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Comité permanent de l'industrie, des sciences et de la technologie

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🕒 (1635)

[*English*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good afternoon. Welcome to the Standing Committee on Industry, Science and Technology. This is Tuesday, June 9, 2009.

We are meeting today for an hour and a half, from 4:30 to 6:00 p.m. in order to study Bill C-27.

We are televised, and pursuant to the Order of Reference of Friday, May 8, 2009, we are studying Bill C-27, 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.

We have appearing in front of us the honourable Tony Clement, Minister of Industry, and two of his officials, Madame Helen McDonald, Assistant Deputy Minister of Spectrum Information Technologies and Telecommunications, and Mr. Richard Simpson, Director General of the Electronic Commerce Branch.

Welcome to all of you, and welcome as well to our Mexican delegation, who will be sitting in the audience, observing the Canadian parliamentary system at work. I welcome the Mexican delegation from the United States of Mexico.

Without further adieu, we'll begin with the minister for his opening comments with respect to this bill.

Hon. Tony Clement (Minister of Industry): Mr. Chair, thank you, and thank you to members of the committee of course for the opportunity to meet the community to discuss Bill C-27, the proposed Electronic Commerce Protection Act, or ECPA.

Joining me today we have two officials, Helen McDonald, the Assistant Deputy Minister for Spectrum, Information Technologies and Telecommunications, and Mr. Richard Simpson, who is the Director General of the Electronic Commerce Branch of Industry Canada.

Mr. Chairman, in a little more than a decade, the Internet has become a critical media, not only for communications, but also for competing in the global economy. It has become an essential part of the daily lives of Canadians, and essential to Canadian business.

[Français]

Toutefois, au cours des dernières années, Internet et les cyberéconomies sont devenues plus vulnérables à la croissance rapide et la sophistication accrue du pourriel et des menaces en ligne.

[English]

So the legislation before you today is about encouraging the growth of electronic commerce by ensuring business confidence and consumer trust in the online marketplace.

In 2007, one report estimated that the global cost of spam was at \$100 billion US per year. Canada's share of this cost would be about \$3 billion. Unsolicited commercial e-mail is more than just a nuisance. Along with the development of associated threats like malware, spyware, phishing, and various viruses, worms and trojans, spam has become a major disruption to the Internet and to the Canadian economy as a whole.

A growing chorus of voices across the nation have called for legislation to protect Canadians and the Canadian economy from spam.

[*Français*]

La Chambre du commerce décrit le pourriel comme, et je cite: « un poids considérable qui doit être porté autant par les consommateurs que par le milieu des affaires ».

Des grandes associations commerciales telles que l'Association canadienne du marketing, l'Association des banquiers canadiens, l'Association canadienne de la technologie de l'information et l'Association canadienne des fournisseurs Internet ont toutes demandé que soient adoptées de nouvelles lois pour contrer ce problème.

En octobre 2007, les représentants de neuf grandes entreprises de l'industrie qui participaient à la Table ronde du Canada sur l'avenir de l'économie Internet ont confirmé qu'ils appuyaient des mesures législatives pour contrer le phénomène du pourriel et des autres menaces connexes sur Internet.

Alors, monsieur le président, nous avons écouté les préoccupations et nous avons entendu les préoccupations exprimées par les millions de Canadiens qui ont vu leur boîte de courrier électronique saturée de pourriel et leur système informatique menacé par des dangers que pose le pourriel lorsqu'il s'intègre à leur logiciel et dérange leur style de vie.

Monsieur le président, il est temps d'agir.

[*English*]

We have debated this bill at second reading, and I am gratified to see the support this bill has received from both sides of the House. In fact, I must say that several parliamentarians have been calling for some time for legislation that would curb spam and other threats to the Internet and the online economy.

Senator Donald Oliver, for instance, in the other place has introduced bills to combat spam. During last September's election campaign, the Prime Minister announced that if elected, the government would introduce anti-spam legislation.

In fact, I would also like to acknowledge Senator Goldstein and his bill, Bill S-220, which was introduced in the other place last February. I believe that the bill before us improves upon his bill in that it empowers specific agencies, at royal assent, that would have the power to enforce the law, the CRTC, the Competition Bureau, and the Office of the Privacy Commissioner. Like Bill S-220, the Commons bill also allows for a private right of action.

The honourable member from Pickering—Scarborough East emphasized the need for international action against spam. I would point out that the bill before us provides the CRTC, the Competition Bureau, and as I said, the Office of the Privacy Commissioner not only with the authority to work with one another, but to work with their international counterparts. The honourable member from Pickering—Scarborough East also pointed out the importance of administrative monetary penalties that have teeth. I should mention to this committee that this

bill provides for AMPs up to a maximum of \$1 million per violation for individuals, and up to \$10 million for businesses.

During our debate in the Commons, other members from the Liberal benches spoke in favour of the principles of this bill. The honourable member from Scarborough—Rouge River told the House that he was pleased to see the private right of action included in the bill, and this right, of course, would allow users and businesses to take civil action against anyone who violates the act. This remedy has been very effective in the United States, Mr. Chairman, and is one example of how we have adopted the best practices from around the world.

The NDP have a solid history of favouring anti-spam legislation. Last fall their election platform contained a commitment to “combat identity theft and control online computer fraud against consumers and seniors and against spamming and phishing”. During second reading, the honourable member from Nanaimo—Cowichan reminded us of spam's impact on the productivity of Canadian workers. She reminded us that Canada is the only G-7 country without anti-spam legislation, and I would like to assure her, through you, that the bill before us benefits from the best practices of the jurisdictions that have gone before us in introducing anti-spam laws.

The honourable member from Timmins—James Bay has been an outspoken champion for protecting Canadians from spam. When speaking to this bill, he expressed concern about the implications that Bill C-27 will have on the national do-not-call list. As well, from the Liberal Party, the honourable member from Scarborough—Rouge River also raised concerns about the national do-not-call list.

I should mention to this committee that the do-not-call list is up and running, and it is effective, with over six million Canadians signed up. At this point in time, of course, we always have the ability to review these things, but we would like to see the DNCL continue for the time being, and we do not shelve it with this legislation at this particular moment in time.

As my parliamentary secretary indicated during second reading debate, Bill C-27 will not abolish the do-not-call list. In fact, subclause 6(7) enhances do-not-call lists because it carves out telemarketing by exempting interactive voice communications, facsimiles, and voice recordings to telephone accounts from the application of the act.

It's well-known, however, that with the convergence of technologies, the distinction between voice telephony and Internet carried communications, for all intents and purposes, is disappearing. Clauses 84 to 86, which could repeal section 41 of the Telecommunications Act and the do-not-call list, would not be proclaimed by the government until necessary to deal with such changes. That is to say we are going to continue to monitor how this particular aspect of the bill changes over time. Of course, we will have the flexibility to react to those changes.

The Bloc spoke in favour of the principles of this bill, and the honourable member from Chicoutimi—Le Fjord reminded us of the increase in the amount of spam and wondered whether businesses were changing the way they contact consumers.

🕒 (1640)

Before the debate adjourned on May 7th, I believe it was the honourable member from Jeanne-Le Ber was about to make a point about the difficulty of policing the internet. It's unfortunate that the debate was cut off at that moment because I appreciate the concerns about the challenge of enforcement when communications technologies know no borders. However, I'd like to assure the committee that it is indeed possible for anti-spam laws to have a huge impact.

In Australia, for example, after the Spam Act came into effect, the proportion of global spam originating from that country was greatly reduced. Some major spammers, particularly pornographic spammers, closed their Australian operations altogether. Mr. Chairman, during the second reading, two themes recurred in most of the interventions. First of all, all parties support the intent of this bill. We just want to ensure that we get the details right. Secondly, many speakers said that they looked forward to examining the bill in greater detail here at committee.

I'm pleased that we have the opportunity now to do just that. I encourage members to read it through, to understand the intent, to ask questions, and you'll see that the legislation in front of you is solid, considered, and will make a big difference to protecting Canadians in the online marketplace. On that note, Mr. Chair, I'll very pleased to hear from the committee members. I expect that if there are more technical aspects of this bill, we have departmental officials to answer your questions and clarify those more technical provisions that may require explanation.

Thank you.

🕒 (1645)

The Chair: Thank you very much, Minister. We'll have about an hour and fifteen minutes of questions and comments from members, beginning with Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

First of all, I'd like to thank the minister for his comments, and I would like to reiterate to him in no uncertain terms that the Liberal Party welcomes Bill C-27 in the interests of combatting spam. There's no question that we're very glad to see this as a follow-up to the task force that rendered its report back in 2005. However, having said that, there are some very significant concerns that have been expressed certainly to myself in the course of the last few weeks concerning Bill C-27.

In a sense, if I could try to summarize, the net has been cast in order to eliminate spam, but it has been cast in such a broad manner and the devil is in the details, that there are significant concerns about it having some negative effects. The net being cast so broadly has also left certain definitions so general that the interpretation of something as simple as a computer program can be taken in a number of ways. If I could, with respect to the anti-spam provisions, the scope is too broad at this point. To get specific, the consent provisions that are contained in the bill and exclusions are too narrow. The unsubscribed requirements are unworkable, and this could have a chill on the legitimate commercial speech and e-commerce.

We want to help to fix that because the anti-slam bill is a good thing, but we have a lot of work in front of us in order to address some of the specific concerns that have been expressed to us by people who also want to see Bill C-27 come into play. As the first question, has the team that put together the bill—I assume that it has done this—but there are more recent examples of legislation in other countries. You mentioned Australia. Australia is an example, and New Zealand is another. Have other countries' legislations been consulted in the process of putting this together, because at first sight, some of what they have done appears to address many of the concerns that have been expressed to me by various different organizations.

Hon. Tony Clement: Thank you. I'll just pass it over to Helen.

Ms. Helen McDonald (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): The United States has also been consulted, and that is where we got the private right of action.

Mr. Marc Garneau: How about New Zealand and Australia?

Ms. Helen McDonald: New Zealand and Australia, yes, absolutely.

Mr. Marc Garneau: I would suggest that we need to look at some of the things that they have done that get around some of the objections with respect to the scope being too broad in this particular case. In terms of defining some of the words that are used in this legislation, let me bring up a couple of examples.

One has to do with extraterritorial provisions. The anti-spam and message-altering provisions that exist at the moment apply to any message where a computer system located in Canada is used to send, route, or access the electronic message. The key word here is “route”. As you know, the way the internet works, we can have information flowing through Canadian computer systems that don't originate in Canada and are not ultimately going to end up in Canada. The use of the word “route” is problematic in this particular case. That is an example that I think perhaps you may want to address. We need to address that.

The Chair: Mr. Simpson, go ahead.

Mr. Richard Simpson (Director General, Electronic Commerce Branch, Department of Industry): Yes, thank you.

It certainly is a valid point that spam is a global problem. Therefore, legislation has to take account of international arrangements, as well as put forward the right legal powers to tackle spam domestically. The example of Australia is a good one, where they've tried to make sure that their domestic rules, through an Australian link, apply with respect to international origins of spam.

In respect to the point about Internet transmissions, and how those are global because of the nature of the Internet, they can't be sourced in any one country, but they go through the whole network and then arrive at their destination, which could be anywhere, that's true. But the bill

does provide for a specific exemption for telecommunication service providers when they're performing the function of telecommunications. Therefore, it's a waiver, if I can use that term, for the function of carriage, which certainly the example that you use about the Internet would be captured by that.

I think that, hopefully, we won't get caught by a specific transmission function that is going to be subject to any of these anti-spam provisions, certainly not as it relates to telecommunication service providers.

🕒 (1650)

Mr. Marc Garneau: Getting back to defining some of the terminology here, when we think of HGML files that are regularly used in accessing websites, or JavaScript, which is another common example, or updating programs that some of us use, for example, Symantec anti-virus software, those would not be looked upon as spam, and, yet, by the definitions that exist within section 8, I believe it is, could be looked upon as being spam.

So, again, that is something that needs to be tightened up and it needs to be clarified so that it doesn't create serious impediments to legitimate users.

Hon. Tony Clement: No, and we have noted that particular concern about section 8, I can tell you, Mr. Garneau.

I can tell you that what we're trying to do is provide the right balance. Clearly, if you're getting an upgrade, if there's an implied consent or some other mechanism so that we can have these reinstallations or upgrades in our computers, that's an obvious legitimate practice. We've got to make sure that is legitimate, but we don't want to leave the barn door so wide open that the bad guys can use that as the way to get the spam in.

We're prepared to work with you to get the right kind of language that will balance this off appropriately.

The Chair: Thank you, Mr. Minister.

Thank you, Mr. Garneau.

Monsieur Bouchard.

[*Français*]

M. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Merci, monsieur leur président.

Tout d'abord, monsieur le ministre, vous savez que le Bloc québécois a donné son appui au niveau de la deuxième lecture. Un comité, nous voulons entendre les témoins pour voir quelles expressions, quelles opinions nous allons recueillir des divers témoins qui vont témoigner devant nous.

On voit, dans le projet de loi, que trois instances seront concernées. On sait qu'il y aura le CRTC, le Bureau de la concurrence et le commissaire à la protection de la vie privée. J'aimerais vous entendre sur le rôle de chacun et cette coordination. Comment va se faire cette coordination pour qu'il y ait efficacité? Vous avez trois gros joueurs importants, est-ce que ces institutions vont se parler? J'aimerais avoir vos commentaires à ce sujet, à savoir le respect des rôles de chacun et aussi les bénéfices dont les usagers et consommateurs bénéficieront.

L'hon. Tony Clement: Oui, merci.

Peut-être que Mme McDonald ou M. Simpson voudrait ajouter quelque chose. Je voudrais dire quelques mots aussi.

Il y a le rapport final du Groupe de travail sur le pourriel, et il est recommandé que, et je cite: « l'application des dispositions de la loi qui s'attaque au phénomène de pourriel devrait être exécutée par les organismes existants ». Bien sûr, cela veut dire que le CRTC, le Bureau de la concurrence et le Commissariat à la protection de la vie privée existent et nous pouvons utiliser ces organismes pour se protéger contre le pourriel. C'est une façon similaire de législation dans les autres pays, comme l'Australie, la Nouvelle-Zélande et le Royaume-Uni.

Peut-être que Mme McDonald voudrait ajouter quelque chose.

🕒 (1655)

[*English*]

Ms. Helen McDonald:

With this law we are very much trying to build on the existing mandates and competencies of these three agencies and, therefore, the CRTC you could look at as the major organization charged with stopping the spread of spam and the use of spyware.

When we look at the other two agencies, we are trying to build on their mandates to make sure that the Competition Bureau can apply its rules around and its role around misleading and deceptive advertising in a computer environment. So we've enlarged their mandate, but they're using their existing tools.

With the Privacy Commissioner, we want to make sure that she has the tools to prevent electronic lists from being created that can be then farmed and used for spam.

For the Privacy Commissioner and for the Competition Bureau, they have existing mandates. We're extending their mandates, but they're using their existing tool set. With the CRTC, we are creating, in a sense, another tribunal that will be able to look at violations with respect to spam and to take action appropriately.

To ensure that coordination that you were concerned about, we are proposing a small organization within Industry Canada that would make sure that the three organizations are

working together effectively to achieve the purposes of this legislation and to make sure that when we look at our situation more broadly that Canada is continuing to be not a safe haven for spam, but a spam-free environment. So there'll be a national coordinating body within Industry Canada that will make sure the three work together effectively.

There is also a spam reporting centre proposed that people could send reports of spam to and it would serve all three agencies to prevent unnecessary duplication.

[*Français*]

M. Robert Bouchard: Les pourriels rendent le système Internet, dans certains cas, presque inefficace. Ils nuisent beaucoup à l'efficacité au niveau de toute la question des courriels.

Votre projet de loi parle d'isoler le télémarketing des mesures prévues par la loi. Ce que je comprends du télémarketing, c'est que c'est la sollicitation par Internet, alors comment un projet de loi peut assurer une protection à toute cette sollicitation? Si le télémarketing est isolé, cela veut dire que, la première chose qu'on fait le matin est le nettoyage de notre poste de travail parce qu'on a énormément de pourriels, les utilisateurs, les consommateurs recevront encore des messages de télémarketing dont ils n'ont pas besoin.

J'aimerais vous entendre là-dessus. Comment pouvez-vous nous assurer qu'il y aura protection des utilisateurs et des consommateurs devant leurs postes de travail sur Internet?

L'hon. Tony Clement: Nous avons déjà la liste nationale des numéros de télécommunications exclus pour le téléphone. Il y a, dans notre vie, la convergence de technologies maintenant et dans l'avenir il est possible d'avoir la convergence d'une autre approche avec le téléphone et Internet, mais pour maintenant nous avons déjà la liste nationale, comme je l'ai dit, et il y aura pour les autres façons de communication, par exemple par internet, un régime établi dans notre législation.

🕒 (1700)

[*English*]

Ms. Helen McDonald: I think the minister has pointed to why the “do not call” list in his remarks should continue. It's a fairly new regime. It's still finding its feet, and we believe that it can be effective.

If you are talking or worried about spam that comes, telemarketing usually refers to a voice-to-voice communication. That is what is covered by the “do not call” list. If you're worried about text messaging on cell phones, that's not voice-to-voice. That's people sending messages by the internet. That would be covered by this. Spam, which is just computer generated electronic e-mails as long as they are unsolicited commercial messages, would be covered by this. It's two regimes that are being maintained for the time being.

As the minister said, one might want to look in the future if people start moving to computer generated voices that leave messages on your home phone, it becomes complex. The way the bill is structured, the government would have the opportunity to react quickly.

The Chair: Thank you, Madam McDonald.

[*Français*]

Merci, monsieur Bouchard. Nous passons à M. Lake.

[*English*]

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister. Obviously when we are looking at an issue like this, we have a bit of a challenge to find, as with all legislation, a balanced approach. In this case, I think that the challenge is to find a balance between catching the bad guys, the most malignant forms of spam, and yet still allowing businesses to contact their legitimate clients without worries of someone knocking on their door to take them away.

Can you maybe clarify a little bit about how this bill sort of captures that balance, maybe from the side of addressing these concerns that might be expressed by the business community?

Hon. Tony Clement: Certainly. I think that for instance, there are legitimate e-mail marketers for instance who want to communicate with their clientele. What we've tried to do is create both explicit consent and implied consent in those situations, when there's a pre-existing business relationship for instance.

Let's say that I used to be in the legal beagle business, and let's say you've clients. You're a lawyer with clients, and you want to send them updates about particular aspects of changes in the law, say anti-spam legislation for instance. Obviously, there's a pre-existing business relationship, and those kinds of things do imply some consent by the receiver of that information, by the consumer of that information. We're not trying to interfere with the legitimate e-mail practices of legitimate businesses of course.

We have the implied consent mentioned in the legislation. We can further hone that down in the regulations as well, where we can describe further circumstances where marketers can rely on implied consent. Again, we're not trying to interfere with the existing business relationships. We're trying to deal with bad guys who right now can drive the truck through the open barn door because there's no regulation.

🕒 (1705)

Mr. Mike Lake: I have a question for Ms. McDonald or Mr. Simpson.

Often when you go through legislation like this, once you put it out there's folks who want to comment on it, express concerns, or get some clarification. I imagine you've had some folks comment or contact you regarding this. What kind of common concerns have been expressed at this point?

Ms. Helen McDonald: There are concerns around the consent regime. Have we got the balance right and how would implied consent be considered?

As the minister said, you don't want to open the door too broadly. Therefore, we've tried to strike a balance to ensure that a pre-existing business relationship could be such that I've expressed interest in a product or service, and that's an implied consent. We hope that would be sufficient. We look for your investigations on that.

I think Mr. Garneau had raised the question about the computer programs and if there is an issue with the downloading of software to keep your computer virus-free. Do we have the wording a little to restrictive on that, I think has been the concern, and should that be a softer more implied consent or an explicit consent program-by-program. I think those are the two major concerns that we have heard.

Mr. Mike Lake: In terms of the other countries' anti-spam legislation that's referred to, from what I understand that has been a real success in those countries. Are there any lessons to be learned, any response that can be given, or experience drawn upon based on the knowledge that we have of those countries' legislation that might address some of the concerns that some stakeholders might have?

Ms. Helen McDonald: I'm going to ask Richard to answer that given his greater experience in putting this together, but also because he interacts more closely with other countries with similar regimes.

Mr. Richard Simpson: Thank you.

The one common denominator that has come out of work in the Organization for Economic Cooperation and Development, which started examination of spam and other harmful activity on the Internet a few years ago, was that you need a combination of tools, legal and technical, to deal with spam. I think that's the first lesson.

On the legislative side of it, which I think has been recognized in the work that we've been doing on spam, is one of those important pieces of that toolkit approach that we need. I think you'll find every country that has a successful result from their work on spam, for example, Australia, have a toolkit approach. In fact, Australia, like Canada, talked about toolkits at the same time the OECD promoted that particular approach.

Australia has taken an approach towards spam which, like this bill, is based on the concept of consent. As I mentioned before, they have looked at it as a domestic regime that has to work in combination with international arrangements to deal with spamming. Another similarity to Bill

C-27 is that the Australians do use their communications regulator as well to deal with some aspects of spam.

Australia is a country that formally reviewed its anti-spam legislation in 2006 after about three years in operation. They found out from the data that because of the legislative arrangements they put in place they had reduced Australia's contribution, if I can use that word, to global spam to something that was well down in the list; off the top 20 list of spam originating countries. I think that's a good example of how that toolkit approach has been effective in that one country.

The Chair: Thank you, Mr. Simpson.

Thank you, Mr. Lake.

Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here. Thanks for noting the democratic policy from the last platform and feel free to act on our position on net neutrality and employment insurance reform as well if you like. There's other suggestions on priorities.

Mr. Minister, I know that you heard these problems with regard to some of the types of issues being raised here. Do you now plan to bring amendments to this legislation, or is it one that right now you want to pass in current form?

🕒 (1710)

Hon. Tony Clement: I take this committee seriously. If you've some suggestions and comments that would fit into what our aspirations are for this particular bill, then I think we're prepared to look at that, absolutely.

I encourage you to do that. The only thing I would say, and I guess Mr. Garneau raised this a little bit, we do consider this economic legislation. There is a \$3 billion a year effect on business in this country. I think we should hunker down at committee, come up with some positive changes that will make this a better bill. I don't want to stretch this out too long because quite frankly, we're costing businesses in our country money. We're the only country in the G-7 that doesn't have anti-spam legislation. I think it's incumbent upon us to get the shoulder to the wheel and get this done.

Mr. Brian Masse: I appreciate that. I agree, as long as we can do the proper bill, and then we could also move on to my private member's bill, Bill C-273 as well.

Hon. Tony Clement: This is a paid political announcement.

Mr. Brian Masse: Yes. I do want to run through a couple of scenarios to be clear here. I want to make sure that I understand the interpretations that are happening as well, as this information

coming into us. We'll say for example automatic updates. Would that be considered as spam under this bill if it's passed as it currently stands in terms of interpretation. This is why I have a couple of scenarios here.

Hon. Tony Clement: Do you mean with the pre-existing relationship? That's what we're saying. We would like that to be part of implied consent. Helen, do you want to talk about that?

Ms. Helen McDonald: It's clearly written as express consent for program modifications.

Mr. Brian Masse: So that would be spam then right now?

Ms. Helen McDonald: No, I haven't said that. I'm simply saying that the spam itself allows for implied and express consent. The modification of your computer program requires express consent the way it's written now. It does it kind of program-by-program. I imagine that there are easily ways in your contract whether that's electronic or paper with your security software provider.

One could provide that express consent for the person wanting the automatic updates and so on. I would not see that as problematic. I think what we're trying to make sure is that the wording that we have of the combination of you agreeing to every explicit program and express consent that we have it worded correctly.

Mr. Brian Masse: That could be through regulations and licensing. I'll ask you a question really quickly then.

For example, a new software company wants to communicate with other software distributors in that. Would they able to send out a message to everyone within their own field of software development, or would that be considered spam, or would they have to rely on traditional mail to be able to contact people they haven't had contact before in the business but are integral for developing that industry?

Ms. Helen McDonald: There's a provision for business to business email.

Mr. Brian Masse: Even though they have no pre-existing relationship?

Ms. Helen McDonald: Yes.

Mr. Brian Masse: Okay, I see. I do want to quickly touch on the "do not call" list briefly. What other types of changes do you maybe foresee? I tried to get on the "do not call" list last time. There was the computerized ghost call that happens to individuals first when they determine whether you're home or not, and then it hangs up right away.

That amendment was defeated unfortunately, when we passed that bill. Would this provide an opportunity for you to address that issue? That's becoming more and more of a problem where you're at home and they do the first phone call. If you pick it up, then it's blank and it's dead air.

From there, the telephone solicitor or the operative then calls you back immediately knowing that the person is at home. Would there be a remedy in this bill here?

Hon. Tony Clement: I would say no, because our bill is dealing with electronic communications, not using telephones for a medium. It's becoming difficult to separate these things. It was what I was trying to signal in my remarks. We have a contract with Bell right now where they run the "do not call" list, so I want to obviously let that contract kind of run.

This bill then gives us an opportunity to start to see if things have converged to such an extent that you can't really chunk out telephony on one end and the electronic on the other. We will have an ability then to tuck everything into the same kind of regime.

🕒 (1715)

Mr. Brian Masse: Okay, because I think there's some fear that's being expressed out there that this potentially could open up and the vulnerability of the do-not-call list.

Hon. Tony Clement: I don't think so. I think it's expressly excluded, but it gives us a chance to sort of tuck it in if we so choose.

Ms. Helen McDonald: I'm just trying to be precise here. The two-way voice communications is the carve-out we've made to keep the do-not-call list whole. I'm not familiar enough with what a ghost call is, whether that is a computer-generated call?

Mr. Brian Masse: They often use a computer system....It's basically somebody calls you first for telephone marketing and they hang up on you and often they use a computerized system to pull the numbers up and then if you're home, then they....It's in.

[*Français*]

[*Inaudible*].

[*English*]

Hon. Tony Clement: I know those calls, believe me.

Ms. Helen McDonald: We've had the clarification. The ghost call would be covered under the do-not-call list.

Hon. Tony Clement: Oh, lovely, under the do-not-call list.

Mr. Brian Masse: Thank you.

The Chair: Thank you, Mr. Masse.

Mr. Rota.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair and thank you, Mr. Minister for coming out today.

Of course, I think SPAM is something that concerns all of us and we wanted to see some kind of legislation out there that would prevent unwanted SPAM.

One of the things you mentioned earlier in your speech is you wanted to encourage growth of electronic commerce and I think that's something that has to be encouraged and it's a wave of the future. One of the things that has come up in discussions with some of the people who are directly affected by this legislation is that the legislation doesn't zero in on one activity and stop it or certain activities, it's basically throwing a wide net out there and stopping everything. Basically, everything is illegal except for a small list or a list of activities that are permitted.

That's the way it was described to me by someone who's affected directly by this and I was wondering if you can comment on that. Because in this changing world of electronics, we have new products, new actions, new ways of doing business coming about on a regular basis. So, one, is maybe comment on this wide net that only allows certain activities through; and, two, with the intervention of new activities or new ways of doing business, how long do you see it taking to make a change so that it can adapt to a changing world?

Hon. Tony Clement: Thank you for the question.

Certainly, if you look at the structure under section 6, you're quite right, it's saying that no person shall do this unless you fit into the category. I would argue that's the appropriate way of doing it and the reason is as follows.

This area, obviously, is changing rapidly by the year, by the month, by the week and if we tried to itemize the things that were accepted rather than having a blanket prohibition, then we're going to get into a situation where the legislation would almost be out of date by the time we get around to getting Royal Assent. That would be my fear. You'd be constantly seeking exceptions to the general rule of openness which would be the opposite of this, because other methodologies would come forward that would be legitimate methodologies or in your case, other things would come forward that are bad, some new form of NOWHERE, some new form of SPAM, that we'd have to then plug the hole and say no, no, that one's excluded too.

So I think it's better to exclude everything and say no, no, everything's excluded. Assume it's SPAM or NOWHERE unless you fit into what we know is legitimate commerce or legitimate communication under this particular bill.

Mr. Anthony Rota: You can understand the concern, though, if somebody's doing business and okay, we're going to do business a certain way and they're restricted because it's not part of the legislation and it's not defined. That's a real concern.

I just had someone from the real estate board saying, if a certain real estate agent hears through a friend that an acquaintance of theirs is looking for a house. Well, if they have a house for sale within their portfolio, it would be illegal for them to contact that person to offer them a

house or to say look, I understand you're looking for a house, is this something that interests you? Would that be something that would be blocked?

🕒 (1720)

Ms. Helen McDonald: I'm sure there are many ways in which the real estate agent on this particular issue could express or make known through a friend. We're talking more about the mass sending of the kind of e-mail that--

Mr. Anthony Rota: You're telling me that the real estate agent would be caught in this vast net that covers absolutely everything if it's not defined. If it's not defined in there, that person can't do business. You're impeding someone from using a tool that would be very useful to them to do business.

Ms. Helen McDonald: I don't think we've quite worked out the precise example, not being at the meeting, of how they positioned this and whether there was an implied consent that, I know a real estate agent, if you like you can call.

Mr. Anthony Rota: Basically what happens is that someone tells you that they have a friend who's looking for a house. If that person gets an e-mail from you, all of a sudden that's illegal. That takes the place of--

Hon. Tony Clement: We'll get back to you.

The Chair: I think Mr. Simpson might have something to add to this.

Mr. Simpson.

Hon. Tony Clement: I'm just looking at it quickly and at the very least you have the ability under regulations to deal with some of these examples. Section 6(5)(c) would give us the power to say that these are acceptable commercial activities in these cases.

Mr. Anthony Rota: You know as well as I do, Mr. Minister, through you, Mr. Chair, that around Parliament things don't happen instantaneously. We find holes and it takes forever to change them. Meanwhile, industry comes to a grinding halt because we have tools that we can't use. That is my concern with this legislation. It's the fact that it has a very wide net that impedes business from taking place. When I look at what's going on with the economy today, the last thing we need is another break in the economy. In going through Bill C-27, that's what keeps coming up. I feel that this legislation has been put together in haste and there's problems.

Hon. Tony Clement: This legislation has been kicking around this department for a good long time. Previous governments have tried to do legislation like this, but have never got around to it. I would reject the idea that this is put together in haste.

However, you can come up with examples and I won't know the answer immediately to a particular example. I will say that if you want a situation where everything is open unless it's

specifically excluded, then the bad guys will find a way to be excluded and this legislation will not work and it will not protect anybody. It will not protect commerce, it will not protect business, and it will not protect consumers. I still abide by the philosophy that you exclude everything unless it is a legitimate form of communication, in which case, that's fine. I think that's a better way of looking at it.

The Chair: Thank you, Mr. Minister.

Thank you, Mr. Rota, for those questions.

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I thank you, Minister, for coming, and having you folks here.

Can you follow-up a little on Mr. Rota's example? I think Mr. Rota's example is exactly what we're trying to resolve in this. If I'm a homeowner talking to my friend about moving and I get a slew of unsolicited e-mails from real estate agents, I'm not happy about it. That's the whole idea.

I don't have any problem there as that is my privacy and there's other ways for real estate agents. Now if I give permission to my friend to tell that real estate agent to call me, e-mail me, mail to me, or come to my door, that is a different story. Without permission or consent, I don't agree with it.

I'm happy with the legislation. It has been kicked around for a while. Could you give me a sense whether that's a year, two years, or three years. Do you have any idea how long you've been working on this? Not you, Minister, but the staff.

Mr. Richard Simpson: The origins of the bill actually go back to the work of the spam task force, as one of the members mentioned.

🕒 (1725)

Mr. Mike Wallace: How long ago was that?

Mr. Richard Simpson: It was in 2004 or 2005.

Mr. Mike Wallace: That was in 2004. Thank you very much. I don't need more information. This has been working around. We have had support from our colleagues. I know there are some issues. My question about the issues that you've heard today really breaks down to two, as far as I can tell, from the people I've seen and the reading I've done. One is if you've got a software package and they do an overnight update on it and they drop cookies down or they drop something on there, is that covered off? I need to know, were there changes to this bill or do we pass it the way it is and we make a commitment to fix that during regulation? That's my first question.

The second area which I think you've clarified considerably is that we will not give royal assent or declare, whatever you call it, the section to deal with...because I think one section, section 86 actually repeals the section that has the "do not call" list in there. So if we don't declare it or whatever we call it, it will stay in abeyance until we need it, and we had a great example at our own committee of most of these members who are here today, of a country in Africa where you don't need a card of any sort to do your banking, because they do it by phone. Who knows what's coming next in this country or any other country in terms of spam? That's fully integrated with their phone. So that could be coming here, those kinds of things.

Is there specific wording that you've been working on or you need changed at committee? I don't even know if we can do it at committee, but from a process point of view, how...because I'm a little bit with Mr. Masse on this. I'd like to see this passed relatively quickly. We have our witnesses in the next few days. I think we should get on with this process. It has been hanging around way too long and that's why people get frustrated with government because we take forever to find issues when we need to move on to other projects. I'm happy to debate Mr. Masse's bill when it eventually comes back here.

Hon. Tony Clement: So let me just answer the question there. We talked a little bit about section 8 and the anti-spyware provisions and we talked about express consent and installation of computer programs, whether there's consent or no consent, that kind of thing.

Certainly under section 10(2) for instance, there's some language there that could perhaps be tightened up a little bit, that would be--

Mr. Mike Wallace: Are you providing us with that wording or do we make that up on the fly or what happens? That's my question.

Ms. Helen McDonald: We're looking at that wording ourselves because we're also hearing from some groups asking if that would capture the security upgrades and so on. So we're looking at that but I think depending on the committee, the witnesses that you're calling before committee, they may also be probing into that.

Mr. Mike Wallace: Okay, I appreciate that. Just a clarification. My understanding based on my review of this, I think it's section 6, but business to business, not business to consumer, but business to business is actually exempt. Virtually exempt. So if company A wants to talk to company B who is in the software business or anybody in the software business, they can send their unsolicited e-mail to absolutely everybody and this legislation does not cover that. Is that a correct statement?

Hon. Tony Clement: That is correct.

Mr. Mike Wallace: Okay.

Mr. Richard Simpson: Six, yes, you're correct. Paragraph 6.(5)(b) talks about an exception when the e-mail is sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity. So I just point out the qualification there that

this has to be a commercial activity in which there is a purpose that is, I guess, mutually shared between the two individuals. You can't necessarily, just because it's a commercial activity, then send it out to every business in Canada.

Mr. Mike Wallace: Right.

The Chair: Thank you, Mr. Simpson. Thank you, Mr. Wallace.

Monsieur Bouchard.

[*Français*]

M. Robert Bouchard: Merci, monsieur le président.

Monsieur le ministre, vous savez qu'Internet c'est mondial, les pourriels peuvent venir du Québec, du Canada, mais ça peut aussi venir de l'extérieur du pays. On a parlé tout à l'heure qu'il y avait trois organismes, le CRTC, le commissaire à la vie privée et le Bureau de la concurrence, j'aimerais savoir qui aura l'autorité d'intervenir, admettons que je reçois des courriels de l'extérieur du Canada et je suis tanné d'en recevoir, je n'ai pas donné mon autorisation préalable pour recevoir des pourriels, alors à quelle instance vais-je me plaindre? Que se passera-t-il de ces pourriels que je reçois de l'extérieur? Y a-t-il des mesures efficaces? Ces institutions peuvent intervenir à l'extérieur?

🕒 (1730)

L'hon. Tony Clement: Oui, c'est le plus efficace que nous avons en ce moment, mais il y a dans ce projet de loi l'intention pour le CRTC d'avoir le pouvoir pour le CRTC — par exemple le Bureau de la concurrence et le Commissariat de la protection de la vie privée— d'échanger des renseignements et des preuves avec leurs homologues internationaux, par exemple s'il y a des applications de lois similaires des autres pays et bien sûr, il y a Interpol qui est l'agence de police internationale de ces questions. Il n'est pas possible d'avoir de partenariat pour ces questions. Maintenant, c'est difficile pour les autres pays d'avoir ce partenariat avec le Canada, car sans ce projet de loi, il n'y a pas moyen d'avoir ces partenariats et de travailler ensemble.

M. Robert Bouchard: Merci. Je comprends très bien. Je vois qu'à l'intérieur du Canada, il y aura sans doute plus d'autorité et plus d'efficacité, mais à l'extérieur, c'est sujet à des ententes, à des collaborations des autres pays, donc c'est à développer.

Je veux parler d'un autre sujet. On sait que le commerce électronique est important. Il y a beaucoup de commerçants qui nous écrivent pour nous proposer des choses et lorsque la loi sera en application, chaque commerçant offrant quelque chose aux usagers de l'Internet devra obtenir l'accord préalable pour communiquer. Alors, si un matin, j'arrive, la loi est en force et je constate que j'ai des pourriels alors que je n'ai pas donné mon consentement au préalable, je devrai porter plainte. À quelle instance puis-je porter plainte? Que se passera-t-il? On reçoit ma plainte, il y aura enquête. Suis-je informé des résultats de cette démarche?

[English]

Ms. Helen McDonald: If we're talking about SPAM, then you could either complain to the CRTC or you could complain to the SPAM reporting centre which is an organization that we have yet to set up, but would be complementary to this legislation. So if you don't know who to phone, don't worry about it. You can call or e-mail the SPAM reporting centre and between the three organizations they will figure out who is best positioned to take action on this.

As you know, a lot of these organizations, well, at least the CRTC, carries on quasi-public proceedings. You would find out what is happening to your complaint from them. They also have the ability to publish the results when they find someone has violated the act and there has been a penalty extracted. They have the ability to publish that information for you as well, so you can see that they are being effective.

The Chair: Thank you, Ms. McDonald.

Merci, Monsieur Bouchard.

We now have Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister, for appearing before us.

Mr. Minister, we're right in the middle of a very significant global economic crisis and I'm curious why the government would choose this time to introduce this legislation and how will fighting SPAM contribute to Canada's economic recovery? How important is this in that light that we get this legislation passed as quickly as possible?

🕒 (1735)

Hon. Tony Clement: Thank you.

Certainly, I respect this committee's willingness to tackle this legislation with us and to work with us to get the best legislation possible, but, as I mentioned at the beginning, this spam costs Canadian businesses \$3 billion a year. There's the cost of guarding against spam, of course, that businesses and consumers, we all get are anti-virus patches and continue the war that keeps expanding to the next level with the spammers, and that requires constant vigilance and upgrades and so on.

So it's expensive. I'm not saying that it's all going to disappear with this legislation. Obviously, spammers, bad guys, are going to be around trying to get around the rules, but the fact of the matter is there's a big gaping hole in the world right now, and it's Canada. If you look at the top 25 spammers in the world, it's something a third of them are in Canada. They're based in Canada because it's the wild west here.

So I think we've got to do our part internationally. It's hard for us to work with Interpol. As I said to Monsieur Bouchard, it's hard for us to work with them if we have no legislation. We cannot come to the table with clean hands in that situation. We're not seen as a good partner right now. So we have to have legislation, it has to be as effective possible.

Is it going to eliminate everything? No. I'm not here to say that. But the experiences of other countries has been, Australia's a good example, when they pass legislation, when they enforce their legislation, their indigenous spam, if you will, dropped by 40%. So it can have an impact, and that means savings for businesses, less frustration for consumers, and that's what we want.

Now is the best time to do this in the wake of the world economic downturn.

Mr. Dave Van Kesteren: I suppose that leads me to the next part of my question: stakeholders. What kind of response have you received from stakeholders, and the business community, in general? Have they been supportive of this legislation?

Hon. Tony Clement: We've got very positive feedback from the Canadian Marketing Association, for instance. I'm sure there's a whole list here somewhere.

Have you got it there, Helen?

Ms. Helen McDonald: The Canadian Association of Internet Providers has reacted quite favourably to this. The Canadian Chamber of Commerce has reacted quite well. Mr. Perrin Beatty put out a statement after the bill was tabled.

Hon. Tony Clement: Right, yes.

What they're saying, to quote a Telus spokesperson, who says:

It provides a legal framework to stop Canadian-based spammers from bombarding Canadians with unsolicited messages and potentially dangerous malware.

And Mr. Beatty said that he's been pressing the government for years, quote, "I'm pleased that the government is acting to make the Internet safer and more secure".

That's the general impression out there. And certainly, as I say, if there's way we can improve this in a expedited manner, I think we're willing to do that, as well. But at some point the process of debate must stop, we've had that for years, we actually have to pass some legislation.

Mr. Dave Van Kesteren: And what about a review date? Is there an automatic review date? Is it three years? Five years?

Ms. Helen McDonald: No.

Mr. Dave Van Kesteren: Would it help? Is it something we should introduce?

Hon. Tony Clement: If the committee felt strongly that's important, I'm not going to throw myself in front of that train. If you think that it's important to have good legislation, that's fine by us.

Mr. Dave Van Kesteren: Okay.

Thank you, sir.

That's all.

The Chair: Thank you, Mr. Van Kesteren.

Thank you, Minister.

Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

That's one of the things, actually, we added: augmented to the do-not-call list for that review, as well. Especially as the program's in its infancy, it has unintended consequences, regardless of all the things that we do. Sometimes that's good to bring back, so I'm glad that it was raised.

I want to go back to the real estate example because I just want to make I'm clear as to how this works and also another scenario that might evolve. If we don't have the answer for this today, it's fine, I'd just like to eventually get this, and when we have some witnesses it'll help.

From what I understand right now, if you sign on with a real estate agent to find a house or sell your house, you can have an agreement there where the real estate agent, or anybody in his actual agency, could then send an email to you if that scenario comes up where another agent at the same agency wants to send you information related to a search for a house or the sale of your current house. Could that be written as part of the agreement when you sign up? And to answer that, what they couldn't do is then provide it to some other real estate agent from another entire different agency.

So could you have that relationship so you have it with not only just the one agent in the company, and all the agents that have signed on to their entire policies and so forth, and then exclude, I guess, the separate ones, like his buddy that you just talked to down the road, or something like that?

🕒 (1740)

Ms. Helen McDonald: I think it really depends on how that....I don't know enough about real estate to know whether you're signing on with a specific agent and any of the agents working for the same company are all working towards the same goal. Perhaps during the discussions as you try to establish this relationship with the realtor, that would be covered and that would be part of implied consent. I think you had used the word "written". It would not require that you have a

formal agreement with them as to who could e-mail or call or not. I think it could come up in a discussion and as long as it was understood, then it would be a form of implied consent that if our sister company or someone else has places in this area are you interested in hearing about that.

Mr. Brian Masse: Yes, because it brings up a further scenario, because you have businesses like real estate agents or insurance agents and car dealers, for example, where they create their own database of people they've been customers with. What would happen in this bill if they left and this often happens in those occupations that they often move from either provider or company on a regular basis every couple of years, it's not uncommon, would they then have the ability to recontact all their contacts, being that perhaps the agreed person agreed under the scenarios of the person being at a particular agency? At the same time you often actually....I use the same real estate agent that we've always had, but the person's changed different companies. Once again, we don't have these scenarios now, but I think it's important that we look at them.

Hon. Tony Clement: Sure and let me say that if you look at section 10 you've got the definitions of express consent, including under subsection 10(4), definition of "existing business relationships". So I encourage committee to go through that list. There's also under sub(6) the definition of "existing non-business relationship". So go through that list, find out whether that makes common sense to you.

I'm not going to opine anymore, because I'm going to get myself into trouble with Mr. Rota again. But I'm guessing that part of his question is at least answered in subsection 10(4). But let's go through that and make sure it covers things in a common sense way and meets our objectives.

Mr. Brian Masse: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Masse.

Mr. Lake, please go ahead.

Mr. Mike Lake: Thank you, Mr. Chair.

I want to move to talking a little bit about charities, maybe companies that conduct research, those kind of companies, can you talk a little bit about how the protection would affect them so they don't get lumped in with Spammers, charities, in particular.

Ms. Helen McDonald: Under subclause 10(6) it talks about, say, donations or gifts and it talks about volunteer work and there's usually an 18-month period that allows that relationship, if you like, to continue. So that's one way in which what are called existing non-business relationships are protected.

I think you had talked about political parties, there are also provisions in subclause 10(6) for members of associations or parties, clubs, voluntary associations that if you've got a relationship with also have an 18-month period that allow these kinds of messages to be sent, because presumably it may be an annual event or something else that you might want to protect.

I think the other point we want to be clear about is whether it's commercial or whether it's non-commercial activity to try to make sure that we are only looking at those things that are commercial in nature. So that might rule out some types of relationships.

🕒 (1745)

Mr. Mike Lake: Okay.

You talked a little bit about the international reputation that Canada has and it's not a very good one in regard to Spam. Can you talk a little about how that affects and I know the Minister talked about this for a little bit, our sort of international cooperation, it's very difficult if you're not meeting the standard to get cooperation. How does the international sort of cooperation piece of this legislation work?

Ms. Helen McDonald: It envisages the three separate organizations--the Privacy Commission, the Competition Bureau, and the CRTC--as being able to work with their counterparts, so I wouldn't have described quite as Interpol. I'd describe it as the communications regulator in Australia being the counterpart for the CRTC. The communications regulator in Australia is the organization charged with oversight and implementation of their equivalent act. So our bill would allow the CRTC to share information with Australia to help Australia apply its own law where perhaps the spammer is located in Canada.

We can also work with them to try to make sure that spammers located--it can't be Australia, it must be some other jurisdiction because Australia has dealt with most of them--in, say, some European countries, if they have a substantially equivalent law. It allows them, probably, to exchange information with us which would allow us to help go after spammers from other countries who are targeting Canadians. Unless you can share information, you can't really get to taking action against them. The provision of the bill allows that kind of provision of information, and collaboration across these, essentially, administrative arms of government.

Mr. Mike Lake: I guess there would be no borders when it comes to this. Ultimately, the fact that we don't have legislation right now sort of contributes to this idea of Canada almost as a haven for spammers, to be sending from Canada to other countries where they have laws, but they can't touch the spammer in Canada. Is that--

Ms. Helen McDonald: And we can't help them. Not only can spammers stay in Canada and feel somewhat protected because there are no laws in Canada that allow us to go after the spammer, but it also prevents us from sharing information that could be helpful to these other jurisdictions.

Mr. Mike Lake: Just changing direction a little bit, Mr. Garneau talked about sort of casting the wide net and I think Mr. Rota kind of touched on it as well, almost in a negative. I understand the concerns that they're bringing up there, but I would think that in an area like this where technology is changing all the time, the danger of not casting that wide net in a sense is that you're going to be changing your legislation every time technology changes, right?

Hon. Tony Clement: Yes, I was saying that rather inelegantly, but that's exactly my point.

Mr. Mike Lake: Okay, thank you.

The Chair: Thank you, Mr. Lake.

Madam Coady.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much, and thank you, Mr. Minister, and thank you, Ms. McDonald and Mr. Simpson, for being here, and so late in the evening. We really do appreciate it. It gives us a good overview of where your heads are with regard to this legislation.

First of all, I don't think there's a person in this room who wouldn't agree that spam is harmful and hurtful to industry and individuals and we have to do something about it, so I think you have our concurrence in that regard.

On this particular bill, there are some challenges that I think, as the Minister has indicated, we do have to overcome. I guess my first question would be, did a draft of the bill go out to stakeholders, and did you get feedback from the draft?

Hon. Tony Clement: We did not do a pre-existing consultation on the draft itself. We announced, I guess around April 24, the bill was there, but we'd had a lot of contact with stakeholders prior to that to get their sense of what was necessary.

Ms. Siobhan Coady: That dates back to, say, the anti-spam round table of 2005. I think, looking at what the anti-spam round table of 2005 did, this bill goes beyond what the discussions were at that time, so Ms. McDonald's point that our investigations over the next number of weeks will be critical to improvements to the bill because there are improvements required. For example, the anti-spam provisions from Mr. Garneau, I'm going to talk a little bit further about that. The address-harvesting provisions, I'm concerned about those. As I understand them, it does remove some of the widely accepted generally applicable exemptions under the PIPEDA legislation, for example, so there are concerns about that. I'll get to those. There are concerns that the anti-spyware provisions are a bit broad. So there a number of issues that we're going to have to focus on. Mr. Garneau talked about the extra-territorial provisions, as well as some of the remedies.

Just let me get to the anti-spam, if you would be so kind, because the main anti-spam provisions are found, I think, in clause 6, and you've clarified what they are. Under the spam task force network and technology working group in May of 2005, they had a different interpretation, much more succinct. The bill assumes electronic communications of unwanted spam, and we've talked about this, and prohibits all commercial electronic messages, except in very limited circumstances, where, I believe, Mr. Minister, you indicated we'd probably see acceptable commercial activity outlined in the regulations. Is that where you're going to put most of these?

Hon. Tony Clement: Well, there are some found in the actual body--

Ms. Siobhan Coady: Some are found under clause 10.

Hon. Tony Clement: --but others, obviously, we have a catch-all on paragraph 6(5)(c), yes.

Ms. Siobhan Coady: The scope really does depart from our international counterparts, the anti-spam legislation found in other areas. For example, if you look to the EU directive and the U.K. act, they talk about direct marketing. The Australia spam act and the New Zealand spam act define it, really, towards relating toward direct marketing. Singapore looks at direct marketing.

Did you consider that narrowing of the scope? When you look at what your scope is, it's very, very broad, a catch-all. We've talked a bit about that. Other legislation around the world, it's absolutely more defined to direct marketing. Do you have any comments on that?

Ms. Helen McDonald: I can ask Richard to speak more directly about what we learned from other countries and their experiences. I think we were concerned that if you narrow it too much people will claim that they are not direct marketing, they are doing something else, provision of information or something else. You want to make sure you capture the kinds of behaviours that are clogging our e-mails and discouraging people from moving online. We tried to restrict it to focus on the unsolicited and commercial activities with a series of exemptions that I don't think are tiny, laid out to try to make sure that the legitimate businesses could continue, but that we were actually putting a stop to the kinds of behaviours and practices that were slowing down electronic commerce.

Ms. Siobhan Coady: Can I take a couple of examples? This is why I'm concerned. For example, if I'm a business and I'm going to send an e-message concerning a product recall or a warranty, for example, of safety or security information, if we haven't been in contact, if it was purchased more than 18 months previous, as I understand it, we're not allowed to do that, it would be considered spam. That's pretty concerning to me because, of course, warranty and product recall would be very, very important to be able to discuss. I have other examples.

Do you want to handle this?

Mr. Richard Simpson: Yes, thank you.

The example you used of a warranty or some form of communication that is relevant to a product, there are two possibilities. First of all, it could have been express consent when you bought the product that you always want to have information on warranties or anything related to the safety or a product or anything along those lines. Even if not, implied consent in an existing business relationship would work in that situation. The 18 month time limit is just a way of trying to find some date certainty in terms of when that business contact is stale, but it's a detail that can be looked at.

If I could go back, Mr. Chairman, to the question about the spam task force and the work that was done, having been involved in the working groups and the task force itself, I'm pretty

familiar with the thinking of the group. It's interesting that people like Tom Copeland, who's president of the Canadian Association of Internet Providers, whom the minister mentioned earlier, expressed support for the legislation, was a member of the spam task force. Most of those members would see the bill as being very much consistent with the kind of framework that they put in place. However, there are aspects of the bill that you would see in the work of the spam task force that we need to develop in terms of defining the kinds of practices that will be part of the regime of implied consent, for example.

The regulations that the minister referred to are going to be used to pick up some of the details that we need in order to make the bill work effectively in a business environment. Specifically, in the spam task force report there was a piece of work that was done by the Canadian Marketing Association--president John Gustavson is another member of the task force. The CMA has come out in support of the bill. The annex that I'm talking about was a set of industry guidelines for commercial e-mail marketing. Our intention has always been that those guidelines that were developed by the spam task force, and later adopted by the Canadian Marketing Association, and endorsed by a number of Canadian businesses, would be reflected in the regulations and therefore in the operating principles of Bill C-27 when it became law.

🕒 (1755)

The Chair: Thank you, Mr. Simpson. Thank you, Madame Coady.

[*Français*]

Monsieur Vincent, voulez-vous poser des questions?

M. Robert Vincent (Shefford, BQ): Oui, simplement une petite question. Je me questionne sur, cela me dérange un peu, la liste des numéros de téléphone d'exclusion parue sur internet et la problématique que nous avons eu vers la fin de l'année ou en début de cette année. Il y a eu des gens par l'entremise d'internet, qui ont réussi à acheter la liste des numéros de téléphone des gens sur la liste d'exclusion, et qui se sont fait contactés par des agents de télémarketing. À partir de ce moment-là j'ai pu comprendre ce que M. Clement disait un peu plus tôt, qu'il y aurait possiblement une liste d'exclusion similaire au niveau de notre adresse internet, pour ne pas qu'il y ait justement des gens pouvant nous envoyer des pourriels. Il est certain que cette liste sera disponible sur internet, mais les autres pays qui eux n'auront pas d'aucune façon de loi englobant les pourriels, pourraient venir sur un site internet et acheter les numéros de téléphone et la liste d'adresses internet, et pourraient communiquer avec les gens et envoyer des pourriels comme bon leur semble, même si ce serait de la publicité venant d'ailleurs parce qu'il y a des pays qui ne seraient pas contraints par un projet de loi. Alors j'aimerais savoir de quelle manière pensez-vous contrer cette façon de travailler que les gens auront à faire au niveau de l'internet. Car on a vu ici, au Canada, des gens réussir à aller chercher la liste d'exclusions. Si ça se fait ici, je suppose qu'ailleurs dans le monde, où il n'y a pas de loi, ils pourront aller chercher cette liste d'exclusions en passant par un autre canal pour faire de la publicité pour quelqu'un d'autre.

L'hon. Tony Clement: Pour commencer je peux dire que bien sûr, comme je l'ai mentionné, il est impossible d'avoir un projet de loi ou une loi excluant totalement les pourriels ou les autres

communications électroniques protégeant les citoyens. Je crois que ce projet de loi est important parce que nous pouvons combattre avec les autres pays du monde ces pourriels ou activités. Helen, y a-t-il une autre réponse?

[*English*]

Ms. Helen McDonald: When we talk about the do-not-call list, it's kind of an opt out. You put your name onto a list to indicate you do not want to receive telemarketing calls. There will not be an Internet list to opt out of spam. It's a different regime from opting in. But there won't be a list created of all Canadians who do not wish to get email spam or unsolicited commercial text messages. So there's quite a difference between these two approaches.

On your point about the fact that there is a list and what happens in other countries that might be able to see this list, I believe that had happened in the beginning, but the CRTC is taking steps to prevent the purchase of the names on the do-not-call list.

🕒 (1800)

The Chair: Thank you, Madame McDonald. Thank you, Mr. Simpson.

And thank you, Minister Clement, for appearing in front of our committee to explain this bill. We appreciate it. Your testimony will be helpful.

This meeting is adjourned.