Managing Compliance and Risk with Call Recording

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Overview

The number and scope of regulations and requirements facing businesses today is increasing – along with the costs of ensuring they are complied with. Although the cost of compliance can be considerable, the legal and public-image risks associated with non-compliance can be even higher. Compliance initiatives in the contact center are increasing and often require more than simply recording calls. Advanced technologies offer the opportunity to improve compliance results and reduce potential risks, while lowering the overall costs of compliance management.

Today's contact center not only has to strive to provide its clients superior service and a satisfying experience, it must do so in an environment that is becoming increasingly subject to external oversight and regulations. Many businesses, particularly those in the financial and insurance industries, have been dealing with regulatory issues for several years, but as the number and scope of regulations increase they affect a broader range of industry types.

Part of the problem of managing compliance is that requirements can originate from multiple sources. There are federal regulations such as Sarbanes-Oxley, the Health Insurance Portability and Protection Act (HIPPA) and the Equal Credit Opportunity Act (ECOA). Many individual states have their own requirements and businesses operating internationally may be subject to regulations of other countries such as the European Union. Lastly there are a number of private industry organizations such as the Payment Card Industry (PCI) that publish best-practices and requirements for their members.

Given the increasing complexity and extent of regulations it should come as no surprise that the costs of managing compliance have risen and will continue to grow.

Costs of Compliance

Many organizations do not have a good understanding of exactly how much they spend on compliance, especially those that have not created separate budgets for these expenses. A recent study by AMR Research suggests the costs of compliance are indeed high. The study predicts that companies will spend $80 billion on compliance in the next five years. This year they will spend a collective $15.5 billion, with the average company coughing up $500,000.

Like many aspects of business operations there are two primary cost areas associated with compliance – technology and people. Increased staff spending is driven by the need for additional IT personnel to implement and maintain the technology. The expansion of efforts devoted towards monitoring organizational performance and ensuring compliance policies are being followed also drives additional headcount.

Banking Financial Markets Insurance	▪ Basel II Accord, USA Patriot Act, Anti-money laundering ▪ SEC 17-a-4 / NASD 3010, 3110 ▪ ACORD,GLBA, MiFID, ECOA, TILA, FDCPA
Automotive Electronics	▪ Tread Act, European Block Exemption, End of Life (AP) ▪ RosettaNet, Waste for Electronics and Electronics Equipment (WEEE) ▪ Wassenaar Agreement
Retail Consumer Products	▪ Retail Event Management, ARTS for POS data ▪ Global data synchronization, RFID, Sunrise 2005 ▪ UCCNet
Government Healthcare Life Sciences	▪ Homeland Security, Freedom of Information Act, DITSCAP/DIACAP ▪ HIPPA ▪ FDA/21CFRp11
Energy and Utilities Telecommunications	▪ NERC 1200/1300 ▪ Number Portability
Multiple Industries	▪ Sarbanes-Oxley ▪ PCI Security Standards ▪ Do Not Call, Telemarketing Fraud Prevention Act

Technology investment is often necessary to implement systematic control and reporting processes within the business required for compliance management. However technology, through its ability to automate processes and improve efficiency, tends to offset some of the additional personnel costs.

Costs of Non-Compliance

Although the costs of compliance can be considerable, the risks associated with non-compliance can result in even more substantial costs to the business. These costs can occur as direct monetary ones such as fines and settlements or indirectly through damage to a business' public image and reputation resulting in lost revenue.

> "We save calls for two reasons – to train our people on customer service procedures and to avoid being sued."

Monetary costs can be very high indeed. For example, take the legal case of the United States Securities and Exchange Commission (SEC) vs. Morgan Stanley & Co. in May of 2006. In that case the defendant was cited for failing to produce requested electronic records, in this instance tens of thousands of emails. Specific complaints by the SEC alleged that Morgan Stanly did not diligently search back-up tapes for emails and failed to produce emails because it had overwritten back-up tapes.

Ultimately the case was settled out of court with the defendant consenting to pay a $15 million fine. It also consented to hire, at its own expense, an independent consultant subject to SEC approval, any recommendations of which must be implemented.

An example of indirect costs associated with non-compliance is provided by the experiences of TJX, the parent company of off-price retailers T J Maxx, Marshall's and others in the U.S. and Canada. TJX was repeatedly cited by the Payment Card Industry (PCI) group for failure to conform to its Data Security Standards. The potential fines of $5,000 to $25,000 per day may be negligible to a company having over $17 million per year in revenues. The results of their not conforming to the security standards had a far greater impact however.

In March of 2007 the company revealed in SEC filings that it lost the 45.6 million credit and debit card numbers were stolen from one of its systems over a period of more than 18 months by an unknown number of intruders. In addition, personal data provided in connection with the return of merchandise without receipts by about 451,000 individuals in 2003 was also stolen.

When a data breach occurs significant damage often results to a business' stock price, reputation and customer loyalty. Consumer surveys reveal that many people lose respect and/or trust for businesses after customers' personal information was misplaced or stolen from those companies' systems. Logically, most consumers would greatly prefer to conduct business with a company that has never experienced a data breach.

> "We sample calls to prove that we have implemented internal checks and balances to root out problem employees and violations are not systemic to our organization. This is used, and rightfully so, as a legal defense and can mitigate or even in some cases hold the company harmless against law suits."

Given the extent of the TJX breach, research firms estimate that the total cost could exceed $500 million. Others predict that it could approach $1 billion over time.

There appears to be a growing trend towards heavier fines and punitive damages for non-compliance. Taking this into account, along with the associated costs of lost business and public image damage, the message is clear. Businesses must proactively reduce the potential for violations and misconduct, especially those that are systemic in nature. They must also drive technology to support sustained compliance efforts both now and in the future.

Compliance Management in the Contact Center

The contact center has been involved in compliance management for some time by monitoring agent performance and recording conversations with customers. The primary focus of these efforts have been twofold; ensuring that agents are following defined procedures and providing proof that can be used to avoid potential liabilities.

Liability avoidance can take many forms. In many cases simply providing a recording of a conversation is sufficient to avoid the filing of litigation altogether. If a legal situation is encountered the ability to produce relevant recordings can serve to avoid an unfavorable judgment. Even in instances where a violation did occur using recordings of similar instances where the correct process was followed can help by showing that violations are not systemic within the business.

Consider if you will a situation where two people are going through a nasty divorce and one party is trying to prove the other an incompetent parent in order to win child custody. If private information regarding one parent's dealings with alcoholism or depression finds its way into the hands of an opposing divorce court attorney it could definitely compromise the case and or sway a judge's ruling regarding who gets custody of a child. If that parent's health information was divulged to a third party without consent the insurance company could be held liable. The liability claims in such a situation could be enormous.

Call recordings have potential value in cases of employee termination. A wrongful termination suit can often be avoided by producing recordings that provide a factual basis for dismissal. In any case where recordings are used in a legal environment it is important that the accuracy and integrity of the recording can not be called into question.

Some US government jobs require that before a person is hired or even maintains employment that they produce a clean credit report rating. If a credit reporting service was to make a mistake regarding a person's credit rating and they lost their government job as a result, that business could be sued and the amounts could be very substantial.

"If we have an employee that shows a pattern of violating our ethics and compliance policies we terminate that individual, save the call recordings that support the termination and store it for long term retention for our HR department."

Recordings are used to prove that a customer actually signed up or ordered a service. Many times people order a service over the phone, obtain what they wanted, and then try to say they did not order the service. The call recording is considered a verbal contract once the customer is read the terms and conditions and they provide their payment information. The ability to easily retrieve recordings and play them back for a customer disputing a transaction provides a significant amount of administrative time savings, as well as helping to avoid costly settlements and even potential litigation.

The role of the contact center in compliance management is likely to increase in significance as compliance initiatives become a higher priority across all industries. Leading contact centers will use these compliance mandates as an opportunity to identify and transform business areas that need improvement. Rather than identifying areas in need of quick fixes, they will focus on streamlining business processes, making them more effective, reducing exposure and decreasing overall expense.

Emerging trends driven by compliance management initiatives that affect recording and quality management activities in the contact center include:

- Moving from partial recording for quality management purposes to 100% recording for compliance management, especially in industries outside the financial and investment markets as they become more mindful of compliance regulations and requirements.
- Increasing the retention time periods for captured interactions beyond minimum requirements, in some cases retaining recordings forever in anticipation of possible future regulatory changes.
- Focusing on performance management as a formal methodology to ensure that root causes of problems are identified, addressed and corrected, instead of occurring over and over.
- Insisting on more thorough documentation and reporting on compliance efforts in order to show that non-complying performance is not systematic within the business, but rather a result of isolated individual failures.
- Capturing the full scope of interactions with voice and screen recording to ensure information provided to the customer is accurate and what the agent enters into the system is correct.

"It is important that recorded transactions include screen activities as well as the voice conversation. Capturing both confirms that what the agent tells the customer and enters into the system regarding an interaction are one and the same."

Leveraging Compliance Recordings for Business Intelligence

Organizations are looking for ways to help offset the increases in compliance-related costs. One promising means involves the use of interaction analytics solutions to mine valuable business information from the captured recordings. Interaction analytics combines multiple technologies for speech recognition, transcription and statistical processing into a powerful, easy to use solution that offers significant operational benefits to the enterprise.

Using this solution businesses are able to uncover answers to operational questions that have been very hard to obtain in the past. Information contained in recorded interactions is unstructured in nature making it difficult for traditional transaction-based analytics solutions to process. Applying interaction analytics to this unstructured information business gain key insights into customer behavior and loyalty, competitive activities, marketing effectiveness and other important factors.

These insights and understandings are then put to use in making better decisions and implementing more effective business processes. The resulting operational savings and performance improvements can significantly offset the additional compliance-related investments.

Compliance Recording Management Technology

Depending on regulatory requirements and business practices, call recordings are archived for many months and even years. Compliance is not just about recording and storage, it is how those recordings are managed and maintained. Having a call recorded does no good if it cannot be located and retrieved when needed – ideally with a minimum of time and effort. Failure to produce a recording when required can result in unfavorable litigation or settlements potentially costing an organization millions in terms legal costs and damages.

A comprehensive compliance recording and management system needs to provide several key features in order to ensure that recordings are safely stored, can be located quickly when needed and are indisputable.

Seamless integration voice recording systems

After a recording is captured, a seamless integration between the recording and storage management systems ensures it is safely stored. The transfer should be fully automated in order to reduce costs associated with manual manipulation and the potential for loss due to human error. This type of tight integration between systems also allows for the use of expanded information regarding a call such as agent and customer identification, word content and other business data. This can be very useful in locating a specific recording or series of conversations relating to a common topic or transaction.

Prompt and easy recall of recordings

The replacement of tape-based archival systems with digital storage technology has resulted in much quicker recording location and retrieval. Retrieval delays in terms of four or five days or more associated with tape-based systems have been reduced to minutes or less with disk-based storage systems. Other issues inherent with tape storage are avoided as well such as the costs of transport, storage and destruction. Tape recordings are also subject to content errors due to degradation of the media over time.

Assurance of recording integrity and accuracy

As important as producing a relevant recording can be, ensuring that its accuracy is unimpeachable is often just as vital when needed as evidence in legal proceedings. Recording accuracy is verified in two ways: ensuring that the recording is an accurate and correct representation of the conversation and that it has not been tampered with or modified.

Ensuring the accuracy of a recording is best accomplished by using a self-checking algorithm, based on the actual content of the recording. Audit trails and user access security are used to prevent stored recordings from being access by unauthorized individuals.

> "We generally save all calls a minimum of six months. If the dispute goes to litigation it can drag on for a decade of more. In that case it is important for the data to be stored in a safe place and proven to be unaltered and authentic in a court of law."

Flexible retention policy definition and management

As the amount of calls stored increase it becomes more important to be able to set retention periods by the type of call, rather than saving all calls for the maximum required by the longest need. A flexible retention management system allows for the creation of rules specifying how long a particular call is retained based on the business need for that specific call type. This approach not only helps control overall storage costs it ensures that calls are retained only as long as required and not any longer.

Complete recording removal following the retention period

There are potential liabilities associated with keeping a recording once it is no longer needed. As such, recordings should be removed from a storage system in a manner that ensures they cannot be recovered by any means. A comprehensive storage management system will automatically do this through disk-wiping or other technological solutions designed to prevent forensic recovery.

Protection from deletion during defined recording retention periods

Once a recording is stored its deletion should be prevented internally by the storage management system. This feature is valuable not only in cases of unauthorized access being gained to a file, but also prevents a more common possibility – accidental deletion by an authorized user.

The method for deletion prevention should be implemented at the lowest level within the management system in order to reduce the possibilities of external manipulation.

> "We had a disgruntled employee in one location that had access to a NAS device where calls were stored. Before he left the company he deleted all the calls, about four to five year's worth. Luckily we had offsite storage he did not have access to."

Suspension of deletions based on external events

In many cases litigation or audit activities require that a recording is retained for longer than its usual time period. The ability of a storage management system to flag and override the default retention periods provides further assurance that a recording will not turn up missing when it is required. This feature should be an integral component of the system's retention capabilities to ensure seamless operation.

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