

Business Ethics and Electronic Mail

Cem Kaner, J.D., Ph.D.
Department of Computer Sciences
Florida Institute of Technology

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Notice

This presentation is focused on business ethics and not computer law. I provide some sample policy provisions for discussion but they may not be appropriate for your situation. Computer-related law is complex and rapidly changing, with special rules in each state. You should not adopt these or take other legal action with respect to employee email without discussion with your own attorney.

Power to Create Policy

- 5 *Employees* have a mistaken belief that they are *entitled* to privacy in their email communications at work. If they use business equipment and pass their messages through the business servers, many people can (and might) read their mail. (Gov't employees *do* have some privacy rights not enjoyed by private enterprise workers.)
- 5 Some *employers* have a mistaken belief that they are entitled to read employee mail whenever they want and for any reason.

Electronic Mail Policy

- 5 The best employer argument for being able to read mail is employee consent. Granting that consent can be made a condition of employment. The issue of *fair notice* is probably more important than that of *genuine consent involving a completely voluntary waiver of rights*.
- 5 You don't want your staff to be surprised (and furious) when they discover that you have been reading their e-mail.

Electronic Mail Policy

- 5 Explain the email policy in the:
 - ∀ employment contract (e.g. the nondisclosure agreement)
 - ∀ employee manual
 - ∀ memos
 - ∀ training sessions
- 5 If your policy allows you to read mail, and you do read mail sometimes, publicize the fact that you do read mail sometimes or that you have read it sometimes.
- 5 Don't promise or imply more privacy than you are willing to grant.

Electronic Mail Policy

- 5 If you forbid certain uses, say so.
- 5 Enforce whatever policy you adopt.
 - ✓ It is foolhardy to announce a zero-tolerance policy on hate e-mail and then not enforce it. In the inevitable lawsuit, your policy will be used as proof that you knew what had to be done, and your failure to enforce as proof of your complicity in the racial harassment.
 - ✓ If you can't / won't enforce it, don't adopt it.

You Have the Power, But. . .

- 5 You have the power to create an email policy that lets you read every incoming and outgoing message.
- 5 *BUT* should you exercise that power?
 - ∨ What effect will it have on staff morale and productivity?
 - ∨ What other effects will it have?

Just because it's legal, does that mean it is ethical?

Ethical Reasoning: How Do You Decide What Is Right or Wrong?

- 5 **Egotistical reasoning:** *What's right for me is right.*
- 5 **Consequentialist reasoning:** *What will be the effect of this act?*
- 5 **Non-consequentialist (deontological) reasoning:** *Rules that stand on their own.*
- 5 **Professional ethics:** *To be a member of this profession / community, you agree to . . .*
- 5 **Laws:** *If it's illegal, it's wrong.*

How do you make decisions when these are in conflict?

Impact Analysis

5 What ACTIONS are affected by the email policy?

- ✓ Favored
- ✓ Disfavored
- ✓ Don't care

Impact Analysis - 2

5 Examples of disfavored actions:

- Ⓐ Harassment
- Ⓐ Spamming
- Ⓐ Chain letters
- Ⓐ Fraud

5 What else?

- Ⓐ
- Ⓐ
- Ⓐ

Impact Analysis - 3

5 Examples of favored actions:

- Ⓐ Timely, responsive memos to customer complaints
- Ⓐ Quick transmission of important business documents to other staff
- Ⓐ Status reports

5 What else?

Ⓐ

Ⓐ

Ⓐ

Impact Analysis -- 4

- 5 Who is AFFECTED by the e-mail policy?
 - ∨ Favored stakeholders
 - Most employees
 - ∨ Disfavored stakeholders
 - Unauthorized external users
 - ∨ Neither favored nor disfavored
- 5 For each person (or class of persons) what interests of theirs might be advanced or hindered by the policy?

Impact Analysis -- 5

- 5 What actions should you allow yourself to do and under what circumstances?
 - ✓ Read anyone's mail of any type at any time?
 - ✓ Read business mail but quickly close personal mail?
 - ✓ Read mail only if there is a business reason?
 - ✓ Read mail only in response to a complaint or other reasonable ground for suspicion?
 - ✓ Randomly sample mail?
 - ✓ Sample mail but take steps to preserve anonymity?
 - ✓ ???

Conclusions

- 5 Employee misuse of corporate email systems can result in significant costs (labor, retaliation, litigation, prosecution).
- 5 An overreaching, unenforceable policy can do more harm than good.
- 5 It's up to you to balance the interests of the various stakeholders of your business.

For Further Reading

- 5 Nancy Flynn (2001) *The ePolicy Handbook*, AMACOM Books.
- 5 William Hancock (Ed., 1987 updated annually), *Company Policy Statements*, Business Laws Inc.
- 5 Michael Overly (1999) *E-Policy*, AMACOM Books.
- 5 Jane Winn & Benjamin Wright (2000, updated annually), *Law of Electronic Commerce*. Aspen Books.