

LOOK WHO'S TALKING...

Mark Wheeler – Chief Operating Officer, Driver Trett explains inherent risks of being careful what you wish for (out-loud) and how contract language may be evolving.

Wouldn't it be great if you could just ask for something, and get it, very quickly? Amazon certainly think so, and many tech loving people will have received one of their Echo devices for Christmas. Essentially the Echo is a smart speaker that allows you to issue voice commands to carry out a wide range of activities, from ordering shopping and playing music to connecting to other 'smart' appliances in your home. No doubt the scope for such a device is unlimited and a great asset.

However, there is also scope for unintended consequences. Consider the six-year-old girl from San Diego who asked the device, which is addressed with the name 'Alexa', to get her a dolls house. Within a day or so, Amazon duly delivered one along with a large box of cookies. So, if you are six, this is a fantastic device. If you are the bill payer, not so much. The story would have perhaps gone unnoticed, had not a local TV station reported the story and used the same words the little girl used in their report. Inevitably many viewers' Echo devices listened to the TV and also duly ordered dolls houses. This sparked a wide range of complaints and some frantic searching through instruction manuals to add a security code.

I was recently talking to a colleague about BIM 360, and the growing trend to use handheld electronic devices for record keeping purposes. The potential for problems is clear. Most construction contracts frown upon oral instructions. The contract will often exclude them, or at least require confirmation in writing within a defined period. Minutes of meetings are often debated in terms of the record they offer, but are generally accepted not to be good notice, or an instruction under the contract. Instructions, should be in writing. I recall starting my career in contracting and being sternly advised to get instructions signed as "... oral instructions aren't worth the paper they aren't written on ...".

However, contracts do recognise electronic communications as records. For example, NEC3 states that communication should be made in a form which can be read, copied and recorded. The contract goes on to confirm that writing is "the language of this contract". The question must arise, that if an oral instruction is given and converted into an electronic form, does it change in

status? Once in electronic form, that can be read, copied and recorded, do oral instructions take on a whole new relevance? The electronic data stream could no doubt be printed; does that make it available in writing and therefore in the right language?

The use of technology is evolving in all walks of life, and construction is no exception. No doubt the answers to these questions will also evolve in the next few years. In the meantime, perhaps we should all consider being as careful about what we say, as what we write.

There clearly need to be safeguards, and checks and balances, particularly when spending someone's money on changing the work. Sticking with writing for the foreseeable future seems like a good idea, as 'technology' can also experience glitches and problems. For example, my own Alexa has now been asked four times for a Lamborghini, and has so far completely failed to deliver. I also have an unwanted dolls house. If anyone needs one...