

By: Jack Garson, Esq.

As the most recent Presidential election wound to a close, former U.S. Congressman Anthony Weiner's emails—and God knows what else—rose to prominence. Some might say that they tipped the election (FBI Director Comey thought so...for about a week). From politicians to institutions to the average businessperson, problems with emails are ruining reputations left and right. This applies to all aspects of emails, from what you say to where you send them.

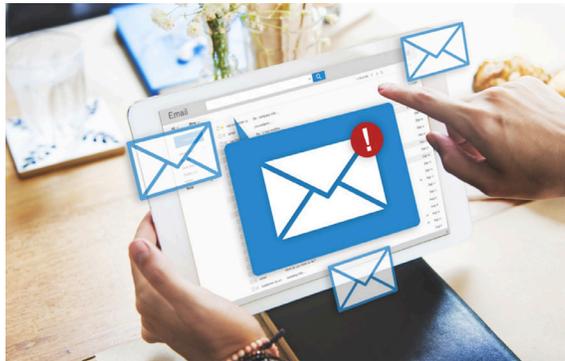
You've been emailing for years. You may have dodged serious consequences so far. But, if you don't start following the new email rules, it's just a matter of time before bad stuff happens.

Consider Countrywide Financial Mortgage. At the dawn of the Great Recession, as Countrywide was imploding, CEO Angelo Mozilo received an email from a distressed customer. Apparently, Mozilo meant to hit Forward and send a snarky message to his colleagues. Instead, he hit Reply and sent the insulting email back to his customer, where the missive made its way to newspapers, TV stations and Members of Congress. Countrywide and Mozilo took massive PR hits.

Email snafus that cause big problems are not isolated instances:

- In 2012, Goldman Sachs typed in the wrong email address, sending highly confidential data to the wrong person. Goldman Sachs had to go to court to order Google to identify the unintended recipient in an effort to retrieve the data.
- Also in 2012—a bad year for emailers—a U.K. bank, Aviva plc meant to fire ONE employee, but accidentally emailed the termination notice to ONE THOUSAND THREE HUNDRED employees. Whoops!
- In a new intercollegiate competition, dozens of colleges are emailing incorrect college- admission letters to

applicants: Cornell (2003) emails 550 incorrect acceptance letters; UNC at Chapel Hill (2007) emails 2,500 incorrect acceptance letters; NYU (2009) emails 500 incorrect acceptance letters; not to be outdone for the 2009 award, UC San Diego emails 28,000 (yes, you read that right: 28,000) incorrect acceptance letters; and Columbia (2017) emails 300 incorrect acceptance letters. And so on. Who says tuition is too high? Someone has to pay for all the apology letters.



- Other notorious emails have mistakenly advised people that their medical test results indicated they had a serious illness (when they did not)!
- Some would even argue that we have one President because the other candidate couldn't manage her emails.

If you don't want the media adding “-gate” after your company name, consider the following rules.

Legal Rules for Businesses

- Most businesses are mistaken about what makes an email “legally” confidential. The only emails that are truly confidential— you can legally refuse to disclose them— are emails between you and your attorney. And even those emails must be intended to seek or provide legal advice. Other rules apply. So, when it's just you and your colleagues emailing each other to strategize about a lawsuit or, worse, to gossip about ongoing litigation, you're potentially serving up a win to your opponent.
- Today, when emails still rule in the business world, you need an email policy that covers a lot of territory. Limit what employees do with their emails. No slanderous rampages. Advise employees that you can access their emails—and their computer and other devices.

Forbid your employees from texting and emailing while driving. And, of course, prohibit your employees from stealing company data and emailing it home.

Your email policy should also provide some practical guidance. Never trust autofill when it comes to listing email recipients. Check each name to make sure it is EXACTLY correct. Likewise, make sure the attachments are actually attached (If I had a nickel for every time I had to reply, “There’s nothing attached”). Also, make sure you have the right attachment (not everyone wants your NCAA bracket picks). Proof your emails for typos, especially the tiny print in the subject line. If the email is especially important, print and proof. You’ll see mistakes in hard copy that you would never notice on the screen.

- For those tempted to use texts for important messages about contracts and legal matters, DONT. The business world is not yet set up to make it easy to print, store or recover text messages. Most texts are not backed up and it takes a special program to print them. Also, texts are great for short, simple messages, like “I’ll meet you @ the bar at 9.” But, they don’t lend themselves to the formality or detail needed for conducting business.
- Most businesses should also have a document retention policy that establishes when emails and other documents can and should be deleted. Without this policy, a business can get in serious legal trouble if it deletes emails or other documents that are relevant to an imminent or ongoing lawsuit. You’ll need legal advice to craft the appropriate policy for your company.
- With the increase in telecommuting and remote access, don’t just address security at the company’s offices. Consider security needs for employees at their homes and on the road. WikiLeaks is just waiting for you to slip up.

Not everything is about rules. Some things are business smarts, like the right email etiquette.

Email Etiquette

- Keep your team in the loop. Blind copy them on messages, to keep them advised. But...
- If someone has blind copied you, don’t “Reply All” to the message. You will out the person who was trying to confidentially keep you in the loop.
- Don’t blind copy people who can’t follow the previous rule. At most, forward messages to them—a week later (they have judgment issues).
- Remember the difference between Reply All and Reply. “Reply All” (instead of “Reply”) and now your colleagues know you threw someone else under the bus when the boss asked about a big mistake.
- Don’t copy everyone. Just the people who need to know. People need a life.
- This one never gets too old: Don’t write an email you wouldn’t want published on the front page of The Washington Post. Ask John Podesta. Seriously.
- When the thread gets to 17 pages, time to start a new email!
- One final safety tip: Add the email addresses last, so you don’t accidentally send before double-checking your email.

What happens when you don’t follow the new email rules? In Countrywide’s case, the SEC forced Angelo Mozilo to pay a record fine and disgorge tens of millions in profits. Countrywide itself was forced into a distress sale to Wells Fargo. You can’t blame all of that on an ill-advised email. But the bad PR from that email certainly made them easy targets.

Don’t put a bull’s eye on your back with an email blunder.

ABOUT JACK GARSON



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Jack Garson’s practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

ABOUT OFFIT KURMAN

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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Find out why Offit Kurman is The Better Way to protect your business, your assets and your family by connecting via our Blog, Facebook, Twitter, Instagram, YouTube, and LinkedIn pages. You can also sign up to receive LawMatters, Offit Kurman's monthly newsletter covering a diverse selection of legal and corporate thought leadership content.

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