

Disclaimers and Signatures

Background

Since the early days of the Internet it has been possible to add a “signature” or “sig” to emails. This originally consisted of a small piece of text preceded by -- (ie two dashes). As correspondents already had your email address it often just consisted of a phone number or a motto. It was considered bad form to include anything but the smallest amount of text in order to conserve Internet bandwidth. As the sig was to be added to most emails, email clients such as Eudora added the ability to define the sig and have it added automatically to all emails. Note that the sig was added by the client software - ie directly by the pc that was composing and sending the email.

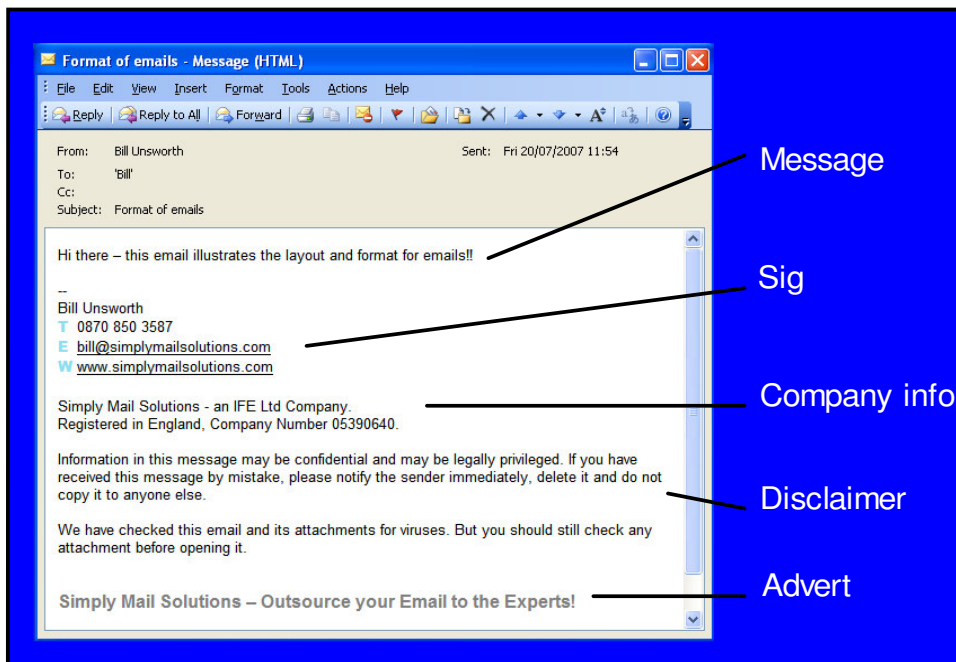


Figure - Format of Emails

Disclaimers

Following on from the use of sigs as the Internet became more commercial it started to become necessary to apply rules from other forms of communications and it became usual to refer to legal text added to emails as “disclaimers”. Inevitably legal firms started to get in the act with things like - “This email is confidential and if you are not the recipient you had better not read it or else”. As the use of the Internet has been recognised by legal systems throughout the world, inevitably things have got more formal.

The current position is that disclaimers may help an organisations legal position if a legal dispute arises. Basically, a company is held liable for communications made in its name and it is no defence to say that you were not aware of what your employee was up to. However, a disclaimer may reduce that liability.

Examples cited of situations where a disclaimer may help include:

- Breach of Confidentiality - a statement that the message is only intended for a given person may help if an email is accidentally forwarded to someone else. Similarly, if the breach is deliberate even though the message is stated to be confidential, then the employee rather than the company is liable
- Employer's Liability - again a company is liable if an employee is defamatory and a disclaimer making clear what the companies policy is may reduce liability.
- Damage to recipients computer - although a sender is liable for damage caused by viruses, and companies should have policies to ensure that employees are checking all email for viruses, a disclaimer can make it clear that recipients should also check for viruses.

Advertising and Sigs

Although we have discussed sigs to send information and disclaimers to reduce liability it is now recognised that all emails are an opportunity for a company to promote itself by adding messages to emails - in effect adverts. So, for example, commonly nowadays sigs include a companies logo and slogans. Of course adverts have a limited shelf-life making the management of sigs and disclaimers an ongoing issue.

Current position regarding information to be added to emails

So we have discussed what sigs and disclaimers are and why they are used. What is compulsory and what is optional? In most of Europe, directives have come into play which in turn are enacted into the legal system of each country. The Electronic Commerce Directive (00/31/EC) and the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002 No. 2013) regulates the use of email and web sites for commercial use. It has many provisions regarding contracts etc but, basically, for websites and email makes it necessary for the recipient or user of a website to be able to identify who they are dealing with and have a rapid means of contacting them. Since the beginning of the 2007 in the UK it has been required that email and websites carry the same information as was required for written communications. Hence full name of the legal entity, address and company registration number as a minimum.

Regarding disclaimers, their legal position is one of being recommended by the legal profession as a precautionary measure for all businesses. However, for given business sectors the requirement may be stronger and, if in doubt, you should consult the appropriate trade body.

Interestingly if you send out Unsolicited Commercial Email - i.e. emailing companies without having got their permission beforehand, you must give information on who is sending the email and a means of having your name taken off their list. Although this seems quite reasonable and, in line with postal junk mail, it does muddy the water with respect to most SPAM which usually is from unsavoury characters offering dodgy shares and similar offerings - you should never respond to SPAM, even the ones that say you can have your name removed by clicking on a link - SPAMMERS just use that information to confirm that the email address is valid!

Practicalities

So clearly then all commercial organisations should be looking to make sure what messages are being appended to all company emails - whether contact information, disclaimer or advertising. If you are a very small business then it is probably practical to periodically bring this information up to date and email to each employee asking them to implement as a new "sig". However, this does not ensure that it has in fact been done. In a small group emails probably fly around between everyone helping to ensure that everyone is using the same one. As you get larger the problems multiply - but there is another problem. Nowadays it is not unusual for an employee to have a pc in the office, a pc at home, a laptop and a smart phone!! Potentially four devices for each employee! You can see how the problem rapidly gets out of hand.

The solution is to use the mail server to add information to every email - commercial packages are on the market to do this but of course this is just some more software to implement for the overloaded computer guys in a company. SMS have now added this capability to their hosted services running Microsoft Exchange. We recommend that this option is considered if you have more than 10 computers or smart phones generating emails in your organisation. It gives peace of mind and allows easy change to information - this of course also makes using the sig for advertising a practical proposition.

Summary - use the "sig" facility on the users computer to add information specific to the user and the "Disclaimer" facility to add general company information.