



Compliance Not My Job!!!

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What is Compliance?

- **com·li·ance** Pronunciation: k&m- 'plI-&n (t) sFunction: *noun*
- **1 a** : the act or process of complying to a desire, demand, or proposal or to coercion
- **b** : conformity in fulfilling official requirements



Whose job is it anyway?

- Legal
- Compliance department
- Risk Group
- Security
- CFO
- CEO
- IT
 - Development
 - Operations and Production
 - Network
 - Storage
 - Architecture



What is Required?

- Depends on the regulations that apply
 - Network security and identity management
 - Records management
 - Retention and handling
 - Classification
 - Litigation support
 - Secure destruction
 - Encryption
 - Process auditing
 - Written policies, procedures and internal controls
 - Audit logs and proof of action
 - Workplace conduct in accordance with Department of Labor Standards



General Business Regulations that Apply

- Department of Labor
 - Fair employment
 - Harassment
 - Wrongful termination
 - OSHA
 - ERISA
 - etc. over 20 regulations in all more than 15 with different records retention requirements

- HHS and HIPAA

- Department of Justice - Litigation

- Department of Treasury - OFAC, AML, USA PATRIOT, GLBA, plus state laws in over 23 states regarding the protection and security of “sensitive personal information”

- SEC
 - Public Companies (SOX)



Industry Focused Regulations that Apply

- SEC
 - Industry Practitioners (17a-4, 204(2), 31(a), NASD, NYSE, etc)
- HHS and HIPAA
- State and federal mortgage, insurance and banking regulations
- Department of Defense
- Environmental Protection Agency
- Food and Drug Administration
- Department of Agriculture
- Department of Energy and FERC



Regulatory Matrix

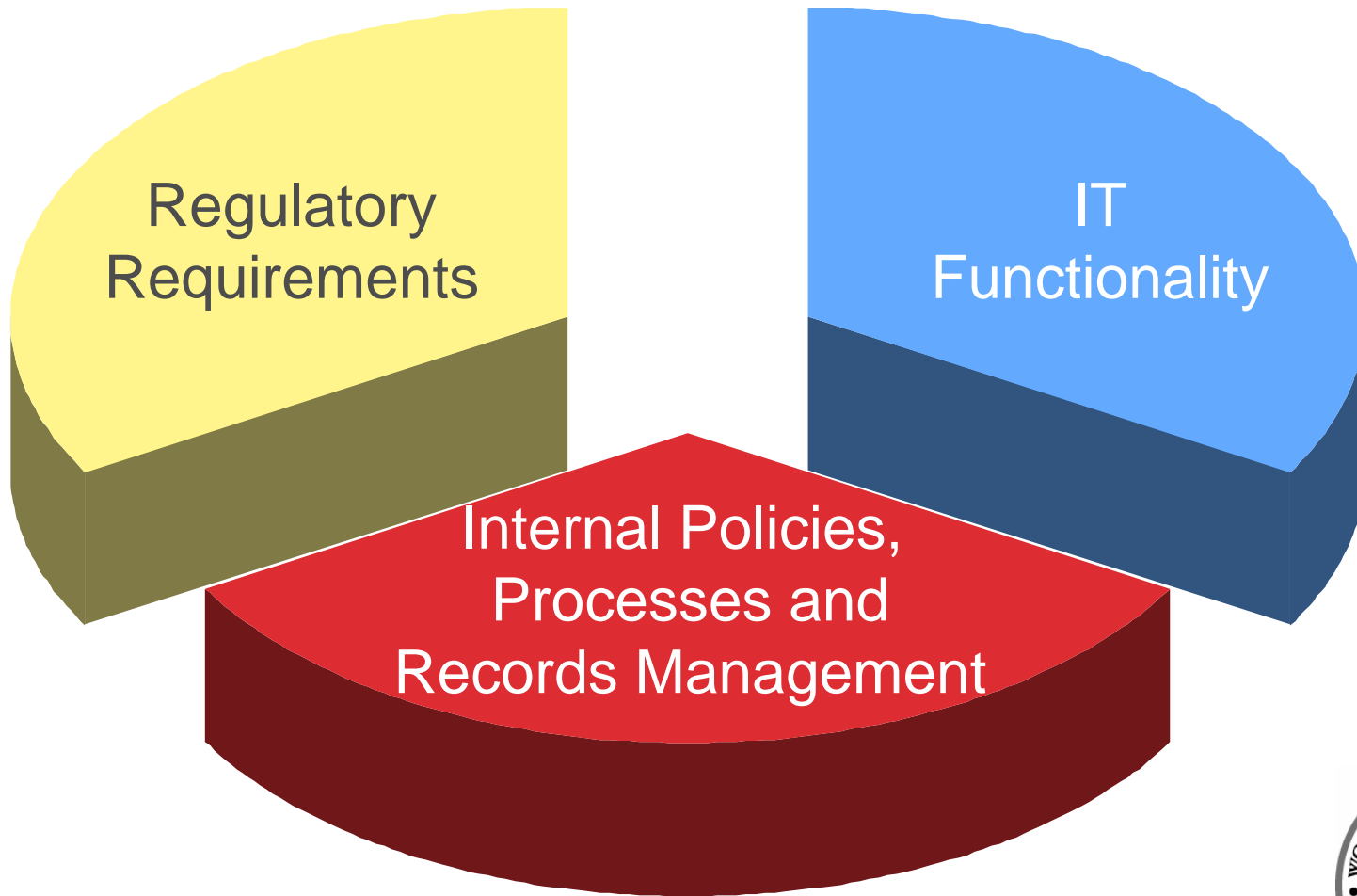
	Retention	Integrity	Authenticity	Privacy	Confidential	Supervision	Secrecy	Access
SEC 17a-4	YES	YES			YES			YES/R
SEC 204-2	YES	YES			YES			YES/R
SEC 31	YES	YES			YES			YES/R
NASD 3010						YES		YES/SR
NASD 3110	YES	YES			YES			YES/R
SOX*	YES	YES		YES	YES	YES		YES/SR
GLB				YES	YES			
USA PATRIOT						YES		YES/R
AML/OFAC						YES		YES/R
21 CFR Part 11	YES	YES	YES	YES	YES	YES		YES/R
DoD	YES	YES		YES	YES		YES	YES/R
HIPAA	YES	YES		YES	YES			YES/R
DoL	YES	YES						YES/R
FTC	YES	YES						YES/R
DoA	YES	YES						YES/R
AFT	YES	YES						YES/R

***Sarbanes-Oxley requires compliance and record retention for all records that relate to reporting to all other agencies of the Federal Government**

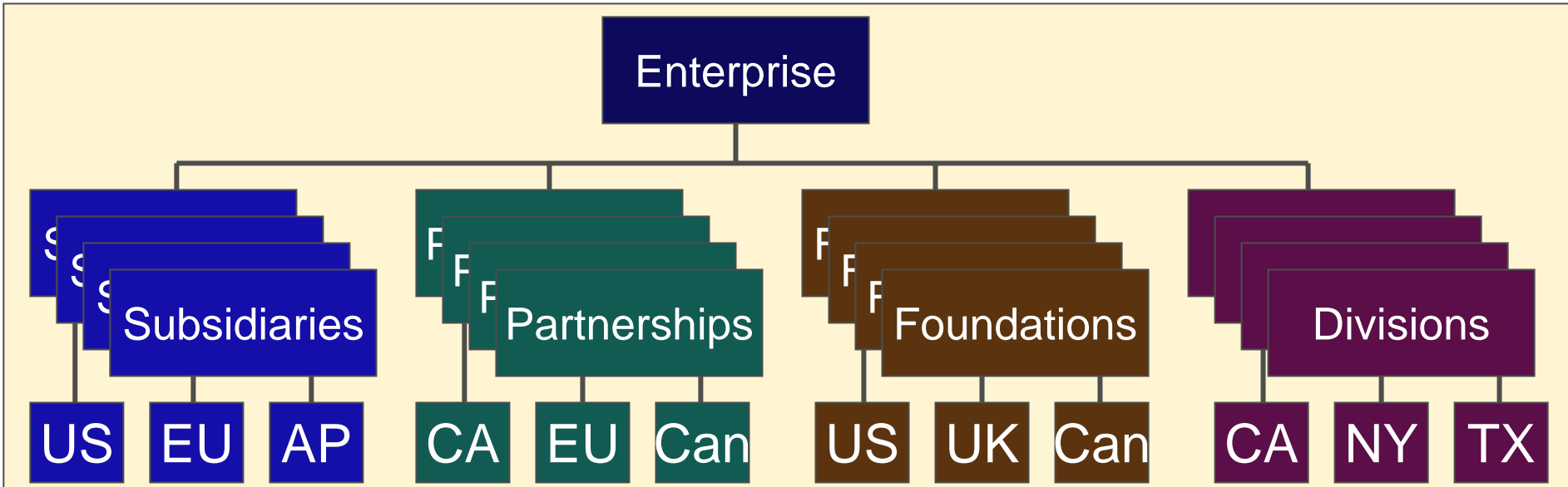
R=Regulatory, S=Supervisory



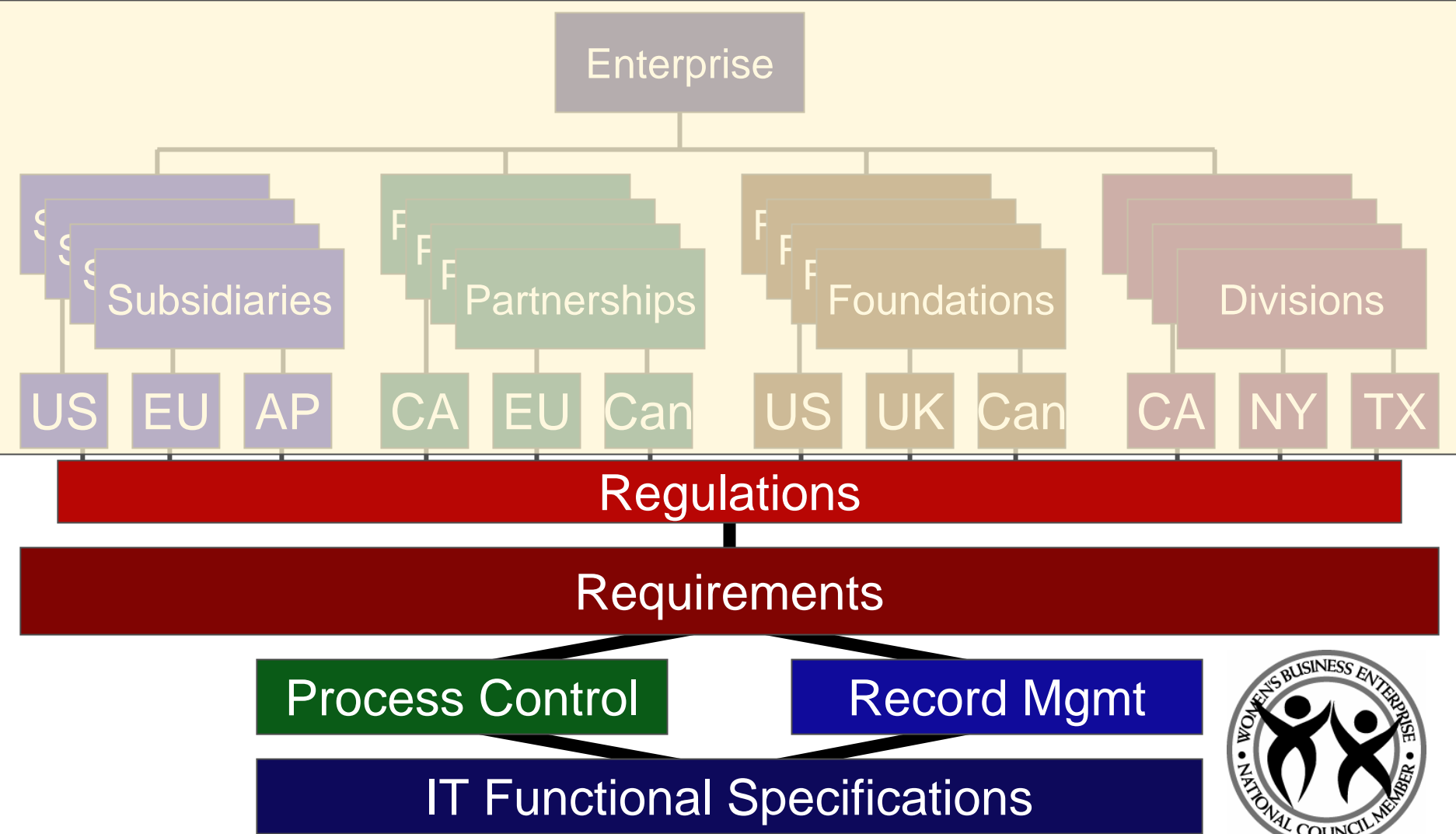
Aspects of Expanded Information Management



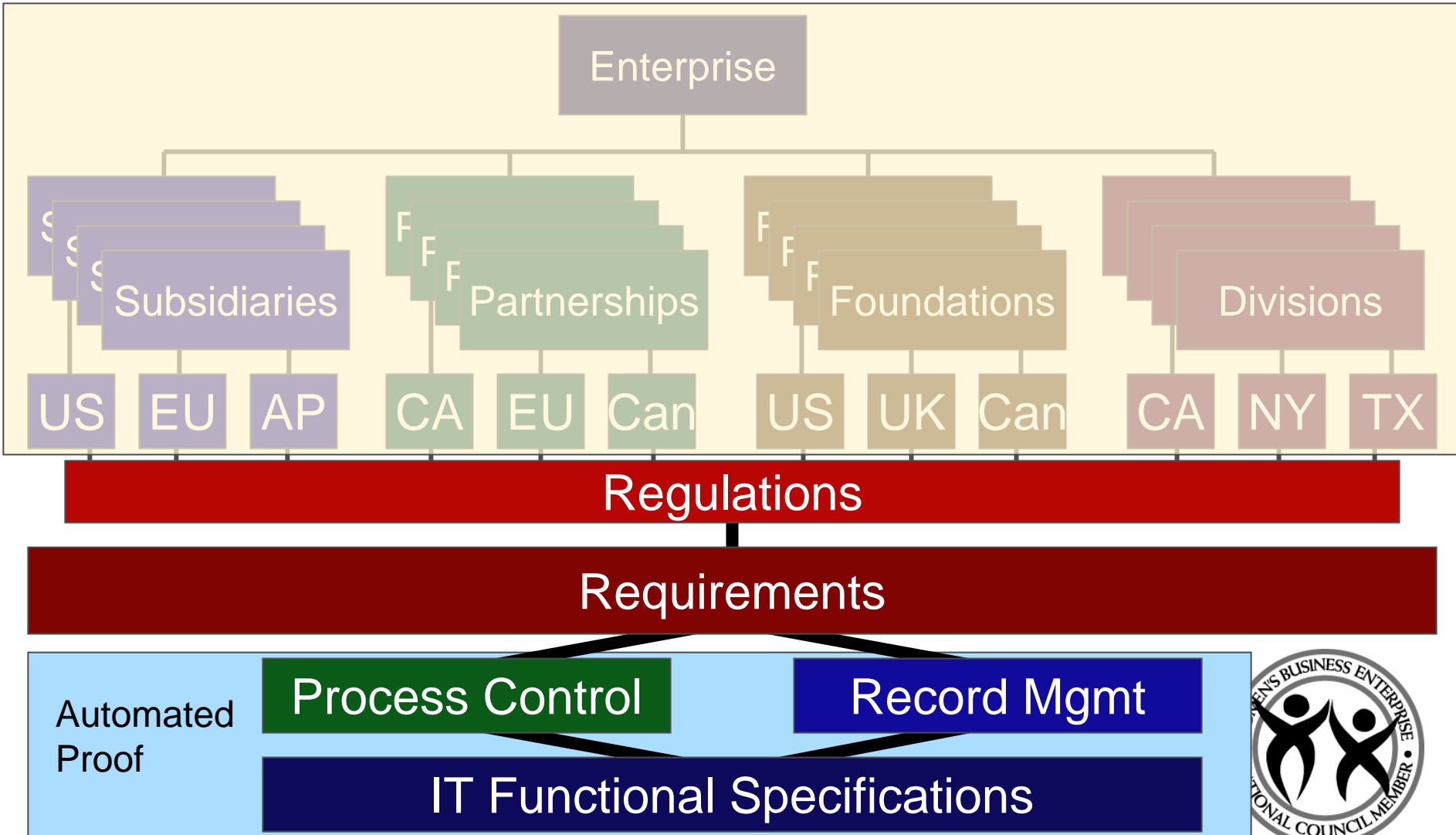
Jurisdictional Structure of the Enterprise



Linking Regulations to IT Functionality



Automated Proof - Critical to Cost Control



Why Should You Care?

- Section 1519 of Title 18 of the US Code
- **Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.**



Some Thoughts on Self Preservation

- If anyone ever asks you to delete or destroy records
 - Check with legal
 - Ask for the request in writing
- Don't use language in your email that you wouldn't say to your Mom or your Grandma
 - IM is not an escape hatch
- If you think you are becoming a scapegoat save your emails
 - Make notes to the file for yourself
 - Be specific about the date and the time
- Don't try to be clever
 - An amazing number of people are going to jail for being clever



Regulation v. Litigation

- Regulation
 - Predictable
 - Defined
 - Comes from known sources
 - Can be anticipated
 - Enforced to varying degrees

- Litigation
 - Unpredictable
 - Undefined
 - Comes from unknown sources
 - Can be prepared for
 - Enforced in the extreme



Common Litigation Issues

- Intellectual property claims
 - NTP v. RIM
 - \$612.5 million

- HR matters
 - Zubulake v. UBS Warburg
 - \$29+ million

- Financial fraud
 - Perelman v. Morgan Stanley
 - \$1.45 billion
 - Enron / Anderson
 - People going to jail



Key Court Rulings

- Zubulake v. UBS Warburg (Zubulake V)
 - “What we’ve got here is a failure to communicate.” Prison Captain, *Cool Hand Luke*
 - Counsel has a duty to effectively communicate to her client its discovery obligations so that all relevant information is discovered, retained and produced
 - Counsel must identify sources of discoverable information, including speaking directly to key players as well as IT
 - Counsel must put in place a litigation hold and make that known to all relevant employees by communicating with them directly
 - Litigation hold instructions must be reiterated regularly and compliance must be monitored
 - Counsel must also call for employees to produce copies of relevant electronic evidence and must arrange for the segregation and safeguarding of any archival media (e.g. backup tapes) that the party has a duty to preserve



Key Court Rulings

- Zubulake v. UBS Warburg (Zubulake V)
 - Once counsel takes these steps (or once a court order is in place), a party is fully on notice of its discovery obligations.
 - If a party acts contrary to counsel's instructions or to a court's order,

"It acts at its own peril."

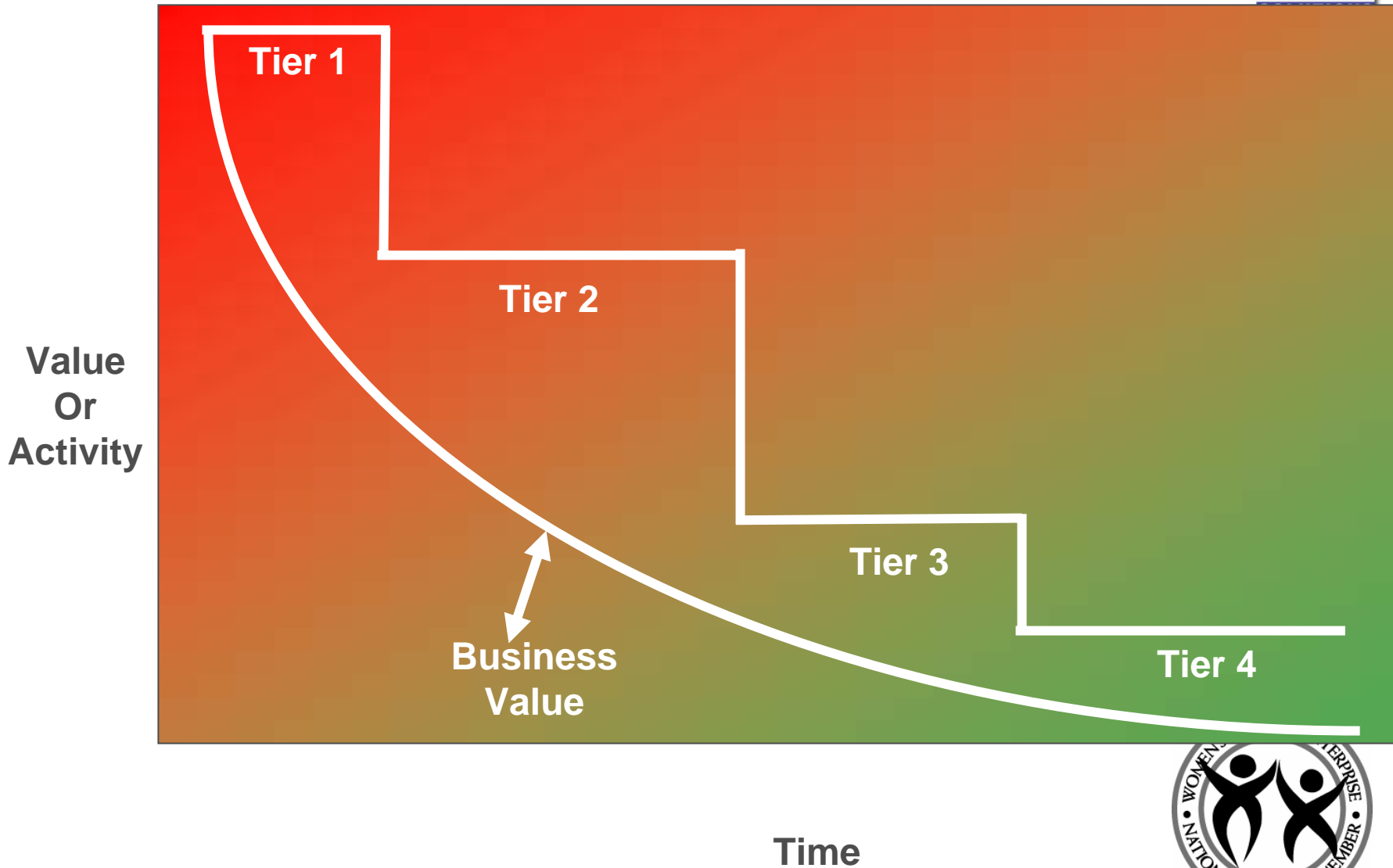


Designing with compliance in mind

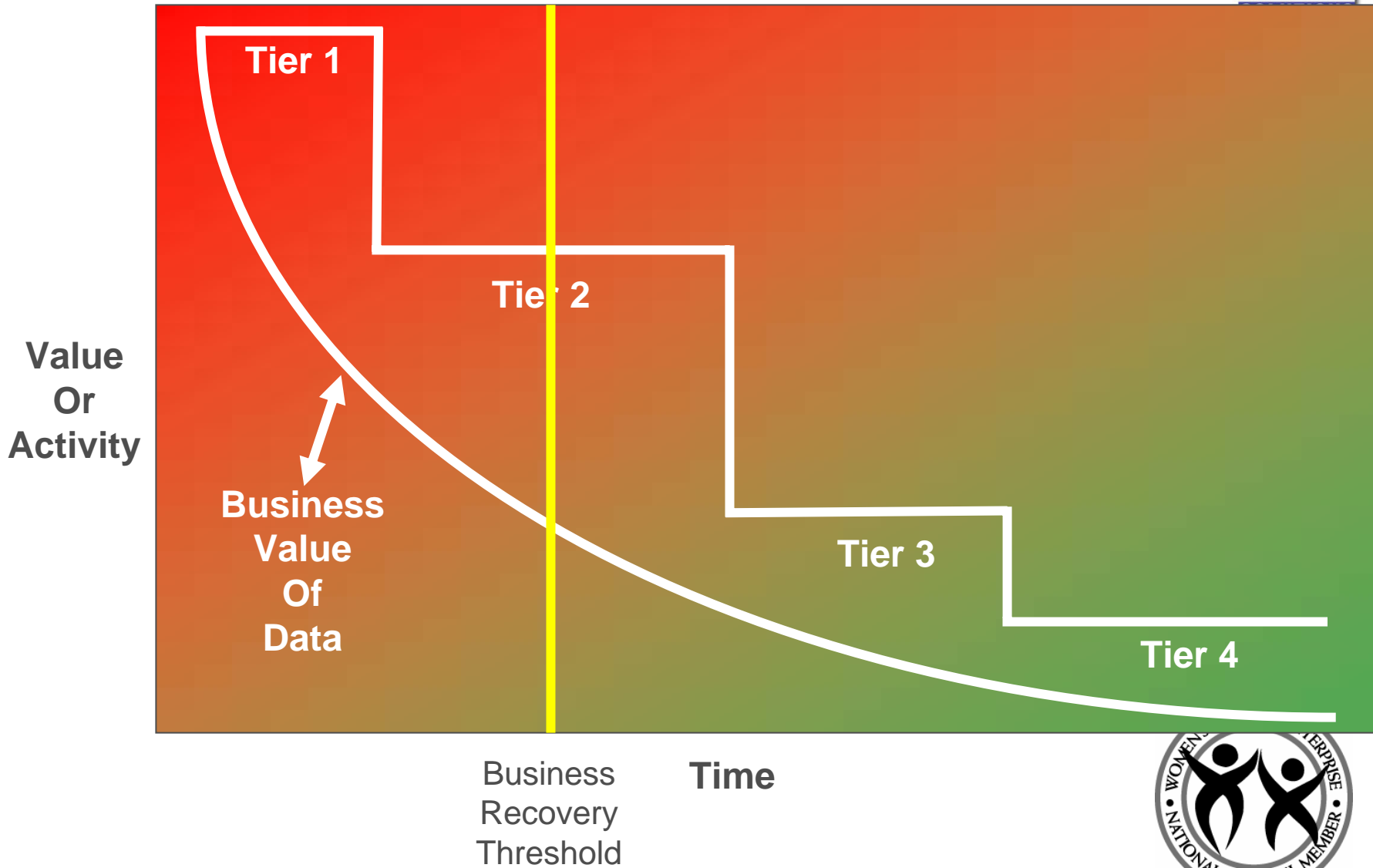
- Intellectual Property Protection
- Audit logs
- Archives
- Ethical wall
- Content control
- Efficient storage design



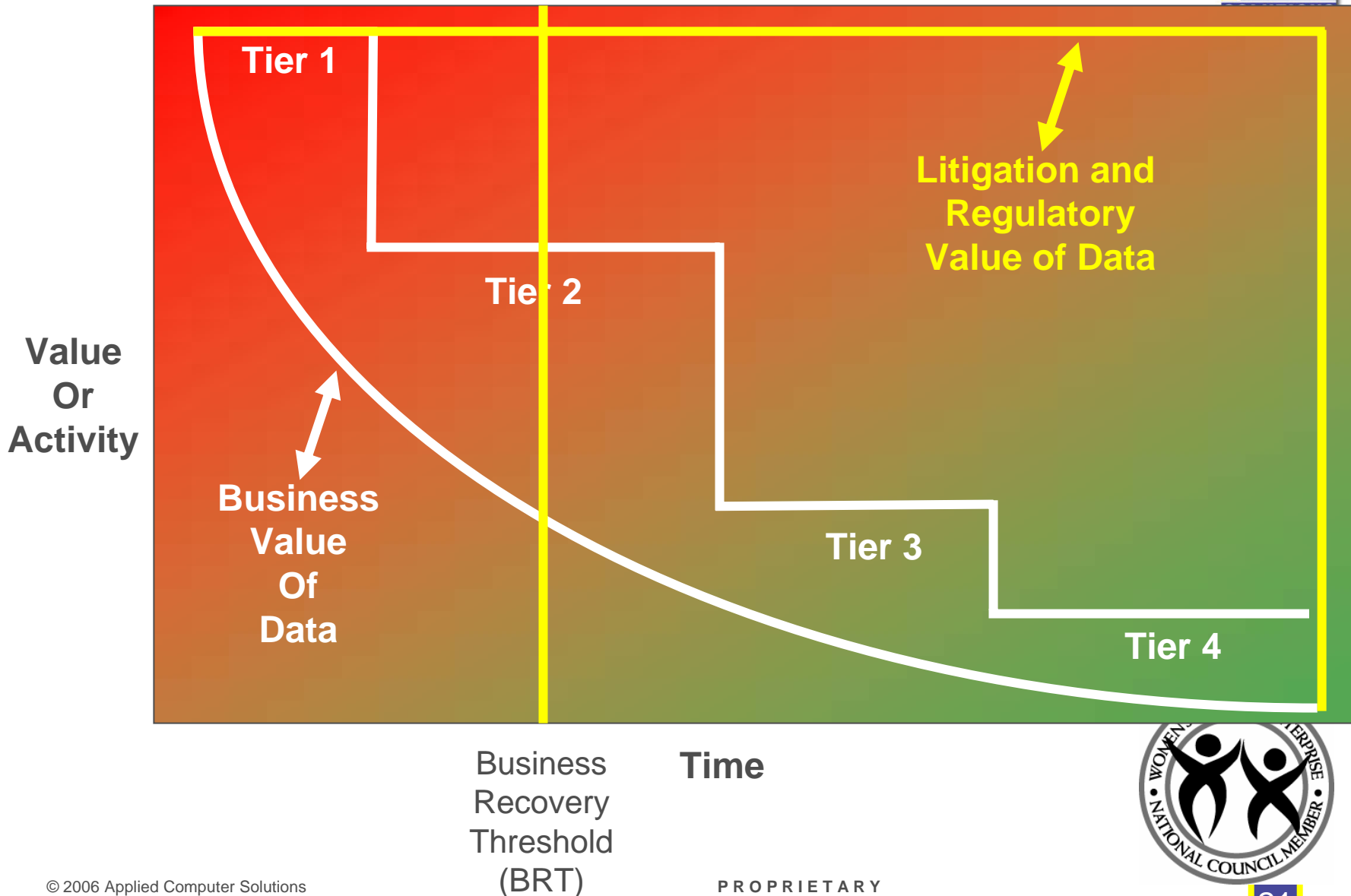
Classic Approach to Storage Optimization



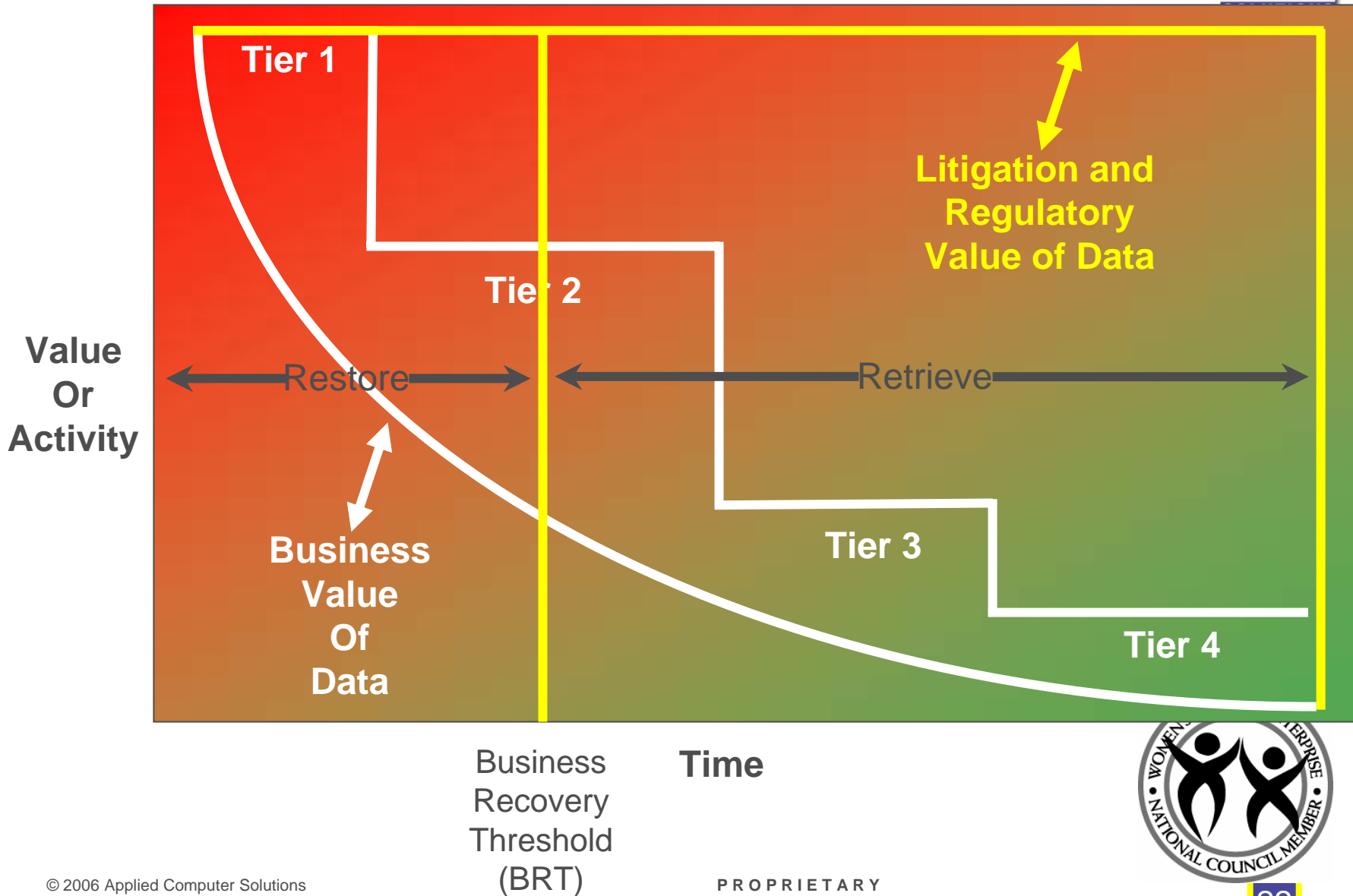
Disaster Recovery Storage Has Limited Use



Why Keep DR Tapes Beyond the BRT



The Difference Between DR and Archive



Six Copies on Average in Every 12 Months

- Jan J
- Feb JF
- Mar JFM
- Apr JFMA
- May JFMAM
- Jun JFMAMJ
- Jul JFMAMJJ
- Aug JFMAMJJA
- Sep JFMAMJJAS
- Oct JFMAMJJASO
- Nov JFMAMJJASON
- Dec JFMAMJJASOND

6.5 copies
on Average per
12 Months

1 year = 6.5 copies
 2 years = 12.5
 3 years = 18.5
 4 years = 24.5
 5 years = 30.5

You only need to archive
 1 or 2 copies, 3 at most
 2 copies vs. 30.5 = 93.4%
 Reduction



Sample Savings Assuming 90% Reduction

- 10,000 tapes in storage
- 9,000 tapes eliminated
- 1,000 tapes after optimization
- 9,000 * \$50 per tape
- 9,000 * \$18./yr * 5 years
- \$450,000 tape cost savings
- \$810,000 storage cost savings
- \$1,260,000 savings per 10,000 tapes every 5 years



Additional Benefits

- Improved privacy protection
- Improved record integrity
- Litigation
 - Lower litigation support costs
 - Faster litigation response
 - Easier to apply litigation holds
- Classification for record retention management
- Easier to meet compliance requirements
- Less costs to meet compliance requirements



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