



Conseil de la radiodiffusion et des  
télécommunications canadiennes

Canadian Radio-television and  
Telecommunications Commission



# Canada's Anti-Spam Legislation

November 26th, 2013

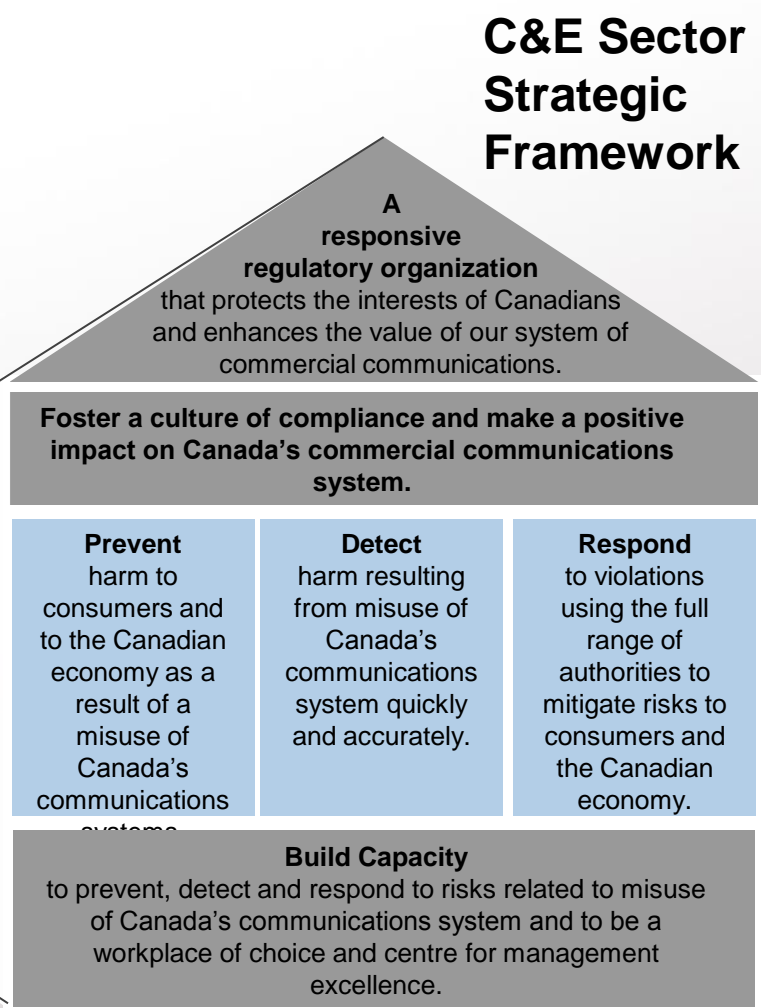
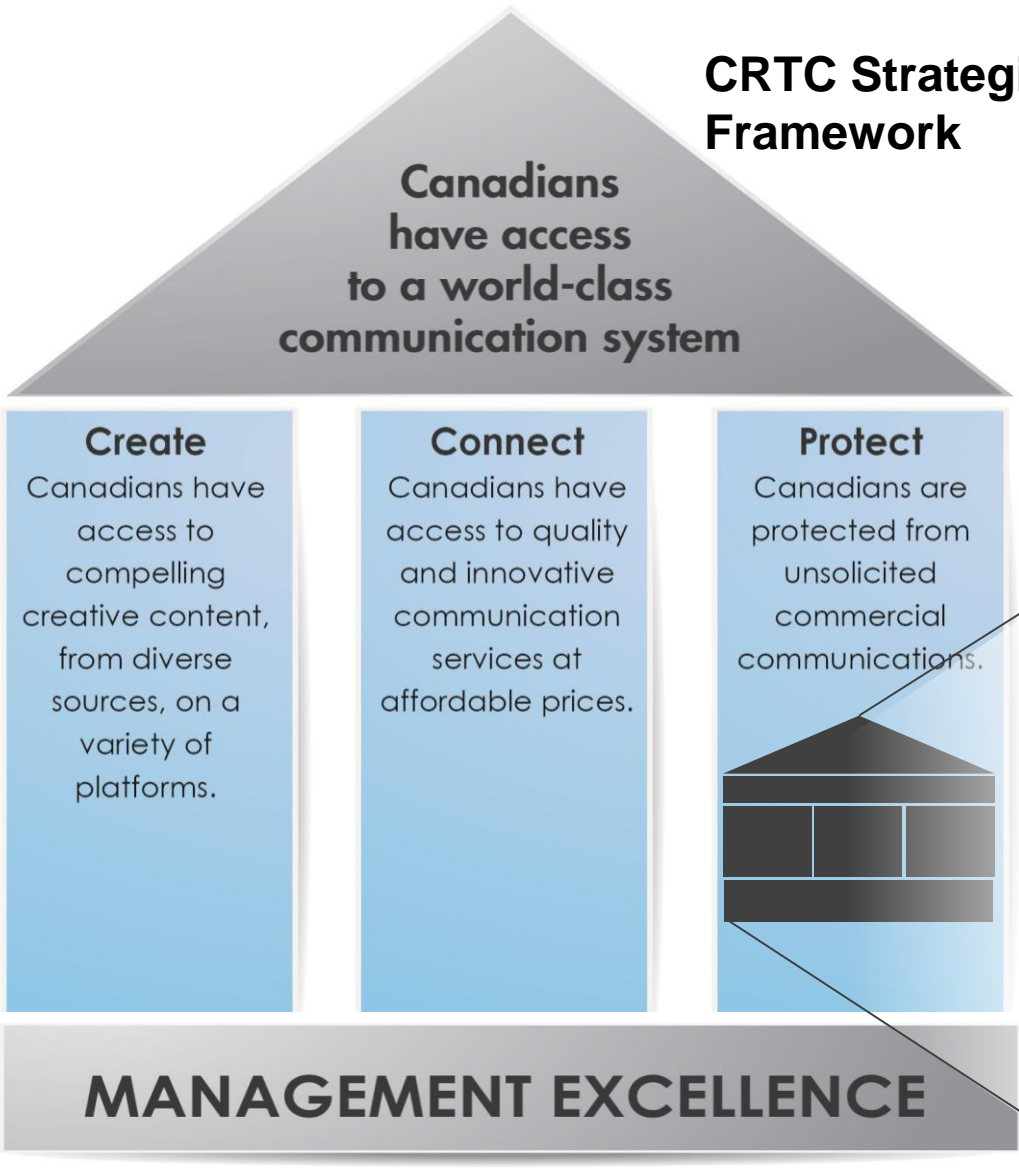
Canada

- Compliance and Enforcement at the CRTC
- *About Canada's Anti-Spam Legislation (CASL)*
- Enforcement of *CASL*
- Undertakings and Private Rights of Action
- *CASL* Regulations
- *CASL* Information Bulletins
- Next Steps



# Compliance and Enforcement

# C&E Role within the CRTC





# ***Canada's Anti-Spam Legislation***



# The Legislation

*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  
(CASL unofficial acronym)*






# Historical Background

- May 17, 2005: Task Force on Spam released a list of recommendations
- December 15<sup>th</sup>, 2010: Bill C-28 Received Royal Assent
- Summer 2011: Governor in Council and CRTC draft regulations posted for consultation
- March 28, 2012: Electronic Protection Regulations (CRTC) (Telecom CRTC 2012-183) were published, following a public process
- Part II of the GIC regulations once they are approved by both the Minister and the TBS.

# International Comparison

Country	Anti-Spam Legislation	Enforcement Agency	Opt In / Opt Out	Private Right of Action	Maximum Penalty
Canada	C-28 Canada's Anti-Spam Legislation (CASL) (2010)	CRTC, CB, OPC	Opt In	Yes	\$1M/violation for an individual; \$10M/violation for any other person
United States	Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act)	Federal Trade Commission (FTC)	Opt Out	Yes – but only by ISPs or state attorney generals	FTC Administrative Actions: \$11,000 per violation
United Kingdom	Privacy and Electronic Communications (EC Directive) Regulations 2003	Information Commissioner's Office (ICO)	Opt In	No	Magistrate's court: £5,000 in England and Wales, £10,000 in Scotland; unlimited if trial before a jury
Australia	Spam Act 2003	Australian Communications and Media Authority (ACMA)	Opt In	No	\$2200/violation up to \$44,000/day for multiple violations; \$11,000/violation up to \$220,000/day for multiple violations for corporations

# Overview of CASL - Legislative roles

Administration	Violation	Addressing
<p>CRTC</p> 	<p>The legislation includes violations respecting:</p> <ul style="list-style-type: none"> <li>• sending of commercial electronic messages (CEMs) without consent</li> <li>• alter transmission data in the course of a commercial activity without consent</li> <li>• Installing a computer program in the course of a commercial activity without consent</li> </ul>	<ul style="list-style-type: none"> <li>• Spam (s.6)</li> <li>• Botnets (s.8)</li> <li>• Malware (s.8)</li> <li>• Network re-routing (s.7)</li> </ul>
<p>Competition Bureau (CB)</p> 	<p>Amends the <i>Competition Act</i> to include violations respecting:</p> <ul style="list-style-type: none"> <li>• Misleading and deceptive practices/ representations, including false headers, subject lines, etc...</li> </ul>	<ul style="list-style-type: none"> <li>• False or misleading representations online (incl. websites and addresses)</li> </ul>
<p>Office of the Privacy Commissioner (OPC)</p> 	<p>Amends <i>Personal Information Protection and Electronic Documents Act (PIPEDA)</i> to include contraventions involving:</p> <ul style="list-style-type: none"> <li>• The collection and use of personal address information without consent</li> <li>• The collection of personal information by illegally accessing, using, or interfering with computer systems</li> </ul>	<ul style="list-style-type: none"> <li>• Address harvesting (steal email contacts)</li> <li>• Dictionary attacks (Systematically guessing email addresses to spam)</li> <li>• Spyware (Personal Info)</li> </ul>



# Main Elements of the legislation

The legislation addresses the recommendations of the Task Force on Spam with a comprehensive regulatory regime that uses economic disincentives instead of criminal sanctions to protect electronic commerce and is modelled on international best practices. The regime includes:

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

Support mechanisms such as:

- A National Coordinating Body
- A Spam Reporting Centre

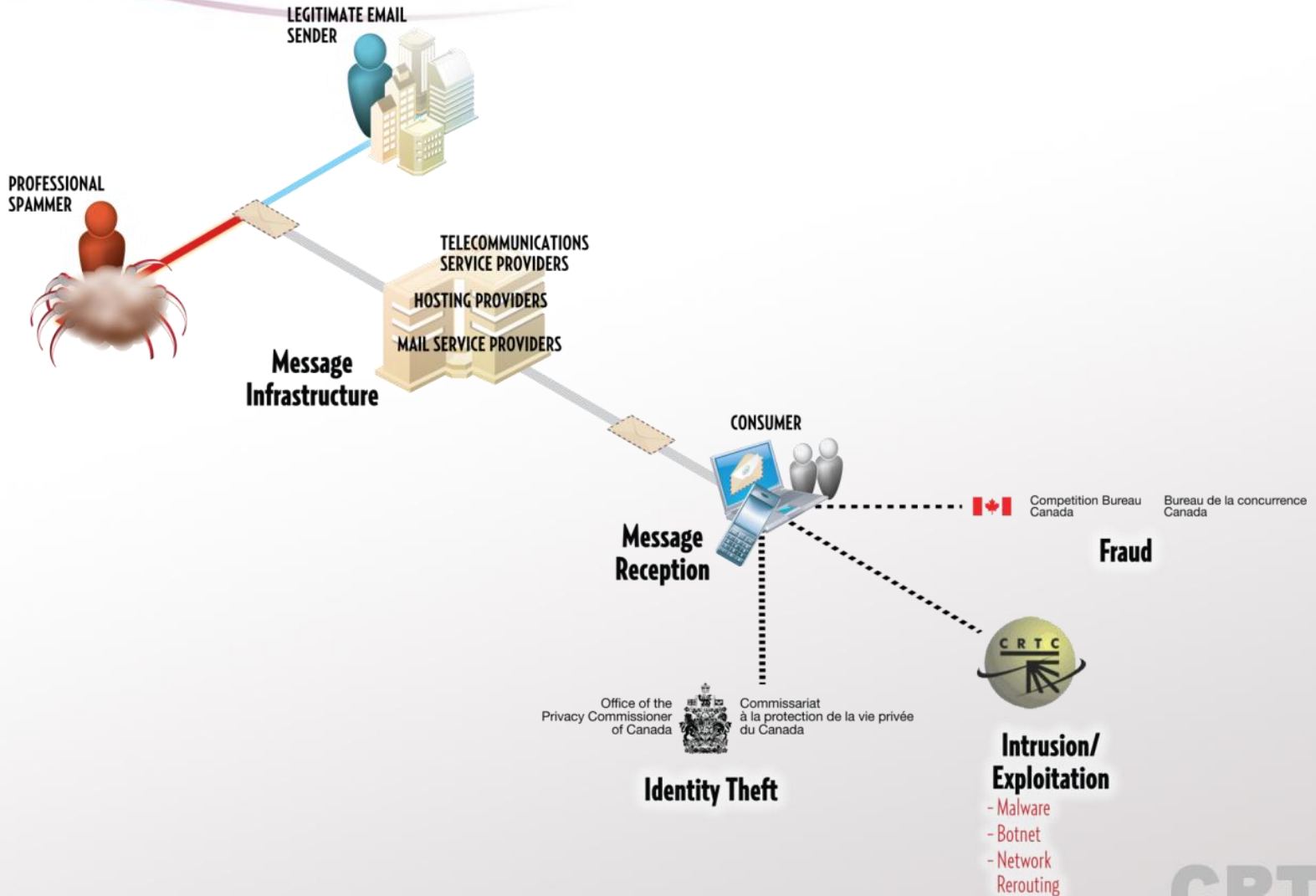


# Main Elements (cont'd)

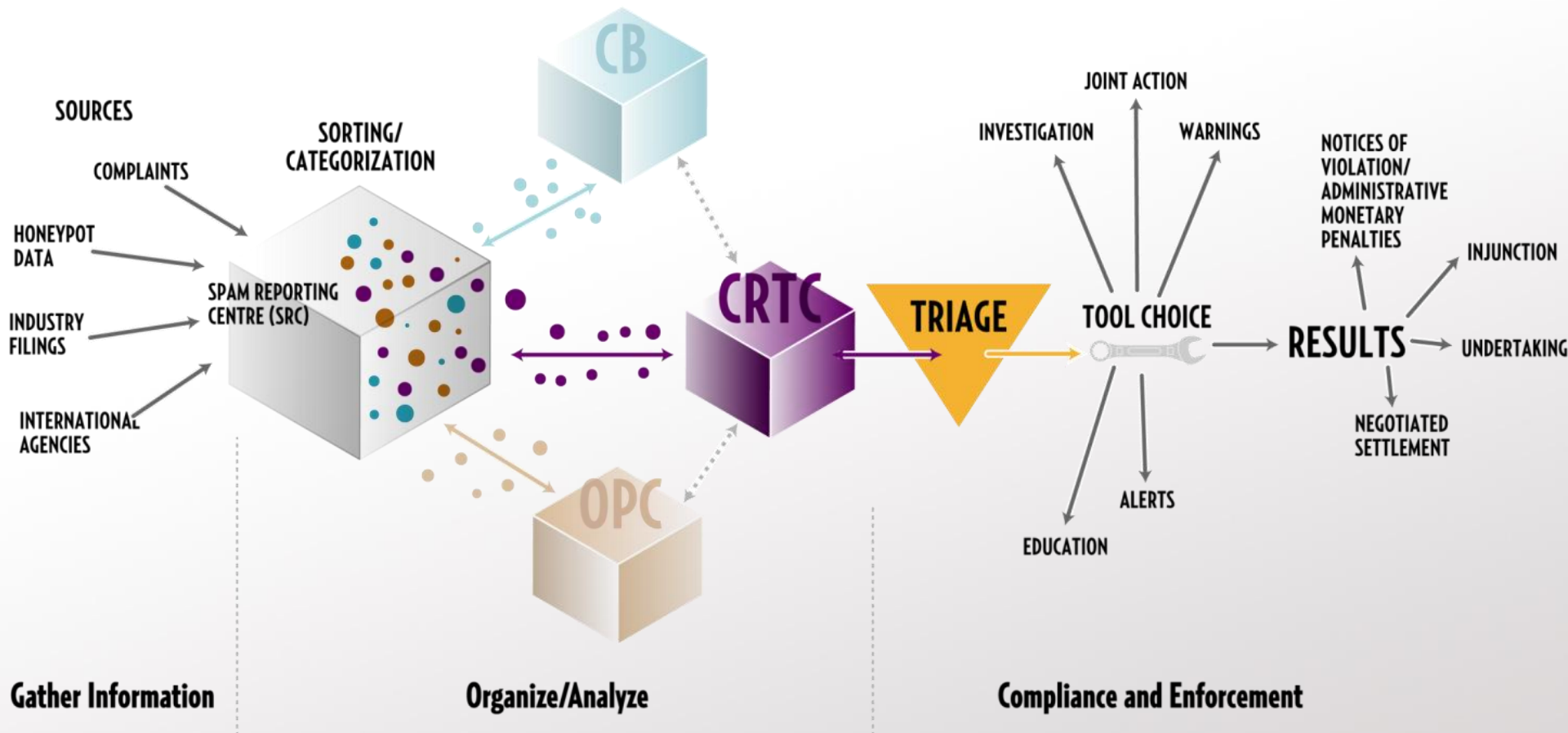
The legislation provides for:

- Public Right of Action (PRA) for any violation
  - The PRA would allow affected persons such as businesses, network providers and consumers to take civil proceedings against those alleged to have committed contraventions of the Act. In addition to actual damages, courts may award significant sums to successful applicants.
- Domestic and International Cooperation
  - Coordination and consultation between the three enforcement agencies responsible for compliance
  - Information sharing and consultation between the three agencies and their international equivalents
- A variety of investigative and enforcement tools
  - Preservation Demand; Notice to Produce; Search Powers; Restraining Order; Direct and Vicarious Liability; Undertakings; Notice of Violation

# Theory of the Business



# CRTC Enforcement Process





# Enforcement Tools

The legislation provides for a variety of investigative and enforcement tools:

- Preservation Demand (s.15)
- Notice to Produce (s.17)
- Warrant (search & seizure) (s.19)
- Restraining Order (cease & desist) (s.26)
- Injunction (s.41)
- Undertaking (s.21)
- Notice of Violation (s.22)
- Administrative Monetary Penalty (AMP) (s.20)



# Consequences of a violation

- **Administrative Monetary Penalties (AMPs)**
  - maximum penalty for individual =  
**\$1,000,000 / violation**
  - maximum penalty for an organization =  
**\$10,000,000 / violation**
- **Extended Liability**, including:
  - vicarious liability
  - director/officer liability

# Conformity Continuum

## Prevent

### *Objective:*

- Increase consumers' ability to recognize, avoid and report conduct that violates the rules and regulations
- Increase industry ability and willingness to voluntarily comply with the rules and regulations

### *Means:*

- Public education, awareness and outreach
- Promotion of internal compliance measures
- International co-operation
- Consultations with various stakeholders

## Respond

### *Objective:*

- Ensure appropriate, timely and effective responses to violations

### *Means:*

- Preliminary measures
- Voluntary measures
- Involuntary measures

## Detect

### *Objective:*

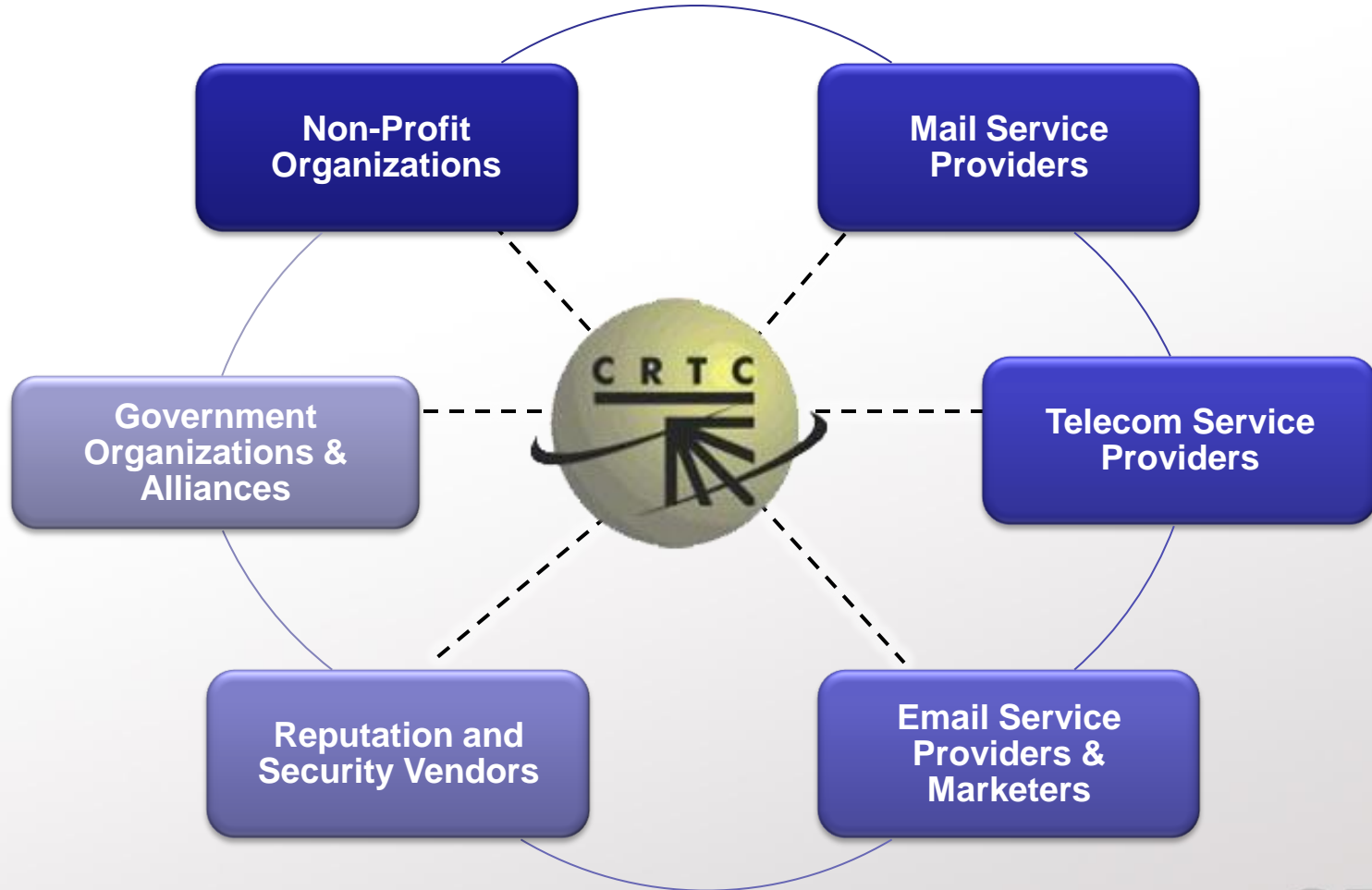
- Assess compliance through surveillance and intelligence gathering activities to ascertain the need to engage in enforcement action

### *Means:*

- Review and analysis of complaints and trends
- Assessment of risks
- Information sharing
- Investigation techniques

*\*The appropriate tool to use in a particular situation will depend on the factual context.*

# Partnership Approach





# What is Success?

## Direct

- Increased compliance with legislation
- Change Canada's reputation as spam haven
- Reduction in infected electronic devices

## Indirect

- Adoption of Best Common Practices (BCP's)
  - Enable / encourage many new Best Practices in the industry
- Cost savings for Business and Consumers
- Reduction in Consumer losses
- Increased Consumer protection, empowerment, and confidence in the e-marketplace



# **Undertakings and Private Rights of Action**



# Elements of an Undertaking

- An alleged violator may enter into an undertaking as per Section 21 of *CASL*
- Entry into an undertaking is subject to approval from a designated person
- The undertaking:
  - Must identify every violation committed under Sections 6 to 9
  - May require payment of a given amount and/or other conditions
- Undertakings
  1. When a Notice of Violation has not yet been issued
  2. When a Notice of Violation has been issued, it will be ended



# Private Right of Action

- As per Section 47(1) of *CASL*, a person who alleges that he or she is affected by an act or omission that breaches the key provisions of:
  - Sections 6 to 9 of *CASL*
  - Section 5 of *PIPEDA* (collection/use of personal information)— subsection 7.1(2) or (3) of that Act
  - Section 52 or 53 (false/misleading representations) or 74.011 (deceptive marketing) of the *Competition Act*may apply to a court for an order of compensation
- Limitation period of 3 years
- A court may not impose statutory damages against a person who has already entered into an undertaking with reference to the same violations



# ***CASL* Regulations**



# CASL Regulations

- CASL Contemplates two categories of regulations:
  - Governor in Council regulations (managed by Industry Canada)
  - CRTC regulations (for which the Commission is responsible)
- Both sets of regulations were published in the Canada Gazette for a 60 day comment period
- Consistent with normal practice, comments on the CRTC regulations were sought by way of a public CRTC Notice of Consultation with the concurrent 60 day consultation period launched via the Gazette
- All regulations will come into force at the same time as the legislation, subject to Governor in Council approval



# CRTC CASL Regulations

- The final CRTC regulations were made on March 28, 2012
- The Regulations relate solely to the CRTC's mandate under C-28, namely, Section 6 to 8
- They include:
  - Reg 2: Information to be included in CEMs
  - Reg 3: Form of CEM
  - Reg 4: Information to be included in a request for consent
  - Reg 5: Specified functions of computer program



# Information Bulletins



# Purpose of Information Bulletins

The CRTC has published the following two information bulletins to help Canadian businesses better understand *CASL* and facilitate compliance:

1. Certain provisions of the Electronic Commerce Protection Regulations (CRTC)

(Compliance and Enforcement Information Bulletin CRTC 2012-548)

2. The requirement to obtain express consent under *CASL* when using Toggling

(Compliance and Enforcement Information Bulletin CRTC 2012-549)



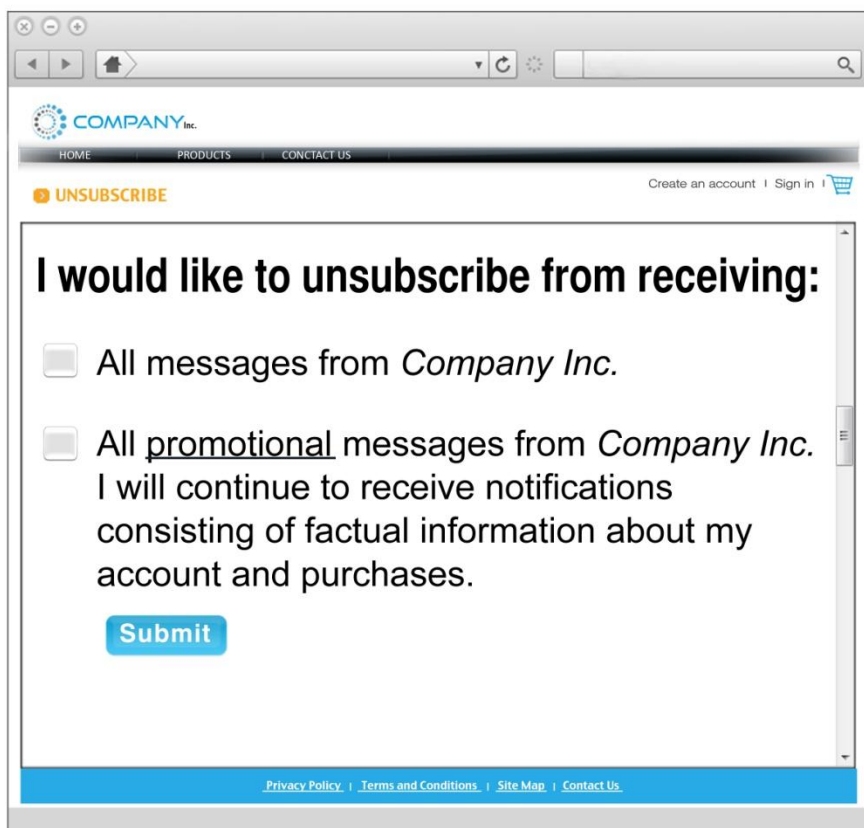
# The Electronic Commerce Protection Regulations (CRTC) Information Bulletin

## Information to be included in a CEM (Reg 2)

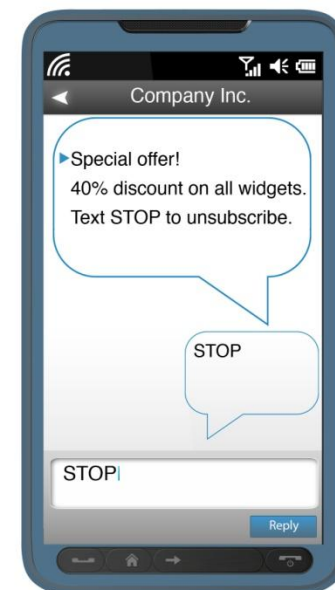
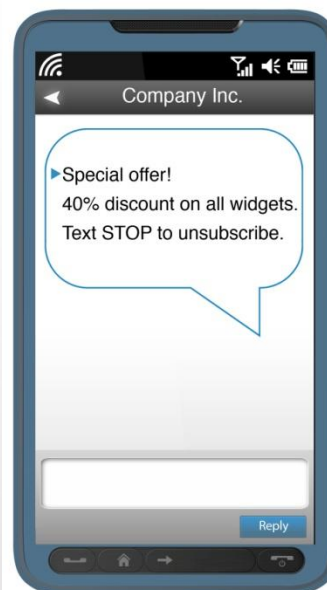
- Sender(s) must be identified
  - Including Affiliates
- CEMs must include the sender's mailing address
  - Definition
  - Valid for 60 days

# The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

## Form of CEM (Unsubscribe Mechanism) – (Reg 3)

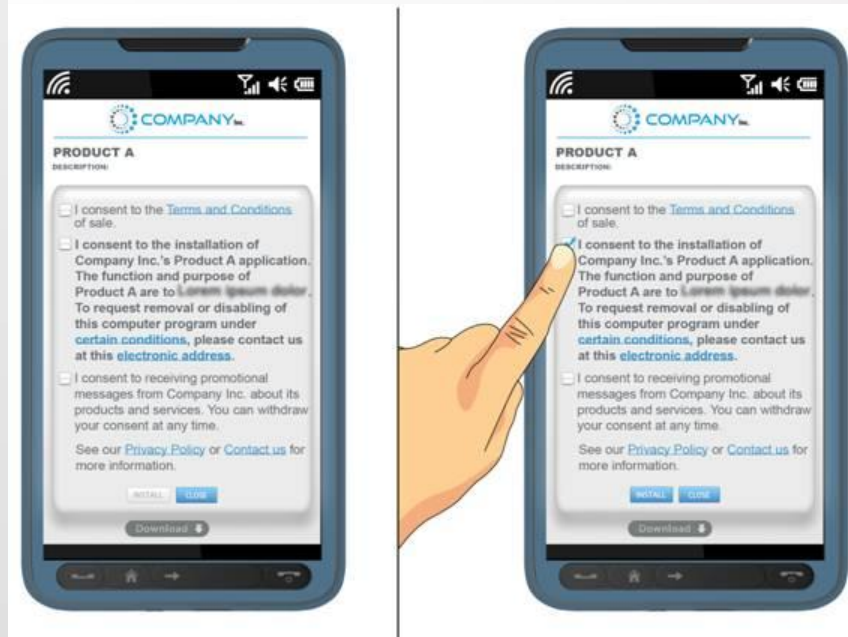
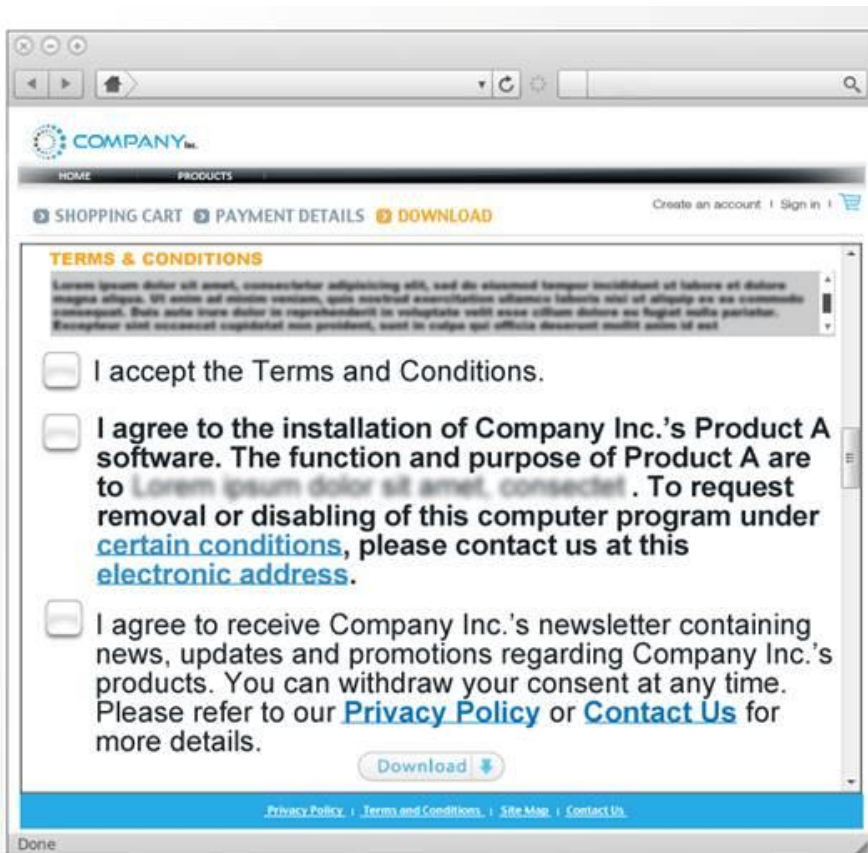


A screenshot of a web browser displaying an unsubscribe form for "Company Inc.". The browser's address bar is empty. The page header includes the "COMPANY Inc." logo and navigation links for "HOME", "PRODUCTS", and "CONTACT US". A secondary header contains "UNSUBSCRIBE" in orange, "Create an account | Sign in |", and a shopping cart icon. The main content area features the heading "I would like to unsubscribe from receiving:" followed by two radio button options: "All messages from *Company Inc.*" and "All promotional messages from *Company Inc.*. I will continue to receive notifications consisting of factual information about my account and purchases." A blue "Submit" button is positioned below the options. At the bottom of the page, there are links for "Privacy Policy", "Terms and Conditions", "Site Map", and "Contact Us".



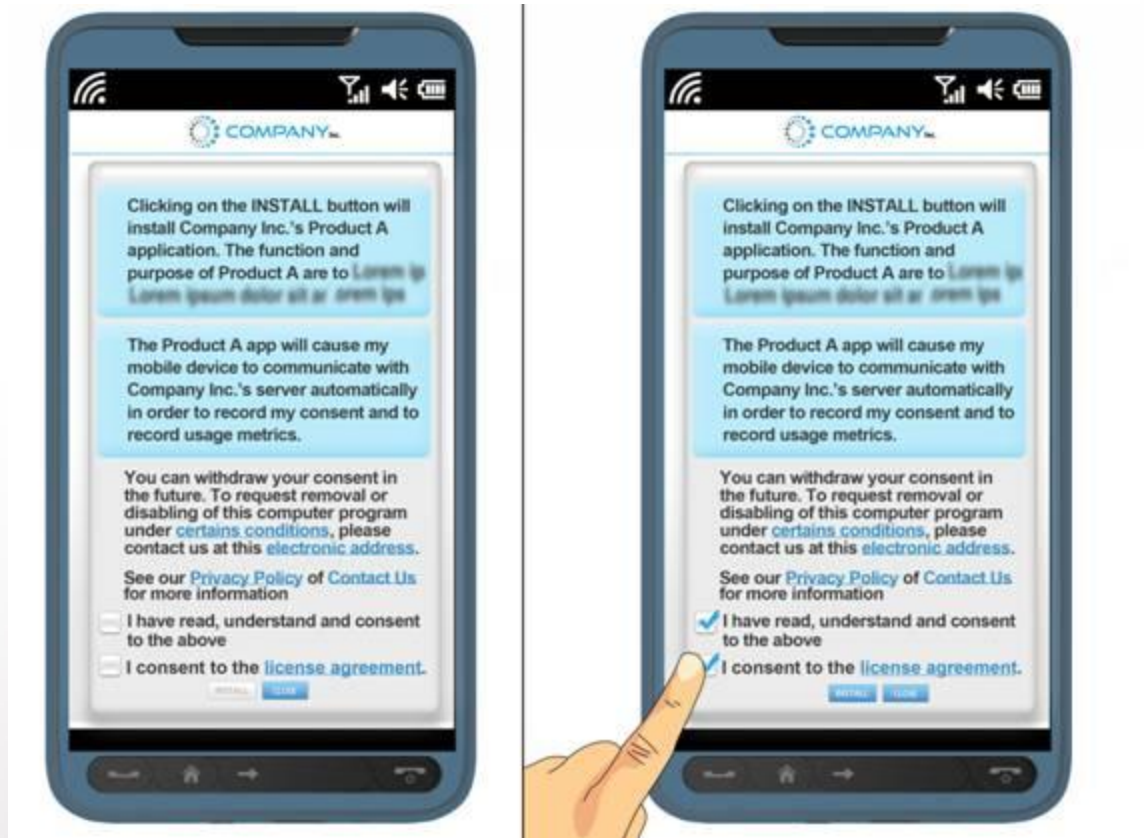
# The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

Information to be included in a request for consent – (“sought separately”) – (Reg 4)



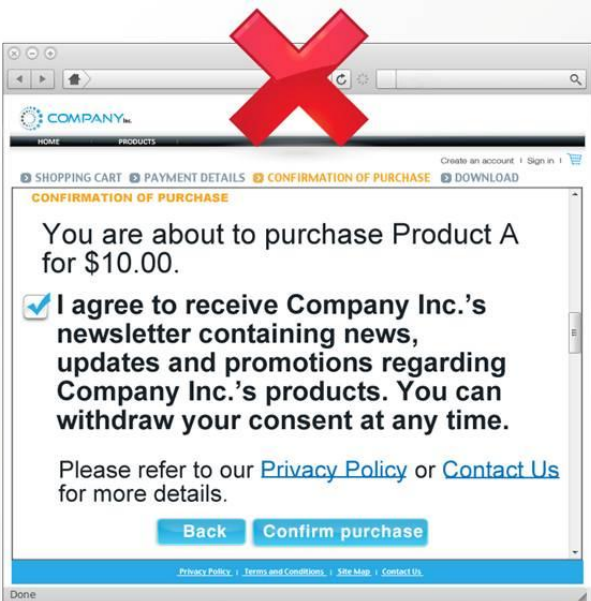
# The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

## Specify functions of computer programs (Reg 5)

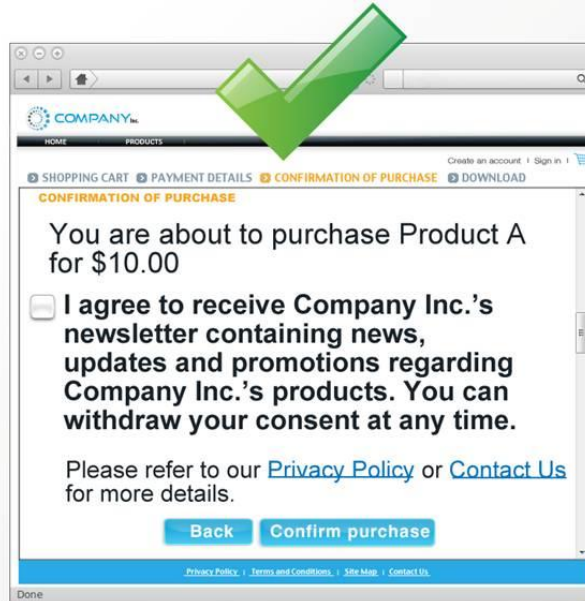


# Use of Toggling Information Bulletin

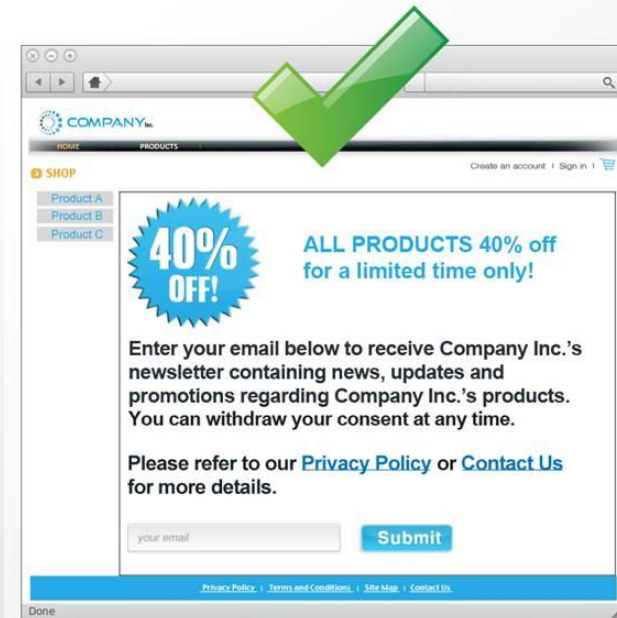
- What is Toggling?



A screenshot of a website checkout page. The page is titled "CONFIRMATION OF PURCHASE" and displays the message: "You are about to purchase Product A for \$10.00." Below this, there is a checkbox that is checked, with the text: "I agree to receive Company Inc.'s newsletter containing news, updates and promotions regarding Company Inc.'s products. You can withdraw your consent at any time." At the bottom of the page, there are two buttons: "Back" and "Confirm purchase". A large red X is overlaid on the top right of the page, indicating that this practice is non-compliant.



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# Next Steps

- Awaiting the Governor in Council (GIC) Regs
- Coming into force of the Act and regulations on a day fixed by the GIC
- Spam Reporting Center and Labs required for implementing *CASL* will be ready at time *CASL* is in force



**Questions?**