



Disposition Strategies from the Trenches

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Agenda

1. **Case Study #1**
2. **Case Study #2**
3. **Conclusion and Recommendations**

CASE STUDY

A hand in a dark suit jacket is holding a compass, drawing a thick, dark horizontal line across the page. The background is a light, slightly blurred sky.

#1



Company Profile

- 1. Global in over 35 countries**
- 2. Highly regulated sectors**
- 3. Industry currently under heavy scrutiny**
- 4. Legal holds in most states**

Back Up Take Accumulation



- **45,000 back-up tapes, spanning a decade**
- **Remaining from company divestiture**
- **Content mostly emails in Exchange and shared drives**
- **Backed up with intent of “disaster recovery” only**
- **Only one attempt to restore in 15 years, but costly**
- **Saved daily (incremental only) and weekly (comprehensive) snapshots**

Costs

- **\$25,000 per month for storage facility**
- **Other direct expenses include cost of disk or tape space, bandwidth, hardware, software, archival systems and related media migration systems, temperature and humidity controlled facilities, insurance**
- **Indirect expenses include training and personnel to manage it**
- **Cost of outside counsel review**
- **Bottom line: Thousands to millions per year in litigation exposure**



Challenges



- **Approx. 150 active legal holds**
- **Unsearchable**
- **Age-related deterioration**
- **Could be recovered but at great expense**

Why Now?

- **FRCP Amendments in December 2015**
- **New Records Manager**
- **New software for disaster recovery purposes does not require backup tapes for most systems**
- **No major anticipated litigation or government investigations**

Summary of Legal Issues

- **May the Company destroy any or all of the Tapes (considering both Daily and Weekly Tapes) intended solely for disaster recovery purposes when information contained on the tapes may be relevant to anticipated, pending or current litigation, but is likely duplicated elsewhere on the server and pursuant to the Company's robust legal hold program?**
- **What questions must Legal, IT and other departments answer in order to determine whether certain information is appropriate for disposition?**
- **What procedure could be implemented to minimize the risks associated with destroying potentially unique information stored in the disaster recovery Tapes that may be subject to an existing legal hold?**

Bottom Line

- **Focus on reasonableness, proportionality and diligence in implementation, including but not limited to adherence to state and federal record retention requirements;**
- **Include a well-documented, ongoing good faith effort to identify and preserve any unique documents relevant to anticipated or existing litigation and interview those who may have more information relating to the status of such holds; and**
- **To implement take purposeful and documented steps to mitigate the likelihood that another party may suffer prejudice with respect to key issues due to the implementation of the policy.**

Steps Taken to Demonstrate Good Faith



- ✓ Questionnaire, responses and analysis
- ✓ Legal Opinion based on research
- ✓ Detailed analysis of existing tapes in 2 phases
- ✓ Phase 1 - 43,500 eligible for immediate destruction, because:
 - ✓ Daily backups completely duplicative
 - ✓ 3 of 4 weekly backups per month are duplicative

Steps Taken to Demonstrate Good Faith (cont'd.)



- ✓ Phase 2 – 1,500 remaining tapes
 - ✓ Determine best week to preserve (e.g., last week of month with most activity?)
 - ✓ Abbreviated questionnaire for counsel in all 150 cases
 - ✓ Require case counsel to green light disposition
 - ✓ Option to preserve additional weeks of sensitive time periods (thus increasing count of 1,500 tapes to preserve)
 - ✓ Separate tapes between pre-shadowing and post-shadowing (latter eligible for disposition)

CASE STUDY

#2



Company Profile

- 1. Global in over 165 countries**
- 2. Highly regulated sectors**
- 3. Industry currently under heavy scrutiny**
- 4. Legal holds in most states**

Back Up Take Accumulation



- **450,000 back-up tapes, spanning Decades, 120 PB of onsite backup tapes, 120 PB Offsite**
- **Found Another 100K tapes**
- **Large collections Remaining from company acquisitions of 45 PB**
- **Fuzzy line between Backups and Archiving**
- **Archiving policies did exist but still were a mystery**
- **So much data was being backed up incrementally, on a 28 day cycle**
- **But it was Also backed up Weekly, and then Monthly**
- **And so many of those were then kept 7 or 8 years, or permanently...**

Costs

- **Costing \$10M / Year on tape infrastructure and 3rd party hosting**
- **Inconsistent methods used across the company**
- **For small cases, backup recovery costs of \$1000 per tape, for the larger cases \$400 per tape**
- **Annual tape recovery costs into tens of \$ millions especially around rising Regulatory issues**
- **Cost of outside counsel review**
- **Bottom line: 10's millions per year in litigation exposure**



Challenges



- **Blanket preservation holds**
- **Previous mindset of “just keep it all” to meet regulatory compliance**
- **Unsearchable, Unindexed, Co-Mingled**
- **LTDP / device / media / backup software deterioration**
- **Could be recovered but at great expense but regulatory deadlines shrinking**

Why Now?

- **Realization need to do Information Governance**
- **Completed an assessment and a business case**
- **Realized facts of left as-is, tapes could number 1.2M in < 3 years, 50%+ growth rates forecast**
- **Aging 7 year + tape infrastructure**
- **Cost and Risk of shrinking reg deadlines**

Summary of Legal Issues

- **Change mindset, policies, processes and people towards defensible disposal**
- **And Backup for DR only, modernize and remediate all other major archives For archiving**
- **Modernize legal hold inventory to let defensible disposal become business-as-usual practice, not exception/never**
- **Tape Decommissioning Program formalized**

Bottom Line

- **Reviewed and modeled potential remediation options, scale, timelines and costs**
- **Options of Remove all data older than 7 years**
- **Remove x% of data in the next 24 months**
- **Formalize and stand up modern scalable repeatable tape remediation factory program, in sync with modern ediscovery process and hold inventory.**

So stop repeating the program go-fwd, remediate historically.

Steps Taken to Demonstrate Good Faith

- Formal remediation process
- With legal opinion and refreshed hold inventory and Go Fwd Policy corrections
- Summary survey of existing tapes in phases through a scalable 3rd party remediation factory model
 - Header scanning rapidly to inventory, tapes read directly
 - 50% tape culling of incrementals, non-user data, out of date range
 - Remaining tapes deep indexed, inventoried, extract into archives and start defensible disposal
- Recycle processed tapes, eliminating long term storage requirements

Conclusion/Questions





Thank you

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