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STATUS UPDATE: CANADIAN ANTI-SPAM LEGISLATION (CASL)

December 4, 2013

CASL – THE ACT

- Full Title: **An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (S.C. 2010, c. 23)**
- Royal Assent in December 2010
- Does not come into force until regulations are adopted



THE REGULATIONS

- Round 1 of Gazette 1 – June 2011
- Round 2 of Gazette 1 – January 2013
- Key concerns:
 - Implementation cost
 - Impede the flow of electronic commerce
 - Rising cost passed on to consumers
 - Hinders ability of Canadian companies to compete globally
 - Hinders Canada's ability to attract investment in ICT infrastructure
 - Compliance in some circumstances not possible
 - Reprisals for inadvertent error could be significant



THE UNINTENDED CONSEQUENCES

- Architecture of the Act all encompassing – attempts to mitigate through regulatory exceptions
- Definition of a CEM overly broad
- Restrictions on Implied Consent
- Structure has not accounted for the development of technology deployment
- Extra-territorial reach is problematic



SOME SOLUTIONS - REGULATORY

- Third Party Exemptions
- Expansion of definition of family exemption
- Expansion of B2B exception
- Acceptance of existing express consents, regardless of compliance with prescribed information
- Extra-territorial Reach of CEMs through compliance with law of receiving jurisdiction (by schedule)
- Closed messaging/managed messaging services exemption
- Transactional messages exemption
- Delay of Private Right of Action Provisions



SOME SOLUTIONS - LEGISLATIVE

- Definition of CEM narrowed
- Acceptance of implied consents
- New regulatory power to manage computer programs
- Extra-territorial application of computer programs
- Revision of the Private Right of Action provision to limit scope to only egregious non-compliance



STATUS

- Minister has signed off on final version of Regulations
- PCO approval on December 3, 2013
- Expect Gazette II December 18, 2013
- Significant changes to what was published in Gazette 1
- Implementation of the Act will occur on July 1, 2014 for CEMs
- Implementation will occur on January 1, 2015 for computer programs



THANK YOU!

