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## CANADA'S NEW ANTI-SPAM LAW MAY AFFECT U.S. BUSINESSES

Canada's stringent new Anti-Spam Legislation (CASL) goes into effect on July 1, 2014. U.S. businesses communicating with Canadian businesses or consumers may be subject to CASL because of CASL's broad extra-territorial reach: CASL applies if a computer system located in Canada is used to send or access an electronic message. Compared with the U.S.'s Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), CASL regulates a broader range of communication, requires consumers to opt-in to receive electronic messages and imposes more severe penalties for violations.

CASL governs commercial electronic messages sent to electronic addresses. "Commercial electronic message" (CEM) means an electronic message that, in regard to the message's content, the hyperlinks in the message or the contact information contained in the message, it would be reasonable to conclude that the message has the purpose to encourage participation in a commercial activity. "Commercial activity" includes any conduct with a commercial character whether or not a person expects to profit from the conduct. "Electronic message" means a message sent by any means of telecommunication, including a text, sound, voice or image message. "Electronic address" means an address used in connection with the transmission of an electronic message to an electronic mail account, an instant messaging account, a telephone account or similar account. CASL contains limited exemptions for certain business-to-business communication. Notably, content with a message could constitute a CEM, even if the message itself is not a CEM. A broad range of regular business communication could trigger CASL's prohibitions.

CASL sending a CEM or causing or permitting a CEM to be sent to an electronic address is prohibited unless (i) the person to whom the message is sent has consented to receiving it, whether the consent is express or implied and (ii) the message conforms to certain requirements. Consumer must opt-in to receive electronic messages as distinct from the opt-out scheme under CAN-SPAM.

After July 1, a sender cannot use any communication that qualifies as a CEM to obtain a consumer's express consent. CEMs must comply with CASL's formatting and content requirements. Each CEM must contain an unsubscribe mechanism that allows a

consumer to limit future CEMs at no cost. CASL also requires CEMs to include certain identification and contact information.

Violators of CASL are subject to steep monetary penalties. Penalties for violating CASL include up to C\$1 million for individuals and C\$10 million for corporations, partnerships or other businesses. Private right of action is permitted. Consumers can seek actual damages and statutory damages of C\$ 200 for each CEM sent per day up to C\$1 million per day the violation continues. Class actions also are permitted. Directors, officers and agents of a corporation may be personally liable for violations if they acquiesce or participate in the violation.

U.S. businesses that communicate with Canadian businesses or residents should take note of CASL. An unintentional violation of CASL could be a costly mistake. □

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