

MEMORANDUM

To: Clients and Friends of the Firm
From: Yigal Arnon & Co.
Date: November 1, 2008
Re: Anti-Spam Law

Effective as of December 1, 2008, Amendment No. 40 to the Israeli Communications Law (Bezeq and Broadcasting) (the "Law") will come into effect. The Law prohibits dissemination of commercial e-mail advertisements, as well as other forms of electronic advertisements, without the recipient's prior express consent.

Entities that distribute electronic messages of a commercial nature are advised to review their recipient subscription and consent practices. Depending on the scope and nature of past consents received, it may be necessary to obtain recipients' affirmative consent in order to continue distributing commercial electronic messages following December 1, 2008.

The following summarizes the law's main provisions:

1. No Distribution of Electronic Promotions without Prior Recipient Consent.

- It is prohibited to distribute Promotions by email, fax, automated calling system or electronic messages (SMS) without obtaining the recipient's prior express consent. The Law defines "Promotions" as any commercial message which encourages the purchase of a product or service or other expenditure of funds. The law applies equally to entities themselves offering the goods or services, and entities distributing electronic advertisements on their behalf.
- **Consent.** Consent may be obtained in writing, by electronic message or recorded conversation. Advertisers may make a single contact with business recipients in order to solicit such consent; such initial contact will not be considered a violation of the Law. Recipients may revoke their consent at any time, either in writing or in the same medium used to transmit the advertisement.
- **Exceptions.** It is permitted to distribute Promotions without prior recipient consent where all of the following conditions are met:
 - (i) the recipient provided his contact information to the advertiser in the course of purchasing goods or services or negotiations for the purchase of goods or services, and the advertiser provided notice that the details so provided would be used for purposes of disseminating Promotions;
 - (ii) the advertiser provided the recipient the opportunity to refuse to receive Promotions, either generally or of a particular type, and the recipient did not do so; and

יגאל ארנון ושות' **Yigal Arnon & Co.**
משרד עורכי דין ונוטריון **Advocates and Notary**

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- (iii) the Promotion relates to goods or services similar to those described in (i) above.

In most situations, all of these requirements will not be met, and the advertiser will be obligated to obtain prior recipient consent prior to distributing electronic Promotions.

2. Mandatory Notice Provisions. In addition to the consent requirements described above, the law requires that all electronic Promotions include a clear, conspicuous notice containing the following information:

- (i) identification of the Promotion as an advertisement. For email communications, the word "advertisement" must appear in the email subject line; in all other Promotions, such identification must appear in the beginning of the Promotion;
- (ii) the advertiser's identity and contact information; and
- (iii) notification of the recipient's right to opt out of receiving Promotions and means for opting out (including an email address for email advertisements).

3. Liability and Penalties. Violations of the law carry criminal and civil penalties. Advertisers who disseminate advertisements in violation of the law are subject to a fine of NIS 202,000 (approximately US \$52,000). Failure to comply with the mandatory notice provisions carries a fine of NIS 67,300 (approximately US \$17,500). Managers and individuals responsible for marketing or promotions who do not take sufficient measures to ensure compliance with the law may be personally liable for violations of the law and may be subject to a fine of NIS 67,300 (approximately US \$17,500). The law also creates a private right of action for violations; in addition to other compensation to which recipients may be entitled, the court is authorized to award recipients statutory damages of NIS 1000 (approximately US \$ 300) per email received in knowing violation of the law.

All entities who distribute Promotions in the manner described above are urged to review their subscription and consent practices to confirm that they comply with the Law, and to consult local counsel where necessary.

In many cases, advertisers will be obligated to obtain recipients' affirmative consent to receive electronic Promotions in order to comply with the Law. A basic form solicitation of consent, in Hebrew and English, is attached to this memorandum as Exhibit A. The solicitation may need to be adapted to the particulars of the relevant business or enterprise.

Please feel free to contact Yoheved Novogroder (yohevedn@arnon.co.il) or Daniel Green (danielg@arnon.co.il) with any questions regarding the manner in which recipient consent may be obtained, or other aspects of the Law.

