



## 203 Global Records Retention Policies & Procedures

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ABN AMRO Bank N.V.

## Faculty Biographies

### **James T. Bellerjeau**

James Bellerjeau is General Counsel and Secretary of Mettler-Toledo International Inc., headquartered in Greifensee, Switzerland. Mettler-Toledo is the world's largest manufacturer and marketer of weighing instruments for use in laboratory, industrial, and food retailing applications.

Prior to joining Mettler-Toledo, Mr. Bellerjeau worked at the law firms Cleary, Gottlieb, Steen & Hamilton in Frankfurt, Germany, and Fried, Frank, Harris, Shriver & Jacobson in New York, NY. His practice included securities, structured finance, mergers & acquisitions, and corporate law.

Mr. Bellerjeau is a country representative for the European chapter of ACC. He also serves on the Legal Committee of the Swiss American Chamber of Commerce.

Mr. Bellerjeau received a BA from Clark University, a JD from Albany Law School, and an MBA from Rensselaer Polytechnic Institute.

### **Catherine Fox**

Catherine Fox is Senior Vice President and General Counsel of Alcatel Space, a company which designs and manufactures satellites for telecommunication, scientific observation, and defense. Prior to entering her current position, Ms. Fox was General Counsel of Alcatel CIT, the French telecommunication infrastructure manufacturer of the group and before, General Counsel of Alcatel Trade International, the marketing and promotional division of Alcatel.

Before joining Alcatel, Ms. Fox was General Counsel of Pechiney Electrometallurgie. She also held a position at Technip, the oil engineering company of the Elf group, dealing with the contractual side of oil refinery design and construction.

Ms. Fox is a member of the ACC Europe Board of Directors.

Ms. Fox has a B.A. in English Literature (Rouen), the Diploma of Higher English Studies (Cambridge) and a B.A. in German Literature (Saarbrücken), a DEA in Civil Law from Paris University and the Diploma of Institute of Political Science of Paris.

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



## Global Records Retention Policies & Procedures

ACCE Annual Meeting (June 2005)

### Designing and Implementing an E-Mail Policy – A Cornerstone of Any Records Retention Program

## Agenda



-  Situation Analysis – Why Look At E-Mail?
-  Behavioral Challenges
-  Technical Challenges
-  Implementation Challenges
-  Sample Policies

## Situation Analysis – Why Look At E-Mail?



### Some Recent Headlines

- **“Once Again, Spitzer Follows E-Mail Trail”** [NYT Abstract, Oct. 18, 2004]
  - New York Atty Gen Eliot L Spitzer is using damaging e-mail exchanges to help build bid-rigging case against giant insurance broker Marsh & McLennan
- **“Merck’s Vioxx E-mail Scrutinized”** [CNN/Money, Nov. 1, 2004]
  - Internal Merck & Co. e-mails and marketing materials show the drugmaker fought forcefully for years to keep safety concerns from destroying the sales of big-selling painkiller Vioxx
- **“Boeing Scandal Highlights E-mail Checks”** [USA Today, Mar. 11, 2005]
  - Ill-advised e-mail to a female employee that led to the ouster of Boeing CEO Harry Stonecipher should be a cautionary message for any worker with an e-mail account

## Situation Analysis – Why Look At E-Mail?



### E-mail is Just One Part of Records Management ... Arguably the Most Important Part

- Likelihood of whistleblowers, investigation and litigation is greater than ever. E-mail presents two key risks:

#### Content Risk

- Informal tone, careless writing
- Almost anything can be taken out of context

#### Cost Risk

- On-line data is costly to turn over, especially in large volumes
- Off-line data (personal folders, attachments) may require significant effort to locate – personal hard drives, missing links to original e-mail

## Situation Analysis – Why Look At E-Mail?



### Content Risk

- Microsoft antitrust case
  - AOL executive e-mail: “Gates delivered a characteristically blunt query: ‘How much do we need to pay you to screw Netscape? This is your lucky day.’”
  - Microsoft lawyer: e-mails are “*snippets taken out of context*”
- Merck - Vioxx
  - Headline: “Vioxx Emails Suggest Early Knowledge”
  - Lawyer representing Merck: internal e-mails were “*taken out of context*” and “do not accurately represent the conduct of Merck and its employees”

## Situation Analysis – Why Look At E-Mail?



### Cost Risk

- Employees keep a lot of e-mails by default
  - Easier to just keep everything than actively managing messages
- Formal litigation may require e-mail production or review, but many other “informal” situations also
  - Audit Committee investigation, regulatory inquiry, tax audit, etc.
- Cost of e-mail production can be very high
  - Cost to restore e-mail backup tapes
  - Need to search hard drives for off-line data
  - Time and effort to “de-duplicate” multiple copies
  - Cost to convert e-mails into searchable database
- Even innocuous messages take time to review

## Situation Analysis – Why Look At E-Mail?



### So Why Not Delete Everything After 45 Days?

- E-mail is primary communication tool
  - Used to track pending matters, and as a filing system
  - Major productivity concerns tied up with e-mail
- E-mails are often the only evidence of the reasons behind various business decisions
  - How to show diligence, due care, good faith, etc.? Can just as often show the company acted properly
- Records must be maintained during litigation, including e-mail
  - Company must be able to show it preserved necessary records; automatic deletion must be suspended when litigation is expected
  - “Morgan Stanley ordered to pay damages” [Reuters, May 16, 2005] :  
“The judge ... became incensed by Morgan Stanley’s handling of e-mails during the discovery process, and sanctioned the firm for these failures with a presumption of fraud”

## Situation Analysis – Why Look At E-Mail?



### Challenge: Address Risks Without Killing Productivity

- Behavioral Challenges
  - Raise awareness of e-mail risks
  - Focus on document creation
  - Provide ongoing employee training
- Technical Challenges
  - Are messages accessible?
  - How to use age & size limits
  - Are your messages easily searchable?
- Implementation Challenges
  - During planning
  - Upon roll-out
  - Living with the policy

## Behavioral Challenges



### Raise Awareness of E-Mail Risks

- Improper e-mails put both the employee and the company at risk
  - Embarrassing publicity, civil or criminal action
  - Regulatory sanctions, disciplinary actions
- Problems come up in seemingly harmless areas
  - In 1995, Chevron paid \$2.2 million to female employees to settle a sexual harassment lawsuit stemming from inappropriate e-mail, including one entitled "*25 Reasons Why Beer is Better Than Women*"
- Risks come in many guises
  - E-mails are easily misunderstood
  - E-mails are not always the best means of communication
  - E-mails allow the inappropriate dissemination of sensitive information
  - E-mails should never be considered private

## Behavioral Challenges



### Focus on Document Creation – “Think . . . Then Send”

- Use judgment and care creating documents – they will be viewed as a reflection of company values, policies and ethics
  - Assume documents will be made public and read out of context
- Prohibited content:
  - Statements that are factually incorrect
  - Statements that are discriminatory, offensive, threatening, or intimidating
- Examples of potentially problematic content:
  - Comments about competitors, potential legal liability
  - Possible accounting treatment, income taxes, transfer pricing
  - Sexual comments or images; racial or gender-specific comments
  - Jokes, gossip

## Behavioral Challenges



### Focus on Document Creation – Do's and Don'ts

- ✍️ Consider what is the most appropriate means of communication
- 📄 If a writing is necessary, make sure your document is factual and accurate
- 🗨️ Deal with inappropriate statements sent to you by others, for example by clarifying what is meant, correcting inaccuracies, taking follow-up actions, etc.
- 🗨️ Avoid irony, sarcasm or exaggeration. Humor is often misunderstood
- 🗨️ Assume that if a statement can be misconstrued or taken out of context, it will be
- 🗨️ Avoid speculations or statements beyond your field of professional expertise
- 📧 Avoid overly broad distribution; send only to persons who have a need to know
- 🗨️ Assume your document will be read by an adversary in litigation
- 🗨️ Be aware the company will have access to your messages.  
Would you still be comfortable if your message became public?

## Behavioral Challenges



### Provide Ongoing Employee Training

- Multiple avenues to raise awareness
  - Management calls
  - Employee newsletters
  - Targeted training
- Certain groups should receive extra training
  - Managers
  - Persons involved in preparation of financials
- Ongoing training and emphasis
  - Part of management incentives
  - Periodic web training
  - Certification



## Technical Challenges



### Are Messages Accessible?

- Know Where Your Content Is
  - On-line
  - Personal folders: on hard drive, backed up to network server
  - Public / shared folders
  - Removable media
  - CRM systems
  - Instant Messaging logs
  - Backup tapes
- Bring Off-Line (Inaccessible) Content On-Line
  - Prohibit personal folders
  - Prohibit storage on removable media
  - Give incentives to bring content on-line: company archive with more sophisticated searching, automatically enforced retention periods, etc.

## Technical Challenges



### How to Use Age & Size Limits

- Age Limits
  - Reinforce the need to regularly review and manage messages
  - Experience shows most matters are addressed within 2 weeks
  - Survey of global multinationals shows limits range from 20 to 180 days (median 45)
  - Because accumulation is in older messages, consider a more generous current period to provide greater flexibility: 60 days
- Size Limits
  - Make users focus on which messages must be kept
  - Average size limit for all US companies: 110 MB
  - Average message size (w/ attachments): 40 KB
  - Corresponding # of messages: 2,750
  - Need to have an approach for large attachments
  - Consider the need for limited exceptions

## Technical Challenges



### Are Your Messages Easily Searchable?

- Emphasis on “easily”
  - Simple search provided in mail environment
  - Ability to search in attachments?
  - Ability to search embedded messages?
  - Indexing, speed of individual search, etc.?
- Search by users
  - Enhance usefulness of stored messages
  - More powerful search tool is incentive to keep messages on-line
- Search in connection with specific request
  - By user, keyword, etc.
  - For compliance purposes
  - Internal or external investigations
  - Litigation-related discovery

## Technical Challenges



### Ease of Searching – From Most Convenient to Least

<u>Type of Data / Database</u>	<u>Location of Data</u>
▪ Litigation database	Company / Third party
▪ Professional, searchable archive	Storage area network
▪ Mail environment (e.g., MS Outlook)	Company server
▪ Personal folders	User hard drive
▪ Individual message files	User hard drive
▪ Backup tapes (1)	Tape
▪ Removable media	CD-ROM, etc.

(1) Consider also time and cost to restore and de-duplicate, ability to include in otherwise searchable database

## Implementation Challenges



### During Planning

- Executive sponsorship
  - How interested and involved is senior management?
  - E-mail policies are hard even with full support
- Involving right people
  - Consider roles of legal, IT, HR, finance, business units, etc.
- Gathering data
  - How is e-mail used? By whom?
  - Where are messages stored; by users, by company?
  - What e-mail backups are taken, and how long retained?
  - And much more. . .
- Other questions
  - Public folders, instant messaging, company monitoring, consequences of violations, etc.

## Implementation Challenges



### During Roll-Out and Afterwards

- Resistance to change generally
  - Often strong emotional reactions to any policy affecting e-mail
  - Concerns about lost productivity
  - "Misinformation" spread by service providers about the need to retain all messages
  - Consensus about need for change is often only possible after painful first-hand experience
- Making the switch
  - Technical challenges: bandwidth to bring off-line content on-line, storage capacity necessary in short term
  - Time needed to deal with existing messages
  - Competing priorities among other corporate / business initiatives
- Regular reinforcement and reminders

## Sample Policies



### E-mail Policy (see attachment)

- Computers and e-mail system are company property
- Address expectations of privacy, and private use of systems
- Content guidelines on creating messages, do's and don'ts
- Messages must be accessible on company systems
- Users should manage messages – age and size limits
- Specify broadly messages that should be retained, and how
- Instant messaging
- Company monitoring and access to user accounts

## Sample Policies



### E-mail Tape Backup Policy

- Consider need to separate e-mail backups from other server data that may need to be retained longer
- Create daily backup of e-mail server / data
- Keep 10 daily backups, then rotate oldest tape
- Do not retain tapes older than 10 days unless required in connection with litigation
- Periodic confirmation from IT managers

## Guideline

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### Use of E-Mail and the Internet

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valid for:

**ABC Company Employees**

from:

**June 2005**

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#### 1. Introduction

ABC Company makes available to its employees access to e-mail and the Internet to facilitate communication among its employees, customers and other parties in connection with company business. These technologies assist employees in the performance of their jobs in obtaining and exchanging work-related information. At the same time, Internet and e-mail use can create certain risks that may subject both individuals and the company to financial loss, and may damage ABC Company's reputation.

#### 2. Purpose and Scope

The following rules have been established to help ensure responsible and productive Internet and e-mail use within ABC Company. This policy applies to all ABC Company employees. The General Managers of each business unit shall take steps to ensure compliance with local law and with this guideline.

#### 3. General Guidelines

The e-mail system, computers, computer files and software furnished to employees are ABC Company property intended for business use. Access to the Internet through company-provided equipment shall be used to fulfill business needs. Users may only keep messages in one company e-mail account and mailbox.

Limited or occasional private use of e-mail and the Internet is permitted. As a general rule, however, any such private use should not be made during business hours and should not interfere with the performance of work duties as determined by ABC Company in its discretion. No private e-mail accounts may be created on the company's e-mail system.

##### 3.1 E-Mail Messages May Be Business Records

Messages created by ABC Company employees may be business records with potential legal implications. Employees should not send messages to unauthorized third parties or persons without a legitimate business purpose that contain content or attachments that are company or customer confidential.

Employees cannot assume that e-mail messages will remain confidential, regardless of whether sent inside or outside the company. Even when a message is deleted, it may still be possible to retrieve and read that message. Because of confidentiality concerns, employees should not set automatic forwarding of their e-mail to an address outside the ABC Company system (for example, while traveling or on vacation).

## ABC Company

### 3.2 E-Mails May Only Be Kept in On-Line Folders

E-mails may only be kept in the main Outlook Mailbox folders (Inbox, Deleted Items, and Sent Items) as well as in custom folders that each user may create as subfolders underneath their main Outlook Mailbox folders. The use of public folders is discussed in Section 3.4 below. E-mails may not be saved in any off-line methods, including in personal folders, to your hard drive, on removable media, or otherwise. "**Personal folders**" are custom folders you create anywhere other than under the main Outlook Mailbox folders.

Attachments should be kept together with the related e-mail message whenever possible.

### 3.3 Employees Should Proactively Manage Their Messages

The e-mail system will limit the age of e-mails in the main Outlook Mailbox folders to no more than **60 days**. Experience shows that the large majority of matters can be addressed within this time period.

In certain cases, it may be necessary or appropriate to preserve a message for longer periods to comply with local law, document retention policies, or otherwise consistent with prudent business practices. Such messages may be printed out and maintained in hard copy. Messages may also be maintained electronically in custom folders underneath the Inbox or in other on-line archive systems the company may make available. Messages moved to custom folders under your Inbox will not be subject to the 60 day restriction.

The e-mail system will also limit the overall size of the Mailbox. For this reason, employees should only retain messages that are clearly required to be kept for a business purpose. Experience suggests that only a small percentage of all messages need and are appropriate to be archived for longer periods.

Please note that you must keep all messages and other documents relating to anticipated or ongoing lawsuits, and when you have been advised to do so by counsel. You should move such messages to custom folders to prevent inadvertent deletion.

### 3.4 Public Folders

"**Public folders**," are on-line folders that are shared among more than one user. The owners of existing public folders should manage the messages in these folders similar to how they manage their own Mailbox. Creating a new public folder will require prior approval of the relevant IT manager and unit general manager.

## 4. Instant Messaging

Instant messaging is not permitted. Exceptions may be made only by the Head of Information Systems and CEO. If an exception is granted, instant messaging may only be done using company-provided software. In any event, because of security concerns, instant messaging should never be done with parties outside the company.

## ABC Company

**5. Content Guidelines; Do's and Don'ts**

E-mail messages and other documents created by employees are a reflection of the core values, policies and ethics of ABC Company. All employees should therefore exercise appropriate judgment in creating documents, and should ensure they are consistent with our code of conduct.

Corporate documents and data that is composed, transmitted, accessed, or received via the Internet or e-mail must not contain content that could be considered discriminatory, offensive, obscene, threatening, harassing, intimidating, or disruptive to any employee or other person. Examples of unacceptable content may include jokes, gossip, sexual comments or images, racial slurs, gender-specific comments, or any other comments or images that could reasonably offend someone on the basis of race, age, sex, religious or political beliefs, national origin, disability, sexual orientation, or any other characteristic protected by law. Keep in mind that messages you send may be forwarded to unknown third parties.

Before creating a document, including e-mail messages, carefully consider what information you need to communicate, why you are communicating it in the form you are, and how others may misinterpret or take out of context what you have written. As a general rule, you should use the same care in drafting messages as if you were going to send a letter by regular mail.

**Do's and don'ts**

1. Consider what is the most appropriate means of communication, which may be a writing, a phone call or a meeting.
2. If a writing is necessary, make sure your document is factual and accurate.
3. Deal with inappropriate statements sent to you by others, for example by clarifying what is meant, correcting inaccuracies, taking follow-up actions, and so on.
4. Avoid irony, sarcasm or exaggeration. Humor is often misunderstood when communicated electronically.
5. Assume that if a statement can be misconstrued or taken out of context, it will be.
6. Don't comment about legal liability, or ongoing or potential litigation. Avoid speculations or statements beyond your field of professional expertise.
7. Avoid overly broad distribution; send only to persons who have a need to know.
8. Assume your document will be read by an adversary in litigation.
9. Be aware the company will have access to your messages. Would you still be comfortable if your message became public?

**6. Respect Copyright, Trademark and Patent Ownership**

The unauthorized use, installation, copying or distribution of copyrighted, trademarked or patented material on the Internet is expressly prohibited. As a general rule, if an employee did not create material, does not own the rights to it or has not gotten authorization for its use, it should not be put on the Internet. Employees are also responsible for ensuring that the person sending any material over the Internet has the appropriate distribution rights.

## ABC Company

**7. Monitoring and Access**

Use of the e-mail system, and access to the Internet through company-provided equipment is not private. Access to any Internet site may be blocked at ABC Company's sole discretion. Subject to compliance with local law, ABC Company reserves the right to monitor any Internet or e-mail use made using company equipment, including circumstances where there are grounds to suspect misuse or noncompliance with this guideline, as determined by ABC Company in its sole discretion.

ABC Company may also monitor compliance with this guideline by randomly inspecting e-mails and Internet log files. The decisions about access to Internet and e-mail records will be made at the discretion of the general manager. In appropriate circumstances, access to and review of these records will be made under supervision of the Internal Audit function or other persons independent of line management.

Abuse of the Internet access and e-mail facilities provided by ABC Company in violation of law or company policies will result in disciplinary action, up to and including termination of employment according to the country-specific legal requirements.

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Distribution:	All general managers of the ABC Company Group	June 2005
Author:	General Counsel	
Replaces:	Prior versions	Chief Executive Officer

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# Global Records Retention Policies & Procedures

ACCE Annual Meeting (20<sup>th</sup> June 2005)

Brussels

## Corporate Records retention requirements

Catherine Fox

ACCE BRUSSELS 20TH JUNE 2005

## Attachment 2

**Records Retention and Destruction Program**  
 (Sample outline of topics to be addressed at the legal unit level)

<p>Sample subject matters and related records</p> <p><i>The listing below may include matters and/or documents that are not relevant to your legal unit, and will likely not include all matters and/or documents which are relevant to your unit, but which you should address as you evaluate your program.</i></p>
<p><b>General Corporate and Shareholder Records</b>          Records of incorporation          Regulatory filings          Meetings and actions of directors, shareholders          Annual and other reports and shareholder materials</p>
<p><b>Tax Records</b>          Tax returns (all)          Social security          Property          Income tax records          Work papers</p>
<p><b>Accounting, Finance and Treasury</b>          Financial statements          Projections, planning memos, banking records          Expense accounts, approvals</p>
<p><b>Plant and Property Records</b>          Maintenance and repair          Property deeds, easements, license, rights of way          Purchase or lease records of plant facility          Mortgages          Property insurance          Records relating to disposal of waste</p>
<p><b>Pay Administration Records</b></p>
<p><b>Employee Benefit Plan Documents</b>          Plan documents          Records of service and eligibility for benefits</p>
<p><b>Personnel</b>          Earnings records (general)          Education and training records (general)          Individual contracts of employment          Insurance records (employees)</p>

<p>Job descriptions  Training manuals  Union agreements  Employees' personnel records</p>
<p><b>Patents, Trademarks and Copyrights</b>  Original patents and trademarks, related documents, work papers, correspondence, memos  Royalty records  All copyright permissions for use of others' copyrighted material  All permission to use any photographs, including photos of employees  All copyright registrations  In and outbound licenses</p>
<p><b>Products</b>  Manufacturing  Drafting records  Inspection records  Lab test reports  Product, tooling, design, engineering research, experiment and specs Records</p>
<p><b>Quality Control and Inspection</b>  Customer service records  Inspection and test records  Supplier quality data</p>
<p><b>Sales and Marketing</b>  Customer order file  Market investigations and reports  Presentations and proposals  Sales analysis reports</p>
<p><b>Credit Relating to Customers</b>  Request for credit, approval forms, qualifications reports  Guarantees and subordination agreements  Security agreements, and financing statements  Disputed accounts</p>
<p><b>Commercial Contracts</b></p>
<p><b>Procurement and Supply Records</b></p>
<p><b>Security</b></p>

Attachment 1  
Retention of Documents

Document	Retention Period		Starting point	Location		Who archives	Confidentiality level	Grantor of access	Who has access	Reproduction authorized
	Period	Destruction automatic		office	outside					
<i>Sample subject matters and related records</i>										
General Corporate and Shareholder Records										
Tax Records										
Accounting, Finance and Treasury										
Plant and Property Records										
Pay Administration Records										
Employee Benefit Plan Documents										
Personnel										
Patents, Trademarks and Copyrights										
Products										
Quality Control and Inspection										
Sales and Marketing										
Credit Relating to Customers										
Commercial Contracts										
Procurement and Supply Records										
Security										

## ATTACHMENT 3

**IMPORTANT LEGAL NOTICE:** The information on this site is subject to a disclaimer and a c



**Freedom, security and justice**

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Data Protection – European Commission

## National Data Protection Commissioners

### European Union:

**Belgium - Czech Republic - Denmark - Germany - Estonia - Greece - Spain - France - Ireland - Italy - Cyprus - Latvia - Lithuania - Luxembourg - Hungary - Malta - Netherlands - Austria - Poland - Portugal - Slovenia - Slovakia - Finland - Sweden - United Kingdom**

### EFTA Countries:



**Iceland - Liechtenstein - Norway - Switzerland**

### Candidate countries

**Jersey/Guernsey/Isle of Man**

### Third Countries

## European Union

Country	Contact
 <b>Belgium</b>	<p><i>Commission de la protection de la vie privée</i>  <i>Rue Haute, 139</i>  <i>B - 1000 BRUXELLES</i></p> <p><b>Tel</b> 32/2/542.72.00  <b>Fax.</b> 32/2/542.72.01 or 542.72.12  <b>e-mail:</b> <a href="mailto:commission@privacy.fgov.be">commission@privacy.fgov.be</a>  <a href="#">website</a></p>
 <b>Czech Republic</b>	<p><i>Dr. Karel Neuwirt</i>  <i>The Office for Personal Data Protection</i>  <i>Urad pro ochranu osobnich udaju</i>  <i>Pplk. Sochora 27</i>  <i>CZ - 170 00 Prague 7</i></p> <p><b>Tel.</b> +420 234 665 111  <b>Fax.</b> +420 234 665 444  <b>e-mail:</b> <a href="mailto:info@uouu.cz">info@uouu.cz</a>  <a href="#">website</a></p>
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**Greece**



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Ampelokipi Athens, Greece*

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**e-mail:** [kkosm@dpa.gr](mailto:kkosm@dpa.gr)

[website](#)

**Spain**



*Agencia de Protección de Datos  
C/Sagasta, 22  
E - 28004 MADRID*

**Tel.** 34/91/399.62.00

[website](#)

**France**



*Commission Nationale de l'Informatique et des Libertés  
Rue Saint Guillaume, 21  
F - 75340 PARIS CEDEX 7*

**Tel** 33/1/53.73.22.22  
**Fax.** 01/53/73/22/00  
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## **203 Global Records Retention Policies & Procedures**

**James Bellerjeau**

**Catherine Fox**

**John Grey**

ACC Europe 2005 Annual Conference: Lawyers Across Borders:  
Succeeding in Transnational Business

June 19-21, Conrad Hotel,  
Brussels, Belgium



## **203 Global Records Retention Policies & Procedures**

- Introduction
- What purposes do records serve?
- What are some benefits of an effective Records Management program?
- What are some legal risks / issues related to Records Management?
- Elements of a Records Management Policy
- Policy Development
- Considerations For Electronic Messages
- Additional Resources

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## **Introduction**

# ● Effective Records Management Programs – Preserving the Corporate Memory

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## **What purposes do records serve?**

- Records are a vital source of:
  - Information for the management and development of a company
  - Evidence of a company's activities, transactions, conduct, rights and obligations
  - Knowledge about the expertise, work and achievements of a company.

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## **What purposes do records serve? (cont.)**

- Records can be captured and managed for different purposes:
  - Supporting the information needs of the business
  - Meeting statutory / regulatory requirements
  - Addressing actual or potential litigation or other dispute resolution processes

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## **What are some benefits of an effective Records Management program?**

- Legal compliance
- Staff productivity – facilitate reuse of information / increase speed of record retrieval
- Lower Administrative Costs – e.g. lower costs of storage & costs of complying with disclosure obligations

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## **What are some legal risks / issues related to Records Management?**

- (Reducing) Electronic Discovery Costs
- Privacy
- Court sanctions for failing to search for or destroy documents responsive to a request for documents
- Suspension of document destruction when litigation, investigations, audits are pending.
- Digital Archiving – A question of “trustworthiness”

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## **Elements of a Records Management Policy**

- Mission Statement – Policy Objectives
- Scope of Policy
- Organizational Structure of the Program - Roles / Responsibilities / Program Ownership
- Policy Statements Addressing Document Lifecycle – Creation, Capture, Storage, Retrieval, Destruction
- Retention Schedules
- Legal Hold Process
- Protocol for Handling Discovery Requests
- Compliance Measures

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## Policy Development

- Secure senior level support
- Form multi-functional team to participate in policy (re)-formulation – IT, finance, audit, tax, legal, HR, risk, business
- Understand How & Where Records are being created
- Review business, legal, and regulatory requirements
- Policy & Retention schedule (re)-design
- Assessment of the Legal Risks
- Bench marking / Peer consultation

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## Policy Development (cont.)

- Global Standard v. Local Standards –  
Global Policy effective across multiple  
legal jurisdictions or local policies  
reflecting adherence to laws in country of  
domicile

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## Considerations for Electronic Messages

- Email, Instant Messaging
- Policy decision – Treating electronic messages differently from other records v. treating all records the same regardless of media
- Centralized v. Decentralized Model
- Acceptable Use Policies

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## Additional Resources

- Association of Corporate Counsel – “Records Retention” Infopak (Feb. 2005)
- International Organisation for Standardisation (ISO) - Information and Documentation – Records Management – Part 1: General (ISO 15489-1)
- ISO - Information and Documentation – Records Management – Part 2: Guidelines (ISO/TR 15489-2)

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## Additional Resources

- The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age (Sept. 2004 Public Comment Draft) ([www.thesedonaconference.org](http://www.thesedonaconference.org))
- The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production (Jan. 2004) ([www.thesedonaconference.org](http://www.thesedonaconference.org))

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## Additional Resources

- Requirements for Managing Electronic Messages as Records (ANSI/ ARMA 9-2004) ([www.arma.org](http://www.arma.org))
- Retention Management for Records & Information (ANSI/ ARMA 8-2005) ([www.arma.org](http://www.arma.org))
- EU - MoReq Specification – Model Requirements for the Management of Electronic Records (<http://europa.eu.int/idabc/en/document/2631>)

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