A Complimentary Webinar Series:

Building a Data Privacy Compliant Records Management Program

Are Your Mobile Device and Social Media Programs Compliant for 2012?

December 7, 2011

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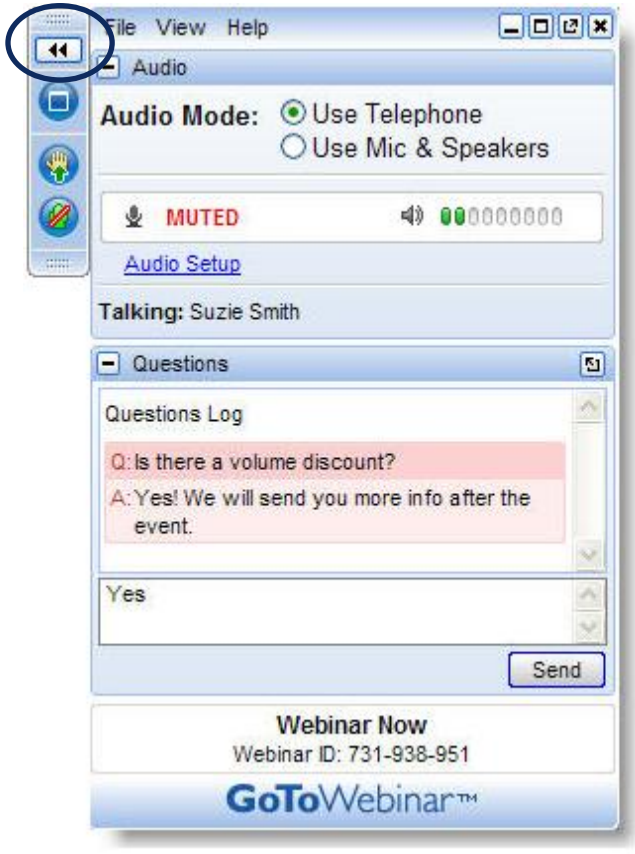

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Introductions- Sponsors

Pivot Group

Independent Audit, Assessment and Compliance Firm providing exclusively Data Privacy and Protection Services.

Cintas Document Management

Cintas was the first North American AAA NAID Certified and PCI-DSS Compliant Provider. Cintas has service locations throughout the entire US, parts of Canada and Europe and offers document imaging, records storage and secure shredding that keeps your business, employee and customer data protected.

Introductions - Host

Jim Soenksen – CEO, Pivot Group

- 20 years of experience in the information security and technology industries.
- As a CPA was also an internal auditor for a fortune 100 company for 7 years.
- Conveys the knowledge and conviction it takes to fight cyber crime
- Offers a realistic view of today's security issues and remedies for businesses.
- Blends business goals with technology, training, policies, and improved processes to provide the appropriate security program, technology controls, and regulatory compliance for each individual companies needs.

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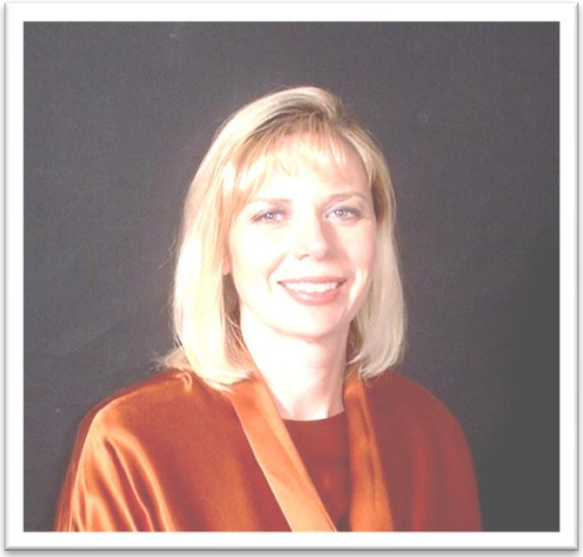
Introductions - Presenter



Nancy Flynn

- Founder & Executive Director, The ePolicy Institute™, www.epolicyinstitute.com
- Author, *The Social Media Handbook* (2012), *The ePolicy Handbook* & other books.
- International speaker & seminar leader.
- ePolicy writer & content provider.
- Expert witness for law firms & federal government.
- Cosponsor of annual American Management Association/ePolicy Institute surveys of electronic monitoring & surveillance and policies & procedures.

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Learning Objectives

- Understanding the risks and liabilities of mobile devices and social media.
- Mitigating risks associated with data breaches.
- Mobile device and social media best practices.
- ePolicy Health Check

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The Changing Shape of Business Communications

- By 2014, social networking will replace email as the #1 form of business communication for 20% of users.
- 10% businesses use Twitter for marketing communications.
- Facebook: 850 million users & 350 million via mobile devices.
- Social media & US Fortune 100: **72%** Twitter; **69%** Facebook; **59%** YouTube; **34%** business blog.

***Sources**: Human Capital Institute; AMA/ePolicy Institute; Facebook*

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Social Media & Web 2.0 Maximize Risks

- Workplace lawsuits.
- Mismanaged business records & eDiscovery disasters.
- Regulatory audits & fines.
- Security breaches.
- Confidential company, customer, patient data exposed.
- Lost productivity.
- Media scrutiny & PR nightmares.
- Reputations tarnished—customers & revenues lost.
- Career setbacks.
- Personal & professional humiliation.

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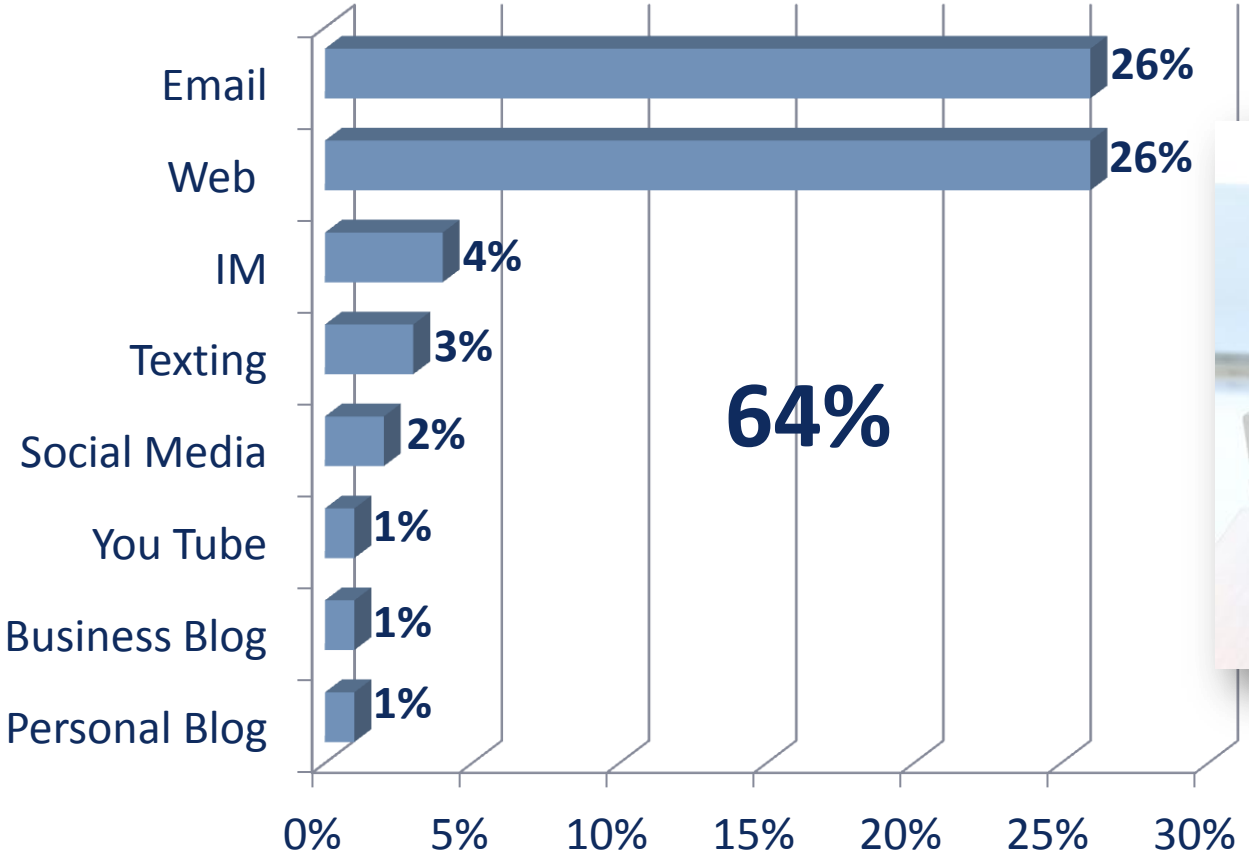
Networking Leads to Not Working



Source: *American Management Assoc/ePolicy Institute 2009 Survey*

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Facebook Friend Fires Back

- British employee bashes boss on Facebook—forgetting he was a Facebook friend, too:

  "OMG, I HATE MY JOB! My boss is a total pervvy wanker always making me do s--- stuff."

- Five hours later, the boss replies:

  "That 's--- stuff' is called your job….Don't bother coming in tomorrow. I'll pop your [pink slip] in the post…And, yes, I'm serious."

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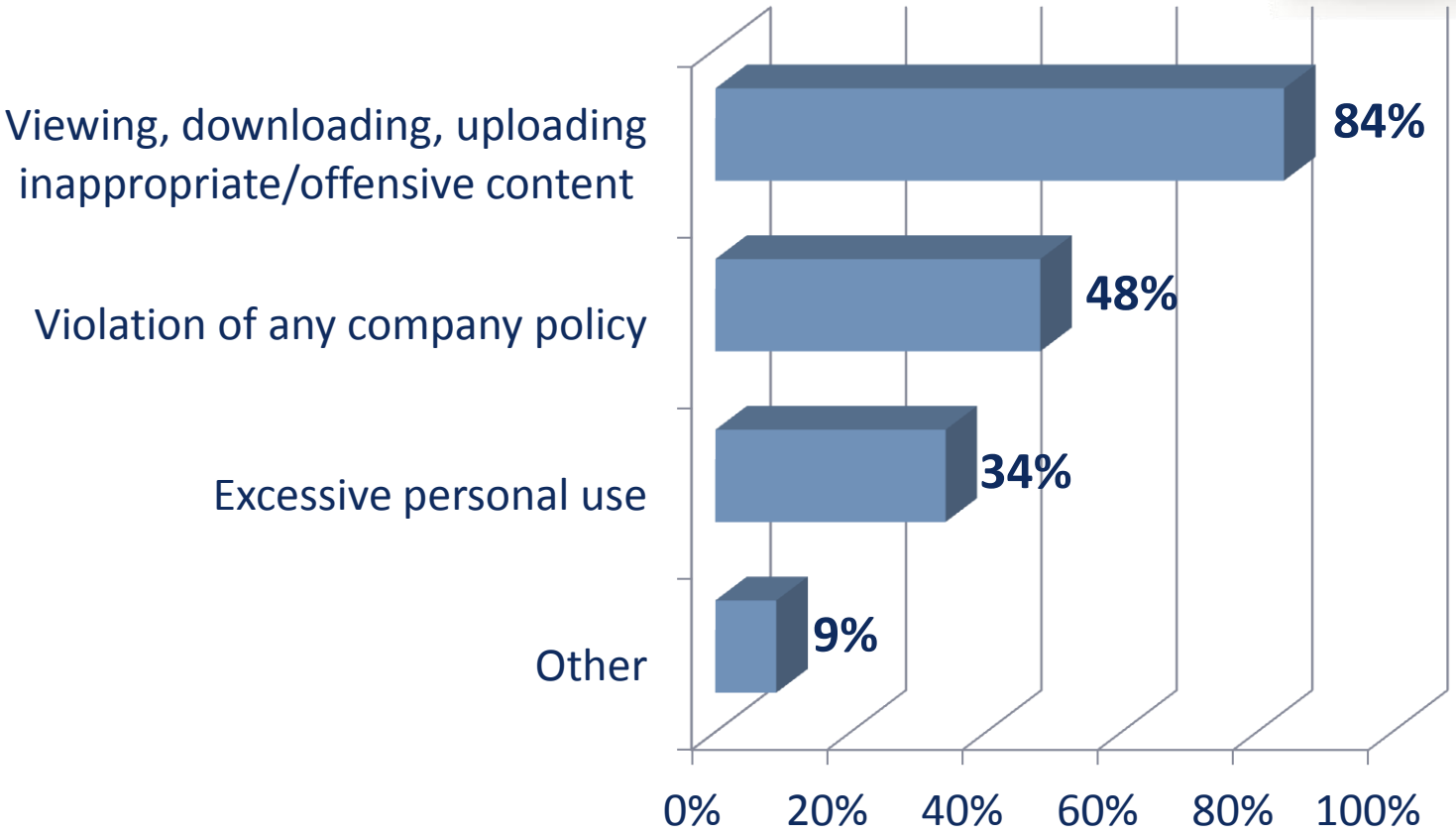
Termination-Worthy Online Violations: Web



Source: American Management Association/ePolicy Institute *Electronic Monitoring & Surveillance Survey*

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Real-Life Facebook Termination

- Employee of Michigan-based hospital posts on personal Facebook account.
- *"Came face-to-face with a cop-killer, and I hope he rots in hell."*
- Hospital not named. Patient not named. Patient's condition not discussed.
- Post removed after employer launched investigation.
- Terminated: (1) Violating HIPAA; and (2) Posting disparaging remarks on public forum in violation of hospital policy.

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Electronic Communications Privacy Act (ECPA)

- Computer System = Property of the employer.
- ***Informed*** users should not consider Email, IM, Tweets, Blog Posts, Facebook Profiles, YouTube Videos, Text Messages, or any other online content their own.
- Even if management says online conversations ***Not*** monitored, employees should ***Not*** expect privacy.

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First Amendment Rights & Realities

- First Amendment *only* restricts government control of speech.
- Private employers are free to fire at will in employment-at-will states.

SCOTUS Backs Government Employers, Too

Even government entities may now fire employees if comments — *Tweets, blogs posts, Facebook comments, LinkedIn conversations, YouTube videos, etc.* — harm the mission & function of the workplace.

NLRB Monitors Social Media

- National Labor Relations Board (NLRB) enforces National Labor Relations Act (NLRA).
- Section 7: Employees have legal right to engage in “protected concerted activities.”
- Communication between 2 or more employees discussing wages, hours, working conditions, staffing, union organizing.
- NLRB rules apply to social media & blogs.
- Covered employers cannot discipline/terminate.
- Best Practices: Policy, training & NLRB poster (Jan 2012).

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Best Practice:
Exercise Legal Right to Monitor

66% monitor **Internet**

36% monitor **social media**

12% monitor **blogosphere**

***Sources**: Price WaterhouseCoopers 2010 Survey;*
American Management Association/ePolicy Institute 2009/2007 Surveys

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“We Treat Employees Like Family”

- Beverly Hills waiter fired after Tweeting unflattering comments about actress who failed to tip him = **Defamation Risk**
- Kentucky police officer fired after emailing nude photos of himself from computer in police car = **Harassment Risk**
- Wife of British UN Ambassador John Sawers used Facebook to disclose where her family lives, vacations, works = **Security Risk**

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Employer's #1 Risk: Legal Liability

- *Vicarious Liability*
- **24%** email subpoenaed
- **9%** battled email-specific lawsuits

Source: American Management Association/ePolicy Institute,*2009 Electronic Business Communication Policies & Procedures Survey*

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Employer Liable for Alcoholic's MySpace Post

- 20-year-old employee of Pennsylvania company.
- Drove company van to work after night of heavy drinking.
- Still drunk, he hit and killed cyclist.
- MySpace: *"I'm an alcoholic, and I work for [name] company."*
- Because post accessible to all, employer potentially liable for putting alcoholic behind wheel of company car.
- Case settled out of court.

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Mobile Devices Drive Liability

- Vicarious Liability: Employers held legally responsible for the wrong acts—accidental or intentional—of employees.
- If accident is caused by distracted employee-driver conducting business on mobile device, the company could be held liable for employee's conduct.
- Even if employee is driving his/her own car or making work-related calls outside business hours, the boss might be liable.
- When employees are required to drive as part of their job descriptions, employers face increased risk of legal responsibility for accidents caused by distracted drivers.

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High Cost of Talking & Texting

- *Tiburzi v. Holmes Transport, Inc*.: **$18 million** verdict in 2009. Victim in permanent vegetative state after struck by 18-wheel truck. Driver checking text messages at time of accident.
- *Bustos v. Leiva & Dyke Industries*: **$21 million** verdict in 2001 when woman struck & injured by truck driver. Cell records proved driver using phone at time of crash—in company truck & on-duty.
- Cell phone records simplify eDiscovery!

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Boss Is Liable for Distracted Drivers

- Lumber Company = **$16.2 million** to woman struck & severely disabled by an ***on-duty*** salesman talking on cell phone.
- Construction Company = **$4.75 million** to man injured by a driver using a ***company-provided*** cell phone.
- Brokerage Firm = **$500,000** to the family of motorcyclist killed by a broker-driver using ***personal*** cell phone to conduct business.

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Good News:
US Courts → SCOTUS

Comprehensive ePolicy

\+ Formal Employee Training

\+ Policy-Based Technology Tools (Monitoring, Blocking, Content Filtering, Security, Records Management, etc.)

= May Form Defense From Liability

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Electronic Business Records: Foundation of Legal Evidence

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Twitter Creates Business Records

- **90%** of business Tweets are about business-related topics, creating potential **electronic business records.**
- Tweets, ReTweets shared, preserved — and potentially subpoenaed and produced one day.

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Twitter : Treasure Trove of Regulatory Risks

- Mayor of Battle Creek, Michigan.
- Accidentally Tweeted city employees' Social Security numbers & other private data.
- City worked with police &Twitter to remove info —4 days after posted.
- **Potentially Costly & Protracted Risks:** Identity theft; HIPAA violation; GLBA violation.

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Blogs Create Business Records

32% Blog to *"Create Record of Thoughts"*

"Our legal department loves the blog, because it basically is a written-down, backed-up, permanent time-stamped version of the scientist's notebook. When you want to file a patent, you can now show in blogs where this idea happened."

—Google Exec Marissa Mayer, *Fortune*

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Texting Creates Business Records

6% Retain & archive text messages transmitted via company-provided cell phones.

Vs.

51% Email retention policy.

Source: AMA/ePolicy Institute survey 2009.

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Texting Evidence Is Easy to Find

- Cellular service providers maintain records that make it easy to prove that an employee was texting or talking at or near the time of an accident.
- eDiscovery: Records will prove whether or not a call or text was business-related.
- Juries are unlikely to view texting & talking while driving as anything other than negligent conduct.

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Amended Federal Rules of Civil Procedure (FRCP)

- Electronically-stored information (ESI) is discoverable. May be used as evidence for or against the company.
- Business record email, social media posts, other ESI must be retained, archived & produced *promptly* and in a *legally compliant* fashion.
- Acceptable to routinely purge ESI not relevant to litigation or pending cases (or otherwise required by law/regulator).

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FRCP Challenge: Find It Within 99 Days

- Rule 26 Meeting: Within 99 days of litigation initiation, parties must meet to discuss the scope & accessibility of electronic records.
- All parties must be prepared to locate, discuss & produce legally compliant email & other ESI or face monetary sanctions and other penalties.

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Court Sanctions Cost Millions

***Qualcomm Inc. v. Broadcom Corp* (April 2010)**

Court sanctions Qualcomm **$8.5 million** for ***"a massive discovery failure."***

***Kipperman v. Onex Corp* (May 2009)**

Finding the defendants' behavior a ***"textbook case"*** of discovery abuse, court imposes **$1.1 million** in monetary sanctions.

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What's the Easiest Way to Control Online Risk?

Control Written Content!

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"Sexual Harassment Isn't About Being Chased Around the Desk Anymore."

- Hooters waitress files sexual harassment claim vs. Ft. Lauderdale restaurant. Sexting claim based on explicit photos and text messages sent by manager (2010).
- Director of Delaware, OH county jail resigns after using personal cell phone to take and send inappropriate photos to female employee — while on duty and in uniform (2010).
- Lafayette College settles sex harassment case for $1 million after campus safety officer sends pornographic email to female employees (2010).

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Appropriate Online Content

- **No Harassment/Discrimination Based On:**
  - Race, Color, Religion, Sex, Sexual Orientation, National Origin, Age, Disability, Other Status Protected by Law.
- **No Disclosure of Confidential Financial, Company, Customer, Patient Data.**
- **Written Text, Photos, Videos, Art of Any Kind.**
- **Adhere to All Employment Rules & All Policies at All Times.**

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No Funny Business Online

- **No** rumors, gossip, defamatory comments.
- **No** whining or complaining about the company, customers, patients, management, business, employees.
- **No** “funny” cartoons, videos, photos, files, art.
- **No** unprofessional conduct, content, comments, or conversations.

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Personal Use Wastes Employees' Time
…and Employers' Dollars

- **90%** employees lack business reason to use Facebook, yet some report using it up to 2 hours/workday.
- Personal email at work **86%**
- 4+ hours emailing (*half the workday!)* **20%**

Sources: Nucleus Research; American Management Association/ePolicy Institute Workplace Email & IM Survey & 2009 Electronic Policies & Procedures Survey

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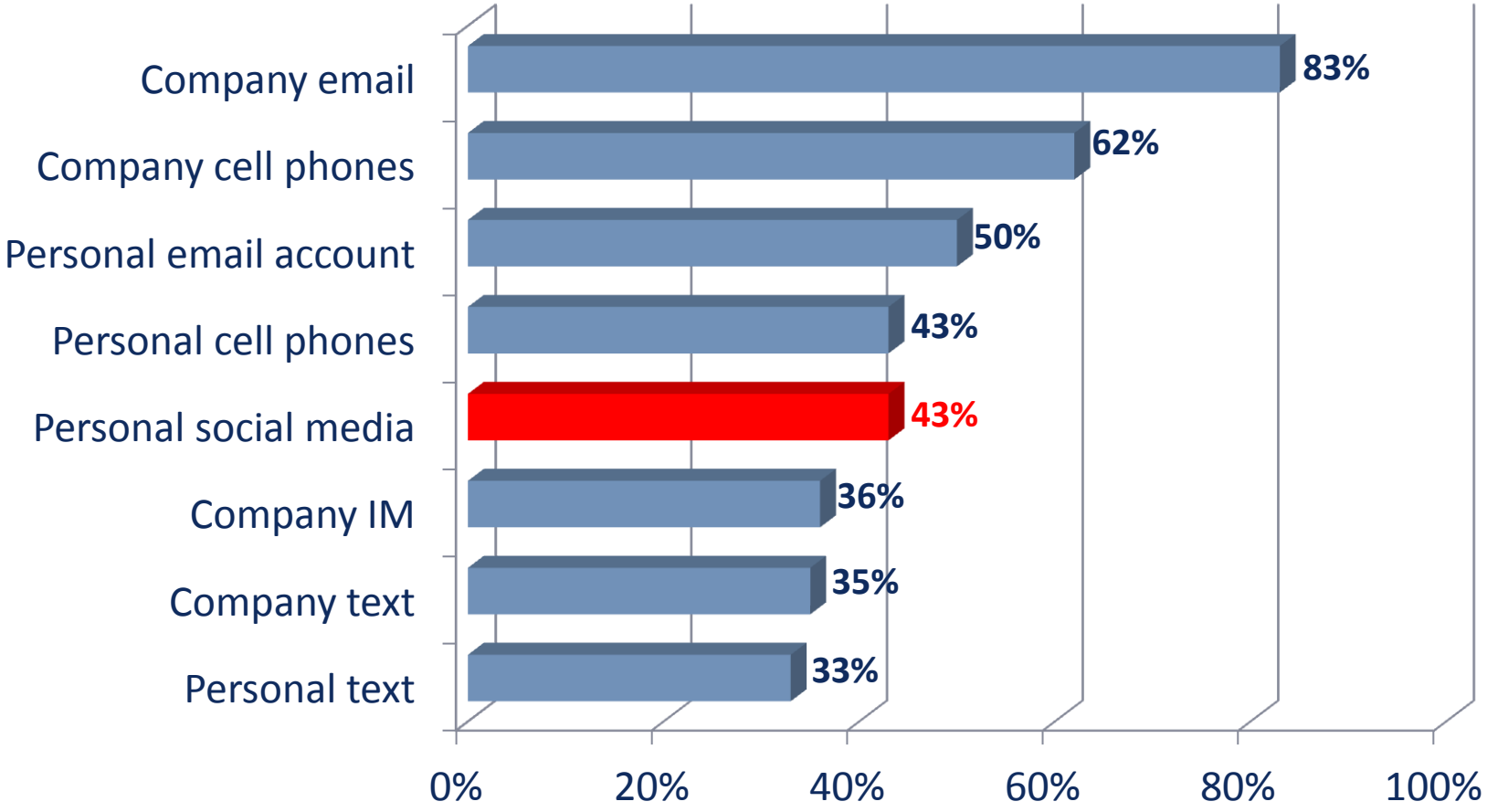
Best Practice:
Enforce Personal Use Rules



Source: AMA/ePolicy Institute 2009 Electronic Policies & Procedures Survey

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Personal Use Triggers PR Nightmare

- Domino's humiliated after *prank* video emailed to YouTube became sensation. Employee stuffed cheese up nose while prepping food. Massive media coverage forced Domino's to address allegations online & via mainstream media (2009).

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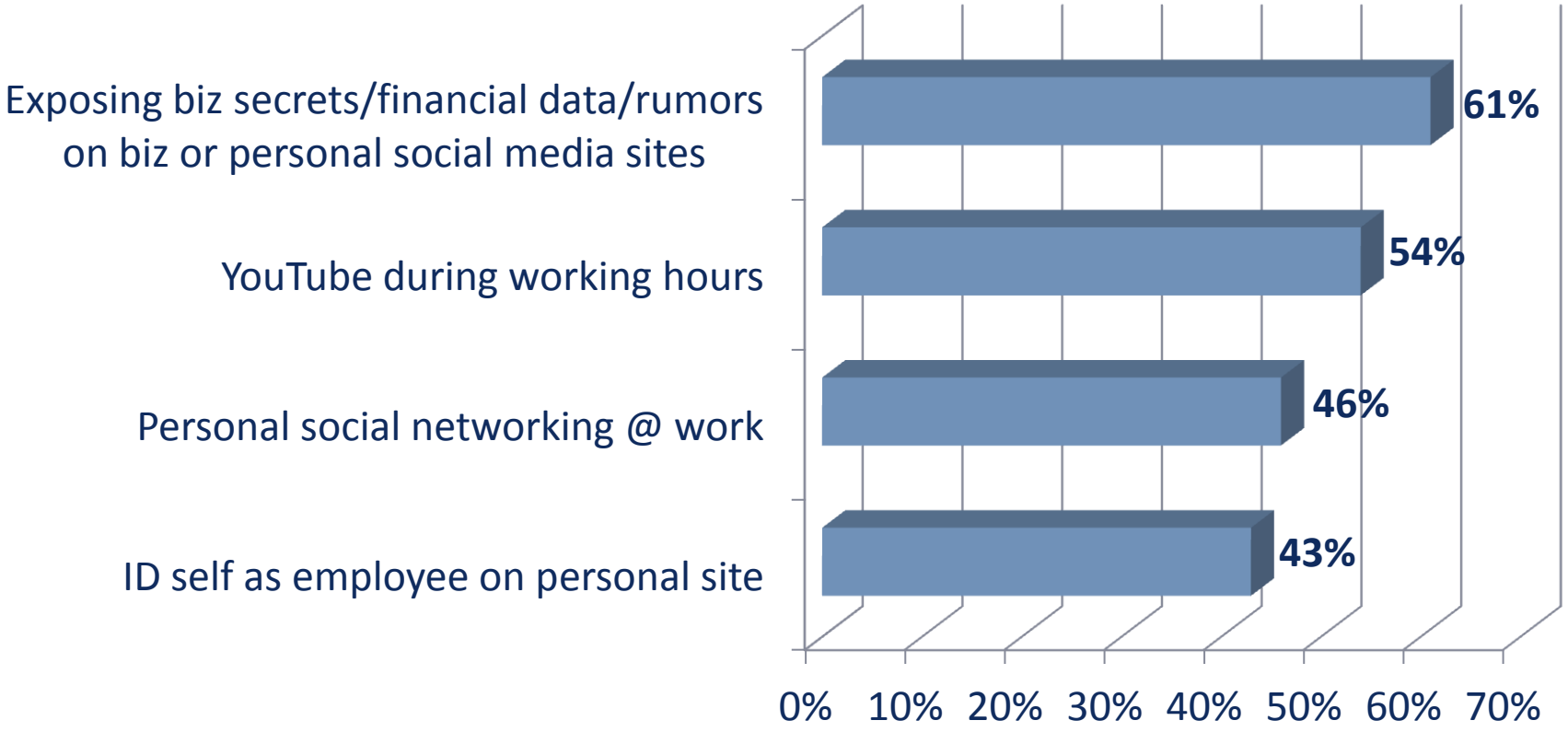
Social Media & Mobile Device Rules

Risks & Rules

Policies & Procedures:

Where Do You Stand?

Where Do You Stand? Social Media Policy



Source: AMA/ePolicy Institute 2009 Electronic Policies & Procedures Survey

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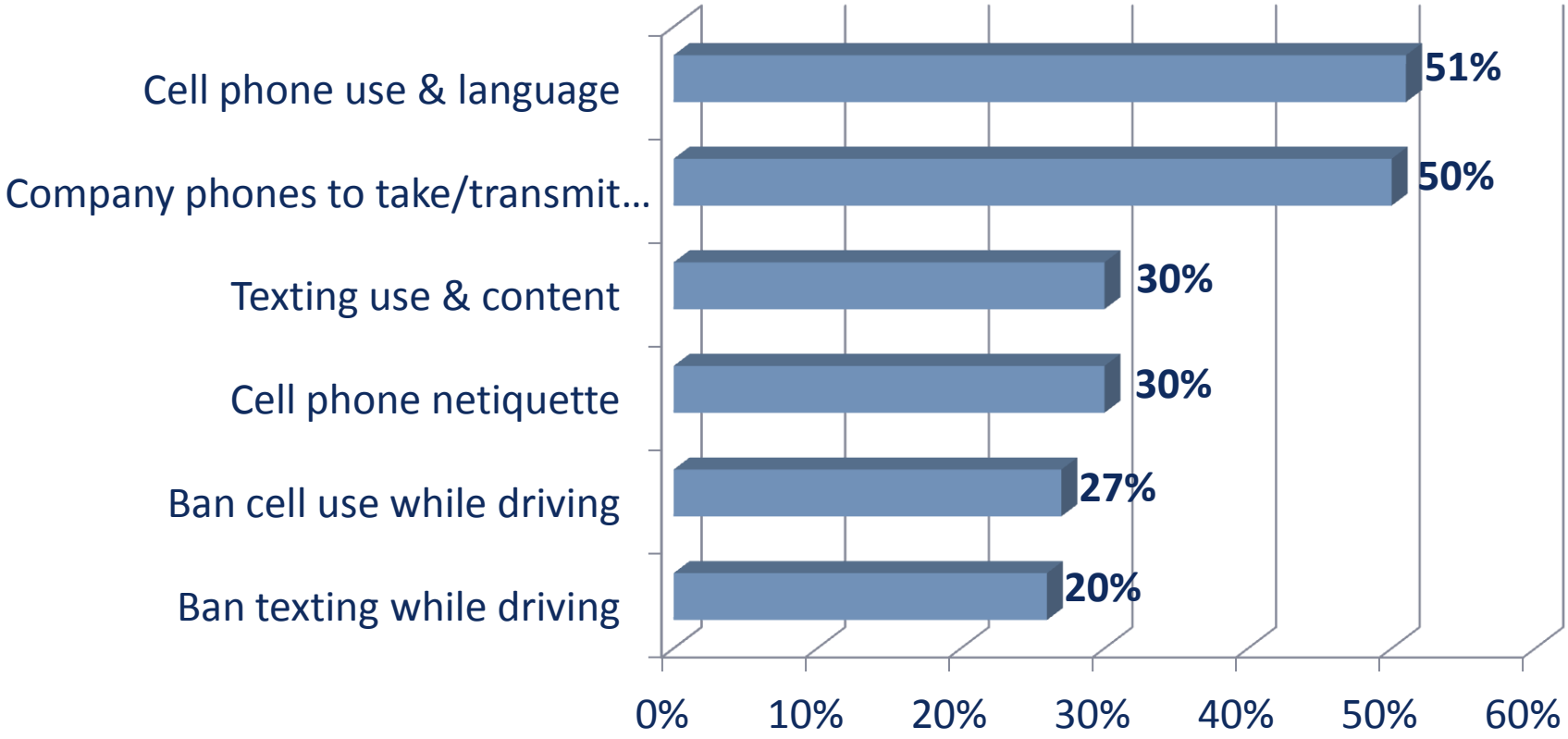
Where Do You Stand? Mobile Device Policy



Source: AMA/ePolicy Institute 2009 Electronic Policies & Procedures Survey

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Social Media & Mobile Device Rules

Best Practices

to Minimize Risks
& Maximize Compliance

Top 13 Mobile Device & Social Media Rules

1. Policy + training + technology tools.
2. Limit personal use during working hours.
3. 100% policy compliance at work, home & on the road.
4. Clear, comprehensive content rules.
5. Do not disclose confidential data about the company, customers, patients, or employees to 3rd parties.
6. No talking, texting, emailing, surfing, posting, or checking messages while driving--company-owned or personal vehicles.

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Top 13 Mobile Device & Social Media Rules

7. One clear, consistent, readable policy per technology tool.
8 Adhere to all federal & state laws.
9. Adhere to all government & industry regulations.
10. Enforce policy with discipline, up to & including termination.
11. Sign & date mandatory acknowledgment forms.
12. Monitor *all* electronic conversations.
13. Don't ignore social media, even if you lack a presence today.

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Year-End ePolicy Health Check

- ✓ Conduct an annual audit of your organization's risks &rules; policies & procedures; legal, regulatory & organizational requirements; records management risks & rules; technology tools.
- ✓ Based on audit, write new Acceptable Use Policies (AUPs) & edit old policies governing content, use & records.
- ✓ Take this opportunity to educate all users. Distribute new & updated AUPs in course of training. Mandatory acknowledgment forms.
- ✓ Enforce AUPs with disciplinary action, up to & including termination.
- ✓ Demonstrate adherence to best practices. Support policies with proven-effective, best-in-class technology solutions including Cintas Document Storage, Shredding & Imaging.

This presentation is designed to provide accurate and authoritative information with regard to the subject matter covered. It is provided with the understanding that the presenter is not rendering legal, regulatory, security, or other professional services. If legal or other advice is required, seek the services of a qualified professional.

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Helpful Sites

- The ePolicy Institute
  http://www.epolicyinstitute.com
- Fraud Watch
  http://www.fraudwatchinternational.com/phishing
- FBI
  http://www.fbi.gov/cyberinvest/escams.htm
- CERT
  http://www.cert.org/insider_threat/
- Data Loss Data Base
  http://datalossdb.org/
- APWG
  http://www.antiphishing.org/
- Dark Reading
  http://www.darkreading.com/index.jhtml

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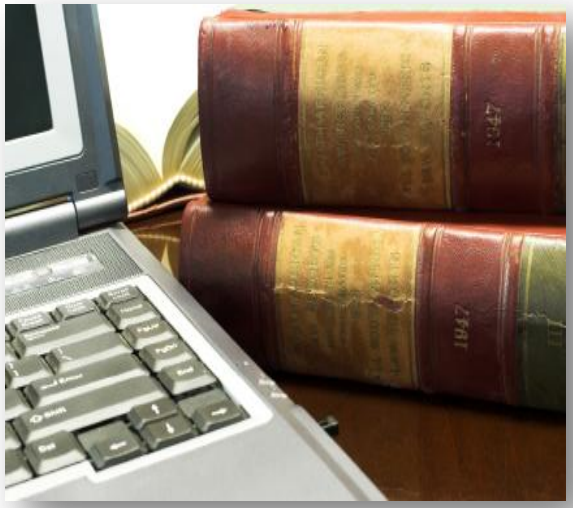
Reference Resources

- American Management Association
- CSO Online
- National Conference of State Legislatures
- ISO 27000
- PCI Security Standards
- Ponemon & PGP *2010 Annual Study: Cost of a Data Breach*
- MER Conference/Sedona Group
- AIIM
- ARMA
- International Threat Resource Center
- The ePolicy Institute
- Pivot Group Critical Data Check List
- Cintas Records Compliance Guide



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Q&A

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