Evidence Lifecycle Management— The Next Frontier

Document management is pretty well understood, conceptually. Think about "things" holistically – from their genesis to their demise – and you will attain wisdom, be more gratified in general and, for sure, sound really smart. Pithy comments aside, it is important to note that "document management thinking" has pervaded almost every business function, technology implementation and economic analysis. There is a reason for this – it makes sense!

PRASHANT DUBEY
NEIL ARAUJO

Document management essentially has sensitized us to the need to consider the useful life/half-life of information for purposes of maximizing its "knowledge potential." As one of the leading Enterprise Content Management (ECM) providers, Interwoven has done a great deal to educate the market about the issues surrounding Collaborative Document Management (CDM) – the next generation of document management that facilitates team-based collaboration around document-intensive processes.

Business success depends upon this ability; however, in most organizations, information is locked up on users' computers and e-mail servers, in PST files, or physically piled up on desks. This content is difficult to access, and it is almost impossible to ensure that the most current versions of documents are shared across the organization. What's more, this vital business content can easily be corrupted or lost and is extremely costly to recreate if an employee leaves the organization or it is not properly backed up.

CDM enables us to capture the business purpose (metadata) of documents at the time of creation for the most effective use of this data in the future. It's critical that this connection between the creation/capture and potential future uses is established early in the document lifecycle, thus ensuring that the storage, retrieval and analytic systems surrounding these documents are properly implemented and utilized. Essentially, CDM is the business process framework for what's most salient to the litigation world – Evidence Lifecycle Management (ELM).

By now, most, if not all of us, are aware of the litigator's lament – "it's not just a document, it's potentially evidence." The electronic information avalanche has made this lament quite tangible. Consequences of inadvertent document destruction do not manifest themselves in mere sanctions – adverse inference instructions and preclusion orders are very much in vogue. It can be stated, without much fear of hyperbole, that "hitting the delete key by mistake can cost you a "bet the company" lawsuit.

So, where does ELM come in? Similar to how CDM provides the business process framework for how documents are managed, ELM is the framework for evidence management.

Over the past 18 months, most corporations that face litigation on even a fairly regular basis have considered the wisdom of treating litigation sub-processes, like discovery, as organized business processes vs. a series of discrete events. Conceptually, this makes sense. The devil is, as they say…in the details. How should one start to put a business process in place for something that is a moving target? For example, most organizations are at least thinking about the steps toward a buttoned up litigation hold process. As part of this process, witnesses (e.g. employees, vendors, etc.) need to receive instructions to suspend the destruction of documents that might be potentially pertinent to an anticipated litigation/investigation matter. However, there is no certainty that preservation
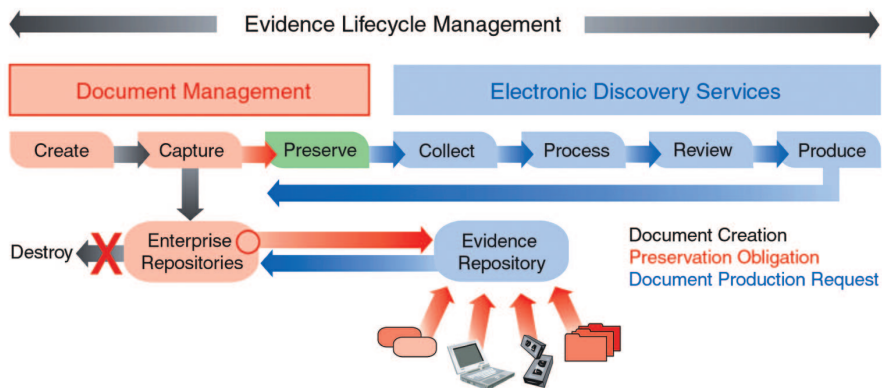
Streamlining the corporation's ability to respond to litigation by linking document management to electronic discovery service

orders, when handed out, will be followed. To mitigate this risk, companies are spending millions of dollars implementing e-mail archiving systems in an attempt to preserve at least some of the potentially responsive evidence. Now, when should these e-mails be destroyed? If you have it, it is discoverable. If you don't, you might be penalized. If you produce some of these e-mails/documents to opposition as part of discovery, can you now delete these documents from your archival system? Perhaps – unless you need to keep it for SOX compliance. The permutations are endless….

In comes ELM. Imagine being able to attribute a document at the time of its creation based on its potential to become evidence. Imagine capturing and storing this document with that filter in mind. Imagine using, as the basis for these filters, proactive compliance needs, such as SOX and NASD, as well as reactive compliance needs, such as litigation, government investigation and government second requests. Imagine being able to establish this business process framework for evidence management – *then* purchase technology that allows you to implement this framework. Interwoven has long understood that the *mechanics* of CDM can be leveraged to ensure that the *sensitivities* of ELM manifest themselves in a technology platform that enables a business process to exist.

The real promise of ELM, powered by CDM, can help enterprises:

- Empower discovery management by capturing electronic documents in a secure, scalable CDM evidence repository
- Meet preservation obligations when litigation is anticipated by quickly and accurately identifying relevant documents from throughout the enterprise and ensuring they are not inadvertently destroyed
- Collect, process, review and deliver responsive documents through a process-oriented approach that is fast, efficient, predictable and legally defensible
- Retain produced evidence for future legal requirements

So now, with ELM, you can reach the next frontier….

About the Authors:

Prashant Dubey is Vice President and General Manager of Discovery Management Services at Fios, Inc.

Neil Araujo is the Vice President for Legal and Professional Services Solutions at Interwoven, Inc.