveVault - RenewData's ActiveVault Evidence Management Platform ("ActiveVault") is the electronic evidence industry's leading technology platform for media and data extraction, native file filtering and production output. This platform is designed for rapid execution of large scale projects enabling large volumes of data to be processed in an expeditious manner. ActiveVault is designed to ensure that legal professionals can achieve their schedules, maintain high levels of quality and control the expense of electronic evidence management.

Electronic Discovery - The process of collecting, preparing, reviewing, and producing electronic documents in the context of the legal process.

Evidence - The means by which an alleged matter of fact is established or disproved. Legal elements for establishing data as evidence include:

- **Authenticity:** The origin and integrity of the record must be demonstrated.
- **Accessibility:** The record must be available for use.
- **Relevance:** The pertinence of the record can must be reliably demonstrated.

Information Lifecycle Management - Information Lifecycle Management comprises the policies, processes, practices, services, and tools used to align the business value of information with the most appropriate and cost-effective infrastructure from the time information is created through its final disposition. Information is aligned with business requirements through management policies and service levels associated with applications, metadata, and data.

Information Governance - Information governance is a framework of organizational policies and procedures that establish who has the responsibility for information lifecycle management and how ILM decisions must be made and implemented. Information governance applies across the organization, not just in the IT department, and will involve high-level executives and often cross-functional teams. The term "information governance," rather than ILM, is often used in companies that have substantial regulatory or other compliance obligations.



9500 Arboretum Blvd Suite L2-120 | Austin, TX 78759 | www.renewdata.com
512.276.5500 Office | 1.888.811.3789 Toll Free | 512.276.5555 Fax

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