



Compliance Monitoring of Social Media

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Karen Smyth, Producer

THE ELEVENTH ANNUAL INTERCOMPANY LONG TERM CARE INSURANCE CONFERENCE





Guest Speakers

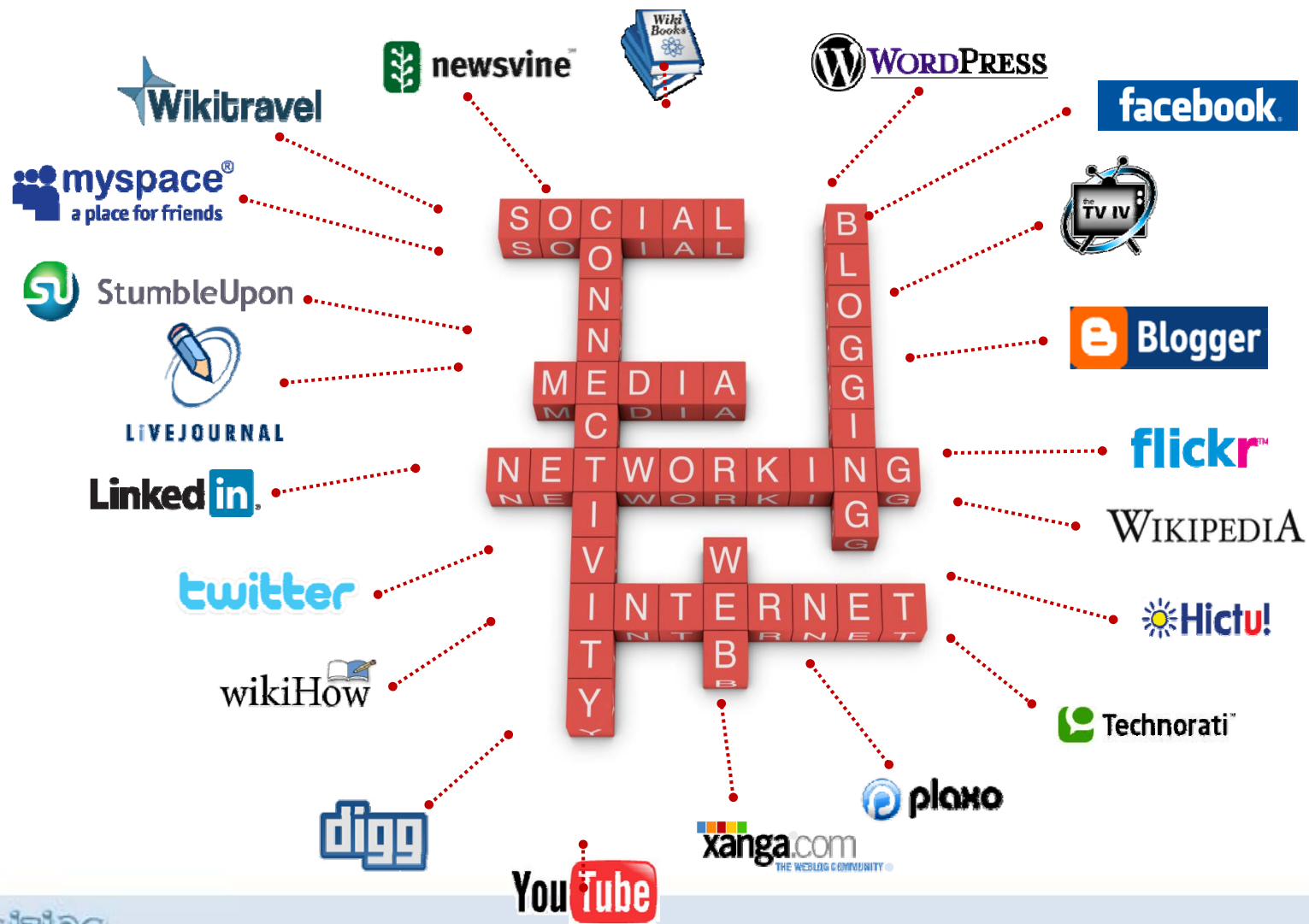
Name	Company
Timothy Cercelle Director Governance, Regulatory & Risk Strategies	Deloitte & Touche LLP
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EMBRACING SOCIAL MEDIA IN INSURANCE



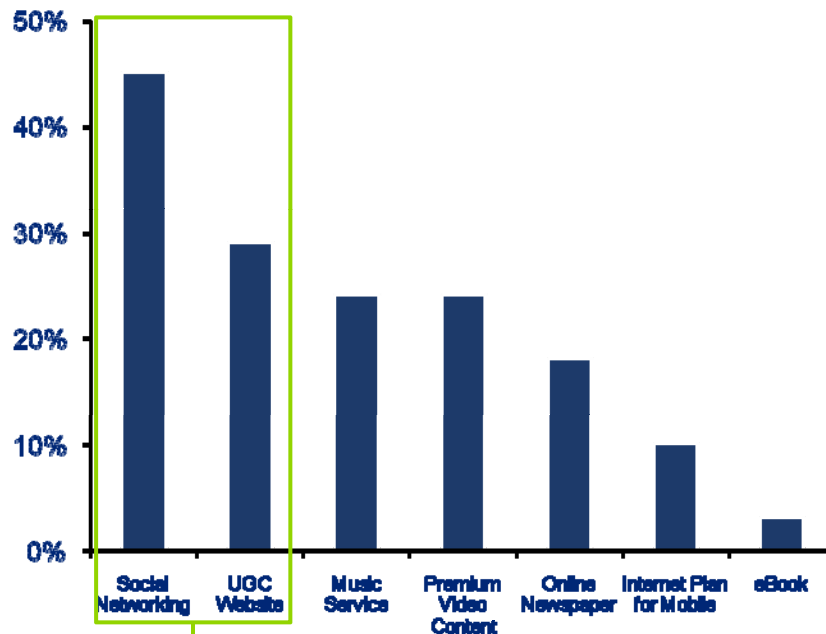
Social media incorporates: Wikis, Social Networks, Blogs, Presence & Microblogging, Online Sharing of Videos & Media, and Social Bookmarking & Tagging





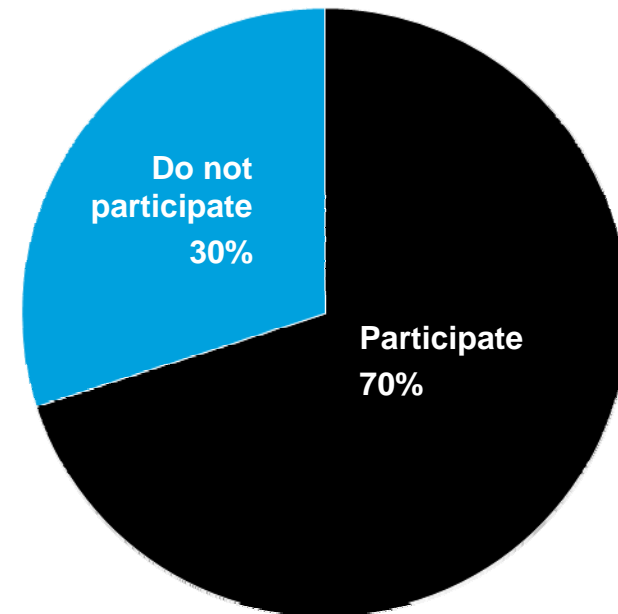
There is evidence that social media has been gaining significant traction outside of its most youthful base of users

Online content usage by adult internet users in the United States



- 45% of adults visit social networking sites on a weekly basis
- 29% of adults visit user-generated content (e.g., YouTube, Photobucket) sites weekly

U.S. IT professionals who actively participate in work-related online communities



- Many employees are forming online social networks of their own with their work colleagues



Social media has started to impact talent: As the new generation of employees assimilates into the workforce, they will bring their online social habits with them

- One of the top reasons employees leave within their first three years of employment is a lack of connectedness and sense of belonging to the organization
- Today's workforce is required to digest vast amounts of information, collaborate across geographical and hierarchical boundaries, and continuously multi-task and make quick decisions, all amid a flurry of distractions
- Knowledge workers are strapped for productivity, with the average employee being interrupted every three minutes during their work day

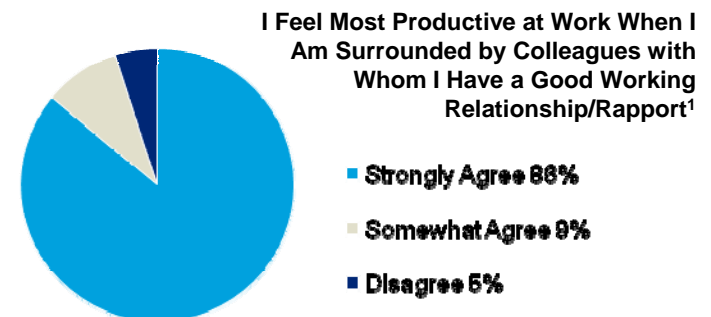
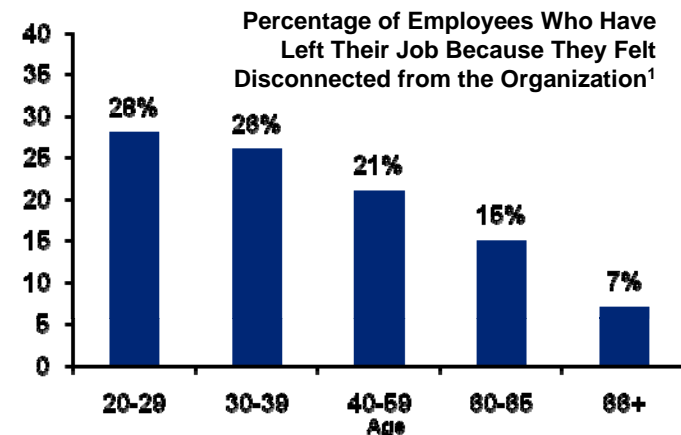
Did you know?

- 90% of employees decide to stay or leave a company within six months of employment
- 89% of new hires indicate that they do not have the necessary tools and knowledge to do their job effectively
- 52.9% Gen Y employees indicate that they can be more innovative if company's culture embraces contribution from all levels²

Social media can allow companies to connect with the next generation of employees using a channel these employees relate to

Sources:

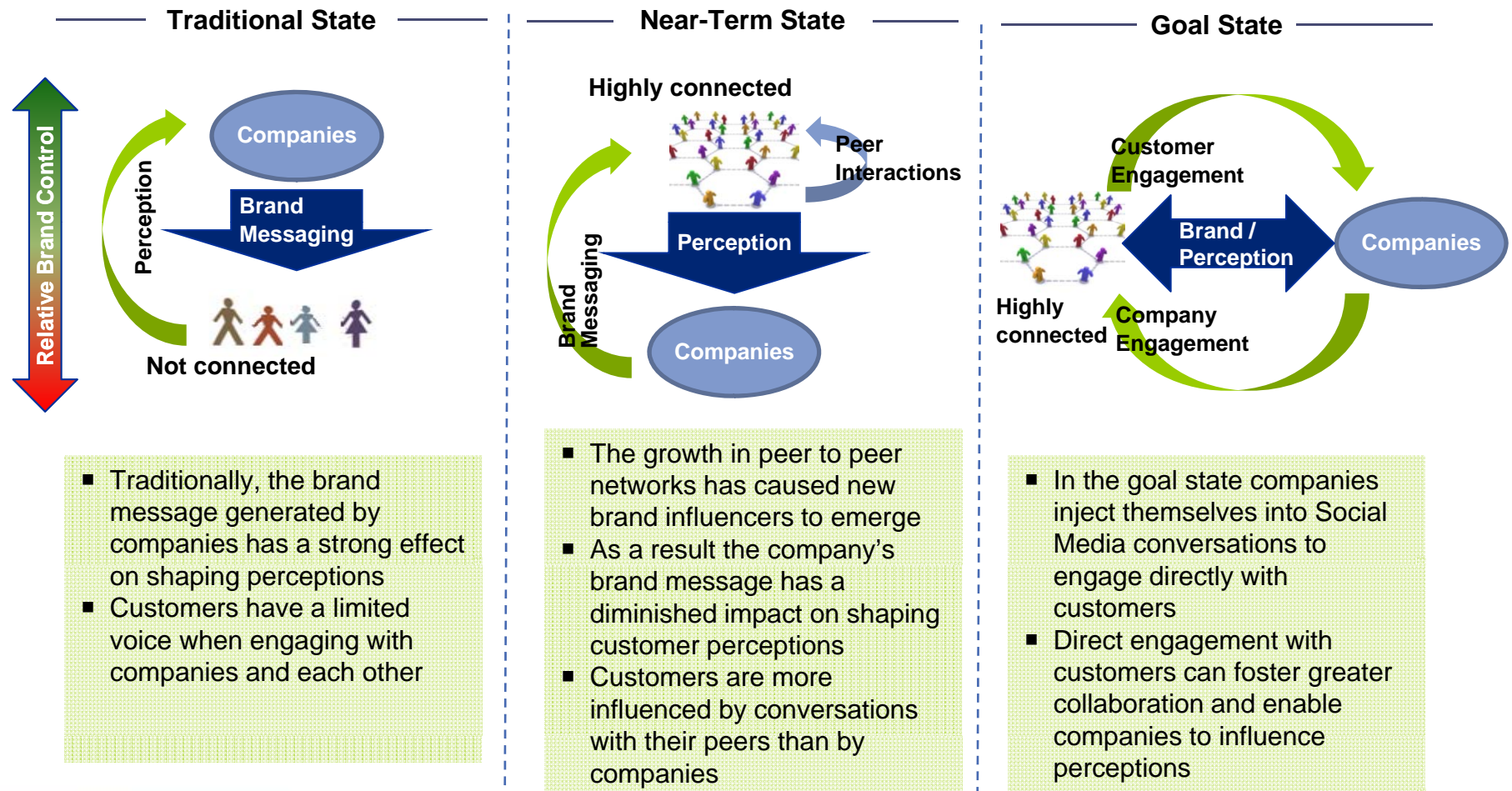
- Deloitte Research 2008; Human Capital Institute & Corporate Executive Board 2007; SelectMinds/Intellisurvey 2007-2008; Gloria Marks, University of California at Irvine
- SelectMinds, 9/2007
- 2 Deloitte Generation Y: powerhouse of the global economy Survey, 2009





Growth of Social Media is shifting brand influence from companies to customers

If properly managed, this paradigm shift can translate into a mutually beneficial opportunity for both companies and customers.





Social Media Impacts all Parties: Insurers, Customers, and Agents

1

Awareness

facebook

LinkedIn

twitter



- **Insurers:** can capitalize on information available on facebook (marital status, life events etc.) to execute more effective targeted campaigns and also gather feedback on brand awareness / positioning
- **Agents:** are already beginning to create online personas on LinkedIn and other websites to attract potential clients

2

New Business



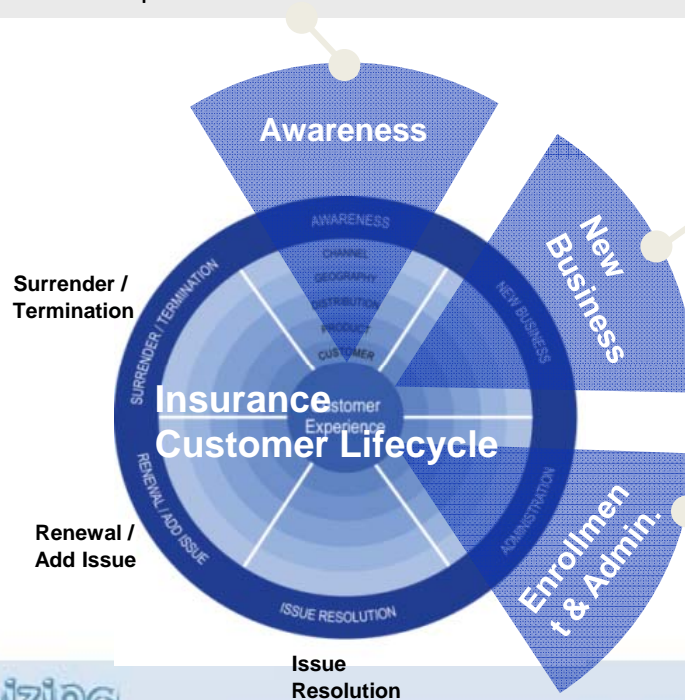
- **Customers:** are utilizing web 2.0 tools for referrals and to rate products and insurance agents
- **Agents:** can use tools to keep up with customer needs and to gather customer feedback
- **Companies:** can utilize web 2.0 tools to more interactively collaborate with their agents to generate new business

3

Enrollment & Administration



- **Customer:** E-enablement of enrollment and underwriting will increase speed and satisfaction of the customer
- **Insurers:** can issue policies online and provide more personalized cross sell and up sell offers
- **Agents:** have more channels of communications with customers leading to better response times





Time to act on Social Media is now

Companies can realize significant benefits now from adopting Social Media

- **Generate Long-Term Revenue Growth:** All customer segments (including boomers) are rapidly adopting Social Media, a trend that was initially led by Gen X and Gen Y. Industries such as telecom and retail have embraced these capabilities, and customer expectations are quickly growing into all sectors of financial services.
- **Attract & Retain Top Talent :** Top agent talent in the industry recognizes the need to engage with their clients using these new tools and is rapidly adopting them. Insurers that provide access, guidelines, and compliance clearance for Social Media tools will rapidly attract the top agent talent, and make their agents more efficient
- **Optimize Marketing Spend & Effectiveness:** Insurers can utilize Social Media as another tool to gather information about their customers and effectively conduct targeted marketing campaigns to the right customer segments
- **Improve Employee Productivity:** Real time Collaboration across the organization and geographical boundaries can significantly increase efficiency and productivity
- **Enhance Partner/Customer Relationships:** Obtaining real time feedback and opening up the lines of communication





Time to act on Social Media is now

Key reasons Insurers need to think about Social Media now...

There are significant time-sensitive risks to ignoring Social Media



- **Branding Risk:** Employees and customers will continue to use Social Media whether insurers recognize it or not. Ignoring customer conversations on Social Media can represent significant branding risk
- **Compliance Risk:** FINRA just recently released new guidelines for use of Social Media. Regulations have not evolved as fast as Social Media. Insurers are likely at risk without knowing it
- **Risk of Falling Behind the Competition:** Action is needed now to capitalize on the opportunity to attract the top agent talent and the next generation of customers. Doing nothing may result in customer loss and talent drain
- **Security Risk:** Employees using public social media tools place IP and security at risk
- **E-Discovery Risks:** Risk of not being able to produce requested records as a result of not including social media within your corporate record retention program



REGULATORY IMPLICATIONS



Regulatory Outlook

- Half of all Americans connect regularly to social media
- Business use of sites like Facebook is exploding
- Regulators cannot risk being left behind



Regulatory Actions

- FINRA issued Regulatory Notice 10-06 in January 2010
- NAIC added a committee charge in January 2011, marked it important
- Market Regulation and Consumer Affairs (D) Committee to appoint a **Social Media (D) Working Group** to develop a white paper on how insurance companies and producers use **social media** in the business of insurance; identify regulatory and compliance issues that might arise through the use of **social media** in insurance; and provide guidance on how to address any identified regulatory and compliance issues.—
Important
- Internal NAIC marketing document says this about social media: ***“Social media can connect you to communities more vulnerable to poor insurance decisions and scams.”***
- Protecting consumers by imposing rules on social media use is a no-lose situation for insurance regulators



Regulatory Issues

- Audit trail: Many states require certain records to be retained. Some of the largest fines regulators issue are for these violations. The evanescence of social media can make this difficult to document to the satisfaction of regulators.
- Information accuracy: Opinions provided during such interaction may not reflect information required by regulators.
- Dissemination: Quick adoption and broad reach of social media mean incorrect or misleading information may spread quickly beyond the ability of regulators to contain.



Regulatory Issues (cont'd)

- Communal nature: Wikis, etc., may spread unverified or inaccurate information beyond the reach of regulators.
- Privacy concerns: Insurers may check the Facebook pages of workers' compensation claimants, e.g., but what about life insurance applicants?
- Monitoring market conduct: Are licensees providing information on these sites? Who monitors the information provided? Are licensees requesting information? What happens with that information? Is it shared, deleted? Are companies providing rules, guidelines and training for their employees or representatives?



How to Prepare

- Adopt policies and guidelines on social media (including personal use)
- Investigate technologies required for record retention
- Develop training for employees
- Prepare a framework for monitoring social media use



LEGAL IMPLICATIONS



Nature of Social Media

**Spontaneous, short, “in-the-moment,”
“off-the-cuff”**

- Often not carefully composed (with no thought of their future use or adverse consequences).
- Informal, conversational in nature.
- Often express opinions.

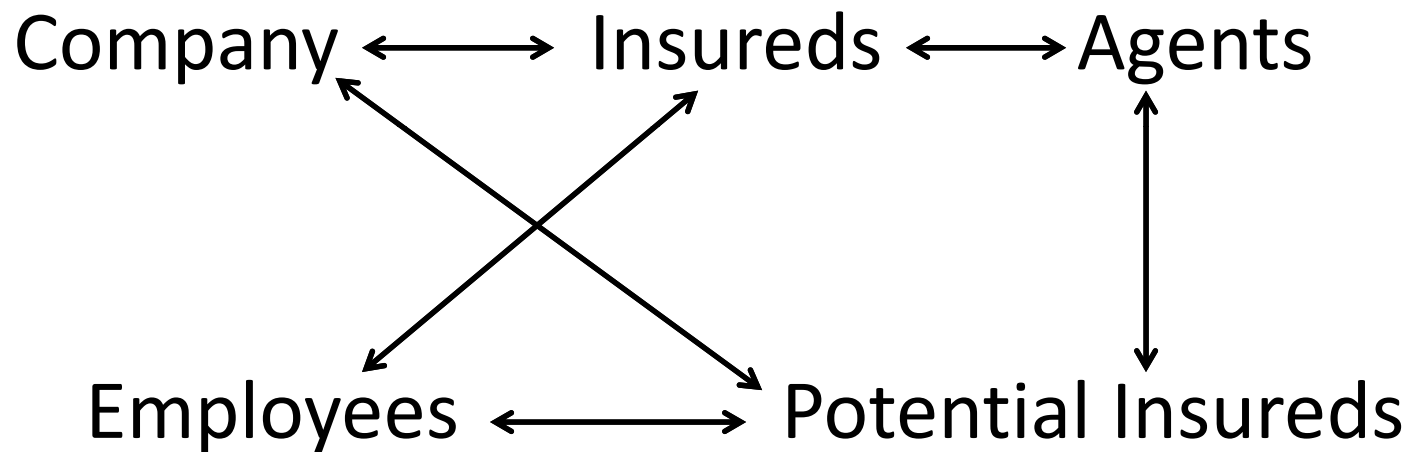
*As such, they can be misleading,
misunderstood, or worse.*

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Nature of Social Media

Multi-directional Communications



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Nature of Social Media

Far-Reaching in...

- Numbers of recipients
- Geographic distribution

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Nature of Social Media

Communal

Virtual on-line communities using and sharing information and material (which may or may not be verified for truth or accuracy).

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Nature of Social Media

Users Provide Content – People Say What They Want

“Facebook originally, and still is, nothing more than a platform on which all of the members create the content. Every member is a broadcaster.”

David Kirkpatrick, author
*The Facebook Effect: The Inside
Story of the Company That Is
Connecting the World*

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Nature of Social Media

Unprecedented Information Gathering and Sharing

Greater ability to

- See what insureds think and want faster than ever
- Target market (“behavioral target marketing”)
- Engage and interact with insureds
- Quickly share knowledge and new ideas

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Social Commerce

Social Media and Social Networking



“Social Commerce”

Targeted Marketing

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Social Commerce

Recent survey of 135 top retailers and consumer goods manufacturers:

86% of respondents plan to engage in social commerce in 2011

- Altimeter Group (Chicago Tribune, Oct. 5, 2010 at 19.)

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Communications and Advertising Laws

- Various state and federal laws on advertising likely apply to social media.

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Communications and Advertising Laws

Examples . . .

- Lanham Act (USC, title 15, chapter 22) prohibits businesses from making false and deceptive claims in advertising
- FTC regulation of advertising
- State insurance trade practices laws on advertising and marketing

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FTC Advertising Guidelines

FTC issued new guidelines in 2009 on . . .

- Use of endorsements and testimonials in advertising, and disclosure of connections between advertisers and endorsers
- Bloggers who endorse or post comments must clearly disclose a “material connection” to advertisers and any compensation or gifts including free products

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FTC Advertising Guidelines

Blogging for an advertiser in exchange for free comps or products is viewed as commercial speech which can be regulated.

(FTC Staff Attorney)

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FTC Advertising Guidelines

Under the guidelines, bloggers could be liable for making misleading endorsements.

(But the FTC has said there is no fine for **not** complying with the guidelines.)

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FTC Advertising Guidelines

- April, 2010, FTC publically released info on its first investigation under the guidelines:
- Ann Taylor investigated for postings by bloggers who attended a preview of its Summer 2010 collection and who received free gifts.
- Took no action, but . . .

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FTC Advertising Guidelines

FTC said companies must . . .

- Have written policies in place notifying bloggers of disclosure requirements;
- Follow those policies; and
- Monitor bloggers' compliance with the disclosure requirements under the rules.

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FTC Advertising Guidelines

In August, 2010, FTC settled charges against Reverb Communications, Inc., a California public relations agency.

FTC alleged Reverb engaged in deceptive online advertising when it hired video game developers to pose as customers and post positive game reviews.

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FTC Advertising Guidelines

“Advertisers should not pass themselves off as ordinary consumers touting a product, and endorsers should make it clear when they have financial connections to sellers.”

-- Mary Engle, Director, FTC Division of Advertising Practices (Chicago Tribune, Oct. 11, 2010 at 19.)

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Underwriting, Rating, Claims Handling Laws & Regs

Social media sites are increasingly being mined for investigations by regulators and private companies.

Increasingly powerful web crawlers and search engines let people search the web for information on individuals.

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Underwriting, Rating, Claims Handling Laws & Regs

Examples . . .

TweetDeck (Twitter feeds)

OpenBook (Facebook updates)

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Underwriting, Rating, Claims Handling Laws & Regs

MySpace – personal profiles

Twitter – thoughts, opinions

YouTube – photos, videos

And now . . .

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Underwriting, Rating, Claims Handling Laws & Regs

LBS – Location Based Services – Places

- Foursquare
- Facebook Places
 - Loopt
 - Gowalla
 - MyTown
 - Where
- Brightkite

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Underwriting, Rating, Claims Handling Laws & Regs

Potential for Underwriting & Predictive Modeling

Examples:

- Insurance fraud
- WC claims
- Disability claims
- Life underwriting
- Auto

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Employment Law

- What if an employee mocked her supervisor on Facebook, used vulgarities to ridicule him, and posted a comment like the following?

“love how the company allows a 17 [psychiatric patient] to become a supervisor”

- *NLRB v. American Medical Response*



Litigation and E-Discovery

The FRCP, as amended in 2006, permits discovery of information “stored in any medium.”

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Litigation and E-Discovery

As we have seen with e-mails, we can expect social media will become rich sources of evidence.

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Privacy

US Commerce Dept., FTC, and FCC are all exploring the impact of Internet innovations on privacy.

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Privacy

Numerous state and federal laws governing privacy potentially apply when companies communicate via social media.

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Privacy

Google Inc. subjected to government scrutiny in US, France, Germany, Spain and Canada over privacy concerns. June 2010

Agreed to hand over data collected through wireless networks and while taking photographs for its Street View service.

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Privacy

Twitter settled with FTC over charges of privacy failures. June 2006

Alleged Twitter allowed hackers to send false tweets pretending to be from President Obama and Fox News and take administrative control of Twitter thereby gaining access to private tweets.

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Privacy

Companies need to protect against the inadvertent communication of non-public personal information including personally identifiable financial information.

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Privacy

Stored Communications Act (18 U.S.C. §2701),
as part of Electronic Communications Privacy
Act --

Pertains to

"stored wire and electronic communications
and transactional records" held by third-party
internet service providers (ISPs)

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Privacy

- Prohibits unauthorized access to electronically stored records.
- If done for commercial advantage, fines or imprisonment up to 5 years (first offense) and 10 years (a second offense).

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The Future

Mobile Devices Will Greatly Increase Social Media Participation Worldwide

- People on mobiles use Facebook 50% more than others.
- Facebook: 350M users worldwide -- 65M on mobile devices (Economist, Jan. 30, 2010)

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The Future

All this comingling of data raises new issues of ownership and control of that information.

How do we sort out what data belongs to employers versus what is personal and belongs to employees?

What is private versus what is public?

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The Future

Quon v. Arch

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Thank you
and
Please fill out your
evaluation forms!