

Blogging Liability and Risk Management Considerations

**PCI Joint Marketing and Underwriting Seminar
Austin, Texas
April 7, 2009**

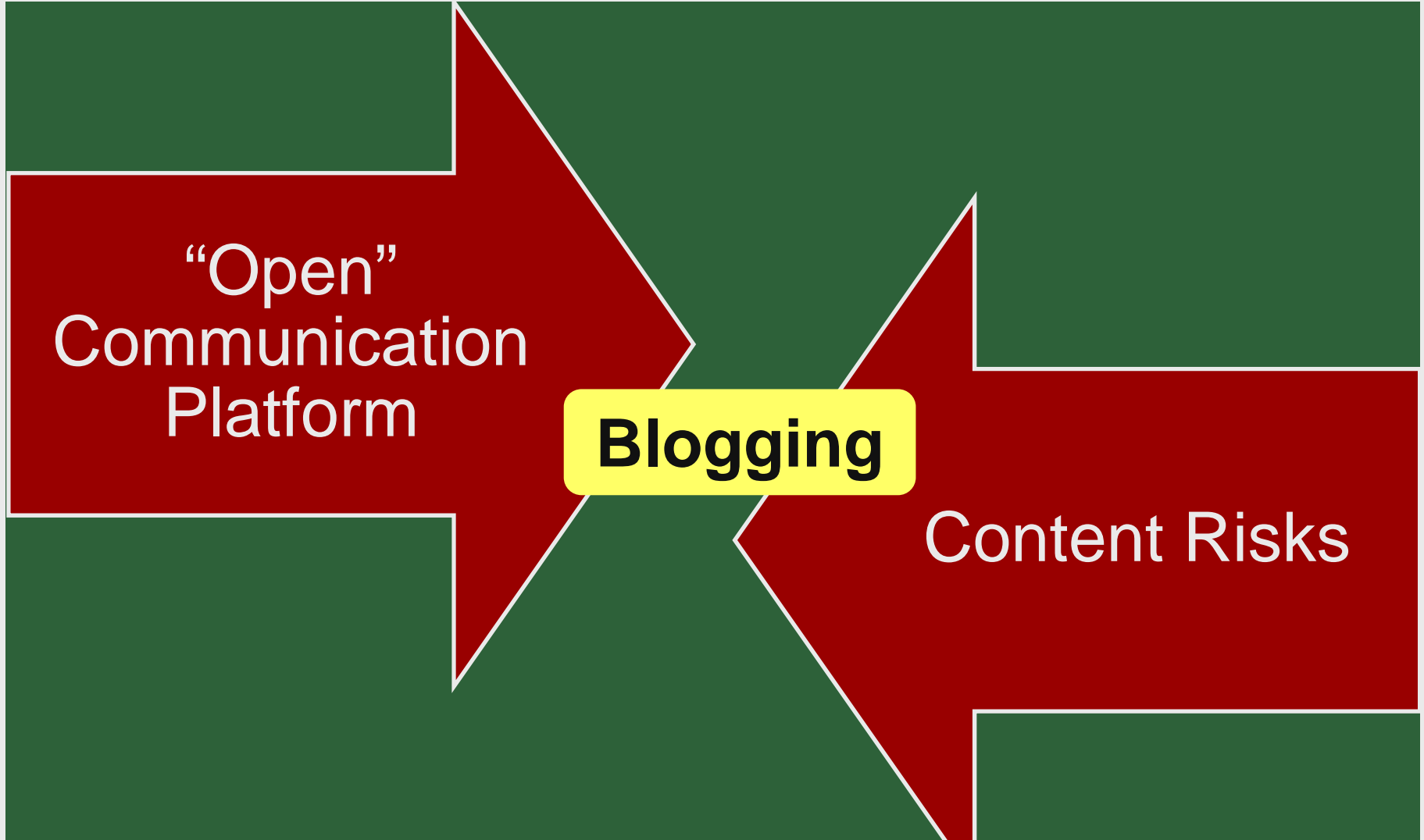
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Blogging Benefits and Risks



Any Company, not just Media Companies can be sued for Blog content

Blogger Liability – Applicable law

Mixed Message

Communications Decency Act

- Sec.230)(1)- No provider or user of interactive computer service shall be treated as the publisher or speaker of....content

Uniform Trade Secrets Act

- CDA doesn't apply to intellectual property claims (sec. 230(f))
- UTSA creates liability for disclosure of trade secrets

Zeran v. AOL (4th Cir. 1997)

- Adapts a broad reading of the protection imputed in the CDA
- Later Courts (Ca. State Courts and 7th Circuit Court) have criticized the broad interpretation of CDA in Zeran

The growth of Blogging has brought a growth in lawsuits (Harvard's Berkman Center for Internet and Society)

The more courts hear cases, the more uncertain the outcomes may be.

Employment Practices

Liabe / Defamation

Antitrust Violations

Privacy

Trade Secrets / Copyright Infringement



Monitor Comments posted and filter spam, libelous or other problem material

Obtain legal sign-off for any corporate sponsored content – engage dedicated cyber counsel

Prohibit trade secrets or inside information

Include a clear Disclaimer

Include “Blogging” rules and company position in Employee Handbook

Review available Insurance Coverage

Blogging – Insurance Coverage

ISO CGL Personal and Advertising Liability may not provide adequate coverage or coverage at all

- Internet Exclusions
- Nature of activity
- Nature of coverage

Specialty Media policies have become more plentiful

Coverage varies greatly – need to understand exactly what is covered and how it is covered



Blogging Underwriting Issues

Things to Consider in setting up (or underwriting) a Blog

Internal or
External Use

Are There
Internal Blog
Procedures

Group or
Individual Blog

How Monitored &
Filtered – legal
Input

Is there a Legal
Disclaimer

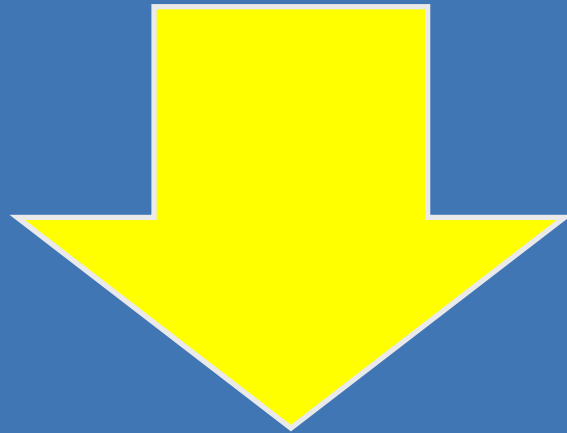
Content, Subject,
Level of
Controversy

Do Employees
have to sign
Confidentiality
Agreements

Do Employees
Understand
Employer
Position on Blogs

Do Employees
have to identify
themselves in the
Blog

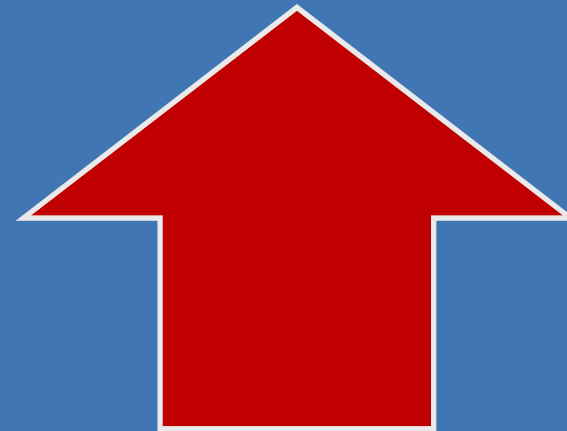
Blogging Takeaway Thoughts



To optimize
the Benefits
of Blogging



Recognize
the Risks and
Proactively
Manage them



Thank you very much for your attention.

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