

E-Mail - The "Clayton's" Deletion

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Electronic mail of some description is now used by 69% of Australian Corporations. By the end of 1996 this figure is expected to be 93%. E-mail is an unusual form of communication. It is informal in nature, so often reads like a spoken conversation. Yet it can be, and often is, printed and therefore becomes written communication. Because of its informal nature and the apparent ease with which it can be deleted, people tend to say things in E-mail which they may well say in a private conversation, but would never dream of putting in writing in the traditional sense.

There are two things about E-mail which are not widely known and which may start to significantly change the way in which it is treated by users.

The first is that "delete" rarely means "delete" to a corporate computer system. Paranoia about data security usually means that backups are made of all data on company computers sometimes as frequently as hourly and usually at least daily. That data usually includes the E-mail messages of all users on the system. So if a backup occurs between sending the message and the deletion, there will be a copy of the message kept on backup. Backups are often stored indefinitely. It is therefore theoretically possible to have hundreds, even thousands of copies of a single message stored on backup systems.

The second important fact is that in most Australian Evidence Acts and Rules of Court the definition of "document" can be interpreted to include not only current E-mail but also all the "deleted" E-mail within a corporation. That dashed off note about inside knowledge on a transaction or the appearance of another employee could easily end up before a Court.

In the United States, specialist firms practice electronic sleuthing with the principal aim being to find that "smoking gun" in old E-mail. It won't be long before the trend develops in Australia.

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