

Web Conferencing Firms Try To Plug Data Retention Hole

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Suppose you're a white collar criminal with a scheme that requires long distance communication, but you don't want to leave tracks. Email is definitely out of the question. A phone call? Instant messaging? Also bad ideas in a corporate environment, where it seems all forms of electronic communication are now captured, crystallized into bits and bites and archived. But what about Web conferencing?

Hosted Web conferencing - provided by firms such as WebEx Communications Inc., Microsoft Corp. and IBM Corp. - has been one of the weak spots in corporate data retention plans, according to specialists in the field. Two or more parties can chat, display charts and graphs - for example, a 'buy here' circle around a timeline for a stock or a 'sell these' arrow pointing to a particular batch of stocks in a portfolio - and at the end of the session, the only information remaining will be a time and date stamp, and the names of the parties involved.

"Using WebEx is like looking at something through a browser. It would be like looking at a page on Amazon.com; after I'm done, the content isn't on my PC anymore, though there may be some cookies left," said Deidre Paknad, president and CEO of PSS Systems, a company that sells software to help companies manage retained data.

Such weak spots are a growing concern for all companies, given regulators' increasing exercise of their right to fine companies that don't or can't provide information upon request. It's especially worrisome to financial services companies, which are bound by Securities and Exchange Commission rules that require them to keep all electronic records of information exchanged between employees and clients. The recent jury decision to award \$604 million to financier Ronald Perelman in his case against Morgan Stanley (before changes including a reduction in damages and addition in interest payment by the judge) is just the latest example of how important such issues have become; \$850 million more in damages were explicitly because the bank failed to produce emails and other documents in the case.

Web conferencing vendors have or are working on products to address companies' concerns. While all have come up with ways to help companies record and archive the various media that flow through a Web conference, they admit that the products leave something to be desired.

WebEx recently released a new product, WebEx Retention Solution, that captures chat, video and audio, as well as things which users "annotate" on top of WebEx slides, and creates an index of the recording that can't be altered. The capture is automated, and also compresses files for better storage. Video and audio is tagged, but not as easily searchable as text portions of the exchange, something the company plans to work on for upcoming versions.

Douglas Louie, WebEx's senior industry manager for financial services, said investment banking clients have been coming to the company with concerns that Web conferencing could cause problems in discovery. The firm, which counts 23 of the 30 largest financial services firms as customers, said one such concerned customer has become its first client.

A spokesman for Microsoft said the company's Live Meeting product doesn't automatically record Web conference sessions, but said that users can choose to save a session, or portions of it. He couldn't say whether the data could be tagged to make things like text or video searchable.

IBM's product manager for real-time and team collaboration products, Adam Gartenberg, said IBM's Lotus Same Time conferencing has a feature which a company can switch on, ensuring that all sessions of

conferences are saved. But he noted that such records are only searchable by the names of the session or participants.

While a recording of all features of the conference will be saved, there is no system of tagging that data to make it searchable by specific topics or names.

“Given our customer base, compliance is something we’re keeping close tabs on. We’ve had lots of interest in email and instant messaging, but companies looking at Web conferencing today are more on the forefront,” Gartenberg said.

While data retention experts say moves such as those by WebEx are a positive step, they’re divided on whether companies should adopt new retention technologies before they’re required. While the current laws are “media neutral” and simply call for retention of all electronic documents, lawyers point out that regulators can’t reasonably ask for records if there hasn’t been a way to save and store them.

“Providing a technical means to retain information is a double-edged sword. To the extent that you’re making information accessible that’s not required to be accessible, you’re just opening a can of worms in the discovery process,” said Adam Cohen, an attorney at Weil Gotshal & Manges LLP and coauthor of a book on electronic discovery law. Cohen said he isn’t aware of any cases where unsaved Web conferencing data has been an issue.

“You could make the argument that no one has been fined for Web conferencing because there has been no solution. We might be (New York Attorney General Eliot) Spitzer’s best friend,” said WebEx’s Louie.

“Companies constantly have to ask themselves, do they force their retention plans to keep up with the technology, or do they stop using the technologies because it doesn’t meet the requirements of their retention plans,” said Paknad, adding that it’s just as important to organize what information a company does retain than decide whether or not they can retain it. “If companies have 1,000 different ways of creating information, what we think they need is one way of understanding how to deal with it; so when they get a regulatory inquiry or a subpoena looking for all the records on one person or issue, they don’t have to go into 1,000 different systems to find where it is.” *cc*