



Spoliation (Email & Attachments)

The Need To Prevent Spoliation

Spoliation is the deliberate or inadvertent modification, loss or destruction of evidence by a party who has been put on notice of litigation but has failed to take appropriate steps to preserve potentially relevant data.

The Need to Prevent Spoliation

- My word against your word
- Risks in Not taken Action
- Fines for spoliation
- Negative Corporate Image

In litigation truth does not always matter, but the persuasive of the evidence matters greatly. When it comes down my word against your word all other things being equal and your company can't produce an email but the plaintiff can produce it leads all parties to ask what are all the other emails and documents the company can't produce? This would instantly make your adversary testimony or evidence more credible to a judge or jury than your testimony.

Despite the risk posed by spoliation, the collection and retention of electronic data is still performed haphazardly by most companies. E-mail retention has, for the most part, been left in the hands of the individual user. This user rarely possesses a clue as to what to retain and what to destroy or the formal organizational policy in place to avoid spoliation. In lieu of rule-based classification and archiving, the e-mail user will store data in an ad hoc fashion, on desktop hard drives, diskettes, zip cartridges, home computers or personal laptops. Not infrequently, print-and-delete methods of retention and destruction are used, generating difficult to retrieve hardcopies that are both much less accessible than the computer-searchable electronic file and much less informative than the document in its native digital format (which will contain the revealing "metadata" or "data about the "data".) Worse yet, a common e-mail "management policy" are to simply delete or over-write messages, without retaining a paper copy. This renders the e-mails irretrievable (by the average computer user), sometimes resulting in a frantic attempt by the author to re-create from memory what was once extant.

Some companies fined for spoliation range from 566K to as high as \$1.45 Billion Dollars. Some examples are Philip Morris 2.74 Million dollars, Samsung \$566K fine, Morgan Stanley \$1.45 Billion dollars.

Post being fined the effect of spoliation could effect business transactions and give a negative corporate image these losses are hard to quantify. Perhaps more than the legal ramifications of unauthorized destruction is the appearance of poor record keeping practices. The negative public image created can linger longer and be of greater impact than the legal implications of destroyed records.



Athena Archiver assists companies prevent spoliation in the following ways:

- Encryption
- Tamperproof Archiving
- Cryptographic integrity checks
- Demonstrating to a regulatory entity or court that there is no way to tamper with messages.

- Athena Archiver can verify the integrity of the archive because as email comes into the system we time stamp, serialize and create a unique signature for each message.
- Athena allows companies to retain critical email for the required time period in a highly secure encrypted archive. We provide automatic verification of the quality and accuracy of the storage media recording process using CRC checks and cryptographic signatures.
- Athena ensures the integrity of an electronic document by encrypting messages at all points during transmission and storage.
- Unlike some of our competitors, we disallow users and administrators from deleting emails from the archive. The ability to delete email from the archive will almost guarantee spoliation.

more information at www.athenaarchiver.com (888) 613-9400