

INTAPP COMPLIANCE SOLUTIONS

Protecting Law Firm Revenue by Managing Risk

EXECUTIVE SUMMARY

Today, law firms are more aggressive than ever in pursuing shareholder value, employing a number of approaches to boost overall firm revenue and profit per partner. The most effective such strategy is growth. By expanding in size and capability, firms can provide more services to existing clients and better position themselves to compete for and win new business. Firms realize growth through several means including mergers, lateral hiring, geographic expansion and the use of contract attorneys.

At the same time they're taking steps to increase business volume and total revenue, firms are also working to increase internal efficiency and attorney billability. This enables the delivery of services more economically and thus more profitably. However, numerous challenges impede the path to firm growth.

Compliance Enables Growth

Compliance issues can severely impede firm growth and revenue. As firms expand by taking on new clients, hiring new staff and broadening their spheres of practice, conflicts volume escalates. Every time a conflict forces a firm to decline a potential new matter or pass on an attractive lateral hire, firms leave revenue on the table. Through use of client waivers, firms may be able to manage such conflicts, but only if they are able to alleviate client concerns via ethical walls and secure the client's required consent.

Similarly, clients are increasingly concerned about the extent to which firms are protecting sensitive information. Outside counsel guidelines may specifically require firms to keep such matters internally confidential and greatly limit which personnel can access such information.

In this context, client sensitivity and perception can mean the difference between winning and losing business. Firms that demonstrate strong internal protections and compliance measures are able to preserve new revenue opportunities, better serve their clients and differentiate themselves from their peers.

Compliance Challenges

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Conflicts		
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NEW BUSINESS CONFLICTS

When taking on new business, firms frequently discover conflicts. This is especially common during firm mergers, when a tremendous volume of clients and matters must be reconciled. In response, firms often create an ethical wall – a restriction to prevent staff from accessing sensitive client information.

Importantly, this approach to conflicts management is often only possible subject to client approval. If clients are uncomfortable or have doubts about the firm's ability to implement a wall, they may withhold consent, and the firm may be prevented from accepting the new business. In these instances, firms emphasize their use of ethical walls as a means to assuage client concerns and secure their consent.

Firms may also use walls in a precautionary manner. For example, a firm representing consenting joint defendants may wish to maintain an internal distinction between parties in the event that one client leaves the firm and raises future concerns about internal information sharing.

The Problem

Traditionally, law firms implemented ethical walls procedurally, through notification memoranda and by restricting access to physical records. However, with more and more information stored in easily accessed software-based repositories, firms must extend protections to systems for document management, records management and other information storehouses.

Trying to automate enforcement, some firms employ early generation security tools to lock down their document management repositories. But this approach is incomplete and risky. These legacy tools only shield information stored in a document management system. They also impose considerable administrative burdens, making it difficult for firms to keep wall definitions up to date and to keep attorneys notified regarding restrictions they are subject to. Additionally, at a time when malpractice insurance providers are increasingly requiring firms to provide auditable records of their ethical wall creation and enforcement practices, these older tools lack extensive logging and reporting capabilities.

In today's environment, opposing counsel are more willing than ever to leverage any advantage or perceived weakness in court in order to obtain disqualifications.¹ While many judges wish to discourage this sort of tactical maneuvering, it's vitally important that firms demonstrate the use of the strongest ethical wall protection available.

Additionally, clients are increasingly requiring firms to provide greater assurances that walls will be actively enforced and maintained before granting a waiver. To address these issues and stay ahead of the competition, leading law firms are increasingly employing a new class of ethical walls enforcement.

The IntApp Solution – Wall Builder

Today, firms are adopting more stringent information security practices. Wall Builder from IntApp is the only solution that automates the creation of walls, monitors staff behavior in real time to ensure proper wall enforcement, and extends walls beyond document management libraries to all repositories where sensitive information is stored including CRM, records, accounting, enterprise search and other systems.

By embracing these new practices firms are controlling the risks associated with conflicts management and better positioning themselves with respect to their peers in the eyes of their clients and the court. The value of preventing a single disqualification or client departure warrants the strictest compliance available.

¹ <http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1136282710652>

LATERAL HIRES

Lateral hiring represents an effective way for firms to improve client service and shareholder value. By bringing on seasoned, skilled attorneys with valuable relationships, firms can better serve existing clients, win new business and increase revenue. The addition of high-profile lateral hires also positively boosts a firm's reputation among its peers and across the client industries it serves.

But the process of taking on lateral hires can be risky. Typically, organizations run accelerated conflicts checks and attempt to address any issues that are discovered with great urgency. Importantly, firms must resolve problems before the new hire joins the organization or they risk serious consequences including disqualifications, soured client relations and negative press coverage.

When a firm discovers that an impending lateral hire's past employer has represented a party adverse to a current client, they look to ethical walls to manage the situation. An ethical wall is a restriction that prevents the new attorney from accessing materials or communicating with firm staff regarding the adverse client.

The Problem

In these instances, firms must take special care to ensure compliance. In many jurisdictions, applicable rules allow the firm to establish ethical walls unilaterally. In others, the firm may only establish a wall to address a conflict with the explicit consent of the client granted through a waiver. In such cases, if clients are uncomfortable or have doubts about the firm's ability to implement a wall, they may withhold consent, and the firm may be prevented from taking on the new hire.

The options available depend on specific state rules, the nature of the conflict and the extent to which the new hire had access to the adverse party's information his or her former firm. Different rules and standards similarly determine how non-attorney support staff may or must be walled when they change employers. Regardless of the jurisdiction, in all situations the firm needs to be prepared to justify the strength of its walls in case of external challenge or motion to disqualify.

Traditionally, law firms implemented ethical walls procedurally, through notification memoranda and by restricting access to physical records. Today, firms store a great deal of information in multiple, generally accessible repositories, including a central document management system (DMS). While some firms may attempt to control access within their DMS, many fall short of extending protections to other applications where sensitive information is stored such as records management, accounting, CRM and time entry.

In addition to incomplete protection, firms also struggle with the burdens associated with keeping wall memoranda and security definitions up to date as new attorneys are added to client teams. With the need to defend external challenges, firms must also take special care to demonstrate compliance through a clear record and audit trail of their activity.

The IntApp Solution – Wall Builder

In today's environment, opposing counsel are more willing than ever to leverage any advantage or perceived weakness in court to obtain disqualifications. In this context, it's vitally important that firms demonstrate the use of the strongest ethical walls available and be able to furnish verifiable proof of compliance. IntApp offers the market's leading ethical walls solution. It has been adopted and endorsed by top-ranked AmLaw firms for its unmatched protection, ease of use and comprehensive logging and reporting capabilities.

FIRM MERGERS

Legal industry authority Hildebrandt International reports that law firm merger activity is at an all-time high, with nearly 60 firm mergers in 2006.² By joining forces, firms are able to recognize significant benefits including expanding their internal talent pool, broadening the scope of services they can offer their clients and increasing their overall geographic presence. Mergers also bring less quantifiable advantages such as increased reputation, competitive advantage and client roster. By merging, firms hope to create a more prosperous, more productive, more profitable organization.

However, while mergers offer numerous potential benefits, success depends on swift and skillful execution to integrate the newly-formed organization. To accomplish this, firms must complete two important tasks. First, they must successfully traverse a significant conflicts review process in order to preserve as many client and attorney relationships as possible. Second, they must integrate their business operations to enable effective firm administration and collaboration of the joint entity.

The Problem

The conflicts challenge facing merging firms is burdensome, but manageable. All firms have existing processes for identifying conflicts. In the context of a merger, firms encounter two types of conflicts:

- Clients of the newly joined organization are now adverse
- Attorneys from both organizations have represented parties throughout their careers that are adverse to current clients

Given such conflicts, firms need to demonstrate the ability to create strong ethical wall protections to convince conflicting clients to sign waivers necessary to retain their business. This can be especially challenging in the high-volume, high-pressure context of executing the merger. Yet if firms are unable to resolve these issues and set up ethical walls in a timely manner, the risks include disqualifications, client and staff departures, negative press coverage and financial loss.

The IntApp Solution – Wall Builder

IntApp has worked with several high-profile firm mergers specifically to address operational assimilation through solutions leveraging Integration Builder, and ethical wall requirements through Wall Builder. Embraced and endorsed as an industry standard by top-ranked AmLaw 200 firms, Wall Builder enables firms to demonstrate a best practices approach to alleviate client concerns and secure waivers required to preserve valuable relationships jeopardized by merger-driven conflicts. The value of preventing a single client departure warrants the strictest compliance available.

² http://www.hildebrandt.com/Documents.aspx?Doc_ID=2508

CONFIDENTIAL MATTERS

Increasingly, clients are demanding that law firms take special steps to control internal access to their sensitive business information. By default, most firms make the applications they use to store, index and manage client data and work product open and internally accessible by all attorneys and support staff. Clients are understandably concerned that their materials may be viewed by hundreds or even thousands of uninvolved attorneys and support staff.

While attorneys and law firm staff are professionals bound by a strict code of ethics, client perceptions take precedence. Indeed, it is not unusual for potential clients to require that firms document their information security practices as part of responses to RFPs or even to commission third party audits of firm information security practices. In the cases of confidential matters, information security is an area where firms can win new business by differentiating themselves from their competition, much in the same way a bank may highlight the physical security measures protecting customer safe deposit boxes.

Client drivers for enhanced confidentiality include:

- **High Profile / PR Sensitivity** – Organizations or individuals concerned about potential press leaks, even those that only reveal the fact that they have solicited legal advice
- **IP of Utmost Business Value** – Clients from industries such as pharmaceuticals, where the mistreatment of intellectual property such as patents or trade secrets may have dire consequences
- **Regulatory Controls** – Various regulations and statutes such as HIPAA, Sarbanes Oxley and consumer regulations may drive clients to insist on greater protections as well as increased logging and audit practices
- **Client Customer Requirements** – Clients obligations to their own customers or partners may control how customer data may be handled when communicated to third parties including outside counsel

The Problem

To Foster collaboration and leverage existing work product and expertise, law firms generally provide open internal access to information. For example, most firms give users unrestricted visibility across their document management system. Many firms make it even easier to find information by implementing enterprise search tools. In order to serve clients with heightened confidentiality requirements, firms must change their normal operating practices to more tightly control who can access particular assets.

When faced with client requests, firms typically lock down access to specific documents and work product manually. Unfortunately, manual approaches create new burdens for attorneys and support staff. They also don't extend safeguards across all repositories where client information or descriptive data is stored and available. By depending on individuals to correctly secure new materials as they create or add them, firms increase the risk of error or omission.

The IntApp Solution – Wall Builder

Wall Builder offers the industry's strongest protection for firms looking to implement strict access controls to address client concerns and ensure tighter compliance. It's the only solution that delivers real-time enforcement, extends security across multiple applications and automatically updates access rights in response to staff behavior to keep wall definitions up to date.

CONTRACT ATTORNEYS

According to legal industry analyst Hildebrandt International, law firms are increasingly relying on contract attorneys. Firms often engage temporary help during spikes in overall work volume or for assistance on specific cases or matters.³ Through the use of contract attorneys, firms can also increase overall profit-per-partner and the organization's bottom line.

In these scenarios, both parties understand that the relationship is temporary. However, to make contractors productive, firms need to treat them much like permanent employees. This means assimilating them into a team or practice group and providing access to appropriate resources.

The Problem

By default, most law firms provide attorneys with open access to key information repositories such as their document management system (DMS). In order to benefit from past experience and promote reuse, attorneys are encouraged to access and leverage the work product of their peers. However, in this context, the firm has an interest in controlling and tracking the information temporary workers can see. While outright abuse may be uncommon, clients are likely to be concerned that their sensitive information is accessible to non-employees not even assigned to their particular matters. Clearly, providing outside attorneys with unfettered access represents a definite, multi-faceted risk.

Unfortunately, there's no straightforward technical way to restrict contract attorneys' access to just the matters they're working on. Instead, firms face two equally unpleasant options. They can either try complicated workarounds, such as having staff members act as intermediaries between contractors and the firm's DMS and other resources. Or, they can lock down their entire DMS and restrict all users throughout the firm to just the matters they're working on.

Unfortunately, both options represent a fundamental change to the way attorneys and staff are accustomed to working. In the end, many firms avoid the issue and accept the risks.

The IntApp Solution – Wall Builder

Wall Builder provides a straightforward way for firms to replace missing or manual contractor access controls with more vigorous protections. With its flexible and easy to use approach to security, it can be used to restrict contractor access to particular clients or matters across multiple information repositories. With its automated approach to security, it also slashes staff maintenance burdens and guards against human error – should an individual mistakenly grant a contractor access to restricted resources, the system can intercede to immediately correct the error and notify relevant parties.

³ http://www.hildebrandt.com/Documents.aspx?Doc_ID=2508

PROTECTIVE ORDERS

Protective orders limit how sensitive information may be accessed and disclosed to third parties. Applicable in several situations, they are often employed during litigation. For example, during a trade secret suit, adverse firms may negotiate, or find themselves subject to a court-imposed protective order. In such cases, materials provided during discovery may be designated as “confidential” or “attorneys’ eyes only.”

In these instances, attorneys, internal staff and related external parties such as expert witnesses may be required to read and sign the order and follow its guidelines. Such guidelines usually stipulate that only parties actively working on the matter may have access to designated materials. They may also stipulate that physical materials must be stored under lock and key and electronic discovery be similarly restricted.

The Problem

Importantly, as designated content is incorporated into attorney work product, that material must be similarly protected. For example, pleadings filed with the court referring to protected materials may need to be filed under seal. Firms must also control access to such work product during the creation process. This means restricting access to relevant work product stored in generally accessible information repositories such as document management libraries.

Furthermore, especially during contentious litigation, firms must be prepared to demonstrate compliance. Organizations that rely on manual staff intervention for access control may find themselves disadvantaged when challenged by opposing counsel who argue that such approaches are prone to error and oversight and fail to produce comprehensive logs.

In this context information access controls become a potential weapon and a defensive necessity, should firms call each other’s standards and practices into question before a judicial audience. Firms able to demonstrate an automated, comprehensive approach to compliance that secures all key information repositories and provides logging and audit reports hold a powerful advantage over adversaries that employ weaker methods.

The IntApp Solution – Wall Builder

For firms looking to ensure protective order compliance, IntApp provides the industry’s strongest information security solution. Wall Builder provides a straightforward mechanism to enact access controls across a broad variety of information repositories. More importantly, it also offers the flexibility to tightly control and log internal visibility of work product containing materials subject to protective orders, while leaving other information associated with a particular matter more broadly visible.

MARKET REGULATIONS

Law firms that provide securities, merger & acquisition, or other services to public corporate clients must take special care to comply with a diverse set of regulatory requirements. Depending on the nature of the matter and the jurisdiction, firms may be subject to SEC rules, Sarbanes Oxley or the EU Market Abuse Directive.

These policies stipulate that material information must be closely guarded to prevent insider trading or other ethical violations. Importantly, several rules require that firms be able to provide an audit report that details all personnel who have accessed or even have had the ability to access a particular matter or document.

Given the importance of market protections, these regulations also carry substantial penalties for non-compliance. Firms that find themselves under suspicion or investigation face potential financial penalties as well as loss of staff, clients and reputation.

The Problem

In a law firm environment, potentially sensitive and descriptive information resides in a variety of systems including document management, records management, time entry and even CRM applications. Attorneys and staff generally have access to these repositories. However, to comply with market regulations firms must impose limits and tightly control who has visibility. Firms that rely on manual intervention to lock down access face challenges and inefficiencies in ensuring that all information is protected and in keeping security definitions accurate and up to date. Traditional ethical walls tools offer some assistance, but only secure document management systems. Furthermore, they do not self-maintain security restrictions and they fail to provide necessary logging mechanisms.

Most importantly, the audit requirements imposed by these regulations represent an area of considerable risk. Organizations must be able to document access rights and activity when called upon to do so by clients, the court or regulatory agencies. When faced with such requests, firms undertake onerous manual analysis and investigation across multiple applications, trying to assemble necessary records and construct the required records. They must also be prepared to certify the results of their efforts are true and complete.

The IntApp Solution – Wall Builder

Wall Builder enables firms to closely control who can access sensitive information stored across multiple internal repositories. More importantly, it also logs all significant action including the creation of security walls, wall modification and user access permissions for specific assets. This information, which can be easily managed using a customizable reporting engine, provides a comprehensive historical record for demonstrating regulatory compliance.

ITAR COMPLIANCE

US law firms that provide services to defense contractors must take special care to comply with the International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act. Unless overruled by explicit government waivers, these regulations dictate that information and material pertaining to defense and military related technologies may only be accessed by US persons (citizens or permanent residents employed by US-based businesses).

A trade control enforced by the US Department of State, ITAR helps protect national strategic and foreign policy interests. Given the importance of guarding national defense interests, organizations that expose protected information, designs, test data, processes, source code and other materials inappropriately may be subject to civil penalties as high as \$500,000 per violation, with criminal penalties reserved for violations deemed knowing and purposeful. In this context, a violation is defined as each individual sharing of information – multiple email messages or documents revealed or accessed represent multiple violations.

The Problem

In a climate of heightened concerns over national security, compliance is more important than ever. Law firms providing services to organizations subject to ITAR and related rules must take special care to make sure internal controls are in place and enforced. This means ensuring that internal parties not considered US persons are not able to access restricted materials provided by or prepared for clients. Affected personnel may include IT or administrative staff with access to key information repositories such as document management applications or attorneys based in international offices.

Firms may also need to confirm and demonstrate ITAR compliance measures to existing or potential clients, or to the State Department, should more serious compliance concerns arise.

The IntApp Solution – Wall Builder

Wall Builder enables firms providing services to clients who develop or deliver defense and military related technologies to lock down and control internal access to sensitive information subject to ITAR regulations. Access for particular matters can be restricted to US persons employed by the firm or to a specific subset of authorized users. With comprehensive logging, Wall Builder also provides firms with a clear audit trail should the need arise to demonstrate compliance to external parties.

LOBBYING REGULATIONS

Law firms employing former government employees that engage in lobbying or other active interaction with government agencies must take special care to comply with a variety of ethics rules. Protecting against a phenomenon known as the “revolving door,” these rules delineate when, if ever, former government employees can interact with their former employers.

On a federal level, the Federal Ethics in Government Act (Section 207) and Rule 1.11 of the DC Bar Rules control. Similar rules apply in many state and local jurisdictions. The general principle of these rules is that attorneys cannot work on matters in private practice that they dealt with as government employees. In some jurisdictions, such as Washington DC, this ban is permanent. However, in some instances, lobbying activity may be allowed after as little as a one year embargo.

The Problem

While violations are rare, the stakes are high. The Federal Ethics in Government Act is a criminal statute; the US Department of Justice is charged with investigating and prosecuting violations. With a variety of ethics rules applicable based on jurisdiction and situation, law firms must take all reasonable steps to ensure compliance.

This includes not only making sure attorneys are properly educated and informed but also making sure that the firm takes steps to protect against accidental infractions. Additionally, firms must take steps to protect against even the appearance of or potential for improper behavior, as external perceptions can be damaging.

The IntApp Solution – Wall Builder

Wall Builder allows firms to establish ethical walls between attorneys who were formerly government employees and any individuals or teams working on matters that involve their former government employers. With an automated approach that curbs access across a broad variety of information repositories, Wall Builder helps firms prevent accidents. With extensive logging and audit capabilities it also helps verify compliance and prevent even the appearance of impropriety.

For more information, please see: <http://www.intapp.com>, or contact: info@intapp.com