



Defensible Disposal

What every records manager should be concerned about

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Alyssa Blackburn

Director, Records & Information
Management Strategy, AvePoint



Ashley Winton

Technology and Cyber Law Attorney,
McDermott Will & Emery LLP



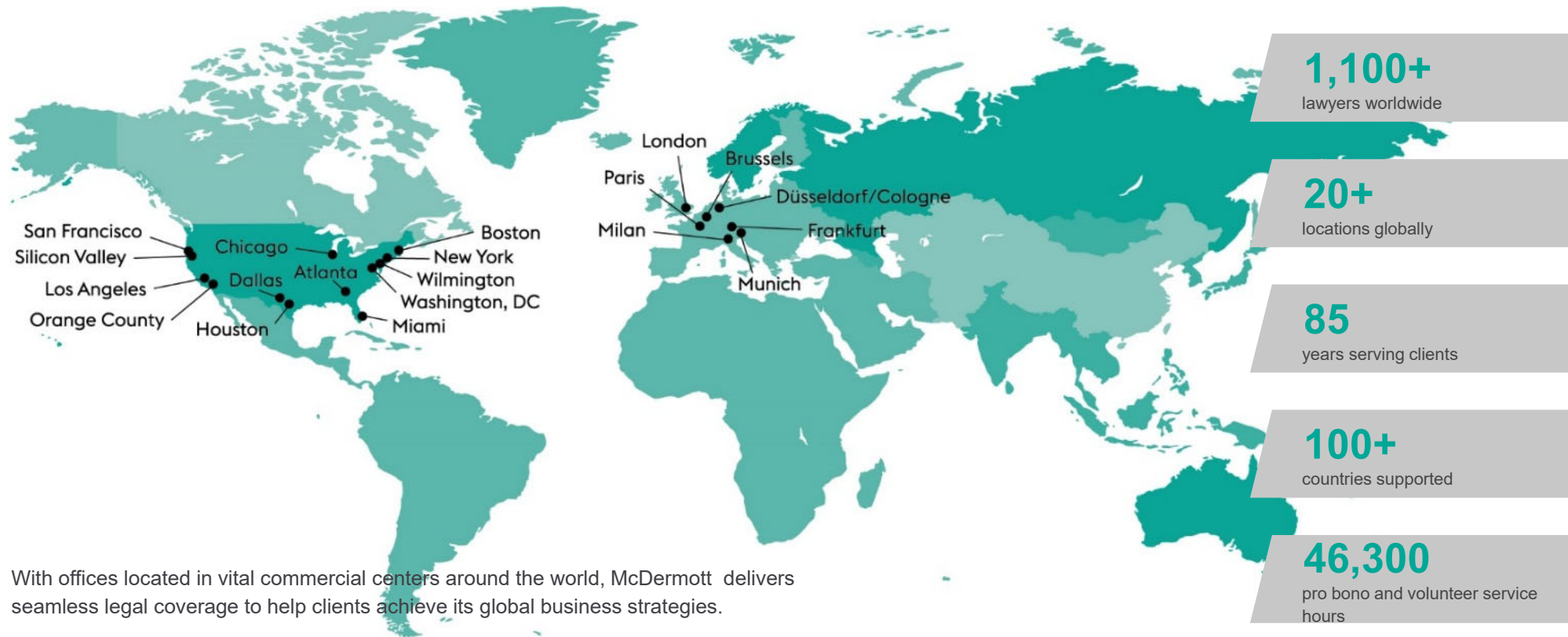
DATA PROTECTION
FORUM



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ASHLEY WINTON

Formerly a computer designer, Ashley focuses his practice on global privacy and cybersecurity, with particular emphasis on data protection. Ashley has a wealth of experience in corporate investigations, lawful interception of data and international litigation arising from data breach. Ashley advises corporations, government entities, trade associations and charities across issues relating to data privacy and information governance. Ashley has a strong background advising on the impact of privacy and information security law on telecommunications, cloud services and international data transfer.

Ashley is a fellow of the Ponemon Institute and current Chairman of the UK Data Protection Forum, the leading data protection association in the UK.

Partner

London

+44 20 7577 6939

+44 7788 676663

awinton@mwe.com

www.linkedin.com/in/ashleywinton



College of Law,

1993

City University, Law,

1992

Manchester University,
BSc, (Hons), M.Eng.,

1991

Admission to The
Law Society of England
and Wales



SOPHIE WOOD

Sophie Wood focuses her practice on data protection law. She has experience across a range of data privacy matters stemming from her experience at the Bank of England and Prudential Regulation Authority.

Sophie also has experience advising on matters related to payment services, working with key players and new entrants to the payments and retail banking markets (including commercial and retail banks, payment schemes, e-money, and payment institutions, mobile operators, retailers, and consumer finance providers) and has been involved in a number of high profile payments projects.

Associate

London

+44 7918 648 457

smwood@mwe.com

www.linkedin.com/in/sophie-wood



University of Law,
2017

University of Leeds,
2011

Université de
Toulouse I, French,
2010

Admission to The
Law Society of England
and Wales



Migrate. Manage. Protect.



12 Global Cloud Instances
99.5% Availability Backed by Azure
24/7 World-Class Support
20PB+ Managed Customer Data

ISO Certification



27001:2013



17K
Customers

7M
Cloud Users

88
Countries

7
Continents

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Public Sector: Microsoft CityNext Award
2016 Partner of the Year Winner
Technology for Good Citizenship Award
2015 Partner of the Year Winner
Collaboration and Content
2014 Partner of the Year Winner
Public Sector: Public Safety and National Security



Director, Information & Records Strategy

Alyssa.blackburn@avepoint.com

www.linkedin.com/in/alyssa-blackburn

Alyssa Blackburn

With more than 18 years of experience in the information management industry, Alyssa has worked with both public and private sector organizations to deliver guidance for information management success in the digital age.

She is responsible for the development of AvePoint's information and records management solution, AvePoint Records and Cloud Records, and has led the implementation of our records management solution with government agencies and commercial clients across the world.

A passionate information management professional, Alyssa is actively involved in the industry and is an in-demand speaker at conferences and industry events worldwide.



Agenda

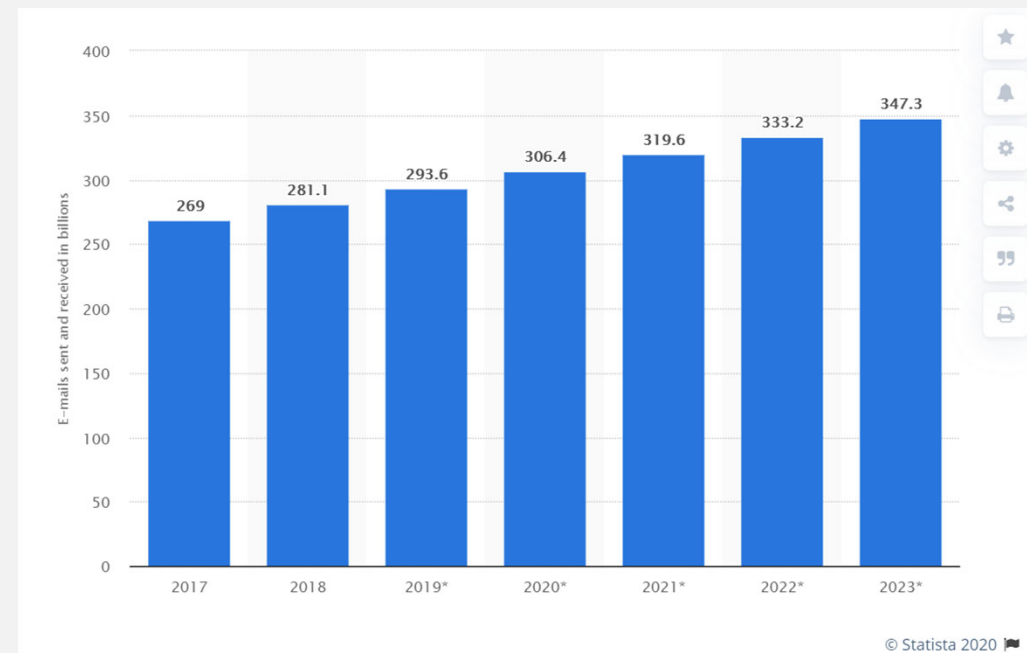
- The volume of email is still rising
- Too much stored data can be expensive
 - *And risky*
- Short of long?
- Records
- Legal Compliance
- Limitation Periods
- Special Rules
- Data Protection (GDPR)
- Master Classification Schedule
- Defensible Destruction in a System
- Practical Application
- What's next?

Records Management & the Law

The volume of email is still rising

Statistics:

- More than half of the world population used email in 2019.
- The number of worldwide email users is expected to grow to more than 4.3 billion by the end of 2023.
- The total number of business and consumer emails sent and received per day exceeded 293 billion in 2019 and is forecast to grow to more than 347 billion by the end of 2023.
- Over 99% of all documents created and stored are created and stored electronically



Too much stored data can be expensive



A study has shown that 50-75% of reviewed emails were found to have no retention value, and it was estimated the company paid \$350,000-525,000 to review records of no value

A major energy company settled a claim after identifying a discovery process would take six months at a cost of \$6.2 million to complete

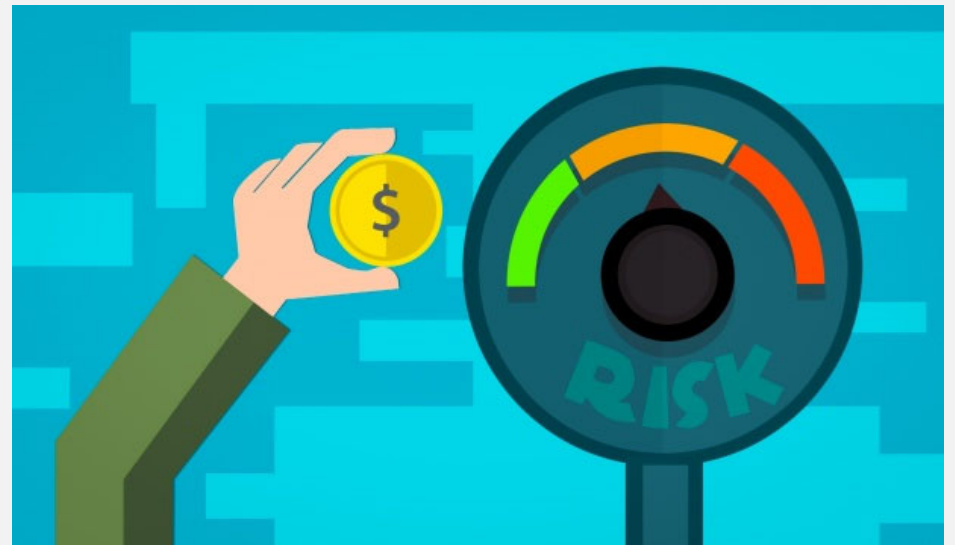
A study showed that organisations lose on average \$2.1 million annually because of poor data management practices

A client of a major data privacy compliance firm recently saved \$60,000 per year in data storage costs by cleaning up file shares and another \$1.2M annually by eliminating backup tapes and reducing backup retention

Too much of the wrong data is **risky**

But: Records may be damaging to the company

- Investigators: "E-documents, in particular e-mails, are godsend for investigations because you'll always find evidences, even if some documents have been destroyed."
- Commercial impact of deficient retention policies:
 - **Arthur Andersen:** Accounting giant collapsed after receiving a \$500,000 fine for destroying documents in response to a US SEC investigation into the affairs of its client, Enron.
 - **SERGIC:** Real estate development company fined €400,000 by the French DPA for data protection violations, including its failure to define data retention periods for the personal data of unsuccessful rental candidates.
 - **Unidentified company.** The Dutch DPA fined an unidentified company €1.85 million after employees deleted/destroyed electronic chat and messaging services during a dawn raid.



Short retention period?

Benefits

- Reduced storage costs
- Less liability for out of date or inappropriate data
- No information embarrassment
- Lower costs in UK or US litigation
- Lower costs for data subject access requests
- Good Data Protection/Privacy compliance

Disadvantages

- Data has an intangible asset value: more data = greater value
- There may be further valuable insights into data which have yet to be discovered (AI and Big Data)
- Storage costs are reducing over time
- Dealing with data subject access and other requests is expensive
- Greater liability on cyber breach
- Higher UK or US litigation costs
- Inherent liability and potentially poor privacy compliance.

Not **everything** should be kept – What is a **record**?

Broadly defined as information created, received or maintained by an organisation in the transaction of business

Physical records

- Hard copy documents e.g. minutes, notes, medical reports, internal company policies and procedures

Electronic records

- Internal emails, electronic documents (including personal and confidential information e.g. passwords and commercial contracts), audio and video recordings/CCTV recordings

Records held by third parties

- Cloud storage providers or offsite records storage. Data owned by the business but on a personal phone of an employee also captured

Official records v disposable information

- Important records e.g. where there is a legal duty/commercial incentive to retain held in a Records Retention Schedule
- Disposable information can be deleted once used e.g. duplicates of originals, training materials, junk mail

Employee Personal Information

- Generally not a record

Legal Compliance



No universal law of document retention

- No harmonisation of laws, they can differ from country to country
- And which country's laws would you apply?

Document retention periods are mentioned in lots of different laws:

- Statutory limitation of liability
- Company law
- Accounting
- Tax
- Health and safety
- Employee/PAYE/payroll
- Electronic communication services or networks
- FCA regulations
- Sector specific e.g. Nuclear

Legal Compliance II

Litigation and Regulatory

- Legal hold
- Record keeping in government audits/investigations
- Discovery/disclosure requests

Contractual and Commercial

- Confidential information, cyber security and data protection obligations in contracts
- Evidential information in case of disputes

Limitation periods

- Statutory limitation of liability

Limitation Periods

The Limitation Act 1980 provides that:

- Claims for breach of contract or negligence should be brought within 6 years for normal “simple” contracts, and 12 years for deeds.
- Commencing on the date of the breach of contract or date of the negligent act or omission.

The Latent Damage Act 1986 allows for later claims up to 15 years from the date of the damage

- Provided it is 6 years from the accrual of the damage or 3 years from the date you knew discovered the facts that could lead to the claim.

However, this is the maximum period allowed by the law. Shorter limitation periods are frequently agreed in the contract.

Special Rules



Litigation Hold

- Where there is threatened regulatory, civil or criminal litigation, the retention policy should be placed “on hold” until the threat has passed

Future claims

- Where a business or employment relationship comes to an end, data (including personal data) in respect of that relationship may need to be retained to defend any legal claims
- Documents may be subject to legal professional privilege

Local law

- Local law may require retention for a longer period if records based outside of the UK

Data Protection

- Data protection law may limit personal details held

Interaction with Data Protection



The General Data Protection Regulation (GDPR) requires that an individual's personal data **is not kept longer than is necessary** for the purposes for which it is used. Personal data is any information from which a living individual can be identified, whether directly or indirectly.

The GDPR **does not specify minimum or maximum retention periods** for personal data, and it is for the Company to determine how long it is necessary to keep it.

Holding personal data for longer than is necessary could expose a company to potential complaints from affected individuals and/or regulatory action from the data protection authorities:

For example: **Deutsche Wohnen** - Property company fined €14.5 million by the Berlin DPA for not having a GDPR-compliant data retention schedule in place.

Master Classification Schedule

A list of record types and recommendations as to retention period

- **Key Decisions**

Big Bucket	▼	Little Bucket
Universal/Whole firm	▼	Country by country
Voluntary guidance	▼	Technically enforced
Standalone Policy	▼	Integrated Policy
Accurate trigger points	▼	Estimated/no trigger points
Automatic categorisation	▼	Manual categorisation

Snapshot of UK Classification Scheme (example)

<u>Specified Record</u>	<u>Retention Period</u>	<u>Citation</u>
<u>Company Records</u>		
Statutory returns, records and registers	Life of the company	Section 162 CA 2006 and Best Practice
Board and general meeting minutes. Board and shareholders resolutions.	10 years from the date of the meeting or resolution	Sections 248, 358, 355 CA 2006
Directors' Service Contracts	6 years after cessation	Best practice
<u>Accounting records</u>		
Accounting records	3-6 years (depending on whether it is a private/public company) after date created	Section 388(4) CA 2006
Corporation tax self-assessment records	6 years from the end of the relevant tax period	Schedule 18, Part 3, paragraph 21, The Finance Act 1998
VAT account and all VAT invoices (including amended invoices) issued and received	6 years from the end of the relevant tax period	Schedule 11, paragraph 6(3), Value Added Tax Act 1994
<u>Personnel and Human Resources</u>		
PAYE records	3 years at the end of the tax year to which they relate	Income Tax (Pay As You Earn) Regulations 2003
Immigration checks	3 years after termination of employment	Best practice
Recruitment records	6 months after appointment	Best practice
<u>Health and safety records</u>		
Health and safety inspections, property management and asset records	6 years after created	Health and Safety at Work Act 1974 and Limitation Act 1980
<u>Legal claims</u>		
Legal advice and other records relating to specific litigation or claim	6 years from settlement or withdrawal of claim	Limitation Act 1990
Data subject rights requests	6 years from closure of request	Limitation Act 1990
Insurance claims	3 years after settlement	Limitation Act 1990



Defensible Destruction

What does this look like?

UK Contaminated Blood Scandal

Cover-up fears as hundreds of contaminated blood files 'vanish' before inquiry can see them

'We're talking about at least tens of thousands of documents within these files,' says campaigner Jason Evans

Contaminated blood scandal: many medical records disappeared, inquiry hears

Health

Contaminated blood scandal: Inquiry 'must uncover truth'

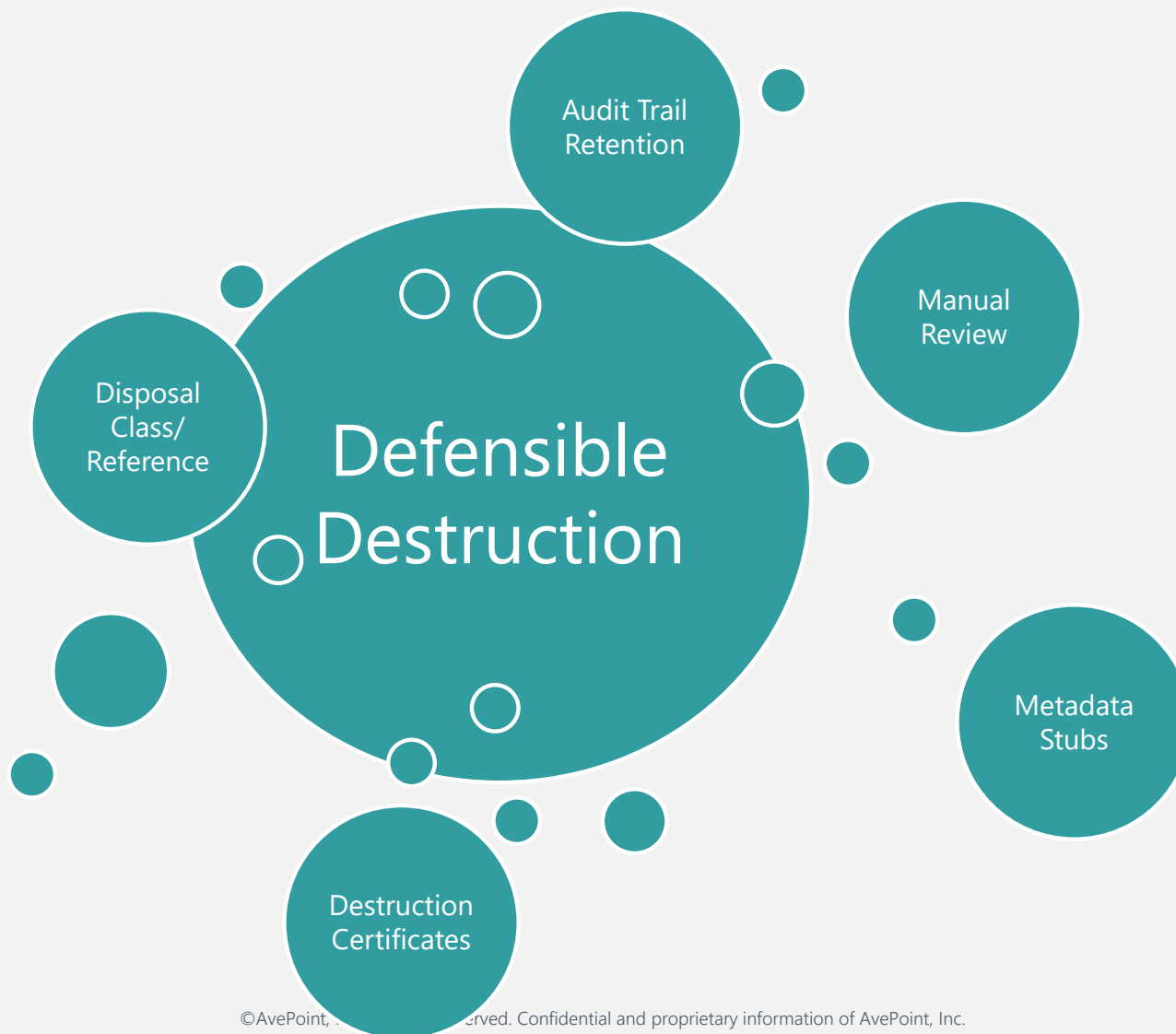
By Nick Trigg
Health correspondent

Many victims believed their experiences amounted to evidence of a cover-up, O'Neill said. "A number of people who have spoken to me independently have come with such similar strands of medical records disappeared, of medical records filleted so that record of treatment is gone."

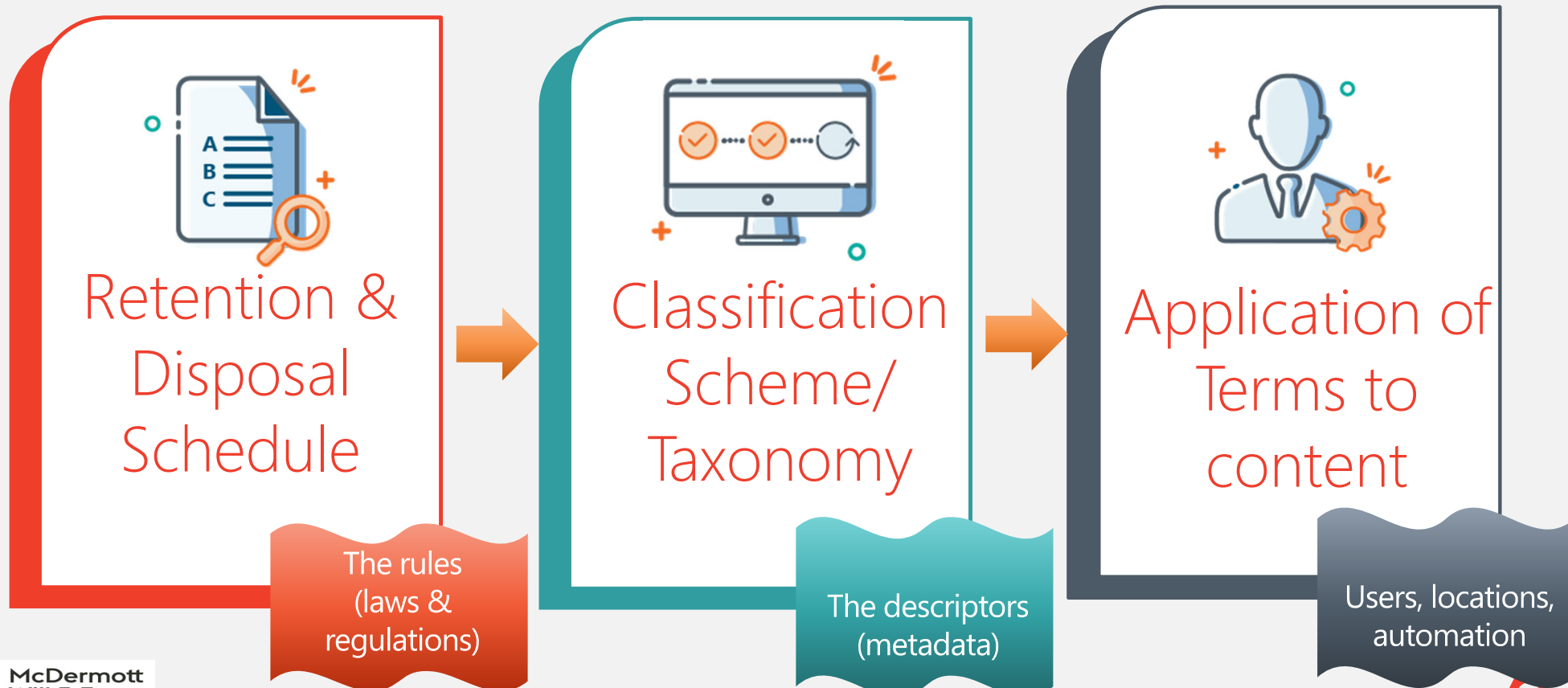


Destroying is fine

But you **must** able to defend it

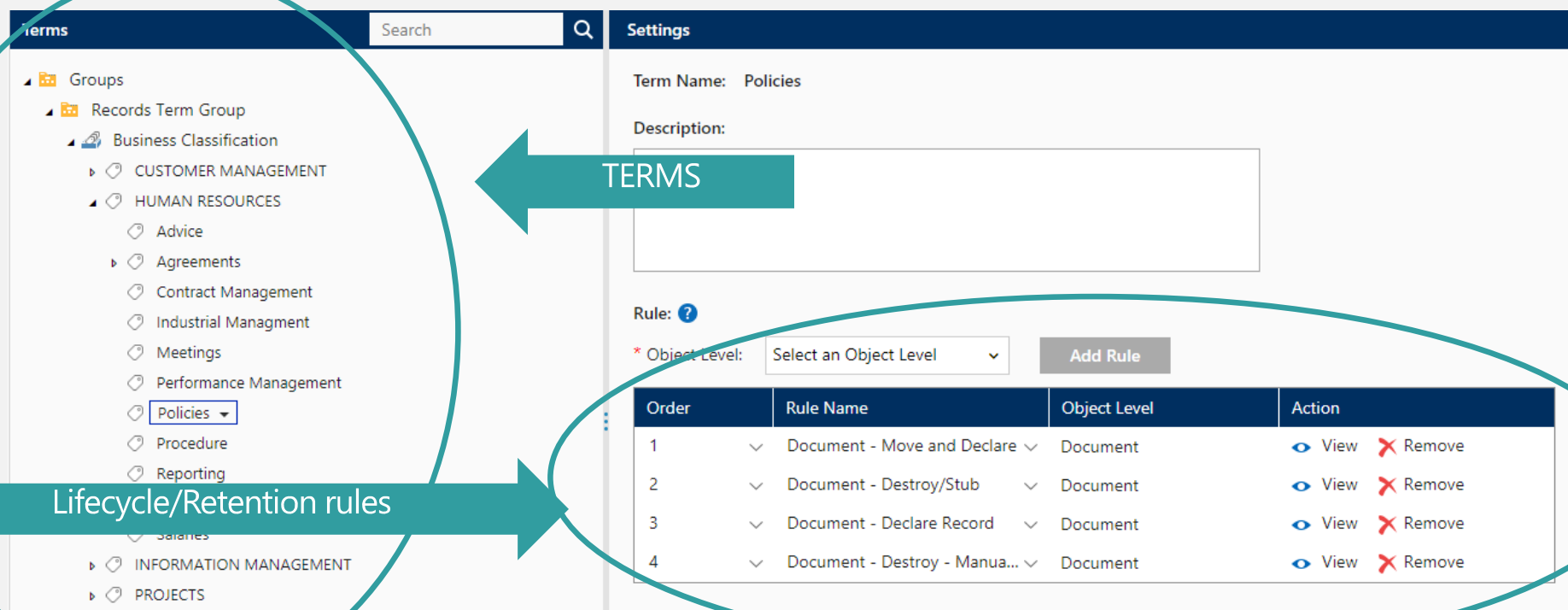


Implementing Classification and Rules



Practical Application

Associating terms with outcomes



Terms

Search

- Groups
 - Records Term Group
 - Business Classification
 - CUSTOMER MANAGEMENT
 - HUMAN RESOURCES
 - Advice
 - Agreements
 - Contract Management
 - Industrial Management
 - Meetings
 - Performance Management
 - Policies**
 - Procedure
 - Reporting
 - INFORMATION MANAGEMENT
 - PROJECTS

Settings

Term Name: Policies

Description:

Rule: ?

* Object Level: Select an Object Level

Order	Rule Name	Object Level	Action
1	Document - Move and Declare	Document	View Remove
2	Document - Destroy/Stub	Document	View Remove
3	Document - Declare Record	Document	View Remove
4	Document - Destroy - Manua...	Document	View Remove

Understanding the relationship between Terms and Rules

IF term = x AND ^{"Rule"} trigger y is met then action z

Examples:

- IF doc is a *Policy* and "*Is Final*" = *Yes* then *MAKE IMMUTABLE*
- IF doc is a *Project Plan* and "*ProjCloseDate*" > *10 years ago* then *DISPOSE*
- IF doc is a *Memo* and *Created By*= *BobSmith* then *DECLARE RECORD*
- IF doc is a *Memo* and *Created By*= *BobSmith* + *Create Date* > *10 Years Ago* then *Send to Archives*

Defensible Destruction Outcomes



What would you like to do with the SharePoint data? ?

☒ Remove content from SharePoint and destroy

☒ Leave a stub in SharePoint for each record following disposal ?

☐ Retain content in SharePoint

☐ Move documents to a new destination library

Include declared records? ?

☐ Include declared records

Enable manual approval? ?

☒ Enable manual approval

Export the SharePoint content before archiving? ?

☒ Export before archiving

Export format selection:

None



Manual Review Tasks & Escalation



Waiting for Approval

Approved

Rejected

+ Approve

✖ Reject

Record Name
<input type="checkbox"/> Destroy Excel.xlsx
<input checked="" type="checkbox"/> Destroy PowerPoint.pptx
<input type="checkbox"/> Destroy Word.docx
<input type="checkbox"/> Manual Approval Escalation
<input type="checkbox"/> Destroy after Manual Approval

Escalate

* Escalate to the following users or groups:

victor.lai ✖

☒ Send an e-mail notification with the following comment:

Please review this for disposal.

Save

Cancel

1

18

Search

Record Owner	Approved By
thomas.jamed	
thomas.jamed	
thomas.jamed	
alyssa.blackburn	
alyssa.blackburn	



Application to Content



User driven

- Never a preferred approach - Only use when no other option available



Location Based

- Easy & Efficient to implement but will only work if your structure for information matches your taxonomy



Auto Classification

- Simple (based on metadata) – Complex (Machine learning or text analysis)

What to do next....

'All you need to know' course list

Information Governance Courses

- Caldicott Guardian
- Caldicott Guardian Deep Dive
- Information Governance
- Senior Information Risk Officer

Records Management Courses

- Records Management
- Records Management Deep Dive
- Information Asset Management
- Microsoft 365 & SharePoint Records Management

Other Courses

- Data Protection Officer
- Certificate in Managing Data Protection Compliance
- Data Protection & General Data Protection Regulation (GDPR)
- Subject Access Request
- Solutions and Support

Microsoft Office 365 & SharePoint Records Management Training.

All you need to know

In House Training Packages

PLATINUM - GOLD - SILVER - BRONZE

These packages are cost effective and designed to suit your training requirements.

Our Bronze package is a virtual training environment which is increasingly popular with our clients as it helps you to reduce your carbon footprint.

LEADERSHIP THROUGH DATA

Need some advice?

Get in touch for a conversation about your legal obligations, GDPR and retention, policies, legal holds and contractual language

Are you records ready for Office 365?

Office 365 readiness roadmap Assessment for records management

(led by Alyssa Blackburn)

thank you

Gracias

ευχαριστώ

Danke

Grazie

благодаря

Hvala

Obrigado

Kiitos

شكراً

Tak

Ahsante

Teşekkürler

متشكراً

Salamat Po

감사합니다

Cám ơn

شکریہ

Terima Kasih

Dank u Wel

Děkuji

நன்றி

Köszönöm

ありがとう
ございます

ขอบคุณครับ

Dziękuję

谢谢

Tack

Mulțumesc

спасибо

Merci

תודה

多謝晒

дякую

Ďakujem

धन्यवाद



Sales@AvePoint.com |



www.AvePoint.com



in    



McDermott
Will & Emery



ASHLEY WINTON

+44 20 7577 6939
+44 7788 676663
awinton@mwe.com



SOPHIE WOOD

+44 7918 648 457
smwood@mwe.com



www.mwe.com



in



f

