

Governance and Recordkeeping Around the World

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E-Discovery:

The challenge of accessing and retrieving
electronically stored information



Library and Archives
Canada

Bibliothèque et Archives
Canada

Canada

Governance and Recordkeeping Around the World, an online newsletter published regularly by Library and Archives Canada (LAC), highlights issues pertaining to government and recordkeeping practices in the public and private sectors.

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The newsletter Home Page is at: <http://www.collectionscanada.gc.ca/government/news-events/007001-1000-e.html>

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Section 1 – News

General News – Overview: Quick Links

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General News

Country – Canada

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Federal Government – Supreme Court

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Headline: Supreme Court to determine access to Prime Minister's agenda books

The Supreme Court of Canada will hear a case that will resolve a dispute about where the dividing line between private and public should be drawn in ministerial offices.

The Court will hear an appeal of a ruling that denied citizens access to documents including the agendas of former Liberal Prime Minister Jean Chrétien.

The Federal Court had ruled that neither the Prime Minister's Office nor the ministers' offices were "government institutions" subject to the access to information law.

Source: <http://news.globaltv.com/court+rule+privacy+agendas/2352584/story.html>

Federal Government – Treasury Board of Canada Secretariat

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Headline: Directive on Privacy Impact Assessment (PIA) Issued

The directive is in effect as of April 1, 2010 and will provide direction to government institutions with respect to the administration of PIAs.

Source: <http://www.sct.gc.ca/pol/doc-eng.aspx?id=18308§ion=text>

Newfoundland and Labrador

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Headline: Court decisions restrict office of the Information and Privacy Commissioner's powers

In one of its decisions the provincial Supreme Court ruled that the Commissioner's office is barred from looking at anything the government considers legal advice. The specific case involved a private citizen seeking information in her own personnel file from the province.

The Commissioner Ed Ring said: "They [the court decisions] potentially represent a huge impact on our office regarding its ability to effectively carry out the mandate of the [information and privacy commissioner]." Ring acknowledged that the rulings could also have "potentially serious implications for other jurisdictions."

Source: <http://www.thetelegram.com/index.cfm?sid=328505&sc=79>

Country – Australia

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Headline: Office of the Information Commissioner to be created

The new Office of the Information Commissioner will incorporate the Office of the federal Privacy Commissioner and a new Freedom of Information Commissioner who will oversee a soon-to-be revamped Privacy Act and the new Freedom of Information laws that will deal with the challenges of information management, security and access in the digital age.

Office of the Information Commissioner Ombudsman John McMillan said that the new office "...will transform information management in Australian government. This package is the most significant reform of administrative law in over 20 years."

Source: <http://www.theaustralian.com.au/australian-it/rudd-information-chief-to-oversee-data-security/story-e6frgax-1225834771466>

Update: http://www.smos.gov.au/media/2010/mr_272010.html

<http://www.smh.com.au/nsw/premier-tells-ministers-to-obey-new-foi-act-20100523-w42z.html>

Country – Germany

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Headline: Germany's Supreme Court rules data retention law unconstitutional

The Supreme Court of Germany has rejected the country's law on the retention of data pertaining to telephone calls and email traffic for possible use by law enforcement.

This will mean that instead of retaining data for six months, German organizations and authorities will have to destroy the data as soon as they collect it.

Source: <http://www.theinquirer.net/inquirer/news/1594417/germany-supreme-court-rules-retention-law-unconstitutional>

Country – India

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Headline: National Knowledge Commission recommends modernizing libraries

The National Knowledge Commission in India has proposed creating a separate National Commission on Libraries and recommends modernizing library management with greater community participation in library management by different stakeholders and user groups.

Source: <http://www.prokerala.com/news/articles/a120539.html>

Country – New Zealand

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Headline: Government agrees to amalgamate Archives and Library

The government of New Zealand has agreed to amalgamate Archives New Zealand and the National Library into the Department of Internal Affairs.

The press release states: "These changes are part of the Government's ongoing programme to reduce duplication and operational costs, and ensure we have stronger government agencies delivering better public services in the future."

Press Release: <http://www.beehive.govt.nz/release/state+sector+changes+improve+performance>

Next Steps in Improving State Services Performance (Key pages 9-10):

http://www.ssc.govt.nz/upload/downloadable_files/next-steps-in-improving-state-services-performance-march10.pdf

Prime Minister: New Zealand has too many State Agencies: <http://www.stuff.co.nz/dominion-post/politics/3419411/PM-John-Key-New-Zealand-has-too-many-state-agencies>

Country – United Kingdom

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Headline: Substantial fines to be imposed for lost data

The Information Commissioner's Office in the United Kingdom has announced that effective April 6, 2010, companies that lose large amounts of data could face up to £500,000 in fines if found guilty of not taking sufficient steps to safeguard the data.

Source: <http://www.newsintech.com/2010/01/hefty-fines-to-be-imposed-for-lost-data/1229>

Country – Vietnam

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Headline: E-Government cloud to be built for Ho Chi Minh City

IBM has announced it will build an e-government cloud for Ho Chi Minh City, the one-time capital of South Vietnam, which will consolidate all of the city government's email systems and websites and increase access to government information.

Source: <http://au.sys-con.com/node/1204147>

Country – United States

Federal Government

1. **Headline:** White House archive rules could save Twitter followers messages

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According to the Presidential Records Act of 1978, White House staff must preserve all communications.

However, White House Press Secretary Robert Gibbs could not confirm whether public replies and private messages that are sent to Obama administration officials through Twitter would fall under the Act.

Source: <http://thehill.com/blogs/hillicon-valley/technology/81235-white-house-archive-rules-could-save-its-twitter-followers-messages>

2. **Headline:** Defense Department issues Web 2.0 policy

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The American Defense Department has released their Web 2.0 policy which permits access to social media from computers connected to the Department of Defense's unclassified network.

Source: <http://www.executivegov.com/2010/03/new-social-media-policy-balances-web-2-0-and-security-says-price-b-floyd/>

Memorandum from the Secretary of Defense: <http://bit.ly/bAdHib>

3. **Headline:** House of Representatives passes the Electronic Message Preservation Act

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The Act ensures the American government properly preserves electronic messages and deploys the necessary information technology to do so as well as increases the National Archives and Records Administration's authority over the oversight of federal and presidential recordkeeping practices.

Source: <http://fcw.com/articles/2010/03/22/web-house-passes-electronic-records-bill.aspx>

Link to Bill: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1387eh.txt.pdf

State Government

Florida

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Headline: Attorney General asks for new rules for retaining electronic records

At the present time there are no required retention guidelines in the state of Florida for electronic communications (only applies to email) such as BlackBerry and text messages because the administrative rules describe them as transitory.

In response, Florida's Attorney General is requesting new rules be developed that require all government agencies throughout the state to set up a process to retain these type of electronic records and comply with state public records laws.

Source: <http://blogs.tampabay.com/buzz/2010/03/mccollum-asks-for-new-rules-for-retaining-electronic-records.html>

Attorney General's Letter: [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-83MJ8D/\\$file/BrowningLetter.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-83MJ8D/$file/BrowningLetter.pdf)

Kansas

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Headline: Legislation will maintain the authenticity of records

A bill has been approved in the state of Kansas that establishes a preservation process for maintaining the authenticity of state electronic records.

Source: <http://www.morningsun.net/news/x640759012/Bill-aims-to-maintain-authenticity-of-records>
<http://www.wibw.com/political/headlines/84825117.html>

Section 2 – Events

Annual Meetings and Conferences

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International

1. I-CHORA 5: Fifth International Conference on the History of Records and Archives

Theme: Records, archives and technology: interdependence over time

Hosts: The National Archives of England, Wales and the United Kingdom, the Liverpool University Centre for Archive Studies and the Department of Information Studies at University College London.

When: 1–3 July 2010

Where: London, England

Summary: The conference theme will be explored from a historical perspective, but will be interpreted as broadly as possible and will consider the evolving interrelationships between records, archives and any technology, not just the digital technology of our own time.

LAC Speakers: To be determined

Programme and Registration: <http://www.nationalarchives.gov.uk/ichora5/>

2. Forum for Archives and Records Management Education and Research Conference 2010

Theme: Questions of trust? Archives, records and identities

Hosts: International Centre for Archives and Records Management Research and User Studies and the University College London Department of Information Studies

When: 5–6 July 2010

Where: Oxford, England

Summary: The conference will examine questions relating to trust and identities in relation to archives and records in mainly digital environments and the implications of such questions for those interested in professional archives and records management education, research and practice.

LAC Speakers: To be determined

Programme and Registration: <https://www.ucl.ac.uk/infostudies/research/icarus/farmerconference2010/>

3. 4th European Conference on Information Management and Evaluation ECIME 2010

Host: Universidade NOVA de Lisboa

When: 9–10 September 2010

Where: Lisbon, Portugal

Summary: The wide scope of ECIME reflects the increased use of technology to manage information in and between organizations of all types and sizes across the globe. ECIME 2010 will provide opportunities for people working and researching in the field to formally and informally share their knowledge and expertise.

LAC Speakers: To be determined

Programme and Registration:

<http://academic-conferences.org/ecime/ecime2010/ecime10-home.htm>

<http://www.h-net.org/announce/show.cgi?ID=172918>

4. 7th International Conference on Preservation of Digital Objects iPRES 2010

Hosts: The Austrian National Library and the Technical University of Vienna

When: 19–24 September 2010

Where: Vienna, Austria

Summary: Digital preservation and curation is evolving from a niche activity to an established practice and research field that involves various disciplines and communities. iPRES 2010 will re-emphasize that preserving scientific and cultural digital heritage requires integration of activities and research across institutional and disciplinary boundaries to adequately address the challenges in digital preservation. iPRES 2010 will further strengthen the link between digital preservation research and practitioners in memory institutions and scientific data centres.

LAC Speakers: To be determined

Programme and Registration (to follow): <http://www.ifs.tuwien.ac.at/dp/ipres2010/>

5. 2010 Australia Society of Archivists Conference

Theme: Future Proof: Resilient Archives 2020 and beyond

Host: Australian Society of Archivists

When: 13–16 October 2010

Where: Melbourne, Australia

Summary: The conference will showcase how resilient archives and archivists can be when dealing with ever increasing quantities and variant forms of records, questions surrounding professional principles, practical methodologies, and the provision of access to archival collections.

LAC Speakers: To be determined

Programme and Registration (to follow): <http://www.archivists.org.au/2010-melbourne>

6. International Conference on Dublin Core and Metadata Applications DC-2010

Theme: Making Metadata Work Harder: Celebrating 15 Years of Dublin Core

When: 20–22 October 2010

Where: Pittsburgh, Pennsylvania, United States

Summary: Conference participants will engage in investigations in both research and application entailing advances that *make metadata work harder* in ways beyond the originally identified need for better resource discovery and will take stock of progress, look to the future and celebrate the broad scope of research and applied work in *making metadata work harder*.

LAC Speakers: To be determined

Programme and Registration (to follow): <http://www.asis.org/Conferences/DC2010/callforpapers.html>

National

1. 62nd IPAC Annual Conference

Host: The Institute of Public Administration of Canada

When: 22–25 August 2010

Where: Ottawa, Ontario, Canada

Summary: Speakers and participants will include the top public decision makers of Canada including Wayne Wouters, head of the Public Service of Canada.

LAC Speakers: To be determined

Programme and Registration: <http://www.ipac.ca/2010>

2. Government Technology Exhibition and Conference (GTEC) 2010

Theme: High Performance Government

When: 4–7 October 2010

Where: Ottawa, Ontario, Canada

Summary: History has already shown that technology can enable better service delivery, but high performance governments in the Web 2.0 world must find new ways to address the human and organizational dimensions of public sector service delivery.

LAC Speakers: To be determined

Programme and Registration: <http://www.gtec.ca/>

Forums

1. DigCCurr Professional Institute: Curation Practices for the Digital Object Lifecycle

Host: DigCCurr Professional Institute

When: 16–21 May 2010 and 6–7 January 2011

Where: Chapel Hill, North Carolina, United States

Summary: Topics include **(1)** Overview of the digital preservation problem **(2)** Managing in response to technological change **(3)** Characterization of digital objects **(4)** Evaluation of digital collection use **(5)** Access and use considerations.

Programme and Registration: <http://ils.unc.edu/digccurr/institute.html>

Seminars

No seminars listed at this time.

Workshops

The following workshop highlights the type of training being provided by the Archives Office of Tasmania.

1. Records Management: Writing a Functional Disposal Schedule

Host: Archives Office of Tasmania

When: 7 July 2010

Where: Hobart, Tasmania

Summary: This workshop evaluates business activities to determine how long records arising from these activities need to be kept to meet business needs.

Programme and Registration: http://www.ttc.tas.gov.au/_security/pages/schedule.php3

Link to Archives Office of Tasmania Home Page: <http://www.archives.tas.gov.au/aboutus>

Campaigns

No campaigns listed at this time.

Section 3 – Current Trends and Products

Recordkeeping: Current Developments, Projects and Future Initiatives

Cambodia

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Topic/Title: Video: Implementing e-Government

Summary: This video discusses the implementation of e-government in Cambodia.

Source: <http://www.youtube.com/watch?v=o1bmgvoAypl>

European Union

Topic/Title: i2010: Digital Libraries Initiative

Summary: The Digital Libraries Initiative goal is to preserve Europe's cultural resources and scientific records and focuses on two areas **(1)** Cultural heritage **(2)** Scientific information.

Source: http://ec.europa.eu/information_society/activities/digital_libraries/index_en.htm

Questions for Online Consultation:

http://ec.europa.eu/information_society/activities/digital_libraries/doc/consultations/replies/national_archives_uk_a303393.pdf

Final Report:

http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/hlg_final_report09.pdf

France – National Library

Topic/Title: Gallica

Summary: Gallica is a digital library created by the Bibliothèque nationale de France containing more than 400,000 documents with ground-breaking functionalities .

Visitors to Gallica can now listen to texts online courtesy of the text-to-speech technology, which means that all material digitized in text mode is available in audio format.

Source: <http://gallica.bnf.fr/>

India

Topic/Title: Archival Advisory Board

Summary: The Archival Advisory Board will monitor the implementation and review the progress of the Public Records Act with the goal of revitalizing the archives as the storehouse and disseminator of India's history and cultural heritage.

Constitution: <http://nationalarchives.nic.in/ShowContent.aspx?uid1=2&uid2=20&uid3=0&uid4=0>

Spain and Portugal

Topic/Title: Portuguese and Spanish e-Government Services Interconnected

Summary: Modern technology is allowing countries to communicate and interact directly with each other and Spain and Portugal are taking advantage.

The two countries will now be able to access and use the services of the other country.

Source: <http://epractice.eu/en/news/306115>

United Kingdom – British Library

Topic/Title: Video: Digital Library Program

Date: November 6, 2009

Speaker: Aly Conteh, Digitization Program Manager, British Library

Summary: In his presentation, Digitization Program Manager, Aly Conteh talks about digitization at the British Library and how it has evolved as the Library collections have become increasingly digital.

He also speaks about digitization projects undertaken by the British Library, the benefits, resources used and how are they sustained over the long run, as well as future initiatives.

Subjects that are included in the presentation include "born digital" records, Web archiving, digital preservation, mass digitization, legal deposit of electronic material, copyright, digital library infrastructure research and development tools, how the British Library makes use of modern technology in the digitization process and the approach used to digitize text-based material.

Source and Video: <http://projectotter.wordpress.com/2009/11/07/digitisation-at-the-british-library/>

United States – Government of Alaska

Topic/Title: Electronic Practices Committee

Summary: The government has determined that uniform State of Alaska executive branch standards for email and electronic records are needed to ensure that all state agencies employ legally adequate and pragmatic standards. Without uniform standards, data can be lost or inconsistently managed making retrieval very difficult and costly, at best.

As a result, the Alaskan government created the Electronic Practices Committee to review and recommend for adoption by state agencies: procedures, policies, legislation, and regulations governing retention of electronic records.

Source: <http://doa.alaska.gov/ets/EPC/ElectronicPracticesCommitteeCharter.pdf>

United States – Library of Congress

Topic/Title: Video: A Visit to the Library of Congress Nitrate Film Vaults

Speakers: Mike Mashon, Head of the Moving Image Section and George Willeman, Nitrate Film Vault Manager

Summary:, A presentation on the Library of Congress nitrate film vaults, which takes the viewer on a tour to learn how they are used.

Video: http://www.facebook.com/permalink.php?story_fbid=190013519599&id=86854559717

United States – Society of Information Management

Topic/Title: Advanced Practices Council Established

Summary: There is a lot of confusion regarding cloud computing. A recent survey revealed that 40 percent of respondents did not completely understand the term.

In response, the Advanced Practices Council has been established to determine how cloud computing is actually being used and how software-as-a-service is being integrated with existing enterprise systems.

Source: <http://www.itbusinessedge.com/cm/blogs/vizard/clouds-of-confusion/?cs=37394>

Products and Tools from Around the World

Czech Republic

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Product/Tool: Data Box

Summary: The Data Box is an online personal repository of all electronic communications between end users and public authorities whose goal is to ease business to government communications in the Czech Republic.

Source: <http://www.pressreleasepoint.com/czech-business-government-egovernment-system-goes-live>

France

Product/Tool: IBM Smart Archive (Case Study)

Summary: As a result of data growth, regulatory compliance, and increasingly complex infrastructures the need for information archiving is rapidly increasing.

France's national railway, the Société Nationale des Chemins de Fers Français (SNCF), was having difficulty finding key pieces of information as they were stored in multiple locations affecting the company's ability to meet and regulate compliance requirements.

With the IBM Smart Archive technology, the SNCF built a unified archival solution to manage and control its growing structured and unstructured content.

"With the volume of ticket sale transaction records and documents growing, we knew that we needed a 'universal archiving backbone' to manage, control and analyze all of our content," said Pascal Le Borgne, archiving project manager, SNCF.

Source: <http://www.reuters.com/article/pressRelease/idUS173216+26-Oct-2009+PRN20091026>

Scotland

Product/Tool: A Guide to Using Web 2.0 in Libraries

Summary: The Scottish Library and Information Council has issued a "Guide to Using Web 2.0 in Libraries."

Sections include: **(1)** What is Web 2.0? **(2)** Why use Web 2.0? **(3)** Benefits of Web 2.0 **(4)** Implementing Web 2.0 Services **(5)** Legal Implications of Web 2.0 **(6)** Integrating Web 2.0.

Source: <http://www.resourceshelf.com/2009/12/10/new-a-guide-to-using-web-2-0-in-libraries/>

Guide: <http://www.slainte.org.uk/files/pdf/web2/Web2GuidelinesFinal.pdf>

Sweden

Product/Tool: Knowledge XChanger(TM) v6.0

Summary: This tool used in Sweden helps shorten time-to-knowledge and provides a central repository or portal where information is organized and made searchable across the entire organization.

Time-to-knowledge is defined as the length of time it takes from knowledge and insight being conceived until it is available for business purposes by relevant persons.

Source: <http://news.thomasnet.com/fullstory/566506>

United Kingdom

Product/Tool: Best Practice Procedures

Summary: The University of London has developed best practice procedures to assist staff in their record and information keeping. They advise on best practice in the creation, management and disposal of information, whether by destruction or permanent retention.

The procedures include **(1)** Managing information: Why records management is necessary **(2)** Electronic records management **(3)** Electronic mail management and storage.

Source: <http://www.london.ac.uk/955.html>

United Kingdom – National Archives

Product/Tool: Digital Data Storage System

Summary: The National Archives in the United Kingdom has ushered in a new era for archiving with the arrival of a machine aimed at securing the government's digital heritage.

The digital data storage system will hold one petabyte of digital data, which is the equivalent to 20 million four-drawer filing cabinets, allowing the National Archives to store both "born-digital records", such as websites, along with digitized copies of paper records.

Source: <http://www.publictechnology.net/modules.php?op=modload&name=News&file=article&sid=21841>
<http://www.kable.co.uk/national-archive-petabyte-tape-library-storage-11nov09>

United States – 5280 Solutions LLC

Product/Tool: Dynamic RM™

Summary: This SharePoint-based records management solution is designed to manage electronic and physical records allowing organizations to meet compliance objectives by applying classic recordkeeping principles.

Dynamic RM™ streamlines the lifecycle of record management, including file plan visualization, declaration and preservation, flexible retention rules, and formal hold and consigned disposition processing workflow, as well as addresses the complexities of physical container management.

Source: <http://www.mediasyndicate.com/index.php?name=News&file=article&sid=15067>

United States – National Archives and Records Administration (NARA)

Topic/Title: Records Control Schedules Repository

Summary: Scanned images of records' schedules kept since 1985 can now be accessed through a new portal on the NARA website.

NARA Archivist David S. Ferriero praised this development saying: "Providing access to agency records schedules supports the Administration's goals of transparency, participation, and collaboration by letting citizens more easily know what kinds of records their Government creates."

"The online availability of approved schedules promotes better understanding of Federal Government business processes and the records they create. The portal will provide Federal agencies easy access to all National Archives-approved schedules for research and analysis associated with their agencies' records scheduling efforts."

Source: <http://www.archives.gov/press/press-releases/2010/nr10-69.html>

Link to Repository: <http://www.archives.gov/records-mgmt/rcs/>

Studies and Surveys

Global

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Survey Subject: Best Practices for Records Management

Survey Conducted By: Iron Mountain Incorporated

Survey Participants: The survey covered approximately 3,500 individuals within public, private, government and non-profit organizations across varying industries and sectors to assess the state of records management compliance.

Key Findings of Iron Mountain's Compliance Benchmark Report:

- (1) Many organizations (**64 percent**) are committed to improving their records management programs.
- (2) **The majority** of organizations have only basic records management programs in place including formal records policies and procedures, retention schedules, offsite storage of critical backup tapes and hard copy records, and systems for rapid records retrieval.
- (3) **While 80 percent** of organizations have a basic command of managing physical records, only **23 percent** of the respondents have established electronic records policies. This disparity is further complicated by several trends, such as the growth of electronic information, growing consumer concern about data protection, and rising levels of litigation.
- (4) Over half of the organizations (**54 percent**) use an enterprise-wide retention schedule for the proper preservation and destruction of information.
- (5) Only **37 percent** of organizations conduct records management training.

Source:

http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20100126005374&newsLang=en
<http://www.infosecurity-magazine.com/view/6919/disparities-in-how-firms-manage-their-physical-and-electronic-records/>

E-Discovery

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This section provides an overview of e-discovery news and developments found in various jurisdictions in the following categories.

(1) Articles **(2)** Court Rulings **(3)** Current Developments **(4)** General News **(5)** Legal Opinions **(6)** Legislation **(7)** Podcasts **(8)** Products and Tools **(9)** Surveys **(10)** Additional Resources.

What Is e-Discovery?

E-discovery (electronic discovery) can be described as the process of identifying, preserving, collecting, preparing, reviewing and producing electronically stored information.

1) Articles

Canada

1. Don't lose sleep over U.S. e-Discovery nightmares

Author: Jennifer Kavur, Senior Writer for *Computer World Canada* featured in *it World Canada*

Summary: This article highlights the views of lawyers and research analysts regarding e-discovery laws in Canada and the differences from those in the United States.

Jurisdictions discussed include the provinces of Ontario and British Columbia and subjects include the Sedona Canada Principles Addressing Electronic Discovery and the Rules of Civil procedure in Ontario.

Source: <http://www.itworldcanada.com/news/dont-lose-sleep-to-e-discovery-nightmares/140240>

Link to the Sedona Canada Principles Addressing Electronic Discovery:

<http://www.lexum.umontreal.ca/e-discovery-web/law.do?id=1&lang=en>

2. Following the e-trail

Author: Joseph Oppenheim, McLennan Ross LLP featured in *Canadian Underwriter*

Summary: With the integration of the *Sedona Canada Principles* into the rules governing discovery, courts are becoming more willing to order parties to produce their hard drives and laptops. As email and social networking websites continue to replace verbal communication, electronic discovery can reveal significant paper trails.

Source: <http://www.canadianunderwriter.ca/issues/ISArticle.asp?aid=1000345142&PC=>

3. The age of e-Discovery: Lawyers face daunting challenges in sifting through mountains of e-documents

Author: Donalee Moulton, *The Lawyers Weekly*

Summary: E-discovery costs are exponential. In North America, it is estimated that spending on technology for e-discovery alone will increase from \$1.4 billion in 2006 to nearly \$5 billion in 2011.

This article discusses the e-discovery challenges that the legal profession is facing in the electronic age.

“What we’ve had are traditional rules about discovery being applied to electronic documents. It simply hasn’t worked well,” says Kelly Friedman, a partner with Ogilvy Renault LLP in Toronto.

Source: <http://www.lawyersweekly.ca/index.php?section=article&volume=28&number=48&article=4>

United Kingdom

1. E-disclosure: how good is your filing system?

Author: Grania Langdon-Dawn, *TimesOnline*

Summary: It is increasingly important for organizations to have an organized system for retrieving information as the arrival of the electronic age has created its own disclosure problems with vast quantities of information held in email archives, shared network folders and back-up tapes potentially held in multiple locations.

Source: <http://business.timesonline.co.uk/tol/business/law/article6958962.ece>

2. Preparing for the eDisclosure time bomb

Author: Simon Price, European Director at Recommind featured in the summer 2009 issue of *ISNOW*.

Overview: With so much information now stored online, time is ticking before more companies are hit by the eDisclosure bomb.

Main Points Include:

(1) eDisclosure requests often result in the production of more than one terabyte of data (the equivalent of 75 million pages) and the costs involved can be high if the organization is not properly prepared.

(2) Most UK organizations are using out-dated, legacy search and data management tools and are not capable of searching data in different formats and from diverse locations.

(3) Organizations should invest in solutions that can automatically categorize, index, access, preserve, delete and collect relevant information in any form.

Source: <http://www.bcs.org/server.php?show=ConWebDoc.27754>

United States

1. Improve Record Retention & E-Discovery

Publication: *Processor*, January 29, 2010, Vol. 32, Issue 3

Summary: Record retention and e-discovery can quickly become major challenges for organizations but there are ways to deal with these challenges. This article discusses tips to assist organizations in modifying and improving storage of information in both of these areas.

Source:

<http://www.processor.com/editorial/article.asp?article=articles%2Fp3203%2F21p03%2F21p03%2F21p03.asp&guid=&searchtype=&WordList=&bJumpTo=True>

2. Defending Against Spoliation Claims

Authors: Kim Leffert is counsel and Michael P. Daly is an associate in the litigation practice at Mayer Brown featured in *Law Technology News*

Summary: According to *Webster's New World Law Dictionary* **spoliation** is the intentional deletion or alteration of a document used as legal evidence.

The article discusses **(1)** Defending against spoliation **(2)** Spoliation factors **(3)** Importance of the litigation hold **(4)** Potential spoliation sanctions.

Source:

http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202446088840&Defending_Against_Spoliation_Claims

3. Legal Holds

Authors: John Isaza and John Jablonski

Summary: This series of articles provides an overview of the seven steps necessary to implement a legally defensible, written litigation hold which is an act by an organization to prevent the destruction of documents relevant to a lawsuit.

Source: <http://legalholds.typepad.com/legalholds/2010/03/lawcoms-legal-hold-series-links.html>

2) Court Rulings

Australia

Recently the Federal Court of Australia issued e-discovery rules requiring all electronic documents and emails to be produced and exchanged electronically, preferably in their original formats. This is expected to improve efficiencies and help contain costs and delays resulting from discovery.

Under the new Federal Court rules, companies must meet strict requirements for the retention and handling of electronically stored information and ensure its availability for court proceedings.

Ruling (Electronic Technology in Litigation): http://www.fedcourt.gov.au/how/practice_notes_cm6.html

Article: <http://www.theaustralian.com.au/news/court-unveils-e-discovery-rules/story-e6frgal6-111119011200>

3) Current Developments

Canada

New rules of Civil Procedure address e-Discovery

Summary: As of January 1, 2010, Ontario's new Rules of Civil Procedure came into effect and introduces significant changes to the rule of discovery and *The Sedona Canada Principles Addressing Electronic Discovery* will be a key reference document.

Source: <http://bit.ly/dscqQa>

What's New? Changes to the Rules of Civil Procedure:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/changes_to_rules_of_civil_procedure.asp

Link to Rules of Civil Procedure: http://www.e-laws.gov.on.ca/html/reggs/english/elaws_reggs_900194_e.htm

United States – New Jersey

E-Discovery Committee Formed

Summary: The New Jersey Supreme Court has formed a committee to look at the practices that agencies and lawyers around the state are using, and what can be done to make e-discovery cost-effective and accessible to all.

This was prompted by the fact that more and more information is in digital form making the transmission of and access to information more challenging.

Source:

<http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202435308080>

4) General News

Singapore

Headline: Courts introduce protocol to handle discovery of electronic documents

The protocol directs that electronic documents are to be produced in their native format for inspection or if copies are requested, in the specified reasonably usable file formats.

Source: http://www.zdnetasia.com/blogs/singapore-blazes-into-e-discovery-of-evidence_bp-63012639.htm

Global

Headline: E-Discovery market will see rapid growth in 2010

The e-discovery software market will see rapid growth in 2010 due to increasing levels of litigation across the business world according to an analyst at Gartner, Inc.

While the United States has been the biggest market for e-discovery other countries such as the UK, Australia, Canada and South Africa are expected to see large revenue growth over the next few years.

Source: http://www.cbronline.com/news/ediscovery_market_set_for_2010_boom_gartner_161209

5) Legal Opinions

United States

Title of Opinion: *Zubulake* Revisited: Six Years Later

Summary: An opinion and order issued by U.S. Southern District of New York Judge Shira A. Scheindlin **provides a practical roadmap** on how organizations and attorneys may be confronted by real challenges regarding compliance to produce documents only to wind up making judgments that come back to haunt them.

The opinion is also a kind of "**how-to**" **manual setting forth key principles** relating to issuing, monitoring, and enforcing litigation holds, discharging preservation and search techniques, and documenting appropriate behind-the-scenes conduct.

Source: <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202444109380&rss=ltl>
<http://www.leclairryan.com/news/xprNewsDetail.aspx?xpST=NewsDetail&news=466>

Opinion: <http://www.technologyinlitigation.com/PensionCommittee.pdf>

6) Legislation

United States – California

Governor signs new e-Discovery Act

Last year Governor Schwarzenegger signed the state's Electronic Discovery Act which lays out procedures for discovery of electronically stored information in California.

The Act **(1)** Defines "electronically stored information" in a broad way **(2)** States that electronically stored information can be requested in a specific format **(3)** That the burden of proof that the data is not accessible falls on the party from which the data is being requested **(4)** Requires the parties to meet and confer regarding electronic discovery.

Source: <http://www.theemailadmin.com/2009/07/california-governor-signs-new-e-discovery-act/>

United States – New York

E-Discovery Bill would include disclosure of ESI in civil cases

The proposed bill would permit the disclosure of electronically stored information (ESI) in civil cases.

New York Assembly member Mark Weprin, who has introduced the bill, predicts that this will result in major changes in the manner which civil cases are litigated in the New York courts.

Source: http://scottandscottllp.com/main/Bill_Predicted_to_Transform_Litigation.aspx

Link to Bill:

http://assembly.state.ny.us/leg/?default_fld=&bn=A06000%09%09&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y

7) Podcasts

United States

Title of Podcast: When the Lawyers Come Knocking: Info Management and E-Discovery

Overview: Organizations face the challenges of dealing with an increasing amount of information scattered across various sectors. Not being able to fulfill a request for discovery and information in its various electronics forms can come at a high cost.

This podcast discusses how organizations can gain control over information sprawl; deal with legal discovery in advance by controlling information; how management life cycle approaches can bring long-term payoffs through better analytics and regulatory compliance; reducing the cost of data storage and archiving; and current and future trends such as cloud computing.

Participants: Jonathan Martin, vice president and general manager for information management at Hewlett Packard (HP) and Gaynelle Jones, Discovery Counsel at Hewlett Packard.

Podcast: <http://www.ecommercetimes.com/story/When-the-Lawyers-Come-Knocking-Info-Management-and-E-Discovery-67994.html>

8) Products and Tools

Canada

M+Archive 2009.2

Summary: This policy-based enterprise-class email retention and e-discovery solution simplifies email management operations with improved reporting and offers an enhanced migration toolkit to facilitate migration between email platforms.

Source: <http://www.prweb.com/releases/2010/01/prweb3426704.htm>

United Kingdom and the United States

Collection solution for e-Discovery and compliance

Summary: Preservation and collection of relevant data is a critical step in the legal hold process, when an organization faces pending litigation or investigation.

The solution automatically searches, identifies, preserves and collects relevant electronically stored information to the “cloud” from laptops, desktops and more than 400 enterprise repositories enabling organizations to perform defensible and systemized preservation and collection in the shortest amount of time to meet the preservation obligation.

Source: <http://www.finextra.com/fullpr.asp?id=30906>

United States

ArchiveOne Enterprise

Summary: This is a unified platform for capacity, compliance, e-discovery and retention management of email, file, and messaging data consisting of strategic, "cradle-to-grave" tools that address regulatory and litigation needs as well as retrieval policies.

Source: <http://www.prnewswire.com/news-releases/c2c-releases-new-version-of-archiveone-enterprise-for-email-file-and-messaging-includes-cloud-storage-enhanced-policy-and-compliance-support-81959517.html>

9) Surveys

Australia

Subject: Challenges of meeting regulatory compliance and regulator requests for electronic records

Conducted By: Deloitte

Participants: Corporate Counsel at 200 Australian organizations

Findings include:

(1) A majority (**82 percent**) of respondents reported an increase in regulatory activity in the past year, with the most common form of regulatory activity reported being the service of subpoenas seeking document production.

(2) Over half (**59 percent**) of respondents have been required to produce electronic documents for regulators in the past year, however, **47 percent** were not confident that they could produce all relevant electronic records in response to a legal or regulatory request.

(3) Only (**14 percent**) of respondents said that their organization still does not have a policy regarding the management and retention of electronic records.

Source: <http://idm.net.au/article/007710-australian-house-legal-face-digital-challenge>

Global

Subject: Preparedness for E-Discovery

Conducted By: KPMG Forensic and Harris Interactive

Participants: Lawyers at 200 global companies

Key Findings Include:

(1) Of the lawyers surveyed, **38 percent** said that it would be difficult to retrieve data in their organization, potentially exposing their firms to high costs or reputational damage in the event of a legal dispute.

(2) Some **21 percent** of legal departments had never been consulted by their IT departments about changes in storage capabilities within the organization and **25 percent** were "rarely or never" consulted about the adoption of new technologies for dealing with electronic evidence for e-discovery.

(3) The lawyers said they faced future challenges with electronic information management due to the growth in data, data security, increased computerization and data access.

According to Paul Tombleson, head of forensic technology at KPMG Forensic in the UK: "Storing and searching large volumes of data, often across borders and across different legacy IT systems, continues to be a major challenge for many companies. Whilst this might seem like an IT issue, when an investigation arises, it can become an urgent reputational and financial one."

Source: <http://www.computerweekly.com/Articles/2009/11/23/239435/businesses-are-ill-prepared-for-e-discovery-warn-lawyers.htm>

10) Additional Resources

Canadian E-Discovery Portal: <http://www.lexum.umontreal.ca/e-discovery/>

Section 4 – Selected Readings

Articles, White Papers, Presentations, Reports

Canada

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Topic/Title: City of Vancouver's history safe thanks to digital archiving

Type of Document: Article

Author: Rhiannon Coppin, *Straight.com*

Summary: More and more of the city's legal and cultural records are being created in digital format and Les Mobbs, archivist and director of records and archives for the City of Vancouver expects "born-digital" holdings to grow in volume from 40 megabytes to 40 terabytes.

The city archives is implementing a fully functional version of Archivematica which is an open-source digital archiving system that uses existing free tools developed at leading academic institutions to automate and simplify the complicated task of processing, translating, and tracking thousands of new files daily.

This will make Vancouver the first municipality in Canada with a fully operational digital archiving system.

Source: <http://www.straight.com/article-292923/vancouver/citys-history-safe-thanks-digital-archiving?page=0%2C0>

India

Topic/Title: Cloud storage

Type of Document: Article

Author: Akhtar Pasha, *Express Computer*

Summary: Cloud storage is something that organizations must deal with as the business need for speed and agility is greater than ever before, and the technology has reached a level at which prudent investments in cloud services can be made quickly and easily by organizations.

Source: <http://www.expresscomputeronline.com/20091221/market03.shtml>

Malta

Topic/Title: Efficient government services through technology

Type of Document: Interview

Publication: *The Malta Business Weekly*

Overview: Derrick Pisani, manager of the e-government program at the Malta Information Technology Agency discusses the latest developments in the area of online services and finds out what is in store for the future.

Summary: The government's goal is to have all government services available electronically by 2012 and Pisani gives an overview of the main e-government services that are currently available and being developed including the Smart Island Strategy whose objective is to put public services offered by government online.

Source: <http://www.maltabusinessweekly.com.mt/news.asp?newsitemid=7347>

Scotland

Topic/Title: Power to the people in digital age

Type of Document: Article/Interview

Author: Cate Devine, *heraldscotland*

Summary: Martyn Wade, head of the **National Library of Scotland**, talks about his plans for the future including digitization of the library's collection.

Source: <http://www.heraldscotland.com/arts-ents/book-features/power-to-the-people-in-digital-age-1.990535>

United Kingdom

Title of Report: Government ICT Strategy: Smarter, cheaper, greener

Published By: The British Government

Date of Report: 2010

Scope: Applies to all of the UK public sector, whether central government, local government, wider public sector or devolved administrations.

Summary: The ICT strategy will ensure that the infrastructure will go through a process of standardization and simplification based on the premise of a common infrastructure designed to enable local delivery suited to local needs.

The strategy provides a common approach to ICT that maintains local accountability and control over implementation to meet unique delivery and business requirements and supports existing core public sector goals, set in *Digital Britain, Building Britain's Future, Excellence and fairness*, and the *Operational Efficiency Programme*:

- improving public service delivery;
- improving access to public services; and,
- increasing the efficiency of public service delivery.

Source: http://www.cabinetoffice.gov.uk/media/317444/ict_strategy4.pdf

United States

Topic/Title: On the Record with SharePoint: Taking out the E-Trash

Type of Document: Article

Authors: Susan Cisco is a director and Brad Teed is a managing director for Gimmal Group focused on enterprise content management and records management featured in *AIIM Informatics Magazine*

Summary: Just because an organization can save everything created electronically doesn't mean that it should. As official records are created, how are rules created for getting rid of the electronic garbage?

This article discusses **(1)** How to use information lifecycle "states" to manage retention and disposition for content that does not have "official record" value **(2)** Highlights what organizations do when destroying content **(3)** Provides **a list of nine best practices** that surfaced repeatedly across organizations and industries.

Source: <http://www.aiim.org/taking-out-the-etrash.aspx>

Global

1. **Title of Final Report:** Sustainable Economics for a Digital Planet: Ensuring Long-Term Access to Digital Information

Issued By: The Blue Ribbon Task Force on Sustainable Digital Preservation and Access

Date of Report: February 2010

Summary: The report develops a general economic framework for analyzing digital preservation as an economic problem, and employing this framework as a tool for analyzing the economic conditions and implications intrinsic to four key digital preservation contexts: scholarly discourse, research data, collectively produced Web content, and commercially owned cultural content.

The report identifies problems intrinsic to all preserved digital materials, and proposes actions that stakeholders can take to meet these challenges to sustainability. Action agendas were developed that are targeted to major stakeholder groups and to domain-specific preservation strategies.

Source: <http://www.teleread.org/2010/03/06/final-report-from-the-blue-ribbon-task-force-on-sustainable-digital-preservation-and-access/>
<http://newsbreaks.infotoday.com/NewsBreaks/Digital-Preservation-Guidance-From-Blue-Ribbon-Task-Force-65992.asp>

Link to Report: http://brtf.sdsc.edu/biblio/BRTF_Final_Report.pdf

2. **Topic/Title:** Should governments archive social media posts?

Type of Document: Article

Author: Robin Hicks, *futureGov*

Summary: This article discusses how governments in the United States, New Zealand, the Netherlands and Hong Kong are dealing with the archiving of social media postings.

Source: <http://www.futuregov.net/articles/2010/feb/09/should-govts-archive-social-media-posts/>

Books

Selected Readings

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1. John Montana, *How to Develop a Retention Schedule*, 2010.

Every organization has records in many different forms with different requirements and lifecycles. This often raises questions about what to keep, for how long, and how to establish that process. The answer to these questions, and to having a successful recordkeeping program, is a records retention schedule.

Often the responsibility of managing an organization's information falls to an individual or group of individuals who have no background in information management. For them, creating a retention schedule becomes one of the first and most important things to establish. In John Montana's new book *How to Develop a Retention Schedule* he explains what a records retention schedule is, the process for creating one, and why they are necessary for proper records management.

Source: <http://www.computeruser.com/pressreleases/how-to-develop-a-retention-schedule.html>
<http://www.pelligroup.com/2010/02/preorder-how-to-develop-a-retention-schedule-john-montana%E2%80%99s-newest-book-coming-soon-from-arma-international/>

2. Tim Padfield, *Copyright for Archivists and Records Managers*, 4th edition, 2010.

As an archivist or records manager it is essential to keep up to date with the complexities of copyright legislation. *Copyright for Archivists and Records Managers* outlines copyright law in the United Kingdom with special reference to materials relevant to archive and records collections such as maps, legal records and unpublished works. This book also offers advice on rights in the electronic environment and the problems associated with rights clearance and covers related areas such as rights in databases.

Source: <http://www.facetpublishing.co.uk/title.php?id=705-0>