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E-MAIL AS A PROJECT COMMUNICATION TOOL: LOOSE FINGERS SINK SHIPS

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Not so many years ago, most people had never even heard of e-mail, much less used it. Yet in the span of a few short years, it is everywhere. Virtually everyone now has an e-mail address and internet account. E-mail is still a comparatively new form of communication. We are still learning to use and appreciate it with bumps along the way and more to come.

Why has the use of e-mail exploded? Why is e-mail so incendiary? Why do people say things in e-mail that they would never put down on paper? The answer to all three may be the same: e-mail is so fast, so easy, so **immediate**. Adding to the attraction, e-mail is likely to receive a much faster response than a letter and eliminates the annoying process of "phone tag". It can communicate even lengthy or complicated messages with the detail of a report and the ease of a phone call. As a result, people use it more often and less cautiously.

It is tempting to compose an e-mail message and send it before reflecting on it. People press the "send" button much more quickly and indiscriminately than they sign their names. Those who always review and revise their typewritten correspondence before sending it often think nothing of dashing off an e-mail message. This reflects most peoples' conception of e-mail. They do not consider e-mail to be as formal as a letter that they sign with pen and ink, or even a memorandum which they initial. Most people do not intend their e-mail to be read

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by anyone other than the recipient. E-mail typically feels more private and intimate than even a hallway or conference room conversation or a telephone call.

Unfortunately, common perceptions do not necessarily match reality. Casual e-mail messages become "written" communications with the click of a "print" button. Even those not printed and theoretically deleted often remain buried (and retrievable) somewhere deep in a hard drive or a routine system backup. The significance of such communications has been played out in numerous Court battles and more so every day. Nowhere has this been more ironic than in the highly-publicized battles between Microsoft and its competitors such as Netscape. If anyone should have appreciated the realities of e-mail it should have been these computer industry giants who created the medium. Nevertheless, it has been nothing short of amazing to watch these companies repeatedly become embarrassed and contradicted by their own internal and external e-mail communications.

Many of the more lurid and insidious dangers of e-mail and internet communications have been splashed colorfully across the press. Sexual harassment, discrimination, computer viruses, security, confidentiality, defamation, hackers, copyright, and criminal and tort liability concerns are all very real issues which should concern every employer who provides e-mail capability and internet access for its employees. As a result, every employer should have a written e-mail and internet policy which properly addresses these issues and protects the employer. Such a policy is a vital risk and business management tool. However, the risks posed by these concerns actually pale in comparison to the project delivery risks created when e-mail is used to communicate project-related information. Very few design firms have adequately addressed these issues.

When e-mail is used as a means to make project-related communications, it is plagued by a number of potential pitfalls. First and foremost are the commonly-held conceptions discussed above that e-mail is an informal and private form of communication. **It is not.** In addition, few firms have any formal restrictions as to who can communicate with whom, and on what subject, using e-mail. Finally, such communications do not always make it to all of those who should be aware of the communication or into the "official" project records. As the use of e-mail continues to expand, such indiscriminate and uncontrolled use of e-mail has led to an increasing series of crises and liabilities. The problem has been most acute in the area of requests for information and clarification, both prior to bidding and during the execution of the work.

As a result, each design firm and/or each project manager should adopt and enforce a detailed, but realistic, policy regarding e-mail which should be communicated to each team member and project participant. The specifics of the policy will necessarily vary according to the nature of the project, the design discipline, and the firm. However, some of the basic components which should be considered in any such plan are as follows:

- Standards or criteria for what information may be received electronically for use or incorporation into the design. Wherever possible, the contract should provide in advance what electronic information is expected to be received during the design of the project. The source and form of the information should be identified. The provider of the information should warrant that the information may be used without infringing on any applicable copyright or other intellectual property right. The design team should be authorized to rely on such electronic information absent specific knowledge of a defect or error. Such provisions should also include warranty and indemnity provisions obligating the party providing the information to stand behind the quality of the information and the right to use it.
- Where any verification or authentication will be required, procedures and standards for verification and authentication of information received electronically should be established in the contract documents.
- Express recognition that internal **and** external e-mail become a part of the project records, and directions that all team members are to treat all such e-mail communications as official project communications, using the commensurate level of care and consideration.
- Standards establishing who is authorized to communicate with outside parties on project-related issues using e-mail.
- Contractual documents and general conditions should provide that all enforceable directions should be in writing with a “wet” signature, or must come from a particular source in a predetermined format. For example, such a provision may provide:

“Contractor shall rely on directions or information received from Architect only if received in a written form signed by Architect’s Project Manager or in electronic form from Architect’s Project Manager and specifically referencing this section.”
- Project-related e-mail should then be conformed to such a contractual provision and notify any interested party that such an e-mail does not constitute an official project communication. For example, e-mails may include a footer as follows:

“This message is intended solely for the recipient and should not be opened, read, or utilized by any other party. This message shall not be construed as official project information or as a direction except as expressly provided in the contract documents”.

- Procedures to ensure all project-related e-mail communications are communicated to all project participants, internally and externally, who need to be aware of the information. Common procedures would require the project manager to be copied on **all** project-related e-mail.
- Procedures to preserve project-related e-mail communications as a part of the project records. Until better procedures are established guaranteeing the long-term accessibility and integration of electronic documents, e-mail should be saved in hard copy as a part of the official project records.
- Procedures to ensure responses or follow-ups to e-mail are documented and included in the project record.