



S2|DATA

WHITE PAPER

**Eliminate Risk & Unlock
the Hidden Treasure of
*Offline & Legacy Data***

In the fast-changing world of data, companies face critical challenges dealing with data and metadata from offline and legacy data sets. Merger & acquisition activity, legacy backups, and varied media formats (tape/disk/versions) combined with a shifting and treacherous regulatory environment make information governance a challenge.

It is a challenge that, if not met, can result in significant costs to the business: lost revenue, regulatory penalties, and damaged reputation. But with the challenge comes opportunity if the right strategy and tools are applied.

Chief Information Security Officers (CISOs) often share their two major data security concerns that keep them awake at night – sensitive data on unprotected data shares and the more fundamental worry of not knowing exactly where all their sensitive data is at any point in time.

You can only protect or manage what you can see.

The data governance mission grows and becomes more complex as an ever-expanding pool of business data is spread across an ever-wider range of technologies (backup systems, archived data sets, acquired data), end-user devices and architectures, and spends more and more time flowing between them. In this environment, some data can be overlooked.

Unseen risk & unexploited potential

This data, often residing in archived storage, offsite tape sets, or arising from mergers and acquisitions, holds immense value for the enterprise. However, it also carries inherent risks, including regulatory and legal considerations, that demand attention. Requirements for cloud migration, multi-cloud and hybrid data integration, and data fabric design patterns should include a review of these Information Governance and Data Governance considerations.

- **Regulatory Compliance & Legal Requirements:** Many industries - Financial, Insurance, Healthcare, etc. are governed by strict data retention and compliance regulations. Properly managing offline data ensures adherence to these rules, mitigating legal risks and potential penalties.
- **Historical Insights:** Legacy data often contains invaluable historical context and trends that can inform technical decisions, product development, and troubleshooting. Understanding this context can lead to more informed choices.
- **Resource Optimization:** Wise utilization of storage resources is a technical imperative. Knowing the content of offline data allows for efficient resource allocation, preventing unnecessary costs and streamlining data management.
- **Data Restoration:** In the event of data loss or legal disputes, having a comprehensive understanding of offline data expedites eDiscovery and data restoration processes, minimizing downtime and business disruption.
- **Security:** Securing offline data is paramount. Failing to understand what's stored can leave data vulnerable to breaches, underscoring the importance of robust security measures. Ensuring that data is properly deleted when it is no longer needed is a critical element of data security.

Mergers & Acquisitions – Value & Risk in Acquired Data:

- **What, Where, How:** In complex mergers or acquisitions, the type, quantity, and location of data can be challenging to determine. Months or years after an event, enterprises often find themselves with disk/tape media in disparate locations, on-prem or off, in varied backup formats. Failing to catalog all stored data properly can lead to legal and regulatory exposure and increased costs. GDPR and other regulations increase the severity of this challenge. The California Consumer Privacy Act (CCPA) includes provisions related to mergers and acquisitions, specifically in relation to the transfer and handling of consumer personal information.
- **Data Integration:** Acquiring data during mergers necessitates a thorough understanding to integrate diverse data sources seamlessly. Access to legacy metadata and lineage information is invaluable for this process, and if not available, a solution to collect Metadata for integration should be implemented.
- **Information Governance:** Access to legacy metadata can make merging governance frameworks and policies less complex. Understanding regulatory issues, data ownership, access controls, and retention policies is critical for compliance and risk mitigation.
- **Data Quality:** Unfamiliar data from acquisitions can introduce data quality issues. Comprehensive understanding allows for data cleansing and validation, preserving data integrity.

Regulatory Risk & Legal Precedent:

- **Non-Compliance:** Neglecting offline or acquired data compliance requirements can lead to severe legal consequences and financial penalties. Regulatory bodies worldwide have established stringent data protection laws, such as GDPR, HIPAA, and CCPA, with explicit provisions for data retention and handling. Non-compliance can result in fines, legal actions, and reputational damage.
- **Legal Precedent (see case study below):** There is a growing body of legal precedent where organizations have faced lawsuits and regulatory actions due to mishandling offline data. These cases underscore the importance of understanding and complying with data regulations, even for older, archived data.
- **Data Privacy:** Privacy regulations, in particular, have far-reaching implications for offline data. Understanding what personal data is stored in archived data sets is vital to ensure compliance with data privacy laws. Failure to do so can lead to costly privacy breaches and legal liabilities.

The risks associated with neglecting these data sets, especially from a regulatory and legal standpoint, are substantial.

Intelligence from legacy and offline metadata extraction can revolutionize the way you access, safeguard, and profit from your valuable data.

Solution - TRACS & INVENIRE expose value, minimize risk

TRACS - S2|DATA has developed proprietary software. TRACS is non-native software that pulls metadata from disparate backup environments (25+ backup formats, from tape or disk) without the need for native agents. When loaded into our metadata platform called Invenire, users manage the exposed metadata. Invenire empowers users to leverage the offline and legacy metadata for eDiscovery, compliance, and security needs.

Invenire - The proprietary technology behind S2|DATA's suite of innovative legacy data solutions, Invenire provides instant insight into key file information and the complete backup information by extracting file-level metadata from backup tapes, backup databases, or evidence files - including offline datasets, and legacy data. Invenire is a secure web-based portal that hosts metadata from backup environments and the smartest way to create a legacy data structure.

When connected to active metadata management tools, Invenire enables users to enhance the passive metadata, creating **Active Metadata** for critical needs, including enforcement of Governance Policies and Standards and other benefits - access controls, data retention, revenue opportunities, and data classification. This can help organizations ensure that data is being used in compliance with regulatory requirements and that sensitive data is being protected from unauthorized access or misuse.

For more information, please visit our website.

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Case Study

The Vital Role of Metadata in Preserving and Understanding Legacy Data

Lessons from Zubulake v. UBS Warburg LLC

The Zubulake case is a notable example of the vital role of metadata in preserving and understanding legacy data in the legal world. This landmark case occurred in the early 2000s – yet it is still highly relevant today – and involved a lawsuit against UBS Warburg, a financial services company. The case revolved around the failure to properly preserve and produce electronic documents during the discovery process in a litigation matter.

Key Takeaways from Zubulake v. UBS Warburg:

- **Duty to Preserve:** The case established that organizations have a duty to preserve relevant electronic documents, including legacy data when they are reasonably anticipated to be part of future litigation. This includes data sets acquired due to merger or acquisition activity.
- **Sanctions for Spoliation:** UBS Warburg was subject to sanctions for failing to preserve and produce relevant emails and documents, including those in legacy systems. These sanctions included adverse inferences and monetary penalties.
- **Importance of Metadata:** Zubulake emphasized the importance of metadata, particularly in e-discovery. Metadata can provide crucial context and information about the creation and handling of electronic documents.
- **Cost-Shifting:** The case discussed cost-shifting, where the party requesting the electronic documents may be required to bear some of the costs associated with their production. This decision highlighted the potential financial consequences of not effectively managing electronic data.
- **Evolving Standards:** Zubulake v. UBS contributed to the development of legal standards and best practices for e-discovery and the preservation of electronic records—subsequent cases built upon these principles.

The penalties imposed on UBS Warburg for failing to properly preserve and produce relevant electronic documents, including legacy data, were significant and had a substantial impact on the outcome of the litigation.

- **Adverse Inference Instruction:** One of the most notable penalties imposed in the Zubulake case was the issuance of an "adverse inference" instruction to the jury. This instruction informed the jury that they could infer that the missing electronic documents, which UBS Warburg did not produce, would have been detrimental to the defendant's case. In other words, the jury was allowed to assume that the missing evidence would have been unfavorable to UBS Warburg.
- **Monetary Sanctions:** In addition to the adverse inference instruction, UBS Warburg was also subject to monetary sanctions. These sanctions included the payment of legal fees incurred by the plaintiff as a result of the discovery disputes caused by the failure to preserve and produce electronic documents.

Case Study *CONTINUED*

- **Impact on the Case:** The adverse inference instruction and monetary sanctions had a significant impact on the case's outcome. The jury's ability to draw adverse inferences from the missing documents could have seriously undermined UBS Warburg's defense. Moreover, the monetary sanctions imposed added to the financial burden of the litigation.
- **Legal Precedent:** Zubulake v. UBS Warburg LLC set an important legal precedent regarding the consequences of failing to properly preserve and produce electronic documents, especially when it involves legacy data. The case highlighted the seriousness with which courts view the duty to preserve relevant evidence.
- **Importance of Data Management:** This case serves as a stark reminder of the importance of effective data management and preservation practices. It underscores that organizations must take proactive steps to ensure the proper retention and production of electronic records, even when dealing with legacy data, to avoid potentially severe legal penalties.
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\$29 Million Judgement

In the final instructions to the jury, Judge Scheindlin instructed in part,

"[i]f you find that UBS could have produced this evidence, the evidence was within its control, and the evidence would have been material in deciding facts in dispute in this case, you are permitted, but not required, to infer that the evidence would have been unfavorable to UBS."

In addition, monetary sanctions were awarded to the plaintiff for reimbursement of costs of additional re-depositions and of the motion leading to this opinion, including attorney fees. The jury found in the plaintiff's favor on both claims, awarding compensatory and punitive awards totaling \$29.2 million.

The Zubulake case is a notable example of the legal consequences that can arise from mishandling electronic data, including legacy data, during litigation. The adverse inference instruction, along with monetary sanctions, underscore the potential risks and financial implications of failing to meet one's legal obligations in preserving and producing electronic records.

This case serves as a powerful reminder of the legal obligations and risks associated with managing data, including legacy data. It underscores the need for organizations to understand and adequately preserve their data, even data that may no longer be part of active systems, to avoid legal consequences and regulatory penalties.