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Law & Technology

Compliance Chaos? Federal regulations present sweeping changes for electronic data management firms. Page 17



MASS High Tech

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Close-Up Report

A weekly in-depth focus on topics affecting technology

THIS WEEK:

Law & Tech: Business Practices

“Companies that are in litigation readiness... are the ones taking the bull by the horns. It’s reactive versus proactive.”

Sandra Serkes
Valora Technologies, Inc.

COMPLIANCE CHAOS?

BY PATRICIA RESENDE
SPECIAL TO MASS HIGH TECH

A Boston-area compliance consortium this week is launching new technology-vendor and regulation directories to help chief compliance officers, IT directors and legal executives manage corporate compliance with electronic document management regulations, which include Sarbanes-Oxley and the Gramm-Leach-Bliley Act.

“I wanted to establish a resource for education and information about best practices on compliance available to users all over the world and to develop standards,” said Adrian Bowles, program director of regulatory compliance at the Object Management Group, a nonprofit computer industry consortium based in Needham.

Billions of dollars, time and resources are being expended by companies working to meet regulatory compliance regarding the management of electronic information. A significant aspect of the challenge, however, comes from the lack of clear compliance guidelines for everyone or every region of the world. Compliance depends on the nature of the business, where it conducts business and the market it serves.

What is clear, however, is that plenty of law firms, consultants and technology companies are moving to market with products and services to meet demand for help to comply.

With leading technology research companies such as IDC adjusting down IT spending forecasts in the wake of Hurricane Katrina and skyrocketing oil prices, however, most companies are looking for the most cost-effective way to meet obligations.

OMG and other industry pundits and technology market leaders are stepping up — not only to develop technology and industry standards but also to suggest effective ways to incorporate compliance as an integral part of a business plan — particularly important for technology and life sciences entrepreneurs and startups to consider as they move to market.

Companies in the Bay State such as Open Pages, Cognos and Valora Technologies are among those with emerging product lines aimed at helping businesses meet regulatory requirements.

Sandra Serkes, founder, president and chief executive of Valora Technologies, a software vendor based in Waltham, said many companies are struggling just deciding when and how to approach compliance.



Sandra Serkes

“They know it is out there and they know they have to deal with it, but don’t know when they have to get involved,” she said. “Then there are the other companies that are in litigation readiness. They are the ones taking the bull by the horns. It’s reactive versus proactive.”

Pharmaceutical and biotech firms have been the most proactive, according to Serkes, because they have patents to protect and because they know the requirements are coming.

“They catalogue and index everything,” she said. “At least if you have everything catalogued and indexed, you are ready for those questions.”

Individual companies are expected to spend \$1 million to \$4 million dollars per year on compliance, according to AMR Research. More specifically, spending on Sarbanes-Oxley compliance in the United States is expected to reach \$6.1 billion this year, up from \$5.7 billion in 2004.

IT spending within that \$6.1 billion figure, is expected to total \$1.7 billion in 2005, up from \$1.1 billion in 2004.

However, some research firms such as IDC are now lowering IT and line-of-business spending expectations by up to 4 percent for IT spending over the next 12 months in the wake of Hurricane

Katrina and the prospect of permanently higher oil prices.

On a national level, the Internet Law and Policy Forum, an international nonprofit focused on the development of the Internet, has tapped tech market giants including Sun Microsystems, Veritas and Oracle, to form the Compliance and Management of Electronic

Information Working Group.

CMEI, based in Seattle, will work with individuals in the public and private sectors as well as industry groups to develop a cross-industry standard for managing electronic information for compliance.

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“There is a lot of misunderstanding in the marketplace,” said Joe Laferrera, a partner at Gesmer Updegrave LLC, a Boston law firm focused on intellectual property and privacy law that has represented dozens of standard-setting consortia.

He said these working groups provide a good way of disseminating information for companies that know

electronic records present complicated legal issues but don’t know quite how to attack.

“There is a lot of value of having a uniformity of approach and it gives companies a comfort level,” Laferrera said. “The flip side, however, is with electronic records there is no one-size-fits-all solution that will work across all industries.

Standards will be helpful but I don’t see it as a panacea in providing folks with a straight forward answer.”

That is why OMG this week plans to announce the launch of two new projects. The first is a directory of vendors indexed by regulations they support in mid-October. OMG is also building a global repository of regulations that affect IT across vertical markets.

“This is so a firm will be able to look at and search the database and say ‘we are a brokerage firm and operate in these geographies, tell us which regulations apply to us,’ ” Bowles said. “It’s a global effort and we are managing it.”

The model used to put together the Oxford Dictionary is the same that will be used to develop the repository.

Such a repository would help, for example, companies doing business in multiple countries, according Bowles, because there are often conflicting regulatory requirements.

A financial institution here in the United States, for instance, must keep its records for seven years.

That same company, if it also has a presence in the United Kingdom, must immediately destroy the information after a relationship with a customer is terminated.

“Whenever you have one regulation saying “destroy something” and another saying “don’t destroy it,” inherently you have a problem,” Bowles said.

Leferrera said the health care market is also a good example of an area in which the U.S. and European differences pose a business challenge.

“Under the EU privacy directive, there is a high degree of privacy awarded to health care,” said Leferrera. “And the U.S. attacks privacy issues on an industry-by-industry basis, while the European Union has a more broad-brushed approach.”

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