

## **Email: Mine, Yours or Ours?**

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Email! It's everywhere and it can be used for a very wide variety of uses. Email can be personal, sensitive and private. It can be intended for small business or large corporate uses. Education can be an important use of email. Other uses include travel and weather alerts, those irritating promotions and other types of junk mail to name just a few other uses. Email is really just one of several ways digital communication can occur. Many have called all of the current ways of communicating "e-messaging."

Besides email, e-messaging includes text messaging [sometimes called short messaging service or SMS] and instant messaging. These two e-services are becoming more prevalent especially for business use since they are faster than email. Email can take a minute or a little longer to get to its destination and in today's world of business this might be costly.

Of major concern to many users of e-messaging is the unwanted forwarding or sharing of what you have written for one person's eyes now being read by those who were not intended to read it! A good question to ask is this: "Is it lawful if someone forwards my email to them on to someone else without my permission?" The short answer is unfortunately: "It depends."

Many claim that an employee's email at a college or university is state property and not subject to privacy in certain conditions. If this is true then this means that the college or university could examine any files on a state-owned computer including any and all email. Not a few administrations think this is a correct interpretation while on the other hand, faculty, students and staff see potential incursions into email as a threat to academic freedom and privacy.

A Federal Law that addresses e-messaging is the Electronic Communications Privacy Act [ECPA]. ECPA prohibits unauthorized access of electronic communications in that providers of public e-messaging systems are prohibited from monitoring or disclosing the contents of stored e-communications. But a recent Court of Appeals decision interpretation states that employers, as owners of the email service provider, can review an employee's email under certain conditions.

One of the great false assumptions about email and text messaging is the fact that when you hit "delete" you really don't really delete it. That's because e-mail and text message files are backed up on servers. In fact, several court cases involve the retrieving of old text messages as evidence. The most current case involving text messaging and their long-term availability on a server is the Kobe Bryant case. A judge ordered old text messages to be produced by the defendant's phone company and they were.

Unfortunately, nothing in the law states how long a service provider can keep a copy of your email or text message on its server. As already noted, the Federal Government really doesn't seem to be any help in regards to email privacy.

Because of this, many have argued that state laws and university policies should address the privacy issue and provide local, specific answers to email. At Ball State University we are fortunate in that both the State of Indiana and the University Computing Services have

addressed the issue. Our UCS Computer User Policy addresses confidentiality and references Indiana State Law. A relevant excerpt follows.

### **Computer User Policy - Confidentiality**

In general, information stored within an individual's computer or computer account on shared resources is considered confidential, whether protected by the computer operating system or not, unless the owner intentionally makes that information available to other groups or individuals. Ball State University will assume that computer users wish the information they store on central or shared computing resources to remain confidential unless the user/owner has explicitly made it public. University Computing Services will maintain the security and appropriate confidentiality of all information stored on their computing resources. Similarly, privileged information on individual account usage will be held in confidence. However, users have no right for information stored on computing resources to remain confidential from those who need to know in instances where the University has reason to believe the user is using these resources in an illegal or unethical manner, or in a way inconsistent with the University's institutional purposes or mission.

The University has an obligation to protect the rights to privacy of the members of the University community in the keeping of personal papers, confidential records, and effects regardless of their media or storage location, subject to the local, state and federal laws and to conditions voluntarily entered into. According to the Access to Public Records Act (Indiana Code 5-14-3), electronic files are treated in the same way as paper files. Any official University documents (as defined by law) in the files of employees of the State of Indiana are considered to be public documents and may be subject to inspection through the Access to Public Records Act.

Is there anything you can do about the situation of a non-intended person reading your private message to someone else? Can you stop someone from forwarding your private email to someone else? Unfortunately, the answer is, "Probably not," but that doesn't mean you cannot take any steps to let others know that you don't want your email shared with anyone else.

First of all, you can inform your recipients that they cannot forward anything you write to them without your permission. That may or may not be taken seriously and you will need to inform everyone you have emailed.

Secondly, you can take a much broader approach and add a footer to the bottom of your email. Many corporate emails are now using something similar to the following example of a footer:

CONFIDENTIALITY NOTICE: This email is copyrighted. Therefore, this email and any attachments are for the exclusive and confidential use of the intended recipient. Any further distribution of this email without permission is an infringement of Section 106 of the Copyright Act of the United States, Title 17 of the U.S. Code. If you are not the intended recipient, please do not distribute or take action in reliance upon this message. If you have received this email in error, please notify me immediately by return email and promptly delete this message and any attachments from your computer and/or network. This email is not public domain. I do not waive any

attorney-client privileges or any privacy concerns by the transmission of this message. Thank you.

It may not prevent unwanted dissemination but it will at least inform the recipient that you do not want dissemination without your permission.

Always remember that your deleted email is stored as a backup on a server after it has been deleted. Jeff Kagan, an independent telecommunications analyst in Atlanta, has an interesting insight about email server storage: "I think in these days of corporate fraud and in these days of terrorism we're seeing more and more reason to store forever. Don't ever say anything on email or text messaging that you don't want to come back and bite you."

This is good advice.