



**Wired
Summit II
@ Hamilton**

**Wired Summit II
The Future of IT
Business & Legal Issues:
Risks & Solutions**

May 14, 2002

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Objectives for the Presentation

 **Awareness**

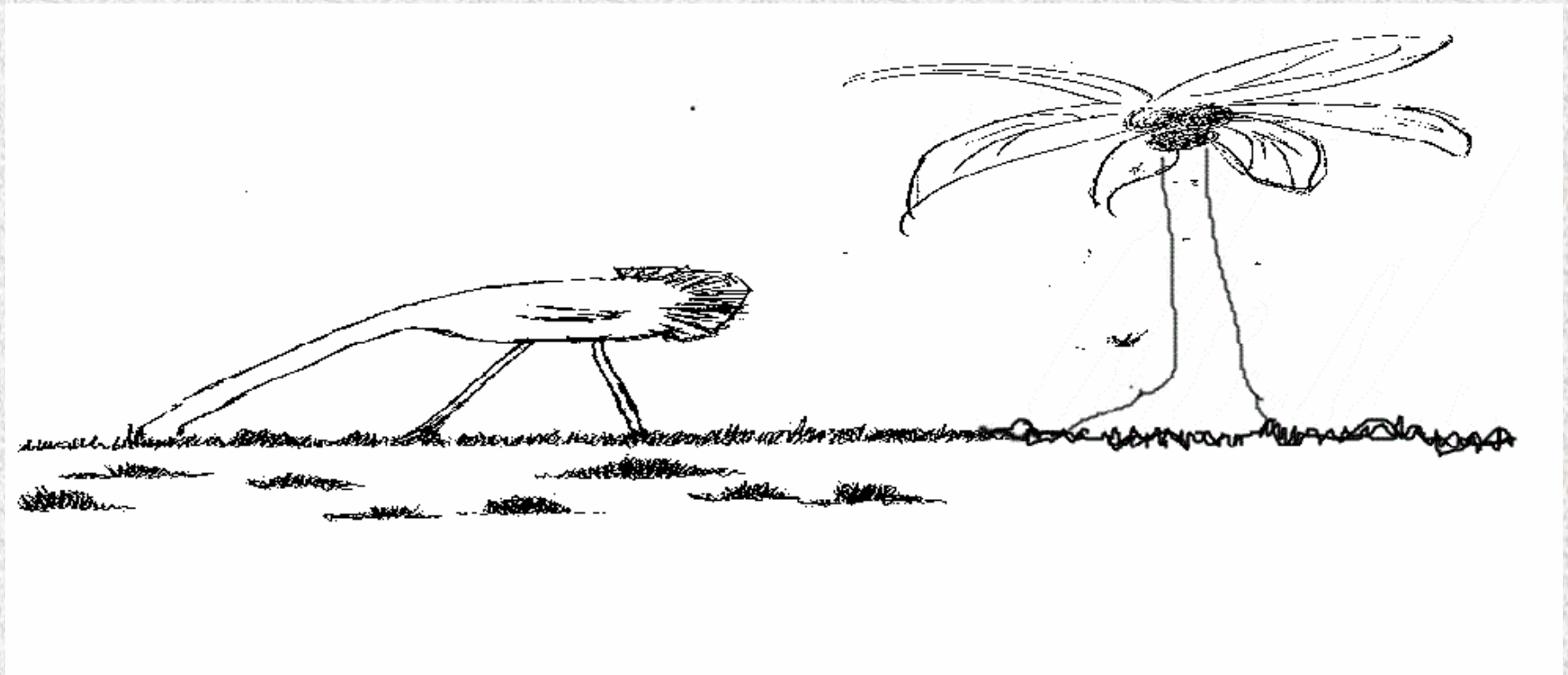
 **Technology & E-Business Risks (Today & Tomorrow)**

 **Risk Management**

Agenda

- ❑ **A Lawyer's View of Doing Business in a Global E-Economy**
- ❑ **The Risks**
- ❑ **Mitigating the Risks**
- ❑ **Summary**

Ignore It or Deal With It



Stakeholders

- ❑ **Business owners**
 - ❑ **Shareholders**
 - ❑ **Employees**
 - ❑ **The Business**
 - ❑ **Investors/Lenders**
-
- ❑ **EVERYONE should be concerned**



Risks

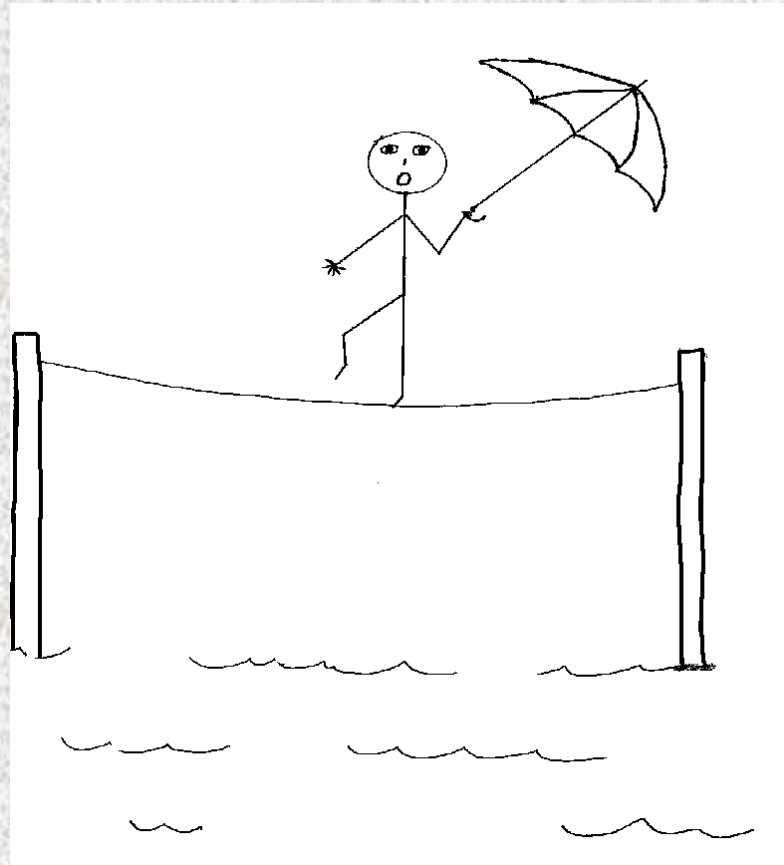
☐ **General**

☐ **Internal**

☐ **External**

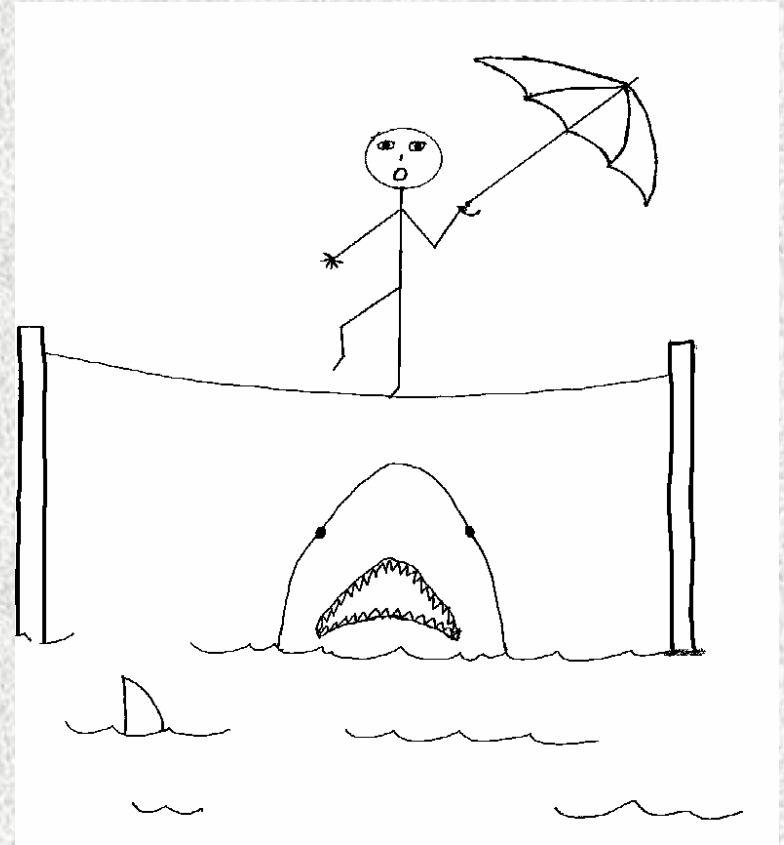
☐ **Legal**

☐ **Privacy**



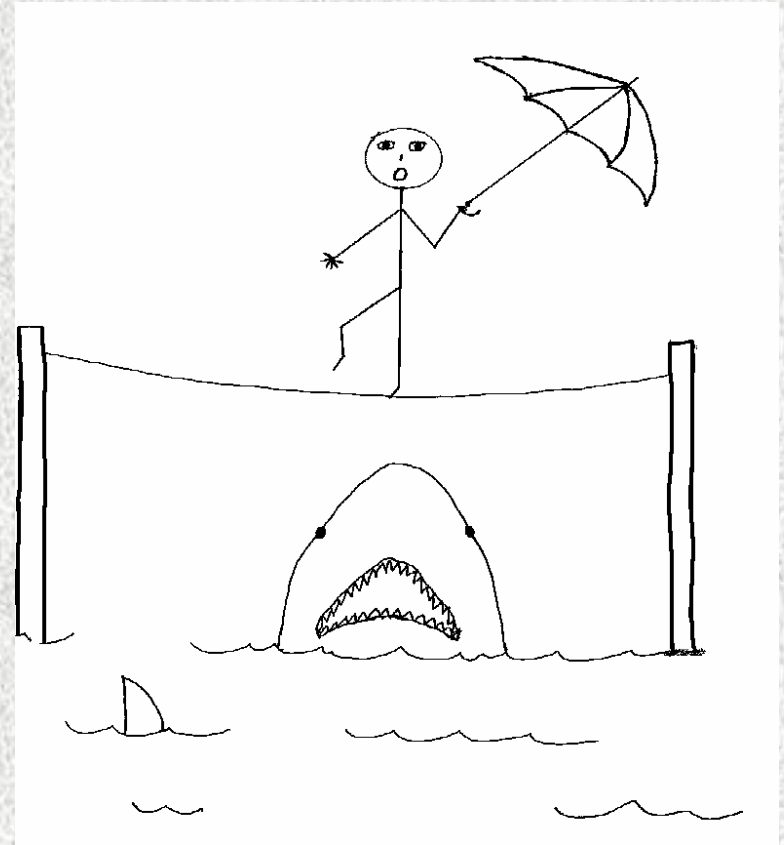
Risks – General Issues

- ☐ **Litigation: criminal**
- ☐ **Litigation: civil**
- ☐ **“Poisoned” Workplace**
- ☐ **Bad Publicity**
- ☐ **Wrongful Dismissal/
Employment issues**
- ☐ **Financial Loss**



Risks – Legal Issues

- ❑ Advertising Online
- ❑ Doing Business Online
- ❑ Jurisdictional Issues
- ❑ Online Conferencing & Webcasting
- ❑ Website Issues
- ❑ Drafting of Agreements



Risks – Legal Issues

- ❑ **Internet Agreements**
- ❑ **Website Development Agreements**
- ❑ **Website Hosting Agreements**
- ❑ **Linking Agreements**
- ❑ **License & Software Agreements**

Risks – Legal Issues

- ☐ **Software development;**
- ☐ **Maintenance & support agreements;**
- ☐ **ASP Agreements**
- ☐ **Out-sourcing agreements;**
- ☐ **Other internet/e-business agreements;**
- ☐ **AUP's;**



Risks – Legal Issues

Online Contracting:

-  Formation

-  Enforceability

-  Jurisdiction

Risks – Legal Issues

Employment Issues:

 Trade Secrets

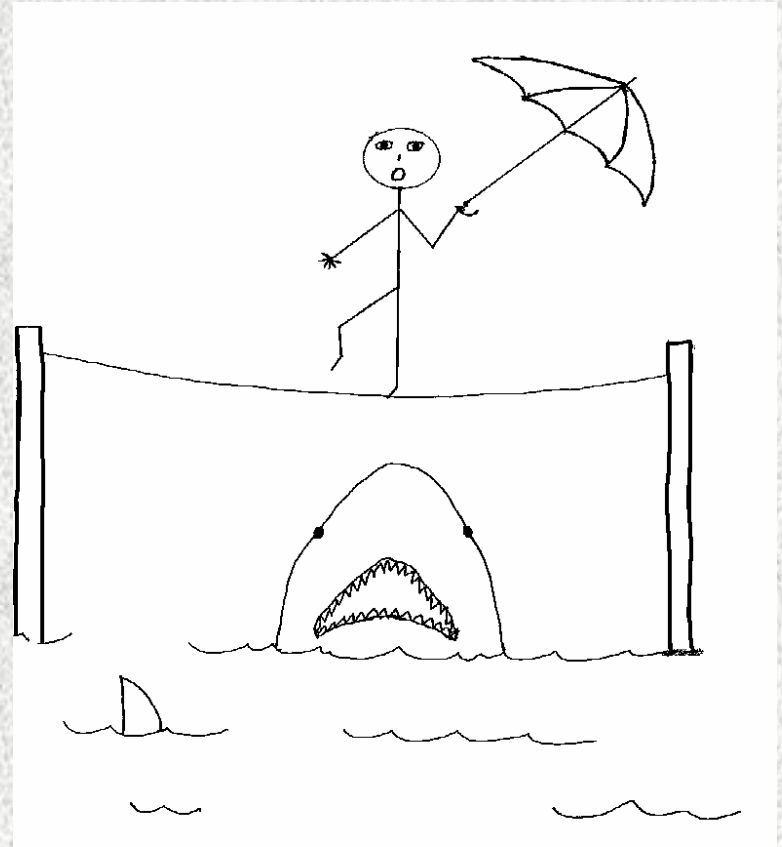
 AUP's

 Confidentiality & NDA

Risks – Legal Issues

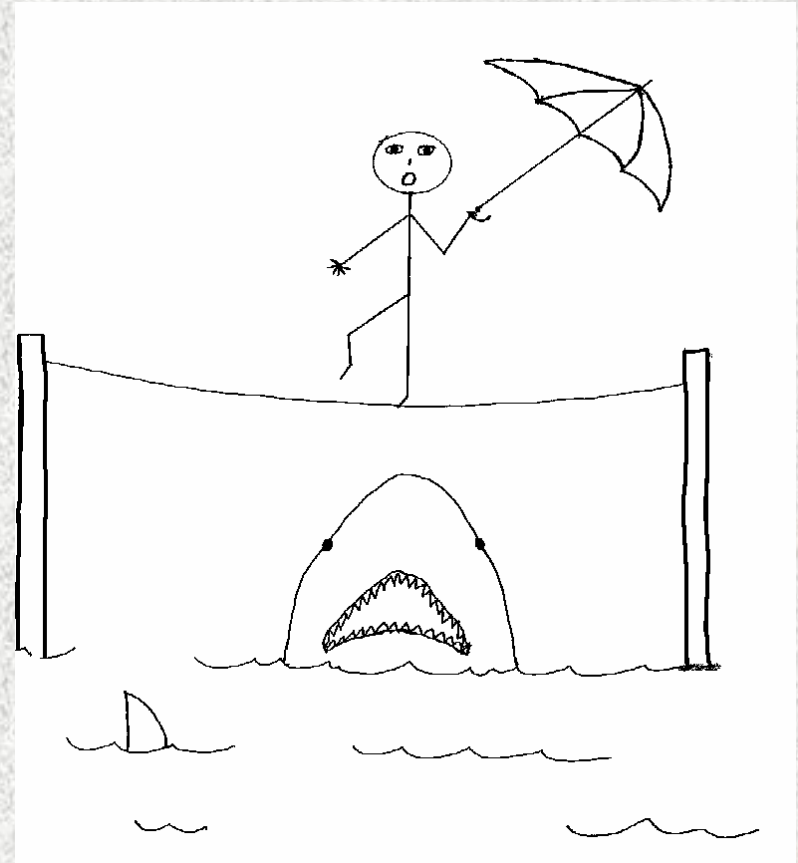
☐ I.P. Issues:

- ☐ Patents
- ☐ Copyright
- ☐ Trade Names
- ☐ Domain Names



Internal Risks: (Risks from the Inside/out) (The “Biggest” Risk)

- ❑ **Transmission of confidential information**
- ❑ **Defamatory or other harmful statements**
- ❑ **Workplace free of harassment and discrimination**
- ❑ **Employee productivity**



Employee Productivity (CyberSlacking)

☐ Employee abuse may justify disciplinary actions up to and including dismissal

☐ 2000 – 40 Million employee email users sent 60 Billion emails

☐ Neilson Media Research

☐ 1996 - IBM, Apple and AT&T employees – visited Penthouse website 12,823 times in one month

☐ Average 13 minutes per visit => 347 person days lost



External Risks

 **Strain on computer system**

 **Cookies**

 **Unsolicited emails**

 **(“Spam”)**

 **Bandwidth**

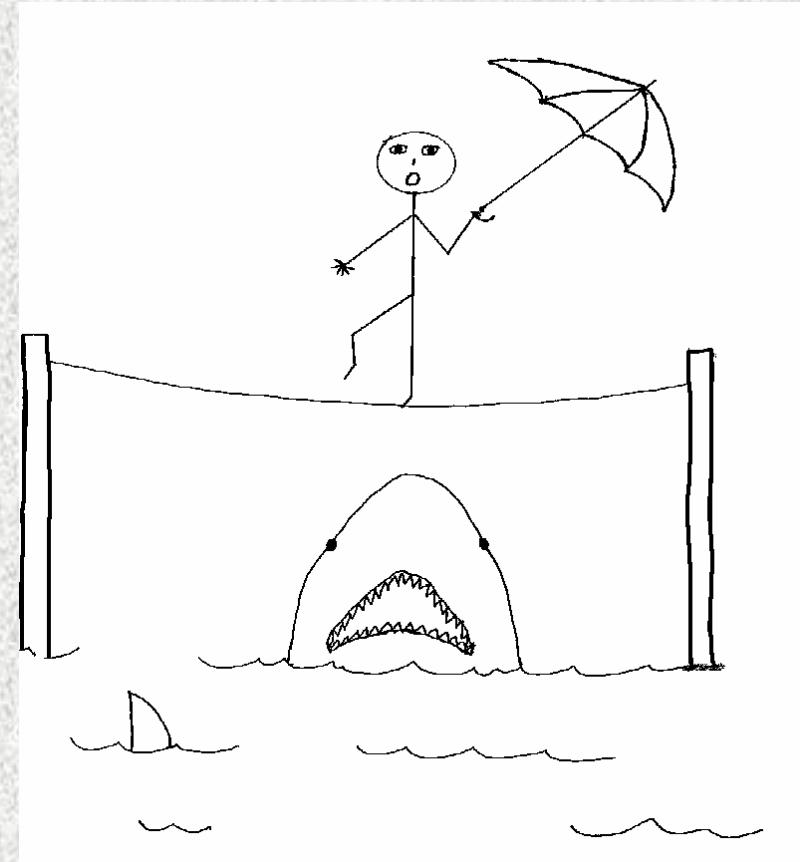
 **degradation**

 **Viruses/Hackers**

 **Denial of Service Attacks**

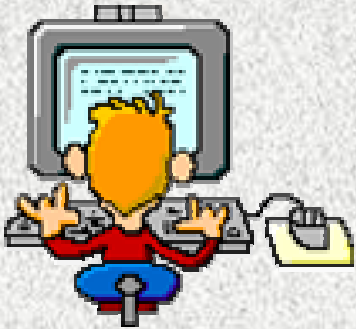
 **T.P. I. P. Infringement**

 **Corporate Espionage**



Intellectual Property Infringement


-  **Content accessible on the Internet is protected under patent, copyright and other intellectual property laws**
-  **Improper copying of Employer's software & emailing it out**



Corporate Espionage



ePolicy Institute: US Corporations, Government agencies, financial institutions and universities lost more than \$100M to computer security breaches in 1999

 **former Cisco employee broke into the company's computer, downloaded confidential information and trade secrets, burned it on a computer disc, and provided it to his employer) (e.g. e-security breaches cause more than \$15 BILLION worth of damage worldwide annually)**

 **stealing laptops with confidential information on the hard drive**

 **hacking into a competitor's server and downloading valuable data**

 **employee theft of confidential information and databases.**

Privacy: A Balancing Act



At the end of the day, there must be a balancing of competing aims and goals. A balancing act of what the employee desires and what the employer demands.

Balancing Act – Employer issues

- ☐ Confidentiality of corporate information
- ☐ Employee fidelity
- ☐ Employee productivity
- ☐ Intellectual property protection and 3rd party infringement
- ☐ “Just cause” dismissal behaviour

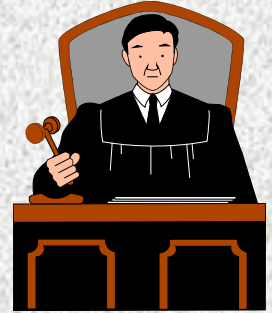


Balancing Act – Employee Issues

- ❑ **Personal Privacy**
- ❑ **Trust**
- ❑ **Big Brother syndrome**
- ❑ **Human Rights violations**
- ❑ **Employer Criminal Code violations**
- ❑ **Employer AND Employee concerned with poisoning of the workplace**



Interception of E-mail



- ☐ **Limited litigation – primarily US based**
- ☐ **To date – US courts generally sided with employers and have not provided as much protection to an employee's right of privacy for e-mail communication as they have provided for other activities.**

The Pendulum Swings (Where is the law going?)



- ❑ **Pre September 11th - courts leaned in favour of employer over employee**
- ❑ **Post September 11th - Security needs trumped employee privacy concerns**
- ❑ **Will most likely last for at least six more months**
- ❑ **Recent statements by prominent US judges**

“Pendulum will swing back in favour of employees against unwarranted monitoring and other privacy infringements”

Mitigating the Risks: Safety Nets

 Awareness

 Employment contracts

 Internal Risks:

 AUP's

 Security

 External Risks:

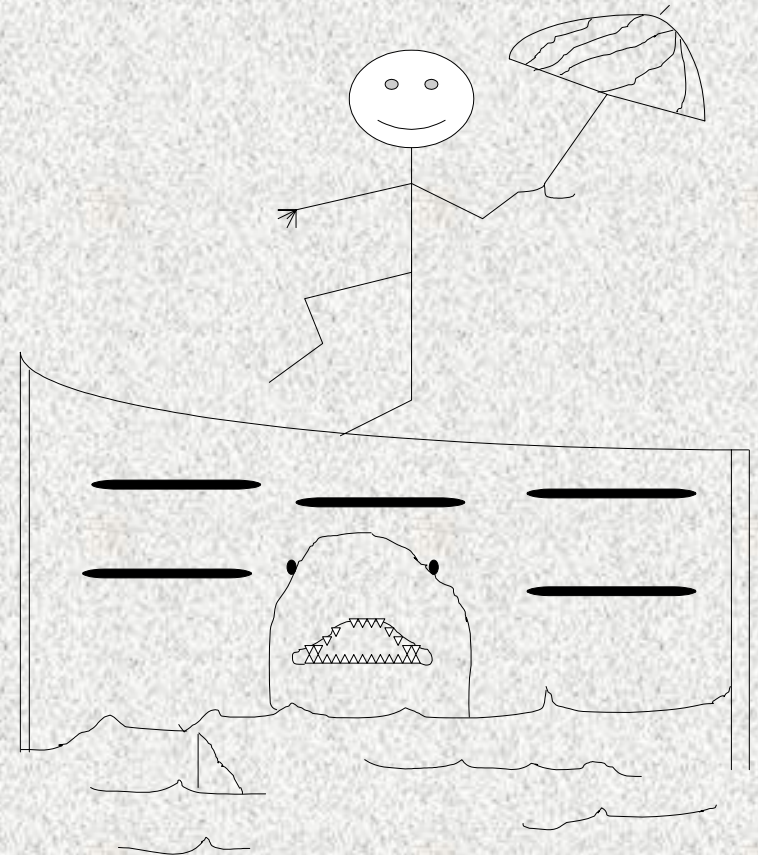
 Security

 Legal

 Legal Support

 Privacy

 AUP's



PC World Ten Commandments

- ❑ Thou shalt not create easy passwords.
- ❑ Thou shalt not maintain a browser cache.
- ❑ Thou shalt not enable file sharing.
- ❑ Thou shalt not preserve a history.
- ❑ Thou shalt not accept cookies from strangers.
- ❑ Thou shalt not talk to strangers without protection.
- ❑ Surf anonymously, less thy information be laid bare.
- ❑ Thou shalt not surf without a firewall
- ❑ Thou shalt not reveal information needlessly
- ❑ Encrypt thy e-mail

Keeping Employees In Line While They Are Online

- ❑ **Establish written Internet Policy**
- ❑ **Prohibit accessing inappropriate sites, downloading objectionable material**
- ❑ **Communicate policy**
- ❑ **Enforce policy**
- ❑ **Don't leave compliance to chance**
- ❑ **Monitoring and filtering software**
- ❑ **Train, on-going employee education**

“ Excerpt from ePolicy Handbook, 2001”



Summary

- ☐ **New risks in the Global E-Economy**
- ☐ **Internet and email ACCELERATE potential harm**
- ☐ **Awareness**
- ☐ **AUP's**
- ☐ **Security**
- ☐ **Professional Support**



Summary – Your Choices

Proactive

-  Develop and implement corporate policies

Reactive

-  Be exposed to:

-  Bad publicity

-  Damages

-  Pay a litigator



Thank you

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