Canada’s Anti-Spam Legislation

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Issue

- Bill C-28 (the anti-spam legislation) received Royal Assent on December 15, 2010
- Regulations Gazette Part 1 concluded on Sept. 7, 2011
- Coming into force of the legislation is expected to occur early in 2012
Main Elements of the Act

- Implements a recommendation of the Task Force on Spam
- Regulatory regime
- Modelled on international best practices.

The regime includes:

- New Violations
- Consent and form requirements
- A Private Right of Action (PRA)
- Administrative Monetary Penalties (AMPs)
- International Cooperation
- Extended Liability (follow the money)

Includes support mechanisms such as:

- A National Coordinating Body
- A Spam Reporting Centre
New Violations

The legislation prohibits:

- **Spamming**: Sending of unsolicited commercial electronic messages (s.6)
- **Hacking**: Unauthorized altering of transmission data (s.7)
- **Malware**: Installation of computer programs without consent (s.8)
- **Fraud**: False and misleading representations online (including websites and addresses) (s.75)
- **Harvesting**: The use of computer systems to collect electronic addresses without consent (s.82(2))
- **Privacy invasions**: The unauthorized access to a computer system to collect personal information without consent (s.82(3))
The “opt-in” Consent Regime

- Express Consent

- Implied Consent
  - existing business relationships
  - existing non-business relationships
  - conspicuous publication
  - conspicuous disclosure
Identification and Unsubscribe

All messages being sent must

- Clearly identify the person who sent the message
- Provide a method where the recipient can readily contact the person(s) responsible for sending the message
- Provide a working unsubscribe mechanism:
  - Functional for 60 days
  - No cost
  - Same means unless impracticable
  - Include either electronic address or link
  - Must process without delay
Comprehensive Compliance Regime

Regulatory enforcement by expanding the mandates of:

- Canadian Radio-television and Telecommunications Commission (CRTC)
- Competition Bureau
- Office of the Privacy Commissioner (OPC)
Strong Penalties & Due Process

- Administrative Monetary Penalties (CRTC and CB)

- Private Right of Action for individuals and businesses

- Maximum penalty per violation: $1 M for individuals; $10 M for any other person (s. 20)

- Factors to be considered in assessing penalty (s. 20)

- The Act is a regulatory regime designed to encourage compliance through stiff penalties for violations
International Cooperation

The legislation provides for:

- Coordination and consultation among the three enforcement agencies responsible for compliance (s. 56-59)
- Information sharing and consultation between the three agencies and their international equivalents (s. 60)
- A broadly defined Canadian link which stipulates that the legislation would apply to electronic messages sent to or from Canada (s. 12)
- Disclosure of information from organizations to the enforcement agencies with regards to any of the violations
A Spam Reporting Centre will be established to support enforcement of the legislation.

RFP for the Spam Reporting Centre expected on October 31.

The Spam Reporting Centre will ensure full and effective access to the database for all enforcement agencies.
Electronic Commerce Protection Regulations

- Industry Canada and CRTC regulations
- Proposed Regulations published for consultation in Canada Gazette Part 1
- Consultation concluded on September 7, 2011
- 55 submissions received (IC process)
- Analysis currently underway
Regs – Planned approach...

- Define “Family Relationship” and “Personal Relationship”
- Provide Conditions for the use of “Unknown Third Party Consent”
- Define “Membership, Club, Association and Volunteer Organization” for the purposes of existing non-business relationships
Regs – Feedback

- Broaden “personal relationship” definition
- Additional exemptions for Third Party Referrals
- Exemption for TSPs for installation of software for network security purposes
- Clarify of Commercial Electronic Message
- Add jurisdictional exemptions
- Broaden B2B exemption for existing business relationship between organizations
Regs – IC response...

...stay tuned.

- CRTC regulations on their own timeline
- ECOM analysing submissions; making recommendations to the Minister
- Better idea of time for regulations and enactment once the Minister provides direction
Thank you

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