

8-15-1997

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Recommended Citation

McGowan, Matthew K., "Electronic Mail Privacy in the Workplace" (1997). *AMCIS 1997 Proceedings*. 105.
<http://aisel.aisnet.org/amcis1997/105>

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Electronic Mail Privacy in the Workplace

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Abstract

This paper discusses the ethical issues of electronic mail (e-mail) privacy in the workplace. E-mail is a relatively new technology that begs for the establishment of ethical practices. The nature of e-mail technology and its use make it difficult to apply traditional practices to situations involving e-mail. This paper explains how the legal system has addressed the privacy issue for electronic mail and how the body of knowledge from philosophy may be used to develop ethical guidelines for electronic mail use. Suggestions for ethical use of e-mail systems are provided.

Introduction

E-mail systems are frequently provided to employees to improve communications within organizations and between organizations. The widespread use of electronic mail in organizations has spawned ethical dilemmas which need to be resolved. Employees frequently believe they have a right to privacy, and that their e-mail messages will be treated as private communications. Employers view e-mail systems as a company resource, and believe their property rights include the right to read employees' e-mail communications. The dilemmas center around the employees' right to privacy and the companies' property rights.

Rapid changes in computer and data communications technology have brought about a need to establish ethical practices for these technologies. Litigation and legislation are commonly used to establish ethical standards. In some cases existing laws must be interpreted for their applicability to new situations brought about by technology. New laws often emerge to address the circumstances of the new technology.

Legal Issues in the Right to Privacy

Sipior and Ward (1995) argued that the U. S. legal system does not offer privacy to the e-mail communications of employees, and that any privacy protection for e-mail communications must be part of general privacy protections for employees. The Electronic Communications Privacy Act (ECPA) of 1986 offers some protection for e-mail messages in transit. The law allows an employer who provides the e-mail system to access employees' e-mail messages (Eckenwiler, 1995).

Legal developments of the privacy issue originated with the 1890 *Harvard Law Review* article by Samuel Warren and Louis Brandeis (Des Jardins, 1987). Warren and Brandeis contend that "recent inventions in business methods call attention to the next step which must be taken to protect the person, and for protecting . . . 'the right to be left alone.' " The phrase is appropriate for the state of e-mail technology today. Des Jardins says it was not until the 1965 Supreme Court case, *Griswold v. Connecticut*, that the Supreme Court recognized any constitutional basis for privacy, using the right to be let alone definition

of privacy. Des Jardins argues that this definition is inadequate for ensuring privacy in employment. Applying that interpretation to electronic mail would suggest that there is no privacy for e-mail communications: a company can read e-mail messages without an employee's knowledge, thus, not disturbing the individual.

Recently a U. S. District Court in Pennsylvania ruled that an employee of the Pillsbury Company was not wrongfully discharged when the company read one of his e-mail messages and discharged him for its content (*Smyth v. The Pillsbury Company*, 1996). The court's ruling came despite the company policy that e-mail communications were confidential and would not be used by the company as grounds for termination or discharge. Part of the ruling stated that the employee does not have a reasonable expectation of privacy in using a company provided e-mail system. Although the company may have been within its legal rights, their actions are questionable on ethical grounds.

Ethical Issues of Electronic Mail Privacy

Velasquez (1988) provides the following perspective on ethics. Ethics deals with moral judgments involving moral decisions. People base moral decisions on moral standards, that is, on what they judge to be right and wrong. Certain moral standards are general principles which we use to judge institutional and individual behavior. One type of moral principle is the principle of "rights." Policies may be evaluated with regard to how they protect individuals' rights.

In evaluating moral decisions regarding e-mail policies and practices, the right to privacy is frequently considered in making evaluative judgments. The right to be left alone is the legal principle which has been applied in court cases involving e-mail policies. Many people mistakenly believe that the Constitution guarantees the right to privacy (Jenero and Mapes-Riordan, 1996). The courts have found that employees do not have a legal right to privacy when using an employer's e-mail system. However, most e-mail users believe that it is unethical for a company to read an individual's e-mail messages regardless of the existence of a company e-mail policy (Cappel, 1995).

Employee expectations of privacy may stem from the privacy protections for U. S. postal mail and telephone conversations. Technological features of e-mail might also lead one to believe that e-mail is private. Usually a logon identification and password are required to access the e-mail system. Users may believe that deleted messages are permanently removed. E-mail messages can be obtained without physically invading an individual's work space. Companies maintain, and courts have upheld, the position that e-mail provided by the company is a company resource. Companies need to prevent "inappropriate and unprofessional comments or even illegal activity over its e-mail system" (*Smyth v. The Pillsbury Company*). Companies assert that an e-mail system provided by the company is a company resource and that the company has the right to do whatever it wants with the e-mail system, including reading employees' e-mail. The conflict between the rights of individuals and the rights of employers exacerbates the moral dilemma.

Parker, Swope, and Baker (1990) presented a scenario to a panel of business and computer professionals, ethicists (philosophers), and lawyers, which dealt with a company reading employees' e-mail. Panel members were asked to express their opinions about management punishing some of the company's employees because of the content of the employees' e-mail. Two of the panel did not consider the matter an ethical issue, but the other 23 believed that the company acted unethically. This provides empirical support for the position that there is a moral decision involving a company's e-mail policy.

Guidelines for Ethical E-mail Practices

Brown (1996) notes that organizations need the proper balance of rights, policies, and practices for new technologies. Des Jardins (1987) argues that privacy rights should move away from the traditional agent-principal model toward a contractual relationship. That is, the employee should not be an agent of the employer who must comply with any legal request of the employer. The relationship should operate under a voluntary contract between free agents.

Velasquez (1988) suggests three elements employers should include in developing ethical practices in the workplace: relevance, consent, and methods. Employers should only examine parts of an employee's life that affect work performance in a direct and serious manner; employees should be given the opportunity to be informed of and consent to any type of surveillance; and employers should use ordinary and reasonable methods to oversee an employee.

The guidelines provided here are compiled from suggestions by Parker, Swope, and Baker (1990), Willard (1997), Des Jardins (1987), and Velasquez (1988). Employers have the right to restrict the use of company resources, including e-mail. If there is no company policy in place, then it is a violation of a person's privacy to read e-mail intended for someone else. Employees must be informed in advance whether it is permissible to use e-mail for other than company business. If an employer permits the use of e-mail for non-company business, the employer has no right to sanction an employee for behavior which is not job-related. It is improper (and probably illegal) to make unauthorized use of company resources, including e-mail systems. Employees should be informed in advance of any monitoring of e-mail messages, and under what circumstances their e-mail will be monitored. To improve the acceptance of such practices, employers should explain the business reasons for such monitoring.

Employees should be informed that e-mail is inherently more accessible than other forms of communications. Employees who wish to ensure their privacy should obtain e-mail services independent of their employers and restrict their personal messages to that e-mail system.

Conclusions

E-mail is a new type of technology for which ethical practices are still being defined. Employers have a right to manage company resources, but employees have a right to

privacy. The legal system favors the rights of employers. Defining clear company policies and informing employees of the stated policies can help ensure ethical practices in the use of e-mail.

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