
Central NY Chapter of ARMA International Newsletter

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**INTERNATIONAL®
CENTRAL NEW YORK CHAPTER**

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PRESIDENT'S MESSAGE

Happy New Year all! The Central New York Chapter ended 2014 on a high note. We had two very successful educational events this past fall. Each was well attended and received high praise from attendees. Most gratifying for the board was an event on archival preservation held at Cornell University in Ithaca. This was the first time in many years we had an event in the Southern Tier part of the CNY region and it was hit. We hope to do more events there in the coming years.

We've started work on our Spring schedule of events. On April 9, 2015 we have Bryn Bowen, President of the New York City chapter presenting on a soon to be decided topic on electronic records management. The event will be held at the C&S Companies in Syracuse.

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For June, the topic is compliance and we're putting together a panel of experts who can speak on a number of compliance topics. Utica will be the location.

2014 also brought some positive changes. We have a new board member, Josie Loughlin, and other board members took on new roles.

We're looking forward to another successful year and hope you'll be a part of it!

Dave Lowry, CRM
Chapter President

What's Old is New Again

Central New York ARMA has returned to it's old website. Visit us at cnyarma.org to find information on upcoming events, reviews and resources from past events, previous newsletters, our by-laws contact information for board members, and more!

Don't forget to visit us on Facebook and LinkedIn.

Job Opportunity

SR. BUSINESS REGULATORY RECORDS MANAGEMENT COORDINATOR-L

BNY-MELLON

THIS JOB CAN BE LOCATED IN SYRACUSE OR ORISKANY

Records Managements mission is to implement a comprehensive, enterprise-wide Records Management Program, with an emphasis on defining the legal and regulatory requirements for creating, using, retaining and destroying company records regardless of the records media or format, in order to minimize risk and maximize operational efficiencies. In addition, Records Management assists in the

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development of training to help ensure that employees clearly understand their obligations as they relate to managing company and client records. The Senior Business Regional Records Management Coordinator will have responsibility to support the development, implementation and the ongoing maintenance of the Global Records Management Program. He / She will provide guidance and educate Records Officers/Record Delegates across their Business Area and / or Region on effective governance and management controls to mitigate risks and to drive incremental value from Records Officers relationships. This will include supporting risk assessments, developing records management strategies and action plans, monitoring and reporting on records-related activities, supporting the administration of Business Records Mgmt Coordinators processes, and coordination with local regulatory requirements as necessary.

Bachelor s degree in a related discipline required. Preferably in records or information management, business, information technology. 6+ years of experience in providing services related to records/Information mgmt and program implementation. Knowledge of electronic and physical records program policies, procedures, standards and best practices required.

FOR INFORMATION ON APPLYING PLEASE VISIT

www.bnymellon.com and go to the careers section and reference job # 1412989

You may contact Chris Fehmel at chris.fehmel@bnymellon.com for more information

Ask a Law Expert

-John Isaza

This is part of a syndicated column I have created for ARMA chapters. My column is devoted to answering information governance, records management, privacy and related legal questions from Chapter Members or sharing my thoughts on current hot topics. As you read my column, please note that although I am an attorney specializing in these areas of law, these are only my opinions. My opinions should not be construed as legal advice. Kindly consult with an attorney for more formal advice.

This month I did not receive questions from our readers, but I have noted some interesting developments regarding E-discovery, which continues to evolve at a faster pace than any other information governance issues.

- I. Courts Beginning to Scrutinize Records Governance Issues More Closely

This past October, Judge Grewal of the Northern District of California issued a decision regarding the "as ordinarily maintained language," a phrase also associated with "routine good faith business practices." In *Venture Corporation v. Barrett*, Case No. 5:13-cv-03384-PSG (N.D. California, October 16, 2014), the court addressed a motion to compel a request for production of ESI (Electronically Stored Information) "in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms." Plaintiffs sought to produce the ESI on flash drive and by email, consisting of approximately 41,000 pages. The drive and email did not contain a custodial index, table, or other taxonomy information at all-just the folders of the files. The court found that this kind of production "did not square with the rules," noting that

"if documents are not organized and labeled to correspond to the categories in the request, they must be produced as they are kept in the usual course of business." (Emphasis added.)

The court then noted that Plaintiff "submitted no evidence that in the ordinary course of business they keep documents and ESI in folders as they were produced... At a minimum, the court would expect to see the documents and ESI kept by the name of the employee from whom the documents were obtained or at least which Venture entity had produced the documents." The court hence ordered Plaintiff to "produce the documents and ESI as they are kept in the ordinary course of business."

This case shows how courts are inching towards more scrutiny over how records and data are actually maintained in the ordinary course of business, including a look at key metadata fields such as filing systems and custodian data. According to the court, "this mean[s] that the disclosing party should provide information... [that] would include, in some fashion, the identity of the custodian or person from whom the documents were obtained, an indication of whether they are retained in hard copy or digital format, assurance that the documents have been produced in the order in which they are maintained, and a general description of the filing system from which they were recovered." (Emphasis added.) Accordingly, the data has to be organized well before litigation is in the horizon. Otherwise, production of disorganized data may make the courts suspicious of what you are producing, and thus lean harder on you to produce even more data.

- II. Duty to Preserve Information on Personal Non-Employer Devices

The court in *Alter v. Rocky Point Sch. Dist.*, 2014 WL 4966119, at *10 (E.D.N.Y. Sept. 30, 2014) succinctly stated that personal non-employer devices are fair game, if they contain data relevant to the case at hand. Specifically, the court said,

"Defendants claim that they were not obliged to preserve work-related ESI which employees... utilized on their personal computers. However, to the extent that the School District employees had documents related to this matter, the information should have been preserved on whatever devices contained the information (e.g. laptops, cellphones, and any personal digital devices capable of ESI storage)." (Emphasis added.)

1. III. Some Words of Caution on Electronic Signatures

At least one court has illustrated a way that electronically signed document can be invalidated. In *Ruiz v. Moss Bros. Auto Group, Inc.*, Case No. E057529 (Cal.App. 4th 2014, Dec. 23, 2014), the Court refused to enforce an employer's electronically executed arbitration agreement. The court found that the employer did not present sufficient evidence to prove that the electronic signature on the arbitration agreement was "the act" of the employee. The Court confirmed that an electronic signature has the same legal effect as a handwritten signature; however, any writing must still be authenticated. Here, the employee argued that 1) he did not recall signing the arbitration agreement and 2) that the employer failed to show that the electronic signature was an "act attributable" to the employee. The Court found that the employer did not provide details on how to verify that the employee electronically signed the agreement in question. Although the employer did explain how each employee is required to log into the HR system with a unique login ID and password in order to review and electronically sign the agreement, the Court found that the employer did not explain how such an electronic signature could only be placed by the employee in this case.

This decision signals a new way for counsel to seek invalidation of arbitration agreements, and by extension other kinds of electronic agreements. At minimum, when it comes to arbitration clauses, parties should evaluate the manner and means by which they obtain electronic signatures, including assurances that such signatures can be uniquely verified and attributable to the signer if ever questioned in Court.

John Isaza is a California-based attorney, CEO of Information Governance Solutions, LLC and law Partner at RIMON, PC, a twenty-first century law firm that includes specialty in electronic information governance, records management and overall corporate compliance. He may be reached at John.Isaza@InfoGovSolutions.com or John.Isaza@RimonLaw.com. You can also follow him on Twitter and LinkedIn.

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Free Records Management Courses Available.

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<http://www.feith.com/records-management-university-webinar-course>

UPCOMING COURSES

MONDAY February 23, 2p ET

What Are the Standard & Optional RM Features I Should Shop For?

Anyone can provide you with a Records Management solution, just like anyone can sell you a car. But when you're looking at that car, it's not just about body style and reputation. It's critical what comes with the car and what value you're getting for extras. Does the RM solution you're evaluating or using have a variety of cool and important features that come standard (like auto-categorization), or are they all options that keep the price going up and the value going down? We'll discuss what features you should expect to come with your RM car, and what additional options are useful.

Tuesday March 10, 2p ET

Have I Avoided the RM Road Hazards or Will My Wheels Come Off?

To paraphrase Jerry Seinfeld, anyone can buy an RMA platform, but not everyone can implement an RMA platform. After ages of trying to convince Senior Management of the value of Records Management, they've finally seen the light. Congratulations, but beware... enlightenment has its price. But now you're facing the monumental and complex task of implementation, especially for electronic records. Getting IT, security, business owners, records consultants, users, and a myriad of other resources on board is hardest part. We'll discuss all the new obstacles you may not have considered, and how to overcome institutional fears facilitate culture change.

Tuesday March 24, 2p ET

Is My RM Car Factory-Certified and Under Warranty for High Speed and Extended Miles?

When an Records Management solution is DoD 5015.2 certified, that means you can trust the security of the RMA application thoroughly... to the level the US Department of Defense does. But what critical security are you missing if the solution you're reviewing - or even using - isn't certified... and why is that important to you even if you're not in Government? And on the other end, is the RMA vendor you choose letting you drive off the lot and wishing you luck, or are they alongside you as you and your organization move forward? We'll talk about the importance of not just sustainability of the product, but of the vendor itself. Is the solution cobbled together from third party parts? Is it dynamic enough to grow along with you? Will you be privy to new versions as they're available? We'll discuss critical issues in certification, sustainability, and maintaining your RMA application for the long road ahead.

Tuesday April 7, 2p ET

Does My RM Car Come with an Awesome GPS and Automated Driving Pilot?

If you don't input gas into your car, you won't go anywhere. If you don't input every object, document, file, and transaction that needs to be records managed into your Records Management application, it won't work either. And just like your car automatically knows how to take that gas and make the car run, your RMA system also needs to automatically know what to do with records when they're ingested. Automating input may be the most important part of records management, especially when you're talking about hundreds or thousands or possibly millions of documents coming in, especially through email. We'll discuss how to manage and automate all of your records input processes without exerting unnecessary energy, the critical importance of auto-categorization (and why Capstone isn't the answer to all your problems), integrating with SharePoint and your legacy applications, and the transitional vs. transparent problem in automating input.

Feith webinars are always free to attend, open to all, and conclude with an informative question-and-answer session with your Feith experts. Please email us with any questions.

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SUPPORT YOUR LOCAL CHAPTER - Join up Today!

Local chapters have long been the heart and soul of ARMA International. They give ARMA its personal face and add a local flavor to the organization. To get the most out of your ARMA membership you really need to join a local chapter and make an effort to get involved. If you're shelling out \$175 to join ARMA International why not pay an extra \$40 for the best part of your membership? You'll enjoy many added benefits such as:

- bringing first class RIM education to your backyard. You can't always make it to the International conference but CNY ARMA brings you top notch speakers and educators right here to upstate New York. We've brought you and will bring you such renowned RIM educators as Bill Saffady, Bruce Dearstyne, David Stephens, and Greg Hunter. If there's no local chapter, there's no one to bring you such great speakers.
- saving money on training. Chapter members receive a \$10 discount on all educational events. If you attend all four annual events you'll recoup your \$40 right there!
- meeting local RIM professionals. Here's your chance to network and exchange ideas with other RIM professionals without having to travel to a national or international conference.
- making new friends. Joining your local chapter is also a great way to meet new people and make new friends.

So if you're not a chapter member please visit the ARMA website and join CNY ARMA today!