



Just last month, Stewart Landefeld ran a [popular blog](#) with practice pointers about directors and their personal devices. Now the DOJ has issued significant new guidance regarding the use of personal devices and the retention of corporate communications that bears reading. Learn more in [our Update](#) on this topic. Here's an excerpt from that Update:

"In keeping with that commitment, the DOJ has provided revised guidance on the [Evaluation of Corporate Compliance Programs](#) (ECCP), under which prosecutors are now explicitly instructed to "consider a corporation's approach to the use of personal devices as well as various communications platforms and messaging applications, including those offering ephemeral messaging."

During [remarks](#) at the American Bar Association's (ABA) recent National Institute on White Collar Crime, Assistant Attorney General Kenneth Polite, Jr. explained that, under the revised ECCP, a corporation's communications and messaging policies "should be tailored to the corporation's risk profile and specific business needs" and should "ensure that, as appropriate, business-related electronic data and communications can be preserved and accessed." Polite added that a corporation's approach to this issue "*may very well affect the offer it receives to resolve criminal liability.*" (Emphasis added.)

The [revised ECCP](#), and Polite's accompanying statement, further underscore the importance of companies' developing and effectively implementing clear written policies regarding the preservation of all business-related communications, including text messages and messages sent using ephemeral messaging applications, as well as business-related messages sent from personal devices. A company's failure to do so could result in significant adverse consequences in the event of a DOJ investigation or enforcement action."

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