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Legal Issues for Customers of Voice over Internet Protocol (VoIP)

If your company has not begun looking at VoIP as a means to reduce the costs of long distance telephone calls, odds are that you will in the near future. IT departments are finding that very little is required to implement VoIP – special headsets, commercially available software and access to the Internet. However, VoIP does bring challenges, and until VoIP provides all of the reliability and other features of traditional telephone service, companies must closely evaluate the benefits and detriments of VoIP. If you have decided to give VoIP a try, even on an experimental basis, below are some of the legal issues you should consider when negotiating your service agreement:

- Is the vendor providing a warranty for the hardware (e.g. the headset), and do you have time to test the equipment to verify that it actually works in your environment?
- How quickly has the vendor committed to correct software bugs and other issues that may hamper your VoIP service? While you may be able to handle downtime in your traditional Internet service, you are less likely to tolerate downtime in your telephone service.
- Can the vendor unilaterally modify the agreement or fees as a result of changes in the laws? Some of the cost savings experienced by VoIP users result from the fact that certain taxes and charges that apply to traditional telephone service do not apply to VoIP. However, VoIP vendors anticipate the possibility of having to pay taxes or 911 charges in the future. If the agreement allows the vendor to pass those taxes and charges on to you, the VoIP service may not be as cost effective as you originally thought.
- Has the vendor agreed to comply with applicable laws, including laws regarding 911 service? The FCC has stated its intent to issue a Notice of Proposed Rulemaking to consider how VoIP should be regulated, so it is likely that VoIP vendors will have compliance issues in the future.
- Has the vendor provided any warranties regarding security and privacy of transmissions?
- Will your company need to call locations where VoIP is not legal (e.g., Poland and Lebanon)? What will you do if additional locations prohibit VoIP?

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CAN-SPAM UPDATE

In our January 2004 Technology Update we provided a brief summary of the Controlling the Assault of Non-Solicited Pornography and Market Act of 2003, otherwise affectionately known as the CAN-SPAM Act. Earlier this month, in what appears to be a coordinated effort, the Internet service providers America Online, Microsoft, Yahoo! and Earthlink filed multiple lawsuits across the country against alleged spammers for violations of the Act and other causes of action.

CAN-SPAM specifically provides a civil cause of action to providers of Internet access that enables them to enjoin further violations, and to collect damages for violations of certain provisions of the Act. As an alternative to actual damages, the Act allows Internet access providers to collect damages of \$100 per email (with no maximum) that contains false or misleading transmission information, and \$25 per email (\$1,000,000 maximum) for violations such as using deceptive subject headings or failing to provide an appropriate opt-out mechanism. Additionally, a court may treble the damages for willful and knowing violations or for other aggravated violations.

It remains to be seen whether the Act and lawsuits brought by Internet access providers will curb the amount of spam in the U.S. Regardless of the overall impact the Act has on spam, with Internet access providers starting to take action under the Act, businesses should take a close look at the Act and ensure that their use of electronic mail conforms to its provisions.

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- Business Process Outsourcing Agreements
- Software and Technology License Agreements
- Technology Development Agreements
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