




Facilitator's Manual

Introduction to E-mail Record Retention

First Video in a Series
Produced by Messaging Architects Media

Presented by
Benjamin Wright

 <p>E-Mail</p> <p>Traditional retention policies are obsolete</p>		<p>Law punishes early destruction of records.</p>	<p>"Print and retain" does not work</p> 
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This Facilitator’s Manual aims to help enterprises follow and respond to the material in the video entitled “Introduction to E-mail Record Retention”. This Manual includes:

An Executive Summary 1.

Action Items after Screening the Video 2.

Questions for Discussion 2.

A Questionnaire & Survey 3.
(for copies; print page 6)

Viewer’s Guide *(see separate document)*

These are tools a facilitator can use to promote learning within an enterprise.

The facilitator can distribute the Executive Summary to attract interest prior to showing the video to a group.

The facilitator can use the Questionnaire & Survey to gather information prior to screening the video.

The Questions for Discussion can help to guide discussion while or after a group views the video. The action items suggest particular steps to take.

The Viewer’s Guide includes text, slides and screen shots to match the video’s progression. The Guide features signposts and “points to consider”, so viewers can better follow the video, pause to discuss as the video progresses and review later.

Executive Summary

Early destruction of e-mail is increasingly dangerous, as evidenced by recent lawsuits and legislation.

The conventional thinking in corporate records management is that lots of documents – especially e-mail records – need to be purged and shredded. It is an article of faith that if records are systematically purged, then bad documents from the past will not come to light and embarrass the corporation in litigation. Thus, corporations commonly have formal record retention policies that mandate the destruction of different classes of documents after they are not strictly required by law to be held.

The conventional thinking is faring poorly in modern courtrooms, especially when early destruction of e-mail is involved.

Electronic mail has become a prime source of evidence and controversy in modern litigation.

Because e-mail is much easier to distribute than paper, finding and destroying all the copies is much harder. E-mail can surprise people who thought they destroyed it.

Hasty destruction – or attempted destruction – of e-mail raises suspicions in the legal system. Enterprises have suffered in court under doctrines such as spoliation and obstruction of justice.

Believing that enterprises should suspend e-mail destruction when litigation is in the offing, courts have penalized them for purging e-mail records, even though they thought they were only acting in accordance with standard record retention policies.

Some enterprises have tried to ensure the preservation of important e-mails, while generally eliminating all others, by telling executives to print and retain the important ones specially. But the print-and-retain policy has not won much approval in court because executives are not talented at printing and retaining.

Enterprises should re-examine their record destruction policies. Policies motivated by the desire to expunge records so they will not be available for future potential litigation should change. Courts can sense this motivation in a systematic destruction program, especially when the program applies to relatively young records.

A better policy is to shift to a bias in favor for longer, more comprehensive retention of e-mail.

One of the historical objections to a policy of keeping extensive e-mail records was that the enterprise would be forced to expend vast resources sifting through those records in the event of litigation.

However, modern judicial decisions recognize that it is not necessarily fair to force the party possessing e-mail records to bear all the discovery costs associated with them. Sometimes the other party must pay some of the costs.

Action Items after Screening the Video

1. Circulate the Viewer's Guide for further study by the relevant parties within the enterprise.
2. Assign someone to research the authorities cited in the Viewer's Guide, together with cases and authorities relevant to your particular industry, and report the findings.
3. Review the other videos in this series produced by Messaging Architects Media.
4. Form a task group to develop an updated policy on e-mail retention and destruction.
5. Develop and implement a program for educating employees about e-mail in litigation and the efforts to update your enterprise policy.

Questions for Discussion

These are questions a group can consider during or after screening of the video.

1. To what extent are the issues and risks presented in the video relevant to your enterprise?
2. Does the recommendation that e-mail be retained longer seem valid for your enterprise? What issues would arise if your enterprise were to follow that recommendation?
3. To what extent is your enterprise following the print-and-retain policy? Is it working for you?
4. Who else within the enterprise should be invited to view this video and read its Viewer's Guide?
5. In light of all the issues your enterprise faces, does the video present a compelling case for change in the way the enterprise manages e-mail records?

Questionnaire & Survey

These are questions to help an enterprise gather information before screening the video.

1. How extensively do employees use e-mail to communicate about day-to-day business?
2. How often does your enterprise get involved in litigation?
3. Has your enterprise ever been requested to produce e-mail records in litigation? What has been the experience?
4. Does your enterprise have a formal record retention/destruction policy? Does it explicitly cover e-mail? In practice, what is the track record for applying the policy to e-mail?
5. In practice, how is e-mail retained? How is it destroyed?
6. Does your enterprise retain e-mail centrally? Is e-mail retention and destruction consistent through the enterprise?
7. Which technology is your enterprise using for retaining e-mail?
8. Over the past 10 years, as e-mail has grown in importance to your enterprise, in what ways have you changed your policy on e-mail retention and destruction. How has your practice changed?
9. In the past two or three years, has there been any debate within your enterprise on whether your policy and practice should change?
10. Who sets policy on e-mail retention and destruction?

About Messaging Architects

Founded in 1995, Messaging Architects is a leading developer of add-ons and enhancements for corporate messaging servers. On a daily basis, thousands of organizations of all sizes depend on MA technology and services to truly leverage the power of their messaging infrastructures. On the web at www.messagingarchitects.com

About Benjamin Wright

One of the world's leading technology lawyers, Ben Wright is the author of several law books, the most recent being Business Law and Computer Security, published by the SANS Institute. During 20 years of private practice, he has delivered over 600 speeches on e-commerce, privacy and computer security and been quoted in publications around the globe, from the Wall Street Journal to the Sydney Morning Herald. Ben Wright joined forces with Messaging Architects in the production of this DVD series on Record Retention and Email Compliance. On the web at <http://wright.safeshopper.com>

Special Thanks to the law firm of Workman Nydegger, intellectual property attorneys in Salt Lake City, Utah, for allowing parts of the video to be shot in its offices. Workman Nydegger specializes in intellectual property and technology related law, including patent, trademark, copyright and unfair competition law, and related litigation, and licensing. The firm represents clients ranging from multi-national corporations and major universities to privately held companies and individuals. On the web at www.wnpat.com

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