

# Information Technology Adviser™

The leading one-stop source to keep IT managers up to date – in a quick-read format, twice a month

January 4, 2007

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### The Purpose of Information Technology Adviser

The purpose of the *Information Technology Adviser* is to keep IT managers up to date on what the latest technology trends mean to their businesses.

ITA's fast-read, one-stop format is packed with plain-English examples of how other information managers cope with the day-to-day challenges of running an IT department.

And it provides insight into how technology can help companies manage costs, boost productivity, improve customer relations, and otherwise become more successful and profitable.

## New fed IT rules: What to save and what to dump

### ■ Fact and fiction about those destruction regs

Have you figured out those new e-discovery rules yet?

Among the myths circulating:

- courts now require companies to keep a copy of all electronic data, including e-mail
- e-discovery demands you copy all relevant data and send it to your opponent in a lawsuit, and
- data can be converted to other formats for easy transfer.

### Keep it all?

Nothing in the new rules says you've got to hang onto every bit of electronic data your users create.

But to be prepared for e-discovery, it's important to have a well-crafted retention and destruction policy in place.

Attorney Robert Brownstone says you'll be in danger of increasing legal risk if you:

- destroy certain documents, or
- needlessly keep carelessly written or old documents.

Brownstone recommends creating a policy tailored to your business needs.

Whether you use tape or other media for backup, sticking to your policy is key to defending yourself

*(Please turn to IT rules ... p. 2)*

## Spam roars back: Winning the war – again

### ■ Anti-spam experts say current blocking tools don't work with new tactics

If your users are in the market for cut-rate Viagra or Russian cell phone company stock, they're in luck.

Spam is back – with a vengeance.

Spam volume doubled in the past six months, and IT pros are faced with overwhelmed servers that can't handle the new brand of junk mail.

Much of the new flood, say experts, is made up of image spam, a new breed of junk mail in which the words of the advertisement are part of a picture.

This fools traditional spam filters

that scan text for certain phrases.

Some companies are taking drastic measures to block this new kind of e-mail. One company blocked all messages from several countries in Europe, Latin America and Africa, where much of the spam was originating.

A number of anti-spam companies are developing new software that catches image spam.

But all agree that the problem's best handled at the server level rather than at the user interface.

# IT rules ...

(continued from p. 1)

against charges of evidence destruction.

A policy will pass legal muster if it requires hanging onto data for:

- statutory/regulatory periods set by agencies like the EPA or OSHA
- employment and labor regs, e.g., job applications, evaluations
- audit and tax data rules (usually seven years for both)
- contracts
- patent correspondence
- engineers' records, and
- corporate historical data.

Any retention/destruction policy should also include a detailed, "litigation-hold" procedure or purging suspension.

This is designed to stop document destruction once you "reasonably anticipate" a legal dispute.

## Can they discover it all?

Once a lawsuit's underway, the discovery process can be time consuming, expensive and tedious.

Lawyers for your opponents often ask for more than they're entitled to get. But you may be able to restrict giving up data that has:

- attorney-client privilege
- trade secrets, or
- private customer data.

In these cases, a privilege log will be needed to explain to the judge why certain information is excluded.

## The format matters

It's important that IT knows what kinds of electronic data the company has and where it's located.

This includes network drives, intranet, back-up tapes, voicemail, cellphone records and sound files.

And the trend, says Brownstone, is that data has to be provided in its original format. For example, you can't sub a pdf for a MS Word doc.

## Smoking gun e-mail

The best e-discovery defense is a good offense. For starters, train users not to create an electronic trail of incriminating e-mail.

Brownstone recommends what he calls the "Multiple Audiences" test users should take. Before writing something, ask if you'd like to see it:

- in the press
- on a competitor's desk
- in the government's hands, or
- read on the witness stand?

If you answer "no" to any of these questions, the e-mail shouldn't be sent.

Bottom line: What doesn't exist can't be used against you.

Brownstone also advises that users be discouraged from:

- printing to paper, and
- storing data locally.

Source: Robert D. Brownstone, [rbrownstone@fenwick.com](mailto:rbrownstone@fenwick.com)

# Sharpen your JUDGMENT

*This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.*

## Company sued for worker's e-mail threats

IT manager Joe Johnstone pulled the blue and white papers from a thick envelope and felt his spirits slowly sink.

Blue and white papers meant one thing: a lawsuit. He picked up the phone and hit speed dial.

"Al, is this paperwork you sent me about Jim Kelly and his nasty e-mails?" Joe asked.

"Good guess," said attorney Al Burnham. "The Acme employees he threatened are suing us."

## Monitoring net use

"But we cooperated with the FBI when they investigated Jim and the e-mail," said Joe. "And we fired him for violating our e-mail policy."

"Yes, but Acme says he was our employee using our equipment," said Al. "They say that Jim couldn't have made those nasty threats if we hadn't been provided him with the tools."

"Are they saying that in a company with thousands of employees we can monitor every e-mail?" Joe asked.

"Looks like that's what they're telling the court," said Al. "They're saying that since it was our equipment and he was on our clock, his behavior is our responsibility."

Did Joe's company win in court?

■ *Make your decision, then please turn to page 6 for the court's ruling.*

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