Agile Contract Governance:
The major challenges & how to address them
An overview of the challenges

Today, companies are grappling with the ever-increasing amount of unstructured data that has built up from company acquisition, document management solutions, digital archiving and authoring using desktop applications that are now available on all types of devices. The volume of new data is set to increase at more than 40% each year, doubling every two years, with around 90% of that new data being unstructured.*

"If you think compliance is expensive, try non-compliance."

~ Former U.S. Deputy Attorney General Paul McNulty

One of the biggest challenges is to effectively and efficiently expose the value of this information to the business. How do you separate the relevant from the irrelevant? Many companies look to information governance for information management, compliance, retention, disaster recovery and business continuity. Defined by research and advisory firm Gartner,**

"Information governance [is] the specification of decision rights and an accountability framework to ensure appropriate behavior in the valuation, creation, storage, use, archiving and deletion of information. It includes the processes, roles and policies, standards and metrics that ensure the effective and efficient use of information in enabling an organization to achieve its goals."

Businesses, therefore, need to establish which data is of high value and implement a plan to manage and leverage the information extracted. How does the business determine which data is more valuable than others?

A key data set from which to acknowledge, gain visibility and value is contracts. Why? Because the data contained in contracts affects many different areas of the business: General Counsel/Legal, Procurement/Finance, Sales, Customer Service and IT.

  http://sharepointmetadataandclassification.typepad.com/blog/2013/12/why-do-enterprises-or-governments-secure-their-information.html
** http://www.gartner.com/it-glossary/
Challenges faced by the General Counsel

According to the “9th Annual Litigation Trends Report Survey” (Fulbright & Jaworski L.L.P., 2013), the ever-increasing numbers of litigations and legal disputes related to contracts were expected to remain relatively constant or increase.

The dominant litigation category is “contracts.” In 2012, 44% of all pending litigation in the United States and 57% in the United Kingdom was in this category.

In addition, the number of lawsuits (one or more) in 2012 rose in the U.S. to 86% from 83% in the previous year, and nearly doubled in the U.K. from 48% in 2011 to 86%. The number of lawsuits with more than $20 million at issue rose from 23% to 31%, with a notable increase in the technology/communications sector, which jumped from 18% to 56%.

The costs related to litigation, excluding settlements and judgments, have risen over the last three years with 54% of companies spending one million dollars or more.

Challenges faced by Purchasing/Sales/Customer management

A large number of organizations have deployed or are considering an enterprise management solution for managing the lifecycle of contracts or
the relationships with their customers. Many of the key phase-one business requirements are related to the following features and functions:

- Contract Creation
- Approval Workflow
- Reporting, Analysis and Alerting

One of the most significant reasons for the low adoption of these platforms is one of forward thinking. Collectively, these functions provide value on all new contracts, but what about all the current, active contractual obligations and the onboarding of active 3rd-party contracts that reside within the business? If we again consider the litigation aspects, this is a significant potential blind spot for the organization.

62% of C-level executives believe contract management is extremely important to organizations.

75% of C-level executives see the importance of contract management increasing over the next 2 years.

9% average impact to bottom-line performance that results from weaknesses in contract management.

89% of C-level executives believe their contract management processes must improve.

Source: IACCM 2013 Contract and Commercial Management Today

**How have these challenges typically been addressed?**

Organizations have realized that the first key phase is to discover and get visibility of their contractual assets. From there, make informed decisions and leverage the contract corpus to determine revenue opportunities as well as cost and expense mitigation. This project has typically involved taking the contracts to an external third party -- for example, a legal process outsourcing (LPO) firm, which will manually extract the designated fields and provide them in a spreadsheet format or populate the target application as part of the project. This is expensive and, if the requirements change or additional metadata is required, this process needs to be repeated, causing further delays and expense.
Existing solutions and drawbacks

To discover and gain visibility of their contractual assets, organizations have typically deployed a global search platform and/or an eDiscovery solution as part of their information governance strategy. These search solutions provide the user with a list of potentially millions of hits based on a simple keyword search, which the user then needs to reduce by opening many documents to decide which ones are truly relevant.

Similarly, eDiscovery also leverages keyword searching, and in recent years predictive coding, which essentially is a process for a subject matter expert (SME) to review and mark a sample set of documents as being relevant. This still requires someone to manually review each of the resultant documents. Bear in mind, these applications are classifying not just contractual documents, but all unstructured documents, emails, content management applications and structured documents, which means the search results returned could be lengthy running into the thousands or even millions.

There are solutions that combine information derived from rule-based extraction, where people are employed to manually review the documents and extract the designated information for future uploading into another application. Any changes to the business question requires the manual review to be repeated, rules to be modified or new ones created by the vendor, which does not lend itself to agile contract governance.

How can these challenges be more effectively addressed?

Nirvana

What stakeholders are looking for is a platform that enables them to discover their contractual documents, automatically extract key contractual metadata, and have the ability to search and take action on their contractual assets, and expose the contractual information and a searchable rendition of the contractual image in other enterprise software applications.
The organization can now leverage this new asset across all business units:

**Financial Services**
Comply with the rapidly changing and the complexities of internal and external regulatory demands (Dodd-Frank, Basel III, Sarbanes/Oxley, FCA and Anti-Bribery, to name a few).

**Mergers and Acquisitions**
Accelerate the "time to results," allowing C-level executives to make informed decisions on the opportunities and mitigate any risks.

**Sales**
Provide a single view of all contractual information resulting in improved customer/supply relations, increased renewals and new revenue.

**Purchasing**
Reduce costs by cancelling or renegotiating contracts. Ensure contract compliance with corporate standards. Proactively manage and adhere to hard and soft contractual obligations.

**IT/Operations**
Provide the ability to track and manage the tabular information found in contracts, bill of materials, software and hardware line items that can be easily transposed into a spreadsheet. Consolidating and cleansing contractual data into a single repository accessible by the business users will dramatically reduce costs.

Organizations need to be agile to meet these demands, positioned to provide answers to complex questions so that informed decisions can be quickly made. Having the ability to proactively manage the contract corpus enables the business to respond and react expediently and consistently.

**How to address challenges to discovery & classification**

Determine Contract Discovery locates the contracts, creates a searchable rendition and an index to search against, as well as an abstract containing over 50 pieces of contractual metadata such as governing law, jurisdiction, indemnity clause, etc.
How to address the challenges to leveraging discovered & classified data

Policy-driven contract information

In the first instance, the customer will complete a full review within Determine Contract Discovery of one hundred contracts. These will be the gold/learning set to initialize Determine Contract Discovery Analytics, which is the catalyst for the system policies (effectively the extraction policies in Contract Discovery).

The user is then empowered to define policy groups, search across their contract corpus, selectively add contractual paragraphs and sections, and define sentence rules to identify and extract from specific contract documents. This extracted metadata will then flow back to Determine Contract Discovery to enrich the contract abstract.

As the regulatory landscape changes, the organization can very easily adjust and respond to new requirements; for example, those companies which have grown through acquisition or need to undertake a divestment of a division or product. Having the ability to swiftly and dynamically respond to the questions posed by these events is very compelling with regard to “time to results” and, more importantly, in mitigating any risk.

Non-standard clause detection

Many organizations have well-defined contract templates and clause templates to use within the initial drafting process. Many of the clauses, however, are rarely accepted without changes, sometimes significant ones. This raises many challenges within organizations. How can they effectively discover the clauses that have been negotiated frequently or that differ significantly from the approved corporate template? In addition, how can the legal department know what 3rd-party clauses have been accepted previously so that they can quickly ascertain and review any newly proposed clauses?

Determine Contract Discovery Analytics Non-Standard Clauses Detection functionality provides the ability to meet both those challenges. With the operational users defining only the standard clauses, it is able to detect, group and present any non-standard clauses for review. This dramatically reduces the contract review and approval times for new or renewal contracts, and also enables a real-life clause library and risk matrices to be generated.
Advanced policy groups

Contract negotiations include many changes to clauses, insertions of new clauses, and/or removal of such. This can lead to unforeseen risk or commitments being placed into contracts without being detected. This manifests when a combination of clauses alters the meaning of the actual contract as an entity.

To reduce the need for a full contract review, Determine provides the ability to detect clause groups within contracts and linked addendums, taking all the items as a group and applying the clause group detection logic.

This is especially important when dealing with 3rd-party paper contracts for which the resources to review all clauses and then fully understand the interlinked items would be significant and costly.

Determine Contract Discovery Analytics provides the ability to define advanced policies that can detect clause groups and immediately present this to review for conformation. Once enabled, the advanced policy can be deployed across all data sets, reducing time to review for the initial location and ongoing review. Additionally, with the use of linked item detection (patent pending), the amendments can be tied to and processed as a group to the main contract; thus, detecting and providing early warnings on changes made well into the contract’s lifecycle that could introduce risk or financial penalties.

Proactive contract template management

Another major issue organizations are struggling with today is the proliferation of contract templates and the lack of control associated with these templates. New contract types, short form contracts, amendments or variations are continually being created. Quickly being able to recognize and classify those items can be a daunting challenge.

Contract templates work in a similar way to the policy groups. The business user can define template policies and then apply these to the contract corpus. The user can quickly and easily see those contracts that match the policy, which template they matched, and how closely they matched.
Determine Contract Discovery Analytics elevates companies to the exosphere of agile contract governance and provides the contractual information required by senior management to make informed decisions based on complex contractual scenarios.

The business user is empowered to create policies by simply selecting sections and/or paragraphs from contracts and adding these to the policy. The Determine Contract Discovery Analytics engine then finds conceptually similar contracts.

**Conclusions and call to action**

Contractual information and the associated documents are critical to so many different parts of the organization. To stay competitive, an agile and proactive solution is required, enabling those responsible for managing the contracts to intuitively and dynamically ask questions of the contract estate as required. The resultant data set is then available for the custodians within the business to make informed decisions. Call or email Determine Contract Management to discuss your requirements.

**About Determine solutions**

Determine Contract Discovery is installed in minutes and locates existing contractual documents wherever they may reside within an organization. Determine Contract Discovery automatically extracts key contractual terms and clauses, rendering them for easy review and populating corporate repositories including Customer Relationship Management (CRM), Contract Lifecycle Management (CLM), Enterprise Resource Planning (ERP) and more.

Determine Contract Discovery Analytics is a dynamic system that discovers and informs users of revenue opportunities, expenses and costs hidden within contractual obligations. Determine Contract Discovery Analytics empowers clients to teach the system beyond standard data extraction to meet their unique needs by discovering particular language and clause combinations that are most relevant to their business.
Determine Contract Discovery Analytics represents the next step in contractual document management – extracting very specific contract language and clauses specific to customer industry, type of contract and geographic location.

Learn more

www.determine.com/contract-discovery

About the company

Determine (NASDAQ: DTRM) is a global provider of SaaS enterprise contract lifecycle management, strategic sourcing, supplier management, and procure-to-pay solutions. As a recognized leader in the industry, Determine provides deep innovative capabilities in Enterprise Contract Lifecycle Management, eProcurement, eSourcing, Spend and Procurement Analysis, Supplier Information Management, Invoicing, and Catalog Management. Since 1996, Determine has helped global companies actively manage their contracts throughout the sales, procurement, and legal life cycle. Determine’s enterprise contract lifecycle management, strategic sourcing, supplier management, and procure-to-pay software solutions drive critical operational business value that effectively accelerate revenue opportunities and minimize risk through compliance. A recognized leader in the industry, our patented technology assists customers across a myriad of industries—including high-tech, telecommunications, manufacturing, healthcare, and financial services. Determine also provides a powerful configuration engine, which Fortune 500 companies use to increase revenue by facilitating the right combination of products, services, and price. For more information, please visit: www.determine.com.

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