Record Management and Fighting Spoliation

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Abstract

Spoliation is a dreaded word - One that hampers the archival world in a magnitude of ways. It is the act of removing a document before its time is done that can be very hazardous to an organization's archival objectives. Some would argue that the reason empires and businesses fall is because of acts of spoliation. In this paper, I discuss three policies from the American National Standards Institute (ANSI), the International Organization of Standards (ISO), and The National Archive of the United Kingdom regarding their methods to fighting spoliation. It is not a question of what we can do to recover from spoliation, but what we could have done to prevent it from happening in the first place. By briefly looking into the policies, we can analyze the real issues that enable the triggers that generate spoliation. Was the spoliation intentional, or a communication error? What really matters is that there is a conversation about it and an effective mechanism to combat it.

Record Management is a practice that has long been integrated into human civilization. Storing information allows our civilization to process it, and having it maintained properly allows civilizations to advance. One of my favorite periods in history was the Golden Age of Islam because their discovery of mathematical equations was preserved, and then used by European nations to advance their civilizations. It is unfortunate that credit was not acknowledged to what is now Iraq because of something called spoliation until only recently. This defined by the Society of American Archivists (SAA) as "The intentional destruction, alteration, or concealment of evidence, especially documents" (Pearce-Moses, 2005, p. 367). This act halts development of ideas and potentially robs us of many discoveries and literature that we may never achieve again. Two historical examples of this include the Destruction of the Library of Alexandria, and the Enron Scandal. While the former event is one that could not have been prevented due to extreme measures by an invading force (Abbadi, 2019), the latter could have been prevented if we had applied a proper retention policy in the business administration of Enron. It can be argued that properly maintained records were avoided on purpose (Gibney, 2007). As a result of the Enron Scandal and the company's bad reputation for one of the biggest acts of spoliation in the 21st century, the Sarbanes Oxley Act was established to ensure that third parties could analyze corporations to prevent them from lying about financial data and withholding information. If this event did not begin the process of applying proper retention policies, it accelerated the process of making secure information and retention policies a priority in companies. To combat future spoliation events we can consider, I will feature three policies that offer solutions and layouts. One is from ANSI's website, referred to as ASTM E860-07(2013) e2: Standard Practice for Examining and Preparing Items That Are or May Become Involved in Criminal or Civil Litigation. This guide is essential for establishing how to handle

documents and business-related material for legal scenarios. Another policy comes in the form of ISO 28500:2017: Information and Documentation – (Web Archive) WARC File Format. This is an online information retention guide for collecting information from the web, offering a way to collect significant amounts of material for future reference. The last source is from the National Archives of the United Kingdom which offers several policies in response to another historically significant act of spoliation: The missing art during WWII and the holocaust. One document, entitled *Deaccessioning and disposal*, talks about proper record disposal techniques within the United Kingdom. With these policies in mind, I will focus on how these relate to the prevention of Spoliation.

ANSI's policy of preparing information for legal cases helps to protect a business' integrity. It states: "This practice is intended to become applicable when it is determined that examination or testing of evidence is required, and such examination is likely to change the nature, state or condition of the evidence" (ASTM International [ASTM], 2013). While it is true that the nature and importance of evidence may change in the process of an investigation, having a policy prepared to deal with a potential of spoliation will help reduce the risk of damaging a company's integrity. If a policy had been enacted at Enron, they would have fallen much earlier than they did, and the investors would have sustained less damage. This guide does warn you that this is only one measure: "This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety, health, and environmental practices and determine the applicability of regulatory limitations prior to use" (ASTM International [ASTM], 2013). I think this statement is a responsible gesture in guiding anyone who looks to this policy for guidance. Policies and practices within record retention policies also need to be updated regularly. And

because many of these policies cover digital information, it is logical natural that they should keep with the times on current policy. I am unsure if I would trust a policy that is quickly going to change and does not offer guarantees, but I can also respect that the policy wants to notify its consumer about what it is about to invest in.

Another method of fighting the spoliation is identifying what counts as records. One of the most frustrating things about services and information posted on the internet is that the information's authenticity is often questioned. With so much information flying around the web, it can be difficult to determine the accuracy of any evidence. In an age where news may be fake, we must take extra care in how we manage our information databases. With ISO 28500:2017: Information and Documentation – (Web Archive) WARC File Format, we have an improved way of maintaining and retaining new information into compressed collections for much easier access. One of the more difficult elements in this is finding a way to store a significant amount of information, and this is not always easy as ISO explains: "Those data objects (or resources) need to be of unrestricted type (including many binary types for audio, CAD, compressed files, etc.), but fortunately the container needs only minimal knowledge of the nature of the objects" (ANSI, 2017). We can compress a significant amount of information into one format. If you have seen the difference between storing a txt. File versus a JPG file, you'll notice the difference of space that takes up. This is an extension of a much simpler format known as ARC which will transition into the new WARC format. This has been desired not only by the United States, but by a wide variety of organizations. "The motivation to extend the ARC format arose from the discussion and experiences of the International Internet Preservation Consortium (IIPC), whose members include the national libraries of Australia, Canada, Denmark, Finland, France, Iceland, Italy, Norway, Sweden, The British Library (UK), The Library of Congress (USA), and the Internet

Archive (IA)" (ANSI, 2017). Spoliation is more likely to occur when there is too much information uncompressed and flying around, but the WARC format will reduce that risk because the information will be condensed and easier to find.

We have plenty of guides in the United States on how to properly dispose of unnecessary records. A guide from the United Kingdom aims to prevent such dispositions from becoming spoliations. While this guide is intended for museum workers and librarians, there is potential for using these practices in a business environment. The guide discusses reasons why these processes should be supervised and managed properly. The one that sticks out for me specifically is: "Disposing of significant archives. Without agreed deaccessioning and disposal policies and procedures, archive services risk irretrievable loss of historically important records" (National Archives UK, 2015). This is often the result of a lack of communication between staff and general disagreements of policies. Not all spoliation events are malicious; sometimes they are simply mistakes. By addressing and communicating with the staff, that risk is reduced. An important national policy was instituted in the UK to prevent events like this happening and it is called the Data Protection Act. This act is pretty like ours in the way that information retention policies should take place. They state that: "Records should be kept for no longer than is absolutely necessary (though retention for historical research is permitted)" (National Archives UK, 2015). They also mention the obvious, stating that records should be stored in a safe environment. I find the lack of description of what a safe place is in their records disappointing, but at the same time, the primary purpose of this policy is to state how to dispose a document, not keep one. They have a list of principles which provide excellent points on to consider. My favorite one is the idea that the process should not be an easy one; significant care should be taken because the removal of a record could potentially be permanent. It is basically like hitting

the “empty recycle bin” on your computer. Once you hit that button, you are not getting the information back.

Spoliation is a very controversial subject and poses a significant risk that will continue to plague individuals in the Record Management business. Much like change (the one constant in the universe), there will always be new ways to develop acts of spoliation whether maliciously driven or not. Many spoliation events like this will occur, but by increasing communication around the subject, and maintaining a determination to develop and enact policy, we can work toward reducing spoliation in the future of the profession.

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