Intelligent Information Management Brief

Mimosa Expands Electronic Discovery Beyond E-mail

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Abstract: Since June 2005, Mimosa Systems has been helping customers manage their Exchange environments with its NearPoint product. NearPoint enables customers to archive e-mail, calendar entries, task lists and contact information and improves application availability by maintaining a standby application log file at a separate location. While it is imperative that organizations address messaging application availability, retaining messages and other collaboration information is becoming a critical legal requirement. E-mails, both past and present, as well as calendar and contact information, are now common evidence sources. As a result, Mimosa Systems has added an electronic discovery option to its NearPoint solution facilitating proper information retention and legal hold policies. Most importantly, customers can execute queries against the archive repository helping attorneys quickly locate and review relevant information.

Introduction

When it comes to determining the most 'mission critical' business application today, the designation goes to e-mail. It is the cornerstone of collaboration and communication for many organizations and, with the latest release of Microsoft Exchange 2007, it soon will be the primary mechanism for regularly retrieving voicemails and faxes.

However, when it comes to e-mail applications such as Exchange, there are two often overlooked functions that also increase productivity: calendaring and contact management. In addition, many employees utilize task lists within the e-mail application to organize their day. These features are vital to any organization that encourages effective time management and fosters constant customer, supplier and partner communication.

Because many employees feel safe behind a computer screen, Blackberry or other e-mail-enabled device, they are likely to say almost anything in a message. The ubiquitous use of e-mail has been a blessing to global organizations because it facilitates collaboration and removes language barriers.

More recently, and much to the chagrin of several organizations, e-mail has also become a liability. Regulators and litigators have targeted e-mail, both production environments as well as offline backups of messages, as a primary source of evidence in matters ranging from insider trading to employer discrimination. While the messages provide a preponderance of evidence that is subpoenaed, attorneys are also seeking calendar entries and contact modifications in an effort to put together event timelines which can be extremely critical in determining 'who knew what and when did they know it.'

It is unlikely that e-mail is going to be replaced as the primary mean of business communication, thus posing a significant dilemma to organizations - invest in more effective e-mail management solutions that facilitate the retention and disposition of messages or continue to manage e-mail with existing processes that leave messages lying around data centers on servers, storage systems and backup tapes, requiring significant data restoration fees in order to respond to the inevitable e-mail discovery requests.

One of the more efficient ways to curb electronic discovery costs, while adding some much needed control to e-mail, is by archiving all forms of content generated by messaging applications. Mimosa Systems offers customers a unique way to capture, archive and search messages, calendar and contact entries. It also indexes this content so that organizations, as well as their in-house or external counsel, can quickly identify relevant information in response to a legal discovery request. The incremental information from the calendar and contact portion of a messaging application provides attorneys invaluable insight that may make or break a particular matter.

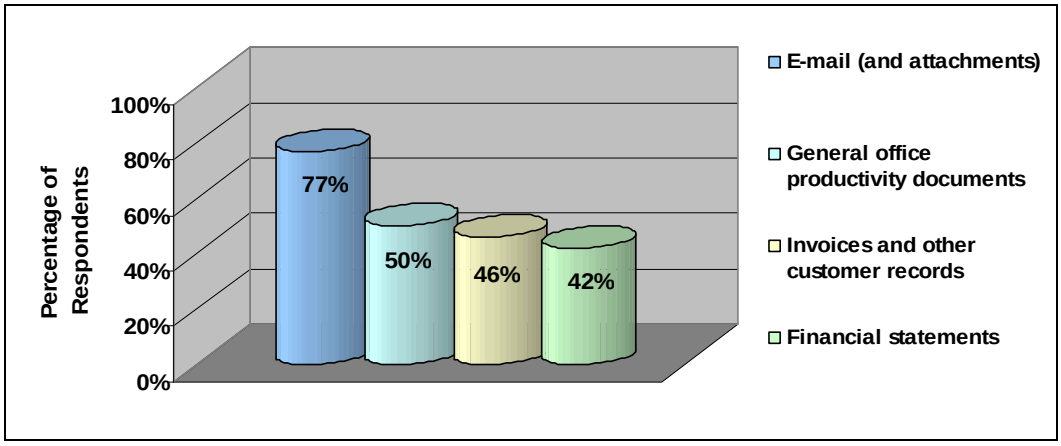
By archiving e-mail via application log files, Mimosa NearPoint captures all content that could be relevant during an electronic discovery process, leading to early preparation of case strategy that may ultimately result in swift matter resolution or improved trial tactics.

Utilizing E-mail Archiving to Mitigate Electronic Discovery and Corporate Risk

As Figure One highlights, the primary record type requested and produced to support a legal proceeding or regulatory inquiry is e-mail and associated attachments. ESG also believes this holds true for internal audits where organizations seek to enforce corporate governance policies such as appropriate e-mail and Internet use.

Because several litigation matters involve former employees covering topics such as discrimination and harassment, organizations, via internal auditors, are looking to curb inappropriate behavior before it becomes a legal liability. As such, organizations are deploying e-mail archiving solutions to monitor e-mail usage to support the audits, as message discussions can often provide the insight needed to identify a potential issue.

Figure One - Record Types Requested and Produced to Support a Legal Proceeding or Regulatory Inquiry



E-mail archiving solutions have integrated indexing and search capabilities allowing organizations to query an archive with accurate results. Because e-mail archiving solutions allow customers to retain information online at a lower cost by migrating messages from production systems to secondary environments, all the data can be indexed and searched. With current and historical e-mails online within an archive, internal auditors and attorneys are assured that search results produce all relevant e-mails, thus minimizing the need to restore tape backups.

When it comes to improving electronic discovery processes, keeping information online can drastically reduce the time it takes to locate relevant information. With attorneys billing by the hour and internal IT staffs already overburdened, e-mail archiving solutions that produce accurate and comprehensive search results can certainly create a compelling Return On Investment (ROI).

In addition to attorney fees for review, another enormous cost during the electronic discovery process is data processing by service providers. After evidence is gathered by an organization, it is typically sent to a legal service provider that processes the information which entails de-duplicating and indexing the content. Processing expenses can range from $2,000 to $2,500 per gigabyte and are an accepted cost of the electronic discovery process.

Once information is processed, in-house or external counsel begin culling and reviewing messages and files to determine the data that is most responsive to a particular matter. With information online and searchable,

organizations can reduce the amount of information that needs to be further processed by a service provider, thus reducing a portion of the overall electronic discovery costs.

Current E-mail Management Processes Will Not Work

Changes in the rules around electronic discovery, such as the amendments to the Federal Rules of Civil Procedures (FRCP) which took effect in December of 2006, are transforming the way that companies must manage electronically stored information. Simply stated, FRCP amendments dictate that companies be prepared for electronic discovery, including knowing what electronic content they have, how much effort is required to get to it, how to produce it and how to delete it.

An overarching theme in the FRCP changes is the need for organizations, especially general counsel, to comprehend the information it has and where it is. This insight can prove to be invaluable as parties negotiate conditions of discovery and prepare strategies in support of litigation. In addition, organizations are now permitted to produce e-mail and other electronically stored information in native format (for Exchange it is most commonly a .pst file).

The FRCP amendments emphasize that electronic evidence is more commonplace, and that organizations must reevaluate current information management processes to include proper identification and classification of all information assets, including e-mail. Furthermore, the new Federal regulations also require the responding and receiving parties to discuss and agree upon the format of the electronic documents. Thus, determining the format of production (e.g., native versus non-native) has become an important consideration for both sides.

The FRCP amendments provide the necessary catalyst for organizations to, at the very least, evaluate e-mail archiving, as current methods are ineffective. E-mail applications have been architected to efficiently and securely send and receive mail. They have not been designed to store the massive amounts of data for the length of time businesses require today. New technologies, communication tools and collaboration methods have resulted in users generating more content, which consumes resources at rates that are outpacing the architecture of the e-mail infrastructure. This problem is exacerbated as employees send large attachments, voicemail and other files around via e-mail.

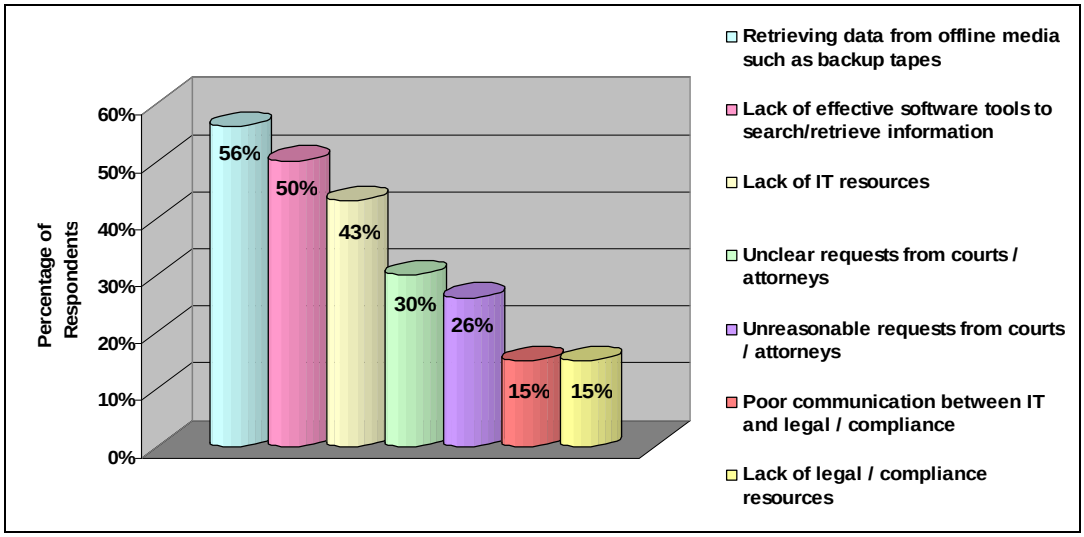
One of the many current corporate processes with which organizations try to control e-mail is user-based mailbox management. When a user receives a notification that their e-mail box is nearing its capacity limit, the first thing employees start to do is empty their deleted items folder and then quickly hunt for any other folders and e-mails they can eliminate to stop the notification messages.

Alternatively, employees can create their own personal archive, a .pst file in Exchange environments that is used to move e-mail off the corporate application server onto their local machine or network drive. This creates yet another wave of operational problems for IT. E-mail is moved from the centralized mail server onto the local machine (laptops in many cases) and is at risk of being stolen and not backed up.

Additionally, storing disparate .pst files can quickly consume capacity on the local machines and network drives, eliminating the advantage of single instance storage whereby multiple copies of the same message are only retained once, helping reduce capacity requirements. IT backs up these PCs and file shares along with the messaging application, which creates a new set of risks as multiple copies of e-mails are located all over the place. When an electronic discovery request arrives, IT is forced to gather messages from laptops, backup tapes and the production application as opposed to a central archive.

As Figure Two points out, retrieving information from off-line media is the greatest challenge for organizations when attempting to produce electronic records. In this scenario, it is very time consuming and expensive for IT to locate all of the information needed and some files may go overlooked. Attorneys may find themselves working with an incomplete data set that could expose the organization to additional legal liability. E-mail archiving helps solve this issue by tracking and managing historical data and maintains the availability of the data by keeping it online albeit on tertiary storage systems.

Figure Two - Challenges Organizations Face When Producing Electronic Records



Mimosa Systems Approach to E-mail Archiving for Electronic Discovery

The solution to taming the growth of e-mail is to implement an e-mail archiving solution that:

- Significantly reduces the capacity overhead on the e-mail's primary storage system.
- Returns performance back to the e-mail server.
- Enables the creation and enforcement of retention policies across the enterprise.
- Maintains a single instance of the e-mail and attachments in a central repository that can be continuously accessed by end-users and legal staff.

Organizations are evaluating e-mail archiving regardless of the industry primarily due to the benefits of centralized mailbox management and ability to conduct more efficient electronic discovery inquiries.

One archiving solution that customers can evaluate is Mimosa NearPoint. Based in Santa Clara, CA, Mimosa Systems provides enterprise e-mail archiving solutions to help Microsoft Exchange customers manage the tremendous growth of e-mail data.

The primary difference between Mimosa and other e-mail archiving solutions is its capability to perform e-mail archiving utilizing log files as opposed to using Exchange journaling. Journaling creates an exact copy of inbound and outbound e-mails putting additional demand on the e-mail application servers from a CPU, memory and disk capacity perspective. Implementations of Exchange Server 2003 require journaling to be turned on at the information store level which leads to companies re-architecting their Exchange infrastructure. All users' e-mail that must be journalled and subsequently archived have to be located on the same Exchange server(s), which could lead to the procurement of incremental application servers and create additional management responsibilities. Journaling only captures messages that are sent or received, so information such as personal calendar listings and contacts cannot be archived, and therefore are not searchable.

While Mimosa provides continuous live e-mail archiving based on transaction log shipping, its customers may also choose to deploy journaling if they so choose. However, by implementing archiving via log shipping, customers can derive additional benefits.

Mimosa's NearPoint server captures data from a Microsoft Exchange server at the transaction log level, maintaining application consistency between the primary Exchange database and the NearPoint application server. The Mimosa NearPoint server captures a full data copy of calendar items, contacts, tasks and all other data stored on the production Exchange Server database.

Mimosa's ability to maintain a full data capture delivers a clear advantage to organizations that find value in capturing and tracking more than just e-mail data -- especially assisting attorneys when they need to create timelines and context for cases involving electronic discovery.

To gather calendaring and other non-e-mail Exchange information with journaling-based solutions, organizations would need to restore and recreate historical e-mail environments and manually search for entries that may pertain to the investigation. By contrast, NearPoint tracks and maintains all the history on line and enables IT to utilize inexpensive disk capacity to store and maintain an active archive and history of all Exchange data.

Since Mimosa maintains a complete consistent database of the production Exchange database, e-mail recovery can be performed from the NearPoint server at the database, mailbox or message level. This granular approach proves to be effective for both e-mail archiving and e-mail availability. NearPoint delivers e-mail archiving combined with e-mail data protection, enabling organizations to manage historical content and maintain a consistent e-mail database for disaster recovery purposes.

The process of transaction log shipping enables organizations to quickly implement an e-mail archiving solution without having to deploy additional e-mail infrastructure to support journaling. Exchange administrators will appreciate the fact that they do not have to juggle users between storage groups and can manage all the e-mail archiving from the NearPoint server. Transactions are captured in real time from the Exchange server and shipped to the NearPoint server. The transactions are played back on the NearPoint server creating an e-mail database that is consistent with the primary Exchange Server database. The continuous update process from the Exchange Server to the NearPoint server is non-disruptive to the production e-mail servers and does not require any additional hardware resources or a change in architectural design of the e-mail infrastructure.

Mimosa's Electronic Discovery Option for NearPoint enables companies to quickly perform powerful searches of archived e-mail, calendar entries, contacts and other Exchange items from a single management platform. The search results detail a complete message history, enabling companies to reconstruct events and user behavior for internal investigations and litigation support. Legal teams can also tag information to organize content by case or other arbitrarily determined groupings. In addition, legal holds of e-mail and other information within Exchange can be established at the mailbox level or on specific messages.

Mimosa's search capability enables companies to efficiently cull through archived data and produce a refined set of relevant results that can be used for legal review. The workflow collaboration feature allows teams to work together to search, hold, review and tag results for export. The ability to quickly produce desired results enables companies to put processes in place to proactively manage e-mail in an environment where electronic discovery is becoming the norm.

Conclusion

E-mail is a convenient communication tool that allows us to quickly communicate with others at a relatively low cost. Since it is so convenient and simple to use, massive amounts of data pass in and out of the e-mail server on a daily basis. The beauty of e-mail is that it has become a central repository for a wealth of information and valuable content that we can refer back to locate e-mail addresses, documents, links and a history of past e-mail exchanges.

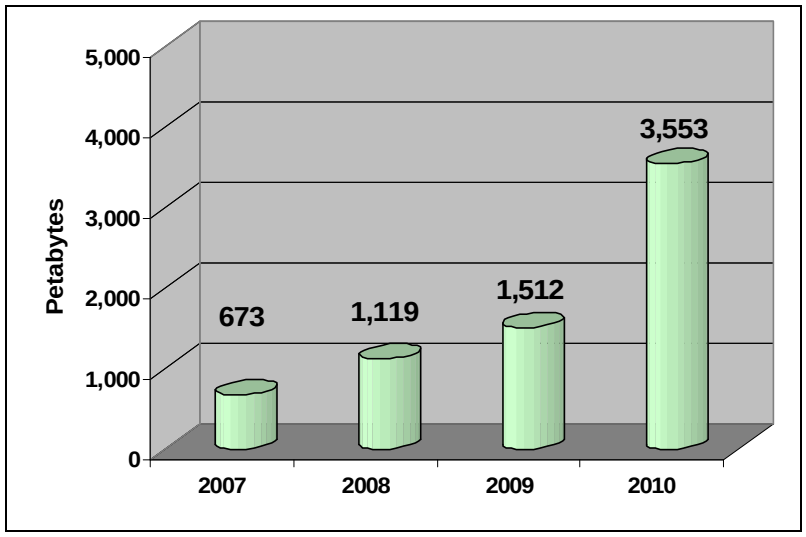
Unfortunately, e-mail, now more than ever, poses significant challenges to IT and legal departments. Amendments to the Federal Rules of Civil Procedure raise the profile of electronic discovery and e-mail will continue to be at the forefront of many litigators' and regulators' minds. In addition, IT must deal with massive amounts of content sent over e-mail, creating out-of-control storage costs. Making employees delete e-mails or build local archives exacerbates the electronic discovery process as IT must look across several sources to find evidence.

It is apparent that organizations need to change the way they manage e-mail as well as calendaring and contact information. E-mail archiving provides customers with a new method of setting and enforcing retention policies, thereby returning control to IT. Most importantly, there are achievable benefits.

E-mail archiving enables organizations to keep information online at lower storage costs and may improve application availability. The centralization and indexing of e-mail allows organizations to conduct searches, and new features within e-mail archiving applications to facilitate tagging and message workflow and support electronic discovery requirements.

As Figure Three shows, e-mail archive capacity is experiencing massive growth due to the aforementioned benefits. Mimosa provides a solution that will help organizations keep pace with massive archives and further provides data protection, enabling companies to quickly recover from a system outage.

Figure Three – E-mail Archive Capacity in Petabytes



The NearPoint solution provides a unique method to maintain an e-mail history and ensures that the information is always available online. Mimosa can also provide important calendaring and contact history to help build timelines and determine important events.

Customers need to consider different approaches when archiving e-mail and not all organizations will require the capture and archival of non-e-mail related information that Mimosa has to offer. Because archiving e-mail data has become a business imperative to meet today's business environment, organizations that include calendaring and contact history are in a much better position to support in-house counsel's requirements to form timelines early on during case strategy preparation. Customers will need to evaluate the different solutions to clearly understand what their e-mail archiving requirements are, and whether or not Mimosa's approach is right for them.