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## PROBLEMS AND SOLUTIONS TO CORPORATE BLOGGING: MODEL CORPORATE BLOGGING GUIDELINES

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### I. Introduction

The Internet functions as a vehicle for various modes of personal expression. This includes the creation of personal websites and posting of photographs as well as emailing and instant messaging. One of the newest and fastest growing ways of personal expression on the Internet is the blog.<sup>1</sup> A blog is the shortened version of the phrase “web log,” which started as a sort of online diary in the early days of the Internet.<sup>2</sup> Blogs have become a popular medium for personal expression on the Internet, but they are not without controversy, especially in the workplace.<sup>3</sup>

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1. Terri Gregory et al., *We Blog: Publishing Online with Weblogs*, 51 TECH. COMM. 129 (2004) (book review) (weblogs were created in the late 1990s by computer programmers to document their thoughts on projects and have since been used by the general public to share ideas and elicit feedback); Leander Kahney, *The Web the Way it Was*, WIRED, Feb. 23, 2000, available at <http://www.wired.com/news/culture/0,1284,34006,00.html> (blogging is undergoing a surge in popularity and growing at an unprecedented rate).

2. Jason Boog, *Employment Lawyers Finding Bloggers Mean Business*, LEGAL TIMES, April 11, 2005, at 23; Greg R. Notess, *The Blog Realm: News Sources, Searching with Daypop, and Content Management*, 26 ON THE NET 5, 70 (2002).

3. Ken Schacter, *Commentary, Blogs: New possibilities, both good and bad for business*, DAILY RECORD & THE DAILY NEWS PRESS, Dec. 31, 2004 (describing instances where employees were fired because of the content of their blog including a flight attendant who posted racy pictures of herself in her Delta uniform and an employee at Friendster who described the company's efforts to improve the website's unacceptably slow performance).

In recent years, there has been an uneasy relationship between employees who have become bloggers and the companies which employ them.<sup>4</sup> Companies have fired employee bloggers as a result of posting either negative comments about their employer or confidential information.<sup>5</sup> For example, Delta Airlines fired a flight attendant in October 2004 for posting racy pictures of herself in her uniform on her blog.<sup>6</sup> Microsoft fired an employee for taking and publishing pictures of Microsoft receiving Apple Computer's new G5 computers.<sup>7</sup> A graphic designer was fired after posting negative entries in her blog about her workplace and co-workers.<sup>8</sup>

Employee blogging in the workplace raises several legal issues for both employers and employees. Namely, blogs could disclose confidential information, such as trade secrets, could defame the corporate image, or offend or defame co-workers and trigger employer liability.<sup>9</sup> Employee bloggers, on the other hand, believe their blogs are protected by the First Amendment to free speech rights or through privacy laws.<sup>10</sup> The balance between the employee's privacy interests and constitutional rights and the employer's liability concerns shifts when the employee blogger is an at-will employee who can be fired at any time for any reason.<sup>11</sup>

The first part of this Note provides a brief history of an employee's free speech and privacy rights. This Note also outlines the history of blogging, discussing the evolution of blogging. Next, this Note examines blogging guidelines set forth by several different companies. The Note proposes a hypothetical situation showing how

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4. *See id.*

5. Stephanie Armour, *Warning: Your clever little blog could get you fired*, USA TODAY, June 15, 2005 at 1B (explaining how workers have been fired from their jobs for blogging and giving examples of companies with employee blogging guidelines); Becky Bowers & Adrian Phillips, *Guide to the Blogosphere*, ST. PETERSBURG TIMES, Sept. 5, 2005, at 6D (explaining that bloggers fired for their blog postings have been "dooiced" by employers and describing situation of blogger fired from a web designer job for controversial postings about her work and co-workers); Michael Seamark & Peter Allen, *An Intimate Internet Diary and the Sacking of the Secretary Who Calls Herself La Petite Anglaise*, LONDON DAILY MAIL, July 19, 2006 (secretary fired because her employer believed her blog brought the company into disrepute).

6. Schacter, *supra* note 3.

7. Schacter, *supra* note 3.

8. Bowers, *supra* note 5, at 6D.

9. Boog, *supra* note 2, at 23.

10. Boog, *supra* note 2, at 23 (employee bloggers wrongly believe in Internet anonymity and that their comments should be viewed similarly to those made "around the water cooler").

11. Boog, *supra* note 2, at 23 (at-will employees have no rights and may be fired at any time for any reason, even an arbitrary one).

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a company might act when confronting an employee blogger. Finally, the Note proposes a model set of blogging guidelines that balance an employee's free speech and privacy rights with the interests of the blogger's company.

## II. Employee Free Speech Rights

Historically, private sector employees do not have any protected rights to free speech.<sup>12</sup> In fact, an employer can fire an at will employee for any reason at all.<sup>13</sup> On the other hand, public employees have enjoyed First Amendment free speech protections since the late 1960s.<sup>14</sup>

### A. Public Employees

The Supreme Court has excluded several forms of speech from First Amendment protection, including obscenity, libel, and slander.<sup>15</sup> In *Pickering v. Board of Education*, a school board fired a public school teacher for publishing a critical letter in a local newspaper about the school board's allocation of financial resources between educational and athletic programs.<sup>16</sup> To decide *Pickering*, the Court used a test that balanced the interest of a public school teacher, as a citizen, to comment on matters of public concern, with those of the State, as an employer, to promote an efficient operation.<sup>17</sup> Because

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12. Cynthia L. Estlund, *Free Speech and Due Process in the Workplace*, 71 IND. L.J. 101, 116 (private sector employees have no constitutional free speech rights against their employer's decision to fire them).

13. *Payne v. Western & Atlantic R.R.*, 81 Tenn. 507 (1884) (creating the employment at-will doctrine); Boog, *supra* note 2, at 23; Estlund, *supra* note 12, at 116 (private employers may fire at-will employees for any reason but this practice has received criticism, giving private employees some protected speech rights).

14. *See Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). In *Pickering*, a school board fired a public school teacher for writing and sending a letter to a local newspaper that was critical of the way the school board handled past proposals to raise revenue for schools. *Id.* at 564. The Supreme Court held that without proof of false statements knowingly or recklessly made by the teacher, the exercise of the teacher's right to speak on issues of public interest is protected and the teacher was improperly dismissed. *Id.* at 574-75. *See also* Estlund, *supra* note 12, at 116 (public employees' free speech rights are protected by the First Amendment).

15. *Connick v. Myers*, 461 U.S. 138, 147 (1983) (obscenity and libel are unprotected speech because they have little value to society).

16. *Pickering*, 391 U.S. at 566. The teacher's letter attacked the school board's handling of a 1961 bond issue proposal and its later allocation of money between educational and athletic programs. *Id.* It also criticized the school board for attempting to prevent teachers from opposing or criticizing the proposed bond issue. *Id.*

17. *Pickering*, 391 U.S. at 568-69. The test balances the school board's interests

employers are concerned with employee statements on sensitive issues that can disrupt the work atmosphere, the *Pickering* Test may be applied to suppress expression that affects the productivity of the workplace.<sup>18</sup>

*Connick v. Myers* defined the *Pickering* Test more completely.<sup>19</sup> In *Connick*, the Court held that the employee's speech must involve "matters of public concern" to employ the *Pickering* balancing test.<sup>20</sup> The *Connick* Court ruled that the First Amendment did not protect speech involving a discrete office problem.<sup>21</sup> Once a court determines that an employee's speech is about a matter of public concern, the *Pickering* Test is applied and when the agency's operations are affected by an employee's speech they looked to whether the employee's speech was protected.<sup>22</sup>

While public employees have few protected speech rights, federal employees are protected by the Whistleblower Protection Act.<sup>23</sup> This act protects federal employees against reprisals for reporting fraud, waste, and abuse.<sup>24</sup> Employees are protected against certain consequences for reporting the issue to the appropriate government

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in their employees' duty of loyalty to their superiors generally accepted goals of education with the teachers' desire to speak in public. *Id.* at 568. The school board argued that if the teacher must speak out publicly he or she must do so factually and accurately. *Id.* The teachers argued that the test which applies to defamatory statements directed against public officials by those without an occupational relationship with the official ought to apply. *Id.* at 569.

18. *Brown v. Dep't of Transp.*, 735 F.2d 543, 545, 548 (D.C. Cir. 1984) (upholding dismissal of air traffic controller for speaking to the media and encouraging strikers to stay the course during the Professional Air Traffic Controller's Organization strike due to the statement's potential to cause controversy); Terry Ann Halbert, *The First Amendment in the Workplace: An Analysis and Call for Reform*, 17 SETON HALL L. REV. 42, 52 (1987) (asserting that only relatively innocuous statements will be afforded protection under *Pickering*).

19. See *Connick*, 461 U.S. 138. A Louisiana district attorney fired an assistant district attorney for handing out a questionnaire to the office about office policies. *Id.* at 146-147. The Court held that speech was only protected if it related to a matter of public concern. *Id.* at 146.

20. *Id.* at 146-147 (matters of public concern include political, social, or other community concerns but not private intra-office matters). See also *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410 (1979) (holding First Amendment protections apply when public employees arrange private meetings to communicate grievances but not if they air their views publicly).

21. *Connick*, 461 U.S. at 148-49. In *Connick*, the plaintiff circulated a questionnaire about internal office policies such as transfer policies and office morale. *Id.* at 141. The questionnaire also discussed whether employees felt pressure to work on certain political campaigns, an issue the Court determined to be tinged with enough public interest to be of public concern and, therefore, protected. *Id.* at 149.

22. Estlund, *supra* note 12, at 115.

23. Whistleblower Protection Act, 5 U.S.C. § 2302 (2006).

24. *Id.*

agency or to her employer.<sup>25</sup> Many states have enacted whistleblower protections for employees who report fraud, waste, or illegality to the proper authority or law enforcement official.<sup>26</sup>

### B. Private Employees

Private employees have no constitutionally protected free speech rights because they are typically at will employees who may be fired for any reason. While this may be disheartening to many employees, statutes have been enacted by some states to protect against employer retaliation for the exercise of First Amendment rights.<sup>27</sup> State statutes typically only protect political speech or comments about public concerns or interests.<sup>28</sup> Private employees may also seek protection

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25. 5 U.S.C. § 2302(b)(8). The relevant portion of The Whistleblower Protection Act states that employees are protected from employers who:

[T]ake or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of-- (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences-- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences-- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

26. Estlund, *supra* note 12, at 116 (explaining that an amalgam of state, federal, and common law doctrines protect certain types of employee speech from retaliation by employers). *See also* ARIZ. REV. STAT. § 38-531 (2006); IOWA CODE § 70A.28 (2006); N.Y. LABOR LAW § 740 (McKinney 2006); TEX. GOV'T CODE ANN. § 554.001 (Vernon 2006).

27. *See* KY. CONST. § 8; OHIO CONST. ART. 1, § 11; MASS. CONST. PT. 1, ART. 16; CONN. GEN. STAT. ANN. §§ 31-51q (West through 2006 legislation). *See also* Lewis v. City of Boston, 321 F.3d 207 (1st Cir. 2003) (stating that proving retaliation for exercising First Amendment rights, requires that (1) his expression involve matters of public concern, (2) his interest in commenting on matters outweighs the city's interests in efficient performance of its public services, and (3) his protected speech be substantial or motivating factor in the employer's adverse employment actions); Zilich v. Longo, 34 F.3d 359 (6th Cir. 1994) (stating retaliation by public officials for exercising First Amendment rights is a violation of First Amendment); Estlund, *supra* note 12, at 116; Andrea Obston, *Free Speech Has Limits in the Workplace*, ALA News, Oct./Nov. 2000, at 20.

28. Obston, *supra* note 27, at 20.

under whistleblower statutes by asserting a public policy exception to an employer's ability to fire employees.<sup>29</sup>

Federal legislation, the National Labor Relations Act (NLRA), contains provisions that protect private employees' speech.<sup>30</sup> Section seven of the NLRA protects those employees who engage in "concerted activities . . . for mutual aid and protection."<sup>31</sup> On its face, section seven appears to only apply to those employees engaged in union activity, but in practice it applies to all private employees who come together and act in concert with each other.<sup>32</sup> For speech to be protected under the NLRA, it must be connected to a group action with other workers or involve the preparation of such action.<sup>33</sup>

Private employees may also protect their speech rights by seeking damages through the tort of wrongful discharge.<sup>34</sup> Under this principle, a fired employee argues she was discharged under circumstances that are contrary to established public policy.<sup>35</sup> The potential problem with this cause of action is that the courts have interpreted it inconsistently.<sup>36</sup> In fact, for the employee to be

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29. *See, e.g.* *Adler v. Am. Standard Corp.*, 538 F. Supp. 572 (D. Md. 1982) (employee who threatened to reveal antitrust violations had cause of action when he was discharged for doing so); *Palmeeter v. Int'l Harvester Co.*, 421 N.E.2d 876 (Ill. 1978) (fired employee had cause of action when employee provided information for police investigating co-worker's criminal actions); *Palmer v. Brown*, 752 P.2d 685 (Kan. 1988) (employee had cause of action when discharged for refusing to promise not to report superior's fraudulent Medicaid billing practices).

30. National Labor Relations Act, 29 U.S.C. §§ 151-69. The Act states in pertinent part: "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection." 29 U.S.C. § 157. In fact, the term "concerted activity" includes speech intended to improve the circumstances of a group of employees, not just an entire employee population. Halbert, *supra* note 18, at 53 n. 74.

31. 29 U.S.C. § 157.

32. *See N.L.R.B. v. Wash. Aluminum Co.*, 370 U.S. 9 (1962) (discharge of seven non-union workers who walked off job to protest extremely cold workplace temperatures violated § 7 of the NLRA).

33. *See N.L.R.B. v. Mount Desert Island Hosp.*, 695 F.2d 634 (1st Cir. 1982) (concerted action occurred when several employees met to discuss concerns about work and management was aware of these concerns); *Mushroom Transp. Co. v. N.L.R.B.*, 330 F.2d 683 (3d Cir. 1964) (discharge of an employee who informed other employees of their rights under a bargaining agreement was allowed because it was not concerted action).

34. *See, e.g.*, *Petermann v. Local 396, Int'l Bhd. of Teamsters*, 344 P.2d 25 (Cal. Dist. Ct. App. 1959); *Harless v. First Nat'l Bank*, 246 S.E.2d 270 (W. Va. 1978); Halbert, *supra* note 18, at 55 n. 95 (citing *Kelsay v. Motorola, Inc.*, 384 N.E.2d 353 (Ill. 1978)).

35. Halbert, *supra* note 18, at 55.

36. Note, *Protecting Employees at-will Against Wrongful Discharge: The*

successful in his or her claim it is often necessary to point to a statute that specifically outlines the public policy that was abused by the employer.<sup>37</sup> Often, an employee may not be protected by the tort of wrongful discharge unless he or she is already protected by a statute.

### III. Employee Privacy Rights

The conflict between employees and employers regarding individual privacy rights can be better understood by looking at an employee's privacy rights and the employer's right to monitor employees' business activities for legitimate business purposes.<sup>38</sup> Privacy rights are not explicitly protected by the Constitution.<sup>39</sup> Private employees have few privacy rights in the workplace because their employer does not satisfy state action requirements.<sup>40</sup> The Fourth Amendment only protects government employees when the employee had a subjective and objective expectation of privacy.<sup>41</sup> Additionally, state law is inconsistent in its protection of employee privacy. Some states have enacted statutory protections and others have not.<sup>42</sup> The problem posed with protecting ideas and opinions

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*Public Policy Exception*, 96 HARV. L. REV. 1931, 1949 (1983). Compare *O'Sullivan v. Mallon*, 160 N.J. Super. 416, 390 A.2d 149 (Law Div. 1978) (x-ray technician who was fired for refusing to perform certain medical procedures for which she was not licensed had a public policy cause of action), with *Lampe v. Presbyterian Medical Center*, 41 Colo. App. 465, 590 P.2d 513 (1978) (head nurse who was fired for refusing to reduce staff in her intensive-care unit to a level that would be dangerous to patients had no public policy cause of action).

37. Halbert, *supra* note 18, at 56.

38. *Webster v. Motorola, Inc.*, 637 N.E.2d 203 (Mass. 1994); *Folmsbee v. Tech Tool Grinding & Supply, Inc.*, 630 N.E.2d 586, 589 (Mass. 1994); *Bratt v. Int'l Bus. Mach. Corp.*, 467 N.E.2d 126 (Mass. 1984); C. Forbes Sargent, III, *Electronic Media and the Workplace: Confidentiality, Privacy, and Other Issues*, BOSTON BAR J., May/June 1997, at 6 (citing *Cort v. Bristol-Myers Co.*, 431 N.E.2d 908 (Mass. 1982)).

39. Michael L. Rustad & Sandra R. Paulsson, Article, *Monitoring Employee E-mail and Internet Usage: Avoiding the Omniscient Electronic Sweatshop: Insights From Europe*, 7 U. PA. J. LAB. & EMP. L. 829, 839 n. 38 (2005) (citing MADELEINE SCHACHTER, INTERNATIONAL AND DECISIONAL PRIVACY 8 (2003) ("Constitutional privacy law has evolved largely from textual and inferential construction of the Bill of Rights; in particular, the First, Fourth, Fifth, and Ninth Amendments, as well as the Fourteenth Amendment.")).

40. John Araneo, Note, *Pandora's (E-mail) Box: E-mail Monitoring in the Workplace*, 14 HOFSTRA L. J. 339 (1996) (exploring the lack of constitutional protection for individual privacy); Rustad & Paulsson, *supra* note 39, at 840.

41. U.S. CONST. AMEND. IV. See *Katz v. United States*, 389 U.S. 347, 361 (1967) (explaining that the Fourth Amendment protects privacy only when there is a reasonable subjective and objective expectation of privacy); Rustad & Paulsson, *supra* note 39, at 841.

42. Rustad & Paulsson, *supra* note 39, at 842-43 (exploring variations in

expressed via an employee blog is that most blogs are posted on the Internet, rather than contained in an office environment protected by federal and state law, and anyone with access to the Internet can access them.

#### IV. History of Blogging

As part of the Internet's evolution, Internet users increasingly have been contributing to more of the content found on the Internet. Nowhere has this user-generated content been more prevalent than with blogs. In 1997, an Internet user named Jorn Barger coined the term "web log" or, in its shortened version, "blog."<sup>43</sup> The creator and editor of the content of the weblog is the "blogger."<sup>44</sup> Blogs have been found on the Internet since the late 1990s.<sup>45</sup> They were first used by Internet user groups, such as computer programmers, to document their thoughts and progress as they worked individually on the same project.<sup>46</sup> Early blogs were technology-oriented or simple personal diaries.<sup>47</sup> As early as 1993, the National Center for Supercomputing Applications created and updated one of the earliest blogs, which was a little more than a page consisting entirely of links to other web pages.<sup>48</sup> The blog was called the "What's New Page" and documented what was new on the Internet by linking to new sites.<sup>49</sup> Early blogs followed this form of link-driven sites, which pointed users to sites of interests to the blogger and contained commentary about the links published by the blogger.<sup>50</sup>

Blogging did not hit its stride until the first blogging software was released in the summer of 1999.<sup>51</sup> A company named Pitas created

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statutory protections in Alaska, Delaware, New York, and California).

43. Gregory et al., *supra* note 1; Kahney, *supra* note 1 (defining "blog" as a "regularly updated list of links and commentary on interesting material on the web" and "weblogging" as a form of Internet publishing); Gail Philbin, *Welcome to their Worlds: Female bloggers build strong presence on the Internet*, CHI. TRIB., July 30, 2003; Craig Taylor, *Hello World*, *The Guardian* (London), Feb 22, 2003, available at <http://www.guardian.co.uk> (discussing how the term blog was created); Rebecca Blood, *Weblogs: A History and Perspective*, [http://www.rebeccablood.net/essays/weblog\\_history.html#content](http://www.rebeccablood.net/essays/weblog_history.html#content) (last visited Apr. 27, 2007) (explaining the creation of the blog).

44. Blood, *supra* note 43 (explaining creation of the blog).

45. Gregory, *supra* note 43.

46. Gregory, *supra* note 43.

47. Peter Scher, *Blogs Become an Internet Phenomenon*, 2 E-COMMERCE L. & STRATEGY 5, June 2002.

48. Taylor, *supra* note 43, at 38.

49. Taylor, *supra* note 43, at 38.

50. Blood, *supra* note 43.

51. Taylor, *supra* note 43, at 38; Blood, *supra* note 43 (explaining creation of



the software, and a month later, a company named Pyra Labs released “Blogger” (a program for creating blogs through a web browser).<sup>52</sup> With the availability of web-based programs such as Pitas and Blogger, blogging underwent a period of explosive growth that continues to this day.<sup>53</sup> After the release of Blogger, blogging shifted from the link-based form it started as, to a short-form of casual journalism.<sup>54</sup> The shift to free-form blogging coupled with the fact that it became simple enough for any Internet user to blog propelled blogging’s popularity into the 21<sup>st</sup> century.<sup>55</sup>

While early blogs focused on topics pertinent to early Internet users and developers, blogs evolved quickly and now discuss anything a blogger wishes, such as music, politics, sports, or the blogger’s other interests.<sup>56</sup> Many companies who maintain corporate blogs for customers to read have recognized that blogging is a potential business tool.<sup>57</sup>

Blogs have never been more popular. In fact, blogs have become so popular that Google created a search engine designed specifically to search blogs.<sup>58</sup> Blogs continue to evolve with technology. For example, blogs are now created to view and post pictures, images, and even video, and can be updated by email and mobile phones.<sup>59</sup> Apple’s iPod® has spawned a whole new form blogging by allowing would-be bloggers to create an audio or video blog and allowing users to download the audio or video to a personal media player such

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the blog).

52. Taylor, *supra* note 43, at 38.

53. Kahney, *supra* note 43 (stating that as of Mar. 9, 2006, <http://www.technorati.com> listed 30.1 million blogs on Internet).

54. Blood, *supra* note 43 (explaining that with the release of Blogger, blogging began to take the form of short journal entries about the author’s life, ideas, or opinions rather than lists of links to interesting places on the Internet).

55. Blood, *supra* note 43 (explaining how blogging became more popular once bloggers could put any content on their blogs rather than the traditional Internet link with short commentary).

56. Chris Vognar, *Rhythm and Blogs: Music Lovers Set Up Sites with Facts, History and – Yes – MP3s*, DALLAS MORNING NEWS, Jan. 2, 2005, at 1G; Blood, *supra* note 43 (explaining that blogging helps the blogger ascertain her own interests and that the medium allows the blogger to create a blog about those interests and share it with anyone on the Internet).

57. Gregory, *supra* note 43, at 129; Scher, *supra* note 47, at 5 (discussing Macromedia’s corporate blog).

58. Google Blog Search, <http://blogsearch.google.com/> (last visited Apr. 28, 2007).

59. Ken Young, *Join the Blogosphere*, AUSTRALIAN PC WORLD, Apr. 1, 2004, at 58.

as the iPod.<sup>60</sup> With the advent of the video iPod, video blogging is certain to be just as popular as audio and text versions.<sup>61</sup>

### V. Legal Issues Related to Blogging and Sample Corporate Blogging Guidelines

As blogs have risen in popularity not everyone has appreciated their content, particularly employers of blogging employees. There are myriad legal issues an employee blogger could face from his or her employer. For example, an employee blogger may be sued for defamation if he writes negative or untrue things about a co-worker or supervisor or may be subject to copyright or trademark infringement lawsuits for quoting from articles, using someone else's creative works, or using their employer's brand name or logo.<sup>62</sup> Employees could subject themselves to lawsuits or termination for discussing their company's trade secrets or upcoming product line before it is announced, thereby depriving their employers of a competitive advantage.<sup>63</sup>

Employees are not the only parties faced with legal issues as a result of employee blogs. From an employer's viewpoint, employee blogs may create problems between the employer and the Securities

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60. *Id.*

61. Tom Heinen, *Video Blogs Gaining in Popularity Among the Faithful*, MILWAUKEE J. SENTINEL, Aug. 24, 2005, at A1, available at <http://www.southend.wayne.edu/modules/news/article.php?storyid=1606>.

62. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (actual malice not necessary for defamation of private person if negligence is present); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (stating that actual malice needed to prove defamation against a public figure); RESTATEMENT (SECOND) OF TORTS § 559 (1977) (defining "defamation" as a statement that "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him"); Mark Brunswick & Dane Smith, *Facing Suit, Anonymous Blogger Lifts His Mask*, STAR TRIBUNE (Minneapolis), Jan. 5, 2006, at 1B (describing lawsuit against blogger for defamation), available at <http://www.startribune.com/587/story/163827.html>. *See also* *Playboy Enterprises, Inc. v. Netscape Comm. Corp.*, 354 F.3d 1020, 1026 (9th Cir. 2004) (listing the eight elements to prove interest confusion in trademark cases); Electronic Frontier Foundation, *Blogger's FAQ – Overview of Legal Liability Issues*, <http://www.eff.org/bloggers/lg/faq-overview.php> (last visited Apr. 27, 2007). *See generally* U.S. CONST. art. I, § 8, cl. 8 (providing Congress with the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"); 17 U.S.C. § 106 (defining the exclusive rights of copyright holders).

63. *See supra* note 62 and accompanying text; Chilling Effects Clearinghouse, *Frequently Asked Questions (and Answers) about Trade Secret*, <http://www.chillingeffects.org/tradeseecret/faq.cgi> (explaining what trade secrets are, how they may be protected, and what the effects of sharing a trade secret are) (last visited Apr. 17, 2007).

Exchange Commission (SEC) if a blog violates the mandated “quiet period” before an initial public offering (IPO).<sup>64</sup> Employee blogs may also cause the United States Patent & Trademark Office to reject a patent application from a company if the blog described a product in development more than a year before the company applied for a patent for the product.<sup>65</sup>

Blogs have become a major part of today’s Internet-driven society. As a result of this growing popularity, companies are more likely to find employee blogs and discipline employees for blogging about confidential corporate information or who speak ill of the company or another employee.<sup>66</sup> In most states, employees have no protection from disciplinary action, including termination, if a supervisor reads an employee blog and is offended by its contents.<sup>67</sup> Yet, some states provide statutory protection for employee bloggers.<sup>68</sup> These protections take the form of statutes limiting the reasons for which employees may be fired while the employee is “off-duty” and doing something not in relation to the employment.<sup>69</sup>

While there are many reasons for employees and employers to be wary of employee blogs there are also many reasons for each to embrace blogs for their potential to benefit businesses. Blogs allow current and potential clients to connect to a company on a deep

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64. See Securities Act of 1933, 15 U.S.C. § 77e (outlawing the use of any medium to issue an offer to buy or sell securities unless a registration statement is in effect for that security); U.S. Securities and Exchange Commission, Quiet Period, <http://www.sec.gov/answers/quiet.htm> (last visited April 29, 2007) (explaining what the “quiet period” is and what type of information can be released to the public during the period); Posting of Jon Gavenman to The Mobility Public Relations Blog, <http://www.mobilitypr.com/blog/2007/04/09/sme-sec-publicity-regulations/> (Apr. 9, 2007, 9:35 EST) (describing the “quiet period,” hyping the market, and actions the Securities Act of 1933 prohibits before an IPO). See generally Raymond Hennessey & Phyllis Plitch, *IPO Outlook: SEC’s New Rules on ‘Quiet Period’ Create Debate --- In Theory, Plan Broadens IPO Process; In Practice, It Could Be More of Same*, WALL ST. J., Dec. 27, 2004, at C3.

65. See 35 U.S.C. § 102(b).

66. Alorie Gilbert, *FAQ: Blogging on the Job*, CNET NEWS, Mar. 8, 2005, [http://news.com.com/2102-1030\\_3-5597010.html](http://news.com.com/2102-1030_3-5597010.html).

67. Krysten Crawford, *Have a Blog, Lose your Job?*, CNN/MONEY, Feb. 15, 2005, <http://money.cnn.com/2005/02/14/news/economy/blogging/>; Gilbert, *supra* note 66.

68. *Id.* See, e.g., CAL. LAB. CODE § 1101 (West 2007) (protecting employees from workplace retaliation for political activities); COLO. REV. STAT. §24-34-402.5 (2006) (it is a discriminatory or unfair employment practice for an employer to terminate an employee for engaging in any lawful activity outside of work); N.Y. LAB. LAW § 201 (McKinney 2006) (protecting employees from discrimination because of legal recreational activities the employee engages in); Employee Privacy Protection Act, S.B. 381, 2005 Leg. (Mich. 2005).

69. See *supra* note 68.

personal level.<sup>70</sup> They allow a company to promote itself in a unique and personal way and market the company in a manner that allows a customer or client to get a feel for the corporation's personality.<sup>71</sup> Blogs benefit companies by making corporate operations more transparent, allowing for conversation among the corporation and various constituencies and customers, and by helping the corporation build community and develop relationships.<sup>72</sup>

For a company to take full advantage of the benefits employee blogs offer and to avoid their pitfalls, it is necessary for companies to create employee blogging guidelines.<sup>73</sup> Not only will blogging guidelines protect the corporation's interest but it will also protect the employee blogger who will know what he can blog about and will fully understand the ramifications of violating his or her company's blogging policy.<sup>74</sup> However, only a small handful of corporations actually have corporate blogging guidelines. It comes as no surprise that many of the corporations who have already enacted employee blogging guidelines are companies in the technological sector, notably Yahoo!,<sup>75</sup> Feedster,<sup>76</sup> IBM,<sup>77</sup> and Sun.<sup>78</sup> Each of these guidelines include reasons why the policy was instituted and the goals it intend to achieve.<sup>79</sup> The reasons range from giving blog

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70. David J. Bilinsky, *Legal Business on Marketing: The "Earth-Shattering" Benefits of Blogs*, LAWYERS WEEKLY, Mar. 25, 2005; Ken Schacter, *Blogs: New Possibilities, Both Good & Bad for Businesses*, KANSAS CITY DAILY RECORD, Dec. 31, 2004.

71. See *supra* note 70.

72. Wayne Hurlbert, *Corporate Blogging Guidelines*, WEBPRONNEWS, Mar. 24, 2005, <http://www.webpronews.com/news/ebusinessnews/wpn-45-20050324CorporateBloggingGuidelines.html>.

73. David C. Henderson & Matthew Feiner, Commentary, *The Internet Lawyer – Policies Guiding Employee 'Bloggers' a Must*, THE DAILY RECORD (Baltimore), Aug. 1, 2005 (corporate blogging guidelines should include sections discussing disclaimers, protection of proprietary or confidential information, defamation, copyright infringement, and other legal ramifications of blogging).

74. *Id.*

75. Yahoo!, Yahoo! Personal Blog Guidelines: 1.0, available at <http://Jeremy.zawodny.com/yahoo/yahoo-blog-guidelines.pdf> [hereinafter Yahoo! Guidelines].

76. Feedster, Corporate Blogging Policy, [http://feedster.blogs.com/corporate/2005/03/corporate\\_blogg.html](http://feedster.blogs.com/corporate/2005/03/corporate_blogg.html) (last visited Apr. 28, 2007) [hereinafter Feedster Guidelines].

77. IBM, Blogging Guidelines, <http://www.ibm.com/blogs/zz/en/guidelines.html> (last visited Mar. 5, 2007) [hereinafter IBM Guidelines].

78. Sun Microsystems, Sun News – Sun Blogs, <http://www.sun.com/aboutsun/media/blogs/policy.html> (last visited Mar. 5, 2007) [hereinafter Sun Guidelines].

79. See Feedster Guidelines, *supra* note 76 (stating that blogs are a medium of self-expression and that employees should inform readers the blog is a personal, not corporate-sanctioned blog); IBM Guidelines, *supra* note 77 (stating that the employee blogging guidelines were created to help IBM, its clients, and

readers a clear indication that the blog contains the blogger's own opinions, not those of the company, to protecting the company's business interest and giving directions how to effectively blog about an employee's work.<sup>80</sup>

Effective employee guidelines must cover several different areas. The first of these is a disclaimer. The disclaimer is commonly used to alert a blog reader that the opinions contained in the blog belong solely to the blogger, not the corporation for which he or she works.<sup>81</sup> The disclaimer typically takes the form of text in a prominent location on the blog site that states something equivalent to "The views expressed on this website/weblog are mine alone and do not necessarily reflect the views of my employer."<sup>82</sup> This protects the employer because the employer will not have to worry about blog readers thinking that the blog content is sanctioned or approved by the corporation. It protects employees from getting in hot water with their superiors about the content of a blog being viewed as speaking on behalf of the corporation.<sup>83</sup>

Another prominent feature of employer blogging guidelines relates to confidential or proprietary information.<sup>84</sup> Those companies whose blogging guidelines include suggestions not to divulge proprietary

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constituents learn about IBM's business and social ecosystem and to help IBM and IBM employees contribute and share what they are doing and learning with the world); Sun Guidelines, *supra* note 78 (employee blogs are encouraged as a way for Sun employees to tell the world about their work); Yahoo! Guidelines, *supra* note 75 (employee blogging is an important aspect of shared media and a way of fostering a thriving online community).

80. See *supra* note 79 and accompanying text.

81. See Feedster Guidelines, *supra* note 76 (informing employees to prominently display a disclaimer informing readers that the blog contains the employee's ideas and beliefs and not Feedster's); IBM Guidelines, *supra* note 77 (explaining to employee bloggers that it is important to make it clear that the blog is a representation of the employee's views and not necessarily those of IBM).

82. See *supra* note 81 and accompanying text.

83. Henderson & Feiner, *supra* note 73.

84. Feedster Guidelines, *supra* note 76 (advising employees to be careful about divulging confidential company information and to consult Feedster's confidentiality policy for guidance about what may and may not be disclosed); Yahoo! Guidelines, *supra* note 75 (all information in a blog about Yahoo! is subject to the Proprietary Information Agreement each employee signs and advising employees of consequences Yahoo! may suffer if such information is divulged); IBM Guidelines, *supra* note 77 (informing IBM employees not to disclose or use IBM confidential information and to ask permission before posting someone's photograph or conversation that was meant to be private and advising employees to consult IBM's Business Conduct Guidelines); Sun Guidelines, *supra* note 78 (advising employees that it is okay to have a dialog and talk about work but that it is not okay to divulge secrets and if there is a question about whether a piece of information may be posted to ask a supervisor).

information often point to the company's confidentiality policy.<sup>85</sup> Similarly, the company advises a potential employee blogger to ask a supervisor or someone in public relations if the information may be divulged or if it has been released publicly yet.<sup>86</sup> The blogging policies discuss the negative impact that releasing such confidential or proprietary information could have for the company as well as possible regulatory violations for divulging private information.<sup>87</sup>

Oftentimes employer blogging guidelines will caution bloggers about using the corporate logo or trademark.<sup>88</sup> It is also common for them to advise bloggers about copyright laws and the ramifications of using someone else's work.<sup>89</sup> The company may also advise potential employee bloggers about the legal consequences of blogging (to the blogger and the employer) that are apropos to the industry in which the employer is involved.<sup>90</sup>

Another universal provision in blogging guidelines is one to prevent employees from speaking ill of or libeling fellow employers or supervisors.<sup>91</sup> Typically, these guidelines advise employee bloggers to be respectful to fellow employees because the blog is out in the public eye and readily accessible.<sup>92</sup> They advise employees to think before they blog, to put things in context, and to make coherent arguments for their ideas, concerns, and criticisms rather than simply saying something like, "This product sucks."<sup>93</sup> While blogs may be posted without the knowledge of employers or fellow employees, it is easy for an employer or fellow employee to stumble upon them and see what a blogger has said about the corporation and other employees.<sup>94</sup>

Corporate blogging guidelines are not burdensome rules designed to prevent employees from blogging. Rather, they give the potential

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85. *See supra* note 84 and accompanying text.

86. *See* IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78.

87. *See* IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78.

88. *See supra* note 63 and accompanying text; Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Yahoo! Guidelines, *supra* note 75.

89. *See* IBM Guidelines, *supra* note 77 (advising employee bloggers not to quote articles at length but to link to information).

90. *See* Yahoo! Guidelines, *supra* note 75.

91. *See generally* Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

92. *See supra* note 91 and accompanying text.

93. *See generally* Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78 (suggesting locations for blogs to be created and ways to maintain and increase blog readership); Yahoo! Guidelines, *supra* note 75.

94. *See generally* Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

employee blogger advice about the possible consequences of blogging about certain subjects or people. It is also common for the employee blogging guidelines to contain tips on how employees can become successful bloggers and attract visitors to their blog.<sup>95</sup>

While most of the corporate blogging guidelines have been developed by corporations in the technology sector many companies in other industries are creating them as well.<sup>96</sup> Guidelines typically include suggestions for creating a successful blog and words of caution to the potential blogger.<sup>97</sup> They contain information about protecting company secrets and use of the corporate logo or trademark.<sup>98</sup> Blogging guidelines also commonly advise bloggers about both the legal and internal consequences of the blogs.<sup>99</sup> They advise employee bloggers to use their heads when posting and to be respectful of fellow employees and the corporation itself.<sup>100</sup> Those corporations who have already developed blogging guidelines realize the immense positive potential the guidelines have and advise employee bloggers how to create a blog that is beneficial and fun for the employee to make but also helps the employer advance its goals of creating better relationships with customers and the public.<sup>101</sup>

### Corporate Blogging Hypothetical

Now that the effects of employee blogs on the blogger, the company, and other employees are known, I will analyze corporate blogging in a realistic, hypothetical situation. I propose a hypothetical situation and then examine it from the standpoint of a corporation and an employee of that corporation when the

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95. IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78 (providing employees with tips on how to start a blog, websites which provide blogging software and hosting, and tips for blogging so visitors return to the blog); Yahoo! Guidelines, *supra* note 75.

96. See NewPR Wiki, NewPR Wiki - Resources.BloggingPolicy, <http://www.thenewpr.com/wiki/pmwiki.php?pagename=Resources.BloggingPolicy> (last visited Apr. 28, 2007) (providing a listing of companies that have developed blogging guidelines and links to those guidelines).

97. See generally Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

98. See generally Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

99. See generally Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

100. See generally Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

101. See generally Feedster Guidelines, *supra* note 76; IBM Guidelines, *supra* note 77; Sun Guidelines, *supra* note 78; Yahoo! Guidelines, *supra* note 75.

corporation has employee blogging guidelines and when the guidelines are absent.

Say that Mr. X is an at-will employee at the Power Plant, a Delaware corporation with its principal place of business in Springfield. The corporation deals in parts and machinery for running power plants across the globe. The Power Plant is currently at the forefront in development of environment-friendly power production machinery and demand for its parts and machines is at an all time high. Mr. X works as a researcher in the high-pressure research and development department at the Power Plant. He is currently working on a top-secret project, Project Wow, a zero-emissions non-nuclear power production machine that will revolutionize the way electricity is created and will end reliance on fossil fuels. Mr. X has had a blog for the past year and a half in which he discusses his family, his hobbies, and his work.

In recent weeks, Mr. X has suffered immense pressure from his supervisors at work to meet deadlines for Project Wow. He has worked long days and has had arguments with his supervisors regarding Project Wow deadlines. Mr. X wants to share his dream of Project Wow with the world but for obvious reasons, The Power Plant would prefer if he did not so it can realize the profit from its investment in Project Wow. During this time, Mr. X makes several postings on his blog regarding Project Wow. First he mentions his supervisor, Mr. Weed, in one of his postings. Mr. X makes several derogatory comments about Mr. Weed calling him an “incompetent bastard who cares more about profits than quality and safety, just like The Power Plant.” In subsequent postings, Mr. X says that “Mr. Weed has demanded that I (Mr. X) work long hours away from my family because Mr. Weed is a lonely loser who has no family of his own so he wants to make everyone else around him miserable.” In his blog, Mr. X also espouses his communist political beliefs while discussing his relationship with The Power Plant.

Mr. X also begins to discuss the finer details of Project Wow on the pages of his blog. Mr. X informs his readers what Project Wow will do for power production, a previously unreleased piece of information. He also provides his readers with some intricate details about the specific pieces of machinery used in Project Wow and how he developed those pieces. Three days ago, a journalist from The Quahog Informant discovered Mr. X’s blog and wrote an article about it that was displayed on the front page of the popular newspaper. Consequently, The Power Plant’s board of directors and corporate managers see Mr. X’s blog and the publicity (both positive



and negative) it has generated. Now they must decide what action to take about the recent developments regarding Mr. X's blog.

If The Power Plant did not have corporate blogging guidelines they will face some obvious difficulties in this situation.<sup>102</sup> One of the most obvious issues confronting The Power Plant is that some very valuable corporate information about Project Wow was divulged to the public and The Power Plant's competitors.<sup>103</sup> Mr. X's blog and the subsequent popularity surrounding it have brought attention to Project Wow and The Power Plant's competitors now have free access to that information. The blog posting may prevent The Power Plant from recouping the expenses it has spent on research and development if its rivals are able to create the same technology Mr. X has designed.<sup>104</sup>

Another problem The Power Plant faces is having its name tarnished and public opinion turn against it because of Mr. X's communist ranting.<sup>105</sup> Mr. X's blog strictly stated that he was employed by The Power Plant and he freely shared his controversial communist opinions with those who read his blog. To those who read the blog, Mr. X could be mistaken as a spokesperson for The Power Plant and his communist statements may be viewed as the official corporate policy of The Power Plant.<sup>106</sup> As a result, The Power Plant could face severe public outrage about the postings on Mr. X's blog and any public statement it makes regarding the blog may be too little, too late.<sup>107</sup>

As a result of his comments about his supervisor, Mr. Weed, Mr. X has also opened himself up to a possible defamation suit.<sup>108</sup> When he called Mr. Weed an incompetent, miserable, lonely loser, Mr. X may have defamed Mr. Weed. Mr. Weed may also have a claim against The Power Plant because Mr. X's blog could be viewed as sanctioned by and speaking on behalf of The Power Plant. Furthermore, The Power Plant could bring a defamation suit against Mr. Weed for

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102. The difficulties faced by the Power Plant because of its lack of blogging guidelines include readers of the blog believing Mr. X speaks for the corporation, the release of confidential or proprietary information, copyright infringement issues, and defamation. See sources cited *supra* notes 77, 79, 81, 86.

103. See Henderson & Feiner, *supra* note 73 (and accompanying text).

104. See Henderson & Feiner, *supra* note 73 (and accompanying text). The Power Plant's foreign patent rights have likely been lost by the posting. At the very minimum, the Power Plant will have one year from the date of the posting to file a patent application in the United States. See 35 U.S.C. § 102(b).

105. See *supra* note 80 (and accompanying text).

106. See *supra* notes 80-82.

107. See *supra* note 81.

108. See *supra* notes 62 and 91.

saying that the company cares more about profits than quality and safety.

If Mr. X had been working on his blog while at work, he may have been violating The Power Plant's guidelines for using corporate computers while at work. Furthermore, The Power Plant would have been paying Mr. X for non-work-related activity and lost money based on lost productivity.

If The Power Plant had corporate blogging guidelines, much of the troubles it is facing could have been avoided, minimized, or even positively capitalized upon. For example, if The Power Plant had a provision in its employee handbook regarding employee blogging that required employees who choose to blog to place a disclaimer in an obvious location on the blog website stating that the opinions and statements contained in the blog are those of the employee, not The Power Plant, The Power Plant would be spared at least some negative publicity from Mr. X's pro-communist comments.<sup>109</sup> The blogging guidelines put Mr. X on notice that the violation of the guidelines would result in his termination.

The defamation issues could have been dealt with in an equally simple manner in the employee handbook. If The Power Plant had also inserted a statement warning employees from discussing other employees or supervisors in any sort of negative light because it is likely that either the employee or a supervisor will see the statement because it is in such a public place, Mr. X would not have posted the comment or, at the very least, would know the consequences if it was seen.<sup>110</sup> By putting Mr. X on notice of what could happen if his blog is read, The Power Plant would have provided a powerful deterrent to Mr. X, preventing him from posting his private thoughts or feelings about his co-workers and supervisors on such a public space.<sup>111</sup>

If the Power Plant had created corporate blogging guidelines for its employees, the trade secrets issue also could have been avoided.<sup>112</sup> The Power Plant merely had to remind its employees that its policy governing corporate secrets applied to corporate blogs, just as it does to sharing trade secrets with anyone outside the company in any other form.<sup>113</sup> Again, by placing its employees on notice about what ramifications their blogging may carry, The Power Plant could prevent its trade secrets from being divulged.<sup>114</sup> If The Power Plant

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109. *See supra* notes 79 and 81.

110. *See supra* notes 90-93.

111. *See supra* note 93.

112. *See supra* note 81.

113. *See supra* note 84.

114. *See supra* note 84.

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had corporate blogging guidelines governing this sort of circumstance, it is unlikely that Mr. X would have found it necessary to violate the company's blogging guidelines.<sup>115</sup> Without the corporate blogging guidelines, The Power Plant's only recourse is likely filing suit against Mr. Weed.

An important thing to realize about The Power Plant's actions is that it is possible much good could come from a Power Plant-sanctioned employee blog written by Mr. X.<sup>116</sup> By actively promoting employee blogs, The Power Plant would engender good will from its employees that could go a long way to the employees blogging favorably about the company.<sup>117</sup> If an employee violates the blogging guidelines, The Power Plant still reserves the right to fire the employee. However, the goal of corporate blogging guidelines is to guide the employee while he or she blogs so that firing an employee for blogging is the final and least desirable solution.

### **VII: Model Corporate Blogging Guidelines**

When a company is creating its own corporate blogging guidelines there are several provisions that should be included.<sup>118</sup> While different guidelines may be appropriate for certain industries they may not be important for others. However, there are a number of standard guidelines that any company creating corporate guidelines should keep in mind.<sup>119</sup> This section will attempt to provide a model for corporate blogging guidelines.

#### **Section One: Definitions**

Web log, Blog, Blogger, Blogging:

Web log or Blog: For the purposes of these guidelines, the terms "Web log" or "Blog" shall mean any website, journal, diary, or other online chronology of thoughts, ideas, or personal commentary kept by an employee in a personal or professional capacity.<sup>120</sup>

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115. *See supra* notes 83-84.

116. *See supra* notes 70 and 72.

117. *See supra* notes 70 and 72.

118. *See supra* note 73.

119. *See supra* notes 73, 75, 79, 87, 96, and 98.

120. *See supra* note 43.

**Blogger:** The term Blogger shall apply to any employee who creates, edits, or otherwise contributes to the content of any blog.<sup>121</sup>

**Blogging:** The term Blogging means “to blog” or to create, edit, or other contribute to the content of any blog.<sup>122</sup>

**Statement:** A Statement may encompass anything from writing, links, pictures, drawings, etc. that appears on a blog as defined above.<sup>123</sup>

### **Section Two: Guidelines are to Promote Employee Blogging.**

The employee blogging guidelines are designed to promote employee blogging.<sup>124</sup> No aspect of these guidelines is to be construed as stifling employee speech or creativity. The goal of [insert corporate name]’s employee blogging guidelines is to aid employees in blogging responsibly and in a manner that will bring the maximum benefit to the employee and to [insert corporate name].<sup>125</sup> [Insert corporate name] would like to remind employees of the public nature of the Internet and that employee blogs can be accessed by anyone in the world.<sup>126</sup> Blogging can expose the employee blogger and [insert corporate name] to serious legal liability if the blog is used inappropriately or if its content or statements are made in an inappropriate manner.<sup>127</sup> [Insert corporate name] wants its employees to know that it views employee blogs as way to benefit not only the employee, but also [insert corporate name] and requests that the employee blog responsibly when identifying himself or herself as an employee of [insert corporate name].<sup>128</sup>

### **Section Three: Disclaimer**

Any employee who chooses to blog whether anonymously or by using his or her real name and who identifies himself or herself as an employee of [insert corporate name] should place a disclaimer in a

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121. *See supra* note 43.

122. *See supra* note 43.

123. *See supra* notes 3 (and accompanying text for examples of instances when pictures and words have caused trouble for employee bloggers).

124. *See supra* notes 70-73.

125. *See supra* note 97.

126. *See supra* note 91.

127. *See supra* notes 62-65.

128. *See supra* notes 99-100.

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highly-visible area of the blog's site stating that the opinions, comments, and views contained in the blog are those of the individual blogger alone and not those of [insert corporate name].<sup>129</sup> [Insert corporate name] suggests employee bloggers use a disclaimer along the lines of "The views expressed on this website/weblog are mine alone and do not necessarily reflect the views of my employer."<sup>130</sup>

Furthermore, use of [insert corporate name]'s logo and registered trademarks by employee bloggers is prohibited.<sup>131</sup> Unauthorized use of the logo and trademarks violates copyright and trademark law.<sup>132</sup> However, if the blog is one that is run by the company or if the employee blogger has express permission, the use of [insert corporate name]'s logos or trademarks is authorized and encouraged.

#### **Section Four: Protection of Confidential or Proprietary Information and Trade Secrets.**

An employee blog should not contain any statement regarding [insert corporate name] trade secrets or other confidential or proprietary information.<sup>133</sup> Just as employees are not allowed to discuss private corporate information or trade secrets with other people in person they may not do so through a blog.<sup>134</sup> If employee bloggers have any questions regarding this policy, they may refer to the [insert corporate name] policy governing the protection of proprietary information.<sup>135</sup> If an employee blogger is unsure whether a statement or other piece of information may be posted on his blog because it is proprietary or a trade secret, he should ask a supervisor if the information is protected or if it may be shared.<sup>136</sup> If an employee is uncertain whether a piece of information has been made public yet, he should also contact the public relations department to determine if the information had been released.<sup>137</sup> [Insert corporate name] is aware of the time-sensitive nature of blogs and, therefore, has instituted a procedure in which an employee blogger can make a request to his or her supervisor or the public relations department and will receive an answer about whether the information may or may not be posted by the end of the workday. This answer will also include

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129. *See supra* note 79.

130. *See supra* note 81.

131. *See supra* note 87.

132. *See supra* note 88.

133. *See supra* note 83.

134. *See supra* note 84.

135. *See supra* note 84.

136. *See supra* note 84.

137. *See supra* note 84.

specific reasons why a statement may not be posted or why parts of it would be inappropriate to post.<sup>138</sup>

### **Section Five: Copyright Infringement**

The Internet makes it very easy for users to share content between people. When blogging, it is easy to accidentally copy and paste text or pictures from another site or another blog into the blog itself. Mistakenly copying text or pictures without proper attribution or in too great detail may open an employee blogger to a copyright infringement lawsuit.<sup>139</sup> To avoid this sort of trouble, employee bloggers are advised to place links within the blog to the content which the blog refers to rather than copying the content itself.<sup>140</sup>

Publications, including internal publications or products, produced by [insert company name] are also protected by copyright law. Before an employee blogger posts content contained in company publications or work product he or she is advised to discuss it with a supervisor first.

### **Section 6: Defamation**

Employee bloggers should be aware of the inherent public and private nature of the Internet and of blogs themselves when blogging about [insert company name] or any of its employees.<sup>141</sup> It is important for an employee blogger to be respectful of his or her co-workers and supervisors when blogging.<sup>142</sup> Being disrespectful of fellow employees may open employee bloggers to defamation law suits and much unwanted publicity.<sup>143</sup> It is also possible that comments made on a blog could open the employee to sanctions through [insert company name]. Rather than simply saying that he or she does not like something it is advised that employees come up with and share coherent arguments based on fact which explain the employee's position.<sup>144</sup> While [insert company name] or fellow employees may never see an employee blog, it is easy to stumble upon a blog and any defamatory statements contained in it.<sup>145</sup>

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138. *See supra* note 84.

139. *See supra* note 88.

140. *See supra* note 88.

141. *See supra* note 91.

142. *See supra* note 91.

143. *See supra* note 91.

144. *See supra* note 91.

145. *See supra* note 93.

### **Conclusion**

Corporate blogging is a hot-button issue in today's society. While blogging began by simply adding text and links to website, it has quickly evolved to photo blogs and audio and video podcasting. There are many problems that are created by employee blogs and the lack of corporate guidelines to govern them. While not creating a legally-protected right to an employees free speech in blogging corporate blogging guidelines will protect their interests and the interests of the corporation. It will also advise employees of what they can and cannot blog about, cutting down confusion and harm between the employee and the employer. It is also important to be mindful that employee blogs may be of great benefit to employers by allowing customers or clients to connect to the corporation or as a way of announcing minor news from the corporation. While employees may never have legally protected speech in blogs, corporate blogging guidelines will function to provide employees with information about how to blog responsibly and advise them of what they can and cannot do when blogging publicly.