

Something Free  
for Small Firms.

**LAW.COM**  
First in Legal News and Information

lawcatalog.com

November 28, 2004

SEARCH  
Newswire Content

#### News & More:

Today's News

#### Focus On:

Career Center

Supreme Court Monitor

Law Students

#### Document

#### Preparation:

Incorporation

LLC

Trademark Registration

Copyright

Wills

Power of Attorney

Provisional Patents

#### Other Resources:

Online CLE

Law Firm Central

LawJobs

**martindale.com**  
**Lawyer Locator**

Last name

First name

SEARCH

Martindale-Hubbell's  
Lawyer Locator

**WordPerfect**  
**OFFICE 12**

✓ Easily exchange Microsoft® Word files with your clients

✓ Publish documents to PDF

✓ Up to 63% less than the cost of Microsoft® Office\*

\*Click for details.

See it  
in  
action!

#### NEWS

## Microsoft Accused of E-Mail Scorched Earth Policy

Foster Klug

The Associated Press

11-18-2004

Microsoft Corp. developed policies stressing the systematic destruction of internal e-mails and other documents crucial to lawsuits it has faced in recent years, a California software company alleges.

Burst.com, in court papers unsealed this week, also accuses Microsoft of destroying e-mails crucial to Burst's lawsuit against the software giant even after the trial judge ordered it to retain the documents.

Burst had previously claimed that Microsoft deleted e-mails it needed for evidence. But the unsealed 50-page motion, filed Oct. 29, provides new details, Burst says, of "institutional policies" by Microsoft "to make sure that incriminating documents disappeared."

Burst is suing Microsoft for alleged anticompetitive behavior, saying Microsoft misappropriated the intellectual property behind its multimedia software after breaking off talks with Burst on a joint project.

Burst, according to the motion, wants the jury in the case to be told that Microsoft failed to retain important documents, so jurors should infer that the company did so because those documents were damaging.

"Critical e-mails have been destroyed and will never be recovered. We've tried; they're gone forever," said Burst's lead attorney, Spencer Hosie. "This is the only remedy that's left open to us."

The motion mentions an e-mail on Jan. 23, 2000, in which Jim Allchin, a Microsoft senior vice president, told the Windows Division to purge e-mails every 30 days: "This is not something you get to decide. This is company policy ... Do not archive your mail. Do not be foolish. 30 days."

Microsoft spokeswoman Stacy Drake said Allchin's e-mail was followed by a broader message, saying that that policy didn't pertain to workers involved in legal proceedings.

She said Microsoft has produced "millions and millions of documents and e-mails for the various legal cases we've been involved in, and we've been completely forthcoming in all document requests in this case as well."

Microsoft, Drake said, has also spent "tremendous amounts of resources on policies to make sure the documents that need to be kept are kept."

Microsoft has settled a string of lawsuits in recent years, including an antitrust suit filed by the Clinton administration but settled with the President Bush's Justice Department. The government case was over

 Printer-friendly version	 Comment on this article	 Reprints & Permissions
--	---	--



The latest legal  
technology news,  
information,  
and downloads  
you need.  
[www.law.com/tech](http://www.law.com/tech)

charges Microsoft used its dominance in the operating systems to muscle out rivals, most prominently Netscape in Web browsers. Microsoft has since spent more than \$3 billion settling antitrust and other claims by AOL Time Warner Inc., Sun Microsystems Inc. and other companies.

The Burst case remains one of the few pending. Microsoft also has pending a major European Union case that chiefly challenges Microsoft's bundling of media player software with its operating systems.

The Burst case and others involving Microsoft have been consolidated for pretrial matters in Baltimore under U.S. District Judge J. Frederick Motz, who in August 2003 ordered Microsoft to search for any deleted e-mails relating to discussions with Burst.

In May 2000, in a separate consolidation of class-action cases against Microsoft, Motz had ordered the company to preserve all records that could be relevant to future cases, according to the motion.

"Given this array of litigation, Microsoft had a concrete duty to preserve relevant documents. But it did not," the motion says.

According to the Burst motion, Microsoft:

- told workers, beginning in 1995, not to save e-mails to corporate servers.
- maintained its deletion policy by creating servers that forced workers to "auto-delete" e-mails.
- "carefully limited the employees it asked to preserve documents for litigation, and excluded key employees ... This has meant that a large number of core documents simply no longer exist."
- and has "concealed or falsely described its document retention practices in past litigation."

"Microsoft is a very clever company, and it saw earlier than most how damaging e-mails can be to corporate America," Hosie said.

Burst, based in Santa Rosa, Calif., sued Microsoft in June 2002, alleging Microsoft developed its own multimedia software for moving audio and video more quickly over the Internet after discussing the technology for months with Burst.

Redmond, Wash.-based Microsoft says it did nothing wrong.

Hosie said he anticipates a hearing on Burst's recent motion in mid-December; he expects a trial next summer in San Francisco.

*Copyright 2004 Associated Press. All Rights Reserved. This material may not be published, broadcast, rewritten, or redistributed.*