Contextual Records Management:  
Managing Risk, Complexity and Cost in Law Firms

Executive Summary

Despite of the importance of records management (RM) in helping law firms manage legal, financial and organizational risk, many firms currently lack effective RM policies and systems. The rise of e-mail and other electronic content has led to the emergence of separate content silos and duplicative RM processes, increasing cost and complexity. Cumbersome, out-of-date systems challenge compliance with RM standards and policies. Industry trends such as mergers and globalization have created a more complex content environment, making firm-wide consistency still more difficult. Meanwhile, new regulatory mandates and legal liabilities present ever-larger risks for firms whose RM capabilities fall short.

This situation poses urgent challenges for every part of the firm. Attorneys and partners must find a better way to manage liability and costs while improving practitioner productivity. Risk managers must gain control over distributed content and ensure the consistent adoption and application of RM policies, both across the firm and across multiple content systems. CIOs must keep pace with new demands on their firm’s technology infrastructure, integrate improved RM capabilities into existing systems, improve usability and make the best possible vendor selections in a consolidating RM marketplace.

Contextual RM is a new records management paradigm designed specifically to address the complexities of RM in today’s legal industry. Contextual RM provides centralized control, planning and management across all forms of physical and electronic records, as well as across all of a firm’s physical locations. Users can access a full range of records functionality from within the same intuitive interface used for work in progress and knowledge management, enabling higher productivity and making full adoption and compliance simpler to achieve.
With Interwoven Records Manager (IRM), organizations apply records policy consistently across paper, electronic documents and e-mail. IRM is tightly integrated with Interwoven’s WorkSite collaborative document management system and uniquely encourages compliance with records policies by making the key step of declaring and classifying of records transparent to the user. By filing a document in the appropriate folder, a document is automatically classified and the retention schedule set. Over 3,200 organizations use Interwoven solutions. A scalable architecture cost-effectively accommodates vast volumes of records distributed across geographically complex organizations. Delivered by Interwoven, Contextual RM is backed by a longstanding commitment to the legal marketplace, deep resources and a proven track record for delivering complex distributed systems that meet the profession’s most urgent technology needs.

**Records Management: The Evolving Challenge**

Records Management (RM) plays a vital role for law firms. Beyond the legal requirement to preserve records as evidence of business transactions, firms rely on RM to safeguard and preserve intellectual property, maintain ethical walls, enable conflicts searching and manage the destruction of obsolete materials. In the event of litigation or regulatory action, the availability of historical records can make the difference between a positive outcome and a devastating financial loss. Direct legal liability withstanding, law firm CIOs have cited the importance of maintaining a firm’s reputation as a key consideration in RM. Of course, the ability to perform these functions effectively depends entirely on the firm’s technological capabilities—the systems used by records managers and users to organize, classify, track, archive and retrieve documents.

Traditionally, RM has referred primarily to the manual classification and administration of paper records. Each time a document is created, the user completes a profile form describing its business context—the matter, client or employee to which it pertains, its purpose or nature, and other identifying information that will determine how it should be managed, secured, and retained. These paper documents are then retained and managed in physical file systems. Records in active files remain in file cabinets, file rooms, or users’ offices, while older records are stored in shelving file centers, or in banker’s boxes in offsite storage facilities. While this approach worked well enough when all documents actually did exist in paper form it has become increasingly obsolete in recent years as the nature of content—and of records themselves—has changed:

- **New forms of content and communication**
  The paper-based legal practice is a thing of the past. Today, the majority of firm correspondence takes place electronically, and the average user gets more than 50 e-mails each day—more than 12,000 per year. Although the informal, ad-hoc nature of e-mails made many users slow to recognize their significance as a new form of record, the rapidly increasing role of electronic content of all types in law has made this status indisputable. According to the Association of Information Management Professionals, also known as ARMA, 90% of the records being created today are in electronic form, including e-mails as well as faxes, forms, Word, Excel, PDF, e-mail, work papers, images, scans and application files.

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### What do you believe are the principal drivers leading to a focus on risk management for your firm?

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<td>Firm Reputation</td>
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<td>Increasing Liability Insurance Cost</td>
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<td>Client’s Inability to Pay for Work Product</td>
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classify and administer with the manual methods that once served for paper. The dynamic nature of electronic content has affected the definition of a record. Today, the declaration of a record can come at many points in the content/matter lifecycle: upon creation, upon receipt (in the case of an e-mail), upon delivery to a client for review, upon signature and/or at the conclusion of a matter.

### Outdated RM systems and methods

As electronic documents and e-mail have come into widespread use, the RM capabilities of most law firms have lagged far behind. In a recent survey, although 55% of large firms reported using RM software to manage physical records, only 28% used that software to manage electronic records as well. For firms entirely lacking the ability to manage electronic records, one approach has been to print out e-mail and other e-records for inclusion in paper-based systems—a costly, labor-intensive and non-scalable process. Other firms have considered supplementing their physical RM systems with separate systems for electronic records and e-mails. This “silo” approach has numerous drawbacks of its own, requiring the duplication and synchronization of user security, administration and records policy definition and application across multiple systems. The high cost and probability of error, especially given that a single record could easily exist simultaneously in multiple systems, has caused this approach to be ruled out by most firms as impractical.

### The move to distributed operations

A wave of mergers has led to the creation of larger firms with operations—and content—that flow seamlessly across physical distance. Although records managers can’t be everywhere, records certainly can—and are, as RM becomes a global, around-the-clock challenge. In fact, with more than 75% of major law firms reporting that they are now actively managing matters across offices, even the records pertaining to a single matter can be scattered across multiple locations. Achieving centralized control and uniform policy application over this distributed content would be challenging enough in a single, unified RM system; in the fragmented records environment described earlier, it is next to impossible.

### Greater sensitivity to compliance

Compliance regimens include the increasingly stringent government regulations and international standards, including the Sarbanes-Oxley Act, the Health Insurance Portability and Accountability Act (HIPAA), DOD 5015.2 and ISO 15489. The consequences of non-compliance can be dramatic; businesses and careers can be destroyed or damaged by allegations of improper content destruction, as seen in the collapse of Arthur Anderson. Given the inadequacy of current RM systems in the legal industry, it may be only a matter of time before a major law firm finds itself embroiled in a scandal related to the improper retention of critical matter. In the U.S., where a law firm’s client is also discoverable, attorneys must be even more vigilant to ensure that they are managing all content retention and destruction in accordance with firm policy.

The breadth and significance of these changes demand more than simply an incremental solution. An entirely new approach is needed—one designed specifically to help attorneys, records managers, risk managers and CIOs deal with the emerging challenges described above.

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1Legal IT Leadership Summit sponsored by Interwoven, attendee survey, May 2004.
By operating entirely within the environment already familiar to users, Contextual RM spares employees the need to master a new application, ensuring uniform and painless adoption. No content type or individual content item is allowed to “fall between the cracks,” giving companies confidence that every record is being classified and managed as company policy and government regulations dictate. Most importantly, Contextual RM provides a practical solution for the immediate RM challenges currently facing law firm personnel, including attorneys, records managers, risk managers and CIOs.

For Attorneys and Firms: Increasing Productivity While Managing Cost and Liability

For legal practitioners, inadequate RM systems can have a direct and severe impact on firm performance. Contextual RM helps attorneys overcome the productivity problems associated with poor RM, manage liability and control costs.

Overcoming productivity problems

For practitioners, the RM challenge can be seen in the larger context of the transition from traditional paper-based content to electronic content. Whereas in the past attorneys counted on being able to find complete matter content in an expandable file folder, today the matter file is typically incomplete, with e-mails, electronic documents, images and other disparate content types scattered across in-boxes, hard drives and servers throughout the organization. Aside from the difficulty this presents for active matters, from a records standpoint,
Contextual RM enables records managers and risk managers to achieve three key objectives: controlling risk, gaining control over distributed content, managing records in multiple systems and ensuring consistent user adoption.

Attorneys are often unable to find and re-use materials from similar past matters. Knowledge management suffers greatly, and duplication of effort becomes the norm as past work is recreated time and again. The silo content environment described earlier requires attorneys to learn too many software tools and different interfaces. Often they give up entirely, sacrificing the potential value of the firm's records for their work.

Contextual RM lets users access complete records management functionality from within the same intuitive interface they already use for work in progress and knowledge management, based on the same model for the electronic matter file. Records can thus be declared, managed and accessed easily in the flow of work, without the need for separate tools or applications. To support a natural transition from dynamic work in progress to records, Contextual RM allows records to be declared at any level, from an individual document to an entire matter/project folder. Automated workflow facilitates the new matter opening process, including conflicts checking, financials and the creation of file structures that incorporate default metadata based on the company’s RM policies. Simple to use with minimal training and no extra work, Contextual RM lets workers realize the full benefit of their firm’s records while continually adding to their value.

Managing liability
Like any organization, law firms with poorly managed records run the constant risk of legal liability. The inability to perform comprehensive conflict checking or to maintain ethical walls can come back to haunt a firm. In the event of legal discovery, the inability to produce requested records—including e-mails and other electronic content—can force a costly settlement even if an organization has done nothing wrong. In Zubulake v. UBS Warburg, a federal district court in New York City ordered sanctions against a company for deleting e-mails germane to discovery requests in an employment discrimination dispute. In another case, Philip Morris was forced to pay a $2.75 million penalty for similar violations. In the course of daily work, the lack of coherent and comprehensive RM will leave any conflicts checking process incomplete, and leave the possibility of cracks in internal ethical walls. Disposition also becomes haphazard; too many records are maintained, all potentially discoverable.

Because it encompasses all forms of content, Contextual RM closes the gaps in conflicts checking and ethical walls to support the highest possible level of integrity. Records are easily accessible as needed in moments, not months—including e-mails. Disposition policies can be enforced down to the folder level, so that only those records that should be and need to be retained, are.

Controlling costs
A substandard RM system increases both direct and indirect costs. Without a unified, integrated RM capability, the firm must support multiple hardware and software tools for separate content silos. In effect, the difficulty of locating and retrieving specific records becomes a tax on users seeking to draw on the firm’s intellectual property. In the event of legal discovery, the requirement to produce a given record—no matter how elusive it may be—can be especially damaging. In the course of Zubulake v. UBS Warburg, UBS found that it could only comply with a request for past e-mails by finding and restoring deleted e-mails from archival media—a process that the company complained Contextual RM enables records managers and risk managers to achieve three key objectives: controlling risk, gaining control over distributed content, managing records in multiple systems and ensuring consistent user adoption. 7 would cost more than $175,000. Subsequent estimates put the figure closer to $300,000, including both vendor charges and paralegal fees. Contextual RM eliminates the costs, inefficiencies, duplication of effort and potential for error associated with separate content silos, making comprehensive RM inexpensive to deploy and own. Attorneys can request files directly from their familiar DM interface, and access electronic records seamlessly from within Microsoft Outlook, Lotus Notes, Interwoven DeskSite or the Web. Compliance with even the most aggressive discovery request can be achieved quickly and easily without the need for outside consultants.

For Records Managers and Risk Managers: Uniform Control and Consistent Application
As the personnel most directly involved with RM systems, records managers and risk managers are now tasked with bringing order to a dynamic and disordered RM environment. Driven by industry trends
New team members can be quickly brought on board, but less no less essential. At the same time, user compliance with firm RM policies has understandably fallen off, undermining the integrity of the entire RM regime.

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**Controlling risk**

Poorly managed records also leave a firm vulnerable to the loss of vital information about current and historical client matters as well as internal firm business. In theory, RM ensures continuity by providing a mechanism by which records can be backed up and restored in the event of a disaster or other mishap. However, RM can only protect the records it encompasses; for many firms, disaster recovery would be a painstaking process involving multiple separate silos—and emails might remain completely unrecoverable. Attorneys would be forced to reconstruct the past and present state of ongoing matters based on the limited materials at hand. Even well short of disaster, a firm can lose vital information through something as simple as an employee departure, a user seeking to free up space on a hard disk or an IT staffer conducting a periodic purge of email archives by date rather than content. Contextual RM brings all of a firm’s records into a unified environment that simplifies backup and recovery.

*New team members can be quickly brought up to speed in the event of a transition, and vital information is safeguarded against inadvertent destruction.*

**Gaining control over distributed content**

The single, centralized file room is often replaced by multiple records rooms and warehouses, and email records spread across complex file taxonomies, server locations and time zones worldwide. In addition to storing the actual electronic record file, records managers must now manage distributed records without regard to location or time zone. Security and access control must also be centrally enforced and maintained, while providing users in any location with the ability to access and use records effectively, on demand, as needed.

Contextual RM provides centralized control over distributed content firm-wide, including both electronic repositories and physical file rooms. Policies can be set and administered from any location, including the ability to set retention policies at any office, from any office; to declare a record in any location, from any location; and to generate a retrieval request from any location.

**Managing records in multiple systems**

In most law firms, records exist in places other than the records or document management system. For example, in the litigation support system, the accounting system and the patent and trademark system. To successfully implement firm-wide records retention, records managers must be able to identify the location of records in these other systems, as well as to be able to lock them from being modified or deleted. Most current RM systems lack the capability to connect with external systems, leaving these essential parts of the matter outside the purview of RM and disposition policies.

By incorporating connectors to external systems, Contextual RM ensures that the data they contain is handled appropriately within the context of the matters to which they pertain.

**Ensuring user adoption of records policies**

The decentralized, distributed nature of content makes the participation of individual users essential to the success of any RM system. While attorneys benefit as much as anyone else from the quality of their own records, they are unwilling to trade productivity for compliance, and will balk at any process that is excessively cumbersome. Thus, any RM strategy must incorporate approaches that enhance adoption by avoiding the imposition of new burdens on users. The process of moving new records into the RM system must be painless and intuitive. Metadata profile forms must be fast and simple to complete, with a high degree of automation. The system should be seamlessly accessible from within familiar interfaces, without requiring extensive training on new tools or applications.

To ensure consistent and accurate policy application, Contextual RM replaces error-prone manual classification with a high degree of automation. In effect, records...
retention policy becomes location-based: Administrators assign an RM policy to each folder in the repository according to its business purpose; as content items are placed in it, they automatically inherit the associated RM metadata. From the user’s perspective, policy assignment becomes transparent and effortless. Simply by filing a document, e-mail, or other item by matter or project as would ordinarily be done, the user ensures that it will receive the correct RM classification. For even greater efficiency, these folders and the associated RM metadata can be embodied in templates to expedite project or matter initiation. Security rules are applied in a similar manner: Once administrators assign a default security profile to a given folder, every item filed in this folder will inherit this profile.

For CIOs: Scalability, Usability and Stability for the Long Term

Traditionally viewed in a supporting role by law firms, technology is now quickly becoming a key strategic function. The right infrastructure can provide the foundation for higher productivity, lower costs and continued growth, while the wrong technology decision can bind a firm in inefficiency and high cost. Contextual RM supports a next-generation RM strategy built on scalability, e-mail integration, user empowerment and a sound vendor partnership.

Ensuring system scalability

In the days of paper records, RM repositories held only metadata, while file cabinets did the heavy lifting. Today, e-records themselves must also be managed and controlled electronically—including PDF files, presentations, images and other large files. Most firms generate well over one million new e-mails and document versions per month—far beyond the capacity of dedicated RM systems, which, unlike document management systems, were never designed to manage and scale across millions of elements and multiple offices. Add in the number of duplicate attachments, and the problem multiplies. As the system grows larger, backing up separate DM systems, RM systems and e-mail archives becomes a costly and labor-intensive proposition.

Contextual RM ensures full scalability by eliminating the need to copy files into a separate RM repository. Instead, records—including e-mails—are managed within the DM repository itself, linked to the metadata stored in the RM system. Duplicates are intelligently managed and deleted to conserve system resources. Instead of backing up separate DM, RM and e-mail management repositories, only one backup need be performed. A three-tier architecture with a full .NET API is designed to accommodate even the most geographically diverse organizations flexibly and cost-effectively.

Empowering Users

As content and matter teams blur geographic boundaries, the records function must necessarily shift from the back office to the front office. Records managers can’t be everywhere, and records processes in a global organization can’t be dependent on work hours in different time zones. End users are now an integral part of a successful records strategy, making adoption, usability and integration with existing systems a high priority for any RM system. Contextual RM empowers end users to perform records functions correctly and effectively at all points in the process, from the declaration of records to the creation of their own paper folders, labels and inserts for physical files. The introduction of RM functionality into familiar interfaces makes adoption painless with minimal training; similarly, a matter-centric approach maps closely to their own work processes for intuitive use. A high level of automation facilitates usability while reducing the potential for resistance and inconsistency. Records managers can conduct regular audits to monitor user performance and fine-tune metadata to ensure high records integrity as well as a high quality user experience.

Finding the Right Vendor Partner

As a crucial strategic investment, the adoption of a next-generation RM system places high importance on the vendor choice made by the law firm. Choosing separate vendors for RM, DM and e-mail management presents integration and upgrade challenges and leads to higher TCO. At the same time, few vendors combine expertise across all these areas with the robust technical architecture required to support global processes. Without a long-term commitment to the legal market as well as demonstrated financial strength, the firm risks committing its records to a dead-end solution that will over time impede growth and productivity.

Embodied in the Interwoven Records Manager solution, Contextual RM benefits from more than 20 years of product development and implementation in more than 110 organizations—40% of them law...
firms. Interwoven has long been dedicated to helping law firms make effective use of technology to solve crucial challenges. Matter Centric Collaboration and the full integration of e-mail management into document management have already helped firms worldwide achieve new levels of performance, and made Interwoven the technology partner of choice for many of the industry’s largest and most successful organization, including Cleary, Gottlieb, Steen & Hamilton; Coudert Brothers; Goodman & Carr; Graydon, Head & Ritchey; Krieg DeVault Alexander & Capehart; ReedSmith; and Wragge & Co. Corporate legal departments that have implemented Interwoven solutions include Toyota, Chevron Corporation and The Hearst Corporation.

Key Features of Interwoven Records Manager include

- **Consistent application of retention policies across physical, electronic and e-mail records**
  Associate policies automatically based on where items are filed. Declare records at any level of the project/matter hierarchy—single document, folder, matter or client.

- **Manage retention policies centrally**
  Provides a central interface to create and manage retention policies. Allows records managers to specify trigger events, retention periods and disposition rules. Retention rules can also be imported automatically from Skupsky’s Retention Manager™.

- **Web and desktop interfaces**
  Interwoven Records Manager supports desktop and web access so records functionality is available anywhere. Complete integration with WorkSite enables electronic records to be managed from within a single unified collaborative document management system, encouraging adoption.

- **Comprehensive physical records management model**
  Interwoven Records Manager lets you manage physical files at the warehouse, shelf, box, folder, subfolder or document level, so records availability, location, and contents are known instantly.

- **Ability to track physical records at off-site locations**
  Interwoven Records Manager enables users to track locations of physical records when they are moved off site by off site storage vendors. Administrators can create requests for boxes stored off site and manage the logistics of moving paper from onsite to off site locations.

- **One click label production**
  Produce labels for folders, subfolders, locations, and boxes including automatic barcode generation.
Support for stationery and portable bar code readers

Bar code technology assures fast and accurate tracing and inventory. Interwoven Records Manager integrates with stationery and portable bar code scanners, enabling rapid physical inventories of the file room, performing “desk audits” to confirm which files are in the possession of users, and tracking items in off-site storage. From any location, you can also perform the standard tracking functions of checking out, checking in, transferring, boxing, relocating, and destroying folders, subfolders, and boxes.

Powerful search capability

Finds records fast using key words, Boolean search operators, proximity, full text, and a user-defined Thesaurus.

Conflicts of Interest module

Helps you manage risk, at matter or engagement opening and records the results for future reference.

Comprehensive reports

Provides critical information that can be formatted, printed, or e-mailed to the people who need them most. Custom reports may be easily created with popular report writers such as Microsoft Access and Crystal Reports.

Robust Reliable Platform From An Industry Leader

Interwoven Records Manager integrates with WorkSite—the leading collaborative document management platform for the legal, accounting and professional services markets—to provide complete management of the matter/engagement lifecycle. Over 1,200 organizations and 600,000 professionals worldwide rely on Interwoven WorkSite’s proven technology for mission critical collaboration and document management. Interwoven Records Manager continues Interwoven’s commitment to being the leader in helping companies address today’s most pressing content management issues.

Conclusion

As traditional RM systems and methods reach the breaking point, the time has come for law firms to embrace a new model designed specifically for today’s legal industry—including geographically dispersed organizations, highly distributed electronic content and stricter RM standards. The traditional notion of RM as a separate, back office function is no longer viable; to improve efficiency while reducing costs, firms must move beyond dedicated RM repositories and applications. Contextual RM lets law firms make records functionality an integrated part of the systems—and work processes—their professionals use every day. By ensuring the quality and comprehensiveness of records, the usability of the system in which they are managed and the scalability of the underlying architecture, Contextual RM provides a complete solution for the RM challenges facing every part of the firm. Interwoven’s innovative document management and records management products fulfill this requirement.

About Interwoven

Interwoven (NASDAQ: IWOV) is a global leader in content management solutions. Interwoven’s software and services enable organizations to maximize online business performance and organize, find, and govern business content. Interwoven solutions unlock the value of content by delivering the right content to the right person in the right context at the right time. More than 4,200 of the world’s leading companies, professional services firms, and governments have chosen Interwoven, including adidas, Airbus, Avaya, BT, Cisco, Citi, Delta Air Lines, DLA Piper, FedEx, Grant Thornton, Hilton Hotels, Hong Kong Trade and Development Council, HSBC, LexisNexis, MasterCard, Microsoft, Samsung, Shell, Qantas Airways, Tesco, Virgin Mobile, and White & Case. Over 20,000 developers and over 300 partners enrich and extend Interwoven’s offerings. To learn more about Interwoven, please visit www.interwoven.com.