How to prevent IT assets from becoming IT liabilities: why you need a plan to manage your IT assets through their life cycle.

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Can a corporation and its managers be held liable for the environmental clean up costs caused by improper disposal of end-of-life information technology (IT) assets? Surprisingly, the answer in certain cases is yes. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), popularly known as Superfund, authorizes the Environmental Protection Agency (EPA) to issue administrative orders requiring responsible parties to clean up toxic wastes. They may also initiate enforcement actions in Federal court to require such a party to comply with a judicial order and they may collect substantial civil penalties (up to $5,000 per day) if the order is disregarded. A responsible party may be defined as a "person," which can be interpreted to be an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, as well as others liable for environmental response costs. The EPA can recover up to three times the amount of the expended clean up costs as a result of noncompliance with the order unless the party establishes that its failure to comply was "substantially justified." So what has this got to do with me, you might ask? Corporations and management are responsible for the hazardous wastes their companies generate and there are real environmental dangers associated with discarded electrical and electronic equipment. Surplus and obsolete IT assets including ATM's, check processing equipment, PCs, monitors, switches, routers, hubs, telecommunication equipment, keyboards and mice may seem harmless, but many of these items contain toxic substances like lead, cadmium, mercury, and beryllium that may be considered hazardous wastes when disposed of improperly.

Can aggrieved parties make legitimate claims against corporations for failing to remove proprietary or private information from transferred or disposed of IT assets? Here again the answer may be yes. The Gramm-Leach-Bliley Act (GLBA) requires "financial institutions," as defined by the Federal Trade Commission (FTC), to protect and secure customer information such as names, social security numbers, addresses, account and credit card information. The Safeguards Rule requires all financial institutions to design, implement and maintain safeguards to protect customer information. The Safeguards Rule applies not only to financial institutions that collect information from their own customers, but also to financial institutions--such as credit reporting agencies--that receive customer information from other financial institutions. Additionally, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires safeguards to protect the security and confidentiality of all medical records and other individually identifiable health information used or disclosed by a covered entity in any form, whether electronically, on paper, or orally. Add to all of this a myriad of different software end-user license agreement requirements and other intellectual property responsibilities and your potential liabilities for improper end of life asset management are immense.

Is it possible to manage and eliminate the risks of the improper management of IT assets at end-of-life while maximizing the return on investment for these assets? Thankfully, the answer here is also a resounding yes, but only if you take the appropriate actions in a timely manner. So what does this mean for IT managers? It means you should implement a well thought out life cycle management plan for your IT assets now. This plan should be reviewed by corporate legal counsel to insure that plans meet your organization's business goals in an environmentally sound manner. Asset management and environmental consultants can assist you in developing and implementing your organization's plan.

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