

# IT support of contract and contracting

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presented at

**e-Stockholm '08**

Proactive Law & IT

# Who am I?

- Former lawyer, corporate finance partner, Davis Polk & Wardwell NYC 1978-1999
- Experience in KM, professional development
- MBA and computer science 1999-2002
- Risk management London office of US-based global law firm 2003-2007
- Author, *Drafting for Corporate Finance* 2007
- Information Systems and Innovation Group, Department of Management, London School of Economics 2007-present (MPhil/PhD candidate)

# Contract experience

- As an outside lawyer
- From inside, for an organization
- Instructional (forms, guidance)
- Computer-based drafting
- Repository construction and related metadata design
- Intranet-based workflow and portal

# “Contract management”

- Business concept – that an organization’s contracts should be proactively managed in a holistic fashion
- That this function should be identified as a core competency within the organization and professionalized
- The role of IACCM

# Why CM?

- An organization's legal rights and commitments are key to its profitability and even survival
- Too often contracting processes are fragmented, ad hoc and opaque
- Inefficiency and extra costs
- Holistic view of relationships with other organizations is missing

# Institutional issues

- No one function is responsible
  - Buy side versus sell side; niche expertise such as supply chain management
  - Role of compliance and legal
  - Role of marketing/CRM
  - Role of IT department or CIO?
- In sum, no single proponent but lots of fingers in the pie ...

# Contract management software

- History and precedents
  - Technological antecedents
  - Specific IT concept antecedents:
    - DMS
    - Strategic sourcing and supply chain management
- Pure play CMS versus “organic” CM extensions

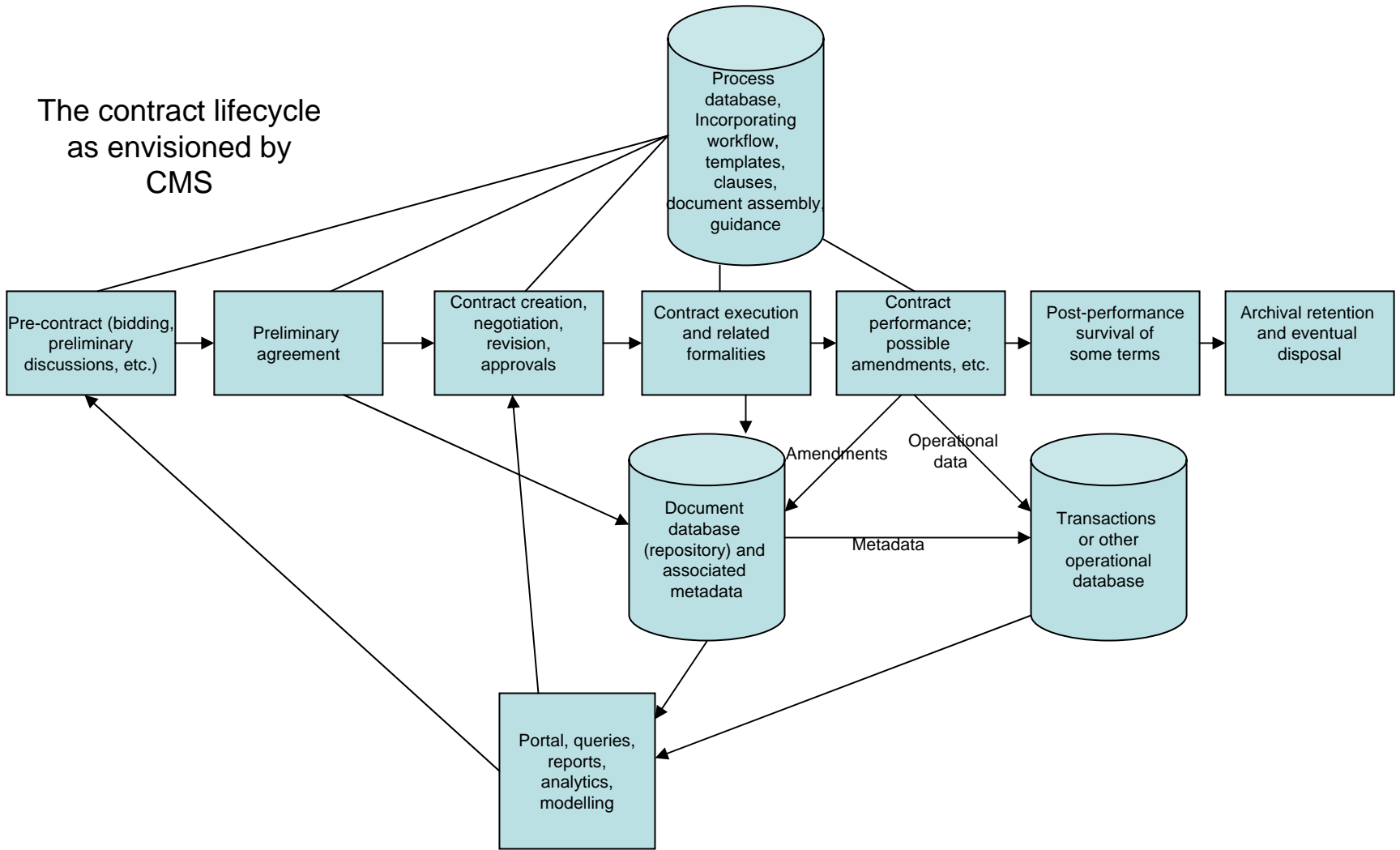
# Elements of CMS

- Repository
- Associated metadata
- Workflow
- Document automation
- Plus collaboration
- Plus integration
- Reporting and analytics

# The contract lifecycle

- Pre-contract/bidding/RFX
- Initial terms
- Negotiation and document exchange
- Document finalization and execution
- Operational life of the contract
- Survival of some terms
- Retirement of contract

# The contract lifecycle as envisioned by CMS



# Closed loop of information

- Making the most of the CM concept in an IT-enabled environment means harvesting contract information for concurrent and future contracting
  - Examples?

# Elements of CM solution, revisited

- “Robust” technologies
  - Word processing
  - Document automation
  - Workflow
  - Document management systems
  - ERP modules operationalizing various datapoints
  - Portals, reports and analytics

# An ambitious project ...

- Many elements, each can present challenges for the adopting organization
- May overlap with other applications

Workflow and  
Collaboration  
Including email

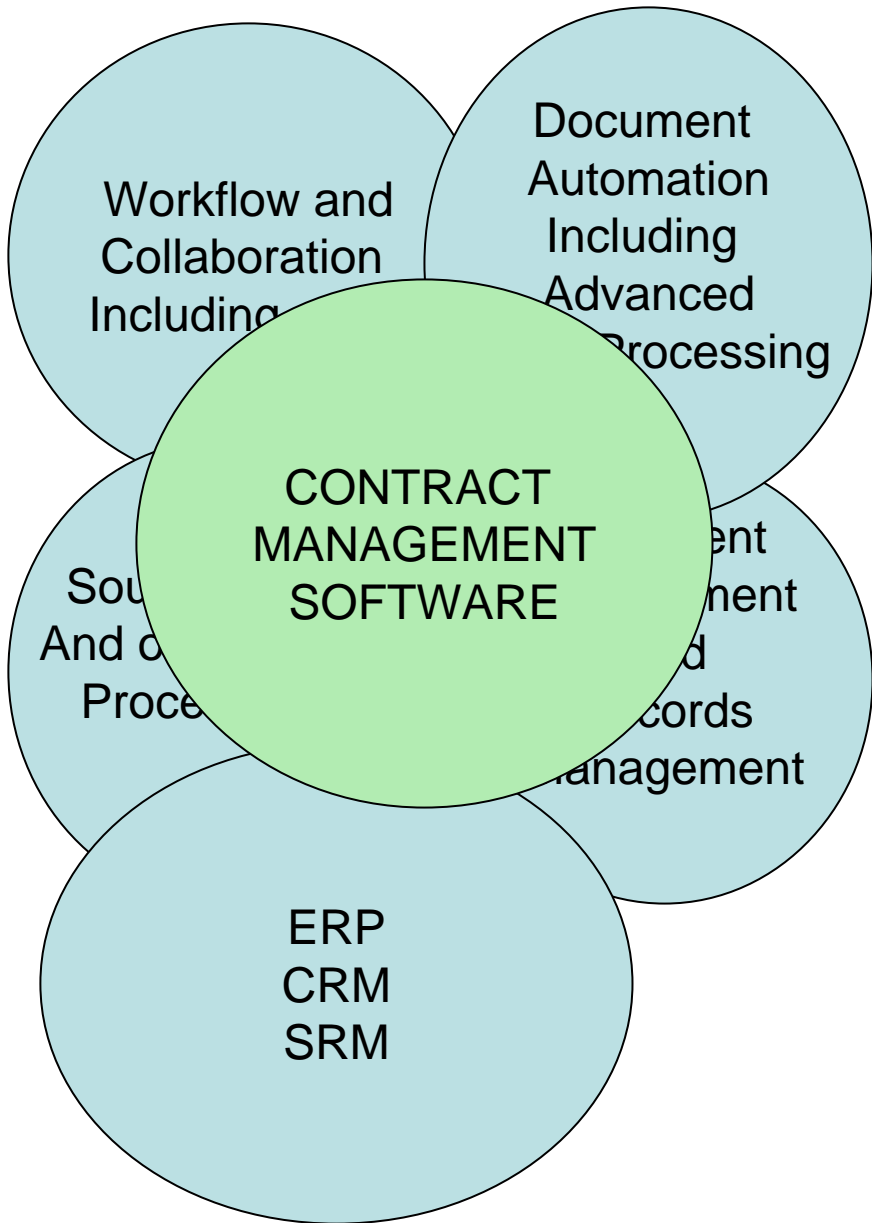
Document  
Automation  
Including  
Advanced  
Word Processing

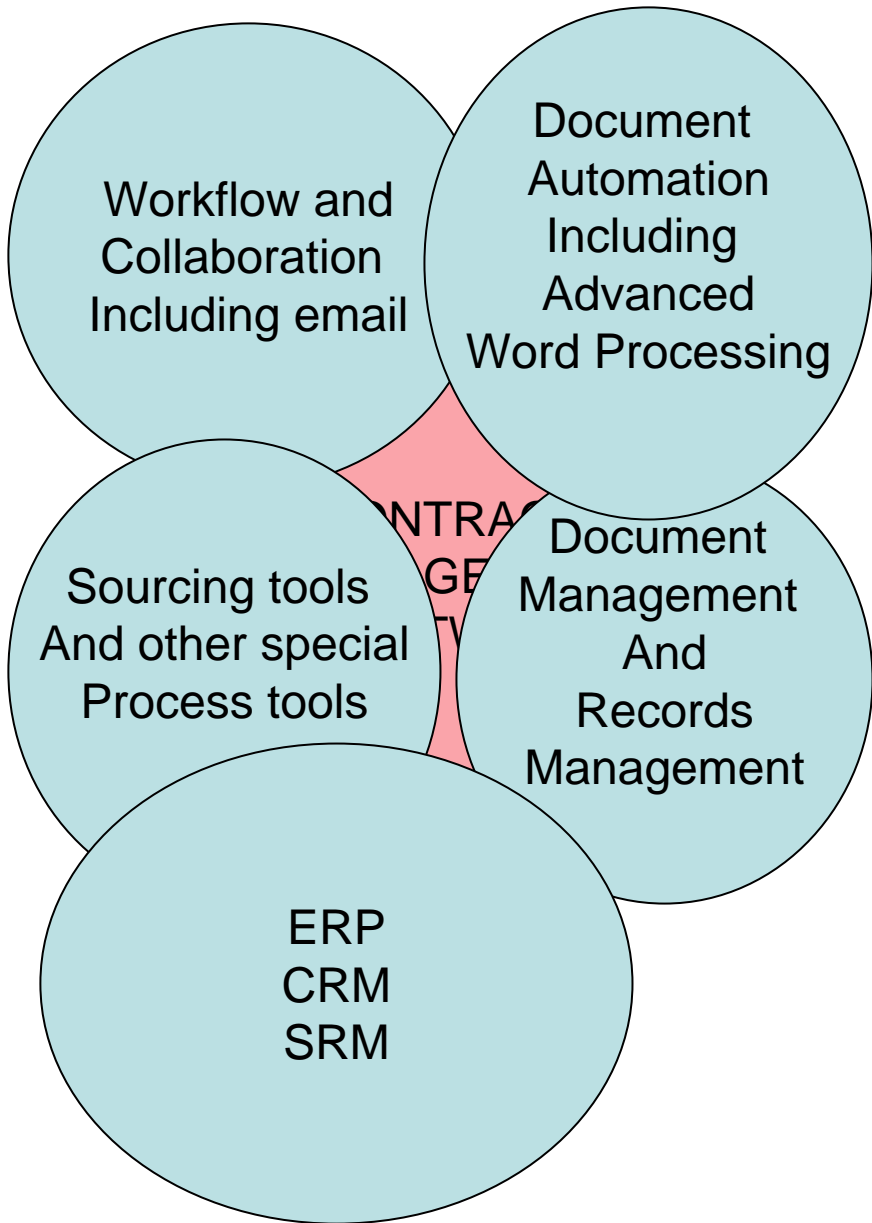
Sourcing tools  
And other special  
Process tools

Document  
Management  
And  
Records  
Management

ERP  
CRM  
SRM

CONTRACT  
MANAGEMENT  
SOFTWARE?





# For investigation

- Preliminary research question: how does CMS conceptualize contract
- In-depth research: IT support of contract and conceptualization of contract for purposes of information system design
- Context: the evolution of the organization; the “database” version of the organization

# What the research is not about...

- A particular contract management solution or assessment of various CMS packages
- Factors more generally applicable to IT implementation ...

# ...consider this case:

- Financial accounting system project
  - Year 1: evaluation by corporate accounting task force
  - Year 2: vendor selection; decision to mirror current processes except for standardization
  - Years 2-3 ½: system design for single corporate database and other modifications
  - Year 3: divisional accountants' views solicited
  - Year 4: division pilot: “not beneficial” but other divisions start using the system
  - Years 5-6: changes undertaken; project leader quits; divisions using the system still keep their old systems so 2 sets of books

# Issues noted

- Early technical problems were solved
- Divisional accountants focus on cost accounting and have only dotted line reporting to corporate accounting
- Earlier merger between X and Y; corporate accounting (from X) was headed by rival to head controller for divisions (from Y); lack of trust in divisional accounting

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- “Power, Politics, and MIS Implementation”  
by M. Lynne Markus, *Communications of  
the ACM* 26(6):430-444 (1983).

# Preliminary research 2008

- Computer-assisted text analysis of CMS selling literature including sponsored analyst reports; interviews with variously placed industry participants
- Argumentation analysis of the CMS selling literature in light of the interviews as well as a review of various aspects of contract from legal, social, economic and organizational perspectives

# Contract from various perspectives

- As “sociomaterial” material artifact – an already existing entangled assemblage
- Contract as boundary object at border of system – locus of information exchange; reflected in internal fragmentation?
- Transaction cost theory of the firm; law and economics – discrete transaction, paradigm case the purchase of commodity items in a market; incomplete contract

# Contract from various perspectives

- Resource-based theory of the firm; contracting as a knowledge capability – contract > document
- Relational contract – transcends the transaction
- Implicit dimensions of contract; trading community norms – contract not the same as the document

# Contract from various perspectives

- Contract as artifact and technology –
  - Standards defined at the supra-organizational level
  - Displaying technology dynamics that transcend the transaction; not static
  - Contract may consist of elements that are generic, subject-matter/trading community, and transaction specific

# How CMS visualizes CM

- Internal standardization and control
- Contract is captured in the document, which can to a significant degree be represented by discrete datapoints (e.g volume rebates, renewal dates); many contracts can be managed at a clause level
- CMS can overcome internal fragmentation

# Issues

- Corresponds well to commoditizable contract, high volume, low variability
  - Consider electronic trading platforms
- Not necessarily extendible in a straightforward way to more complex contract
  - Tacit knowledge and natural language
  - Little data discreteness; data not self-executing

# Issues

- Assumes document construction and associated metadata will capture relevant contract information
  - Entire document important for some purposes
  - Key contract information may not be reflected in the document
    - Implicit, not written
    - May transcend the transaction

	Discrete data	Not discrete data
In Doc	<p>Name of party; Price; Delivery date</p>	<p>Construction of contract language as a whole; Contracts about intent or purpose; Contract language requiring interpretation generally</p>
Not In Doc	<p>Party affiliation Type of contract Explicit rules or laws Assignment? Ownership %? Value?</p>	<p>Trading community norms; Relational factors; Tacit knowledge</p>

# Standardization and data design

- Discrete data, explicit rules and standardization are key, but
  - Standardization inside an organization is difficult; likewise data design
  - Data entry is key, but who will do it
  - Standardization may be driven at the supra-organizational level
  - Is standardization always the best strategy?

# Suggestions

- Separate process goals (function-driven) from information and data design (holistic)
- Accept internal fragmentation for process purposes and look for standardization at the supra-organizational level
- Segment contracts along dimensions
- Consider “assemblage”; repository is likely to be key; relax end-to-end assumption; lever inertial applications

# Suggestions

- Consider critical aspects of contracting such as communication, responsiveness and competence – defined as the ability to manage the unexpected out of a repertoire of accumulated experience and expertise. This view can also be more motivating to contracting professionals than that offered by a pure “control and standardization” model.

# From one vendor document:

*“Besides software, an effective contract management system also has process and people in place, whether internal or provided as part of the solution, to perform the system implementation and management, perform contract negotiations, and maintain the overall system, including process modifications, clause library management and data entry.”*

# Suggestions

- Separate contract information from the contract document
- There may be significant upside in considering discrete data outside the contract

# Suggestions

- Strategic aspects of contract information:
  - Market conditions
  - Contract counterparties
  - M&A
  - Risk (not just valuation but relational, network, or cascading aspects of risk)
  - The “Minority Report” model

# Looking ahead

- Current versions of CMS can enjoy greater penetration if properly understood/targeted
- Partial adoption of CMS can make sense
- Generification as in the case of SAP; better articulation of fixed/moving parts through configuration options
- And beyond: a missing piece of Management Information Systems? Recent events suggest Yes.

# Thanks for listening

REMINDER: 2-3 in-depth case studies first half 2009

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