A Framework for Addressing Legacy Data

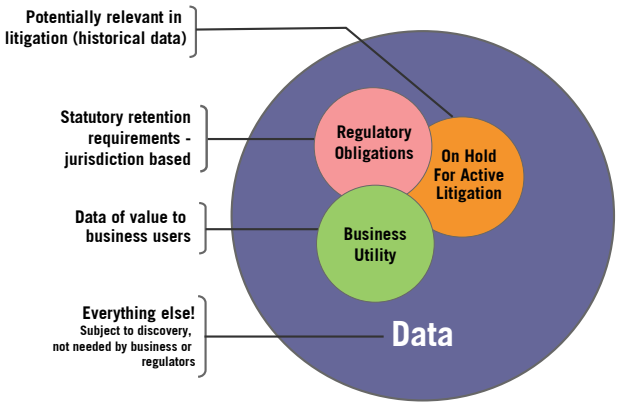
Matthew I. Cohen, Managing Director, AlixPartners LLP
Deidre Paknad, President & CEO, PSS Systems

The Legacy Problem

Legacy data is a pernicious problem for most corporations – whether traditional paper records stored offsite, disaster recovery or back up tapes that have exceeded their rotation period, data left behind by terminated employees, or even data collected and preserved in connection with closed litigation or regulatory matters. Destroying data that is not subject to preservation obligations and which the corporation has no business reason to keep can reduce storage costs as well as reduce potential liability in future litigation and regulatory matters. However, mitigating the risks associated with destroying legacy data requires facts and substantiation – a rational, documented process that relies upon objective information about the data.

By combining process management and robust legal workflow with subject matter and data analysis expertise, AlixPartners and PSS Systems have developed a framework to efficiently inventory and categorize legacy data, to establish the facts needed to determine what data can be destroyed, and to document the process to help companies resolve the legacy data crisis.

Increased sanctions in litigation and regulatory matters resulting from the mismanagement of data have understandably resulted in many corporations taking a conservative ("save everything") approach. Very often, companies simply lack the resources or in-house expertise to address their accumulated legacy data and most lack an adequate or convenient tally of their ongoing legal obligations to retain or preserve information which can readily be compared with the legacy data. In either case, the result is not a decrease in risk but rather an increase in risk and a massive increase in overall cost; the cost of retaining unnecessary information is dwarfed by the cost of reviewing it to determine whether it is relevant in litigation. Without a clear categorization of the legacy data — to understand what is in "the pile" — companies lack sufficient knowledge of the data universe. With data volumes increasing at over 40% per annum according to IDC, a leading information industry analyst, the problem is compounding faster than many realize.



For companies of all sizes, knowing what information falls within their preservation obligations, what information falls within their regulatory retention obligations and that which has continuing business value is the challenge. The magnitude of the challenge increases with company size – as do the cost and risk of failure to understand these distinctions.

This white paper describes the challenge many companies face today and provides a framework for approaching the increasing burden of legacy data. AlixPartners and PSS Systems offer a combined solution that can help companies determine what they need to keep and what they can dispose to reduce risk and cost and to continue to minimize cost and risk going forward. AlixPartners' subject matter and analytical expertise combined with the Atlas software from PSS Systems together provide the process, framework, and methodology to whittle away the legacy data problem that haunts most companies and free them from the vicious cycle.

Reality Check: Keeping Information Longer Isn't Better

Keeping non records and data that is not required under a corporate records retention program actually creates risk and increases costs. Data without business value or subject to legal or regulatory retention obligations will be stored, managed, and potentially collected and reviewed in future litigation – all added cost with no added benefit. It is somewhat counter-intuitive, but more information (and more undistinguishable information in particular) actually reduces a company's ability to determine what to preserve; it clearly adds cost, complexity and time to collect needed information in discovery. Ensuring that security, integrity and privacy obligations are met also becomes more difficult as the volume of information increases.

What may have started as a company practice to "save everything" to prevent potential spoliation and litigation sanctions actually increases the likelihood of mishap. Just as often, the practice of accumulating information arose from a confluence of five factors:

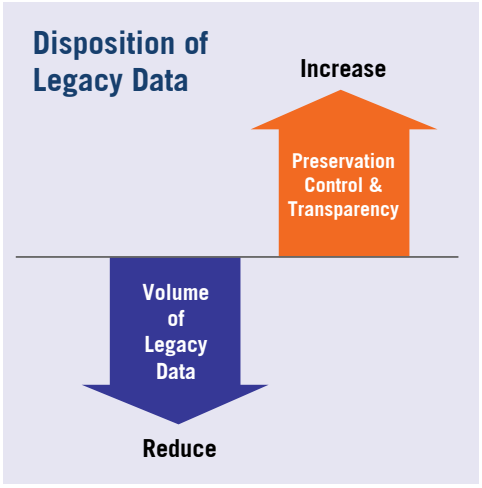
1) Perception that storage was cheap without recognition of just how much data would be involved

2) Inability to determine with any specificity what information should be preserved under litigation obligations because a catalog of holds and their corresponding custodians, data sources, and data was not accurate or available

3] Inability to determine what record retention obligations applied to electronic information because no retention schedules for such information existed or were valid

4] Lack of internal processes and controls to ensure that people who manage information were sufficiently informed of the overriding legal obligations such as the duty to preserve or the need to retain records

5] Misguidance from advisors or providers that saving more information reduces risk or increases compliance.



The value for companies which understand their legacy data and which embrace modern retention and preservation programs is increased preservation efficiency, lower storage and discovery review costs and increased predictability for the business.

Case Studies of Concern

The following vignettes underscoring the causes of legacy data build up and the costs inherent in a "save everything" approach are real examples within Fortune 100 companies.

1] **Tough Deposition:** A high-tech manufacturer had very stringent controls in place for disposing of information and the corporate secretary (who was also the associate general counsel) had to sign off on every disposition request, presumably to ensure that nothing was improperly disposed of. A problem arose when a number of boxes of potentially relevant data (based on the box descriptions) were destroyed in the normal course of business. In her capacity as AGC, the corporate secretary, was responsible for the company's litigation and should have had direct knowledge of which data was relevant to the pending litigation.

After being sanctioned, the company's response was that it was better to keep everything forever than face sanctions in the future. A less risky and more productive alternative would have been to improve the system for determining what information is on hold and instituting or improving disposition procedures and controls.

2] **Five Million Back Up Tapes:** A Fortune 50 company has 5 million back up tapes in storage — over 500,000 of them are on hold for current and closed litigations and regulatory matters. Unfortunately, the only way to find anything relevant is to look at *every* single tape. Depending on the hardware and software versions this may also include outsourcing the restoration. With

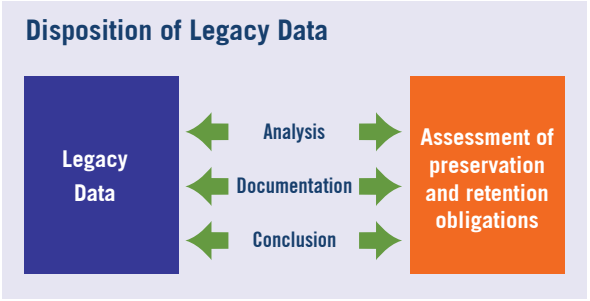
as much as 70,000 files on a server, this is a source of tremendous review cost and waste.

3) **Terminated Employee Files:** A Fortune 100 company has assets and files for over 500,000 terminated employees although its current headcount is less than 20% of that number. This legacy data includes soft and hard files, emails, and server content for these employees, and because this data is in various forms, it is stored in various locations.

   With over 10,000 active legal matters and not enough transparency as to which matters involve which terminated employees, the company must continue to retain the legacy inventory and must continue to search, retrieve, and review it as new litigation arises. An inventory of this size requires dedicated staff to manage it and it contributes nothing but cost and growing risk to the business!

What's Your Legacy?

Think of legacy data as all information that is "inactive" — data stored in physical or electronic format that is not currently understood, used or managed. This includes tremendous volumes of data accumulated in files and data stores originally saved for valid and specific reasons such as disaster recovery, business need, record retention, but which has since outlived its value or utility (particularly in companies that lack procedures for determining end of life and imposing it on data kept for these purposes).



With the very high information growth rate and the escalating requirements for preservation rigor, legacy data problems multiply over time. They don't stay constant nor do they improve without a specific efforts. Fortunately, with such an effort and with tools and expertise, you can fix the legacy data problem to save money and avoid future costs.

Reasonable Process, High Impact Results

The solution outlined in this paper is an efficient, defensible approach that mitigates corporations' risk of over-storing and destroying legacy data. By adopting this approach, corporations will be able to accelerate the disposition of legacy data. Leveraging a methodology designed to be efficient and defensible, AlixPartners helps clients take an incremental and rational approach to the challenge of addressing legacy data and PSS Systems' Atlas software provides the tools to manage and sustain the process. With this joint solution, litigation executives can improve their corporate legacy dramatically with a consistent, reasonable process that reduces risks, costs, and liberates the company to manage information in more rational ways.

The critical elements of this process are:

1) An inventory of the legacy data with reasonable specificity as to content, custodians, date ranges and data types
2) An inventory of the company's current legal hold obligations and the relevant custodians, information parameters, and date ranges
3) Any applicable retention schedule
4) Business process, analysis and expertise to cross check the data with the obligations and to coordinate with the relevant corporate stakeholders and outside counsel

By using a rational, thorough methodology companies can dispose of legacy data with confidence and can prevent accumulation going forward.

The sustaining processes and methodologies must include:

- ✓ An accurate and transparent means of documenting ongoing legal holds, the custodians and data sources involved and the status of collection and discovery response.
- ✓ An information retention program that defines lifecycle procedures for information, not just official company records and which is harmonized with the legal holds process
- ✓ Information transparency and taxonomy so that information is stored with labeling that reliably maps to the conventions and procedures of the retention program
- ✓ Accountability for controls and compliance within each of the processes above

With these processes in place, reasonable people can make well reasoned and easily defensible decisions!

Record Class: FUN360, Managed Futures - General

Record Unit/Department	Record Unit Retention Period	Current Hold(s)	Sources
Private Equity & Venture Capital (US)	Account active + 4 Year(s)	2004-03598	Tape Archive
Global Investments-Portfolio Group US (US)	5 Year(s)	2006-11125	Group Sharepoint
GWM - Private Bank US - NYC (US)	Declaration of record + 5 Year(s)	2006-06399	Backup Tapes
GWM - Private Bank US - San Francisco (US)	3 Year(s)	2007-12934	CMS

Sample report, "LeaDDeR Report" (legacy disposition readiness report) – organized by information record class, there are 4 columns identifying departmental location of data; local retention period; y/n preservation hold on that record class in that department; hit against back up inventory x-check

Inventory is the Key

For many companies, the first and hardest step is inventorying the legacy data itself. AlixPartners uses small teams of highly experienced professionals with legal, accounting, project management and technical backgrounds to ensure that each specific work plan is developed, implemented and managed in an efficient and defensible manner. AlixPartners professionals are accustomed to working closely with clients' IT, RM, legal and business personnel and on teams that blend AlixPartners' and internal staff. They approach legacy data inventory and categorization projects from a workflow perspective first, and once they have developed a framework for the project, they then implement technology to automate appropriate steps of the process. Investing time and resources up front to ensure that the scope of the project and any limitations are well defined and understood by all stakeholders is time well spent.

At a high level, the process and considerations include:

» As a first step, catalog the preservation and retention obligations of the company. This "obligation matrix" should identify any and all data subject to preservation or retention obligations. While the inventory and categorization of legacy data can be done in parallel, the disposition of data can't begin until the matrix is complete.

» Figure out what part of the data mountain to climb first. Where do you start? While there are a number of options, your choice will depend on your priorities. Some companies choose to start with the data set that poses the most risk; if this is your focus, a risk assessment heat map done early in the process will help identify those data sets (wether legal, privacy, security or other areas of risk). Others choose to start with a relatively small data set and use it to generate quick wins and proof points for the organization. Another option is to focus on the most obviously outdated information to quickly shrink the mountain and operating burden – the "low hanging fruit".

» A phased or incremental approach ensures that data can be disposed of as soon as it is determined to be eligible for destruction. Given the size of the legacy mountain, the procedural analytics required, and the rate at which new litigation duties arise, cycling through the entire inventory before implementing disposition may lead to recursive cycles through the inventory! It is essential to manage the disposition process incrementally to ensure that progress can indeed be made.

The AlixPartners methodology provides a rational, fact-based approach that can be reasonably explained and defended to litigants, courts and regulatory agencies.

PSS Systems Atlas LCC software provides the "system of record" for the current and historical hold obligations of the company, including the scope of custodians and data sources involved in each matter and the status of preservation and discovery. It also stores the inventory of legacy data associated with each specific matter and the catalog of data sources and types that are routinely subject to litiga-

tion within the company. Once the catalog of holds and the inventory of legacy data is complete, Atlas makes managing, analyzing, and sustaining these inventories very efficient.

Atlas ERM software provides the catalog of retention schedules that apply in various business units and jurisdictions. The two modules work together to provide a comprehensive, accurate, and accessible matrix of the legal obligations over legacy and current data. Moreover, they provide the process and workflow to capture the decisions made through the course of the legacy data project and to sustain good ongoing decisions on what to retain, preserve, and dispose.

Given the volume of matters in most large companies and the volume of data, managing and monitoring compliance with preservation and retention duties with spreadsheets is risky and burdensome. The legacy data problem itself proves that when managing legal obligations and data properly becomes too difficult, it simply doesn't get done. With Atlas, much of the tedious tracking and monitoring can be done automatically and systematically. More importantly, litigation leaders have instant and accurate information on the company's obligations – eliminating a dangerous blind spot and enabling better preservation and routine disposition of unneeded data.

About the Authors

Matthew I. Cohen
Managing Director, AlixPartners LLP

AlixPartners

Matthew specializes in electronic discovery and litigation readiness planning. He has extensive experience assisting corporations in the technology, consumer products, pharmaceutical, medical device, insurance and financial services sectors. Prior to joining AlixPartners, Matthew worked for 15 years at Skadden, Arps, Slate, Meagher & FlomLLP, where he was a Counsel in the Complex Mass Torts and Insurance Litigation department and Co-Chair of the firm's Electronic Discovery Committee. Matthew earned a JD from the Fordham School of Law in 1995 and a Bachelor of Arts Degree from the State University of New York at Stony Brook in 1986.

Deidre Paknad
President & CEO, PSS Systems, Inc.

PSS SYSTEMS

Deidre leads PSS Systems and is the innovator behind the company's visionary Atlas legal holds and retention management software. She founded the CGOC in early 2004, is a member of the Sedona legal holds and legacy data teams, and is a recognized subject matter expert on legal holds and enterprise retention management. She is a seasoned software entrepreneur and executive.