

The evolving regulatory environment: Striking the right balance

Presentation by
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Telemarketing -- National DNC List

- First proposed by CMA in 2001
- CRTC unveiled new telemarketing regulations in May 04; very problematic and stayed in Sept. 04
- DNCL legislation (C-37) introduced Dec. 04
- CRTC authorized to establish list when Bill C-37 passed in late 2005.
- CRTC also reviewing current telemarketing rules
- CMA submitted brief to CRTC on operation of national DNCL and other telemarketing rules



Telemarketing -- National DNC List

- Existing business relationship
 - **18 months** – exists where a consumer has made a purchase or donation, has rented, leased or contracted for, or has otherwise participated in a organizations provision of products or services within the past 18 months, or a period consistent with that organization’s normal buying cycle
 - **6 months** – exists for six months from the date of an inquiry or application from a consumer.



Telemarketing – B.C. licensing

- Came into effect in B.C. on Oct. 1, 2005
- Administered by province’s Business Practices and Consumer Protection Authority
- Includes operating and reporting requirements and identifies penalties for violations of the regulation
- Imposed calling hour restrictions
- CMA raised jurisdictional concerns during consultations



Spam – Anti-Spam Task Force

- January 2004
 - U.S. CAN-SPAM Act becomes law
- May 2004
 - Industry Canada launches spam action plan and creates federal Anti-Spam Task Force
 - CMA one of 10 members



Spam – Anti-Spam Task Force

- May 2005
 - Canada’s Anti-Spam Task Force issues report:
Stopping Spam: Creating a Stronger, Safer Internet
 - Contains six-point action plan to help Canadians eradicate, and be protected from, e-mail spam



Spam Action Plan – What's Ahead

**Possible introduction of
made-in-Canada legislation in late 2006**

Is spam still a major problem?



Self-Regulation – CMA Code of Ethics

- Last holistic update over 10 years ago
 - New sections added on
 - Foundational elements mail order oriented
 - Language outdated – tech & channel



PIPEDA – 2006 Review

- Mandatory five-year review of federal law
- CMA expectations:
 - Call for increased scrutiny around consent requirements
 - Call for more transparency
 - Call for order making and/or fines
 - Potential for stronger enforcement regime
- Higher federal privacy standards will lead to higher provincial standards



PIPEDA – 2006 Review

- PIAC wish list
 - Naming names
 - Increased enforcement powers
 - Modifying PIPEDA's treatment of implied consent
 - Moving complaints to the courts
 - Specifying purposes at or before time of collection, use or disclosure



PIPEDA – Key Findings

- 2001 -- Complaint lodged by PIAC against marketing activities of five CMA Members
 - a domestic bank, a foreign bank, a telco, a large retail chain and the country’s largest loyalty program
- Complaint alleged:
 - Consent opportunity not:
 - Easy to see, easy to understand & easy to execute
 - Providing sufficient information to allow a reasonable person to make an informed decision



PIPEDA – Key Findings

- 2004-2005 -- Secondary marketing inserts
 - Customer filed complaint that bank would not let them opt-out from receiving secondary marketing offers in statement
 - OPC concludes bank was using personal info for secondary marketing without consent
 - CMA position: inclusion of identical insert materials sent on non-discriminatory, non-individualized basis does not require use of personal information
 - OPC concluded bank using personal info for secondary marketing purposes without consent and must allow opt-out



PIPEDA – Upcoming Developments

- July 2005 -- CIPPIC complaint against well-known Canadian data broker
 - Alleged that company rents lists considered 'personally identifiable' and therefore requires consent from consumers that are on the list
- CIPPIC research on data brokerage field
- Audit capacity doubled; may see audit of private sector entity later in 2006



Looking ahead

- Consumers continue to be annoyed with some intrusive marketing tactics (telephone/e-mail)
- Consumers will continue to require assurance that they can trust the companies that they deal with and that their information is secure



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