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Canada's Anti-Spam Legislation

Andy Kaplan-Myrth
Policy Advisor, Industry Canada

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Issue

- Bill C-28 (the anti-spam legislation) received Royal Assent on December 15, 2010
- Regulations Gazette Part 1 concluded on Sept. 7, 2011
- Coming into force of the legislation is expected to occur early in 2012





Main Elements of the Act

- Implements a recommendation of the Task Force on Spam
- Regulatory regime
- Modelled on international best practices.

The regime includes:

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

Includes support mechanisms such as:

- A National Coordinating Body
- A Spam Reporting Centre





New Violations

The legislation prohibits:

- **Spamming:** Sending of unsolicited commercial electronic messages (s.6)
- **Hacking:** Unauthorized altering of transmission data (s.7)
- **Malware:** Installation of computer programs without consent (s.8)
- **Fraud:** False and misleading representations online (including websites and addresses) (s.75)
- **Harvesting:** The use of computer systems to collect electronic addresses without consent (s.82(2))
- **Privacy invasions:** The unauthorized access to a computer system to collect personal information without consent (s.82(3))





The “opt-in” Consent Regime

- **Express Consent**

- **Implied Consent**
 - existing business relationships
 - existing non-business relationships
 - conspicuous publication
 - conspicuous disclosure





Identification and Unsubscribe

All messages being sent must

- Clearly identify the person who sent the message
- Provide a method where the recipient can readily contact the person(s) responsible for sending the message
- Provide a working unsubscribe mechanism:
 - Functional for 60 days
 - No cost
 - Same means unless impracticable
 - Include either electronic address or link
 - Must process without delay





Comprehensive Compliance Regime

Regulatory enforcement by expanding the mandates of:

- Canadian Radio-television and Telecommunications Commission (CRTC)
- Competition Bureau
- Office of the Privacy Commissioner (OPC)





Strong Penalties & Due Process

- Administrative Monetary Penalties (CRTC and CB)
- Private Right of Action for individuals and businesses
- Maximum penalty per violation: \$1 M for individuals; \$10 M for any other person (s. 20)
- Factors to be considered in assessing penalty (s. 20)
- The Act is a regulatory regime designed to encourage compliance through stiff penalties for violations





International Cooperation

The legislation provides for:

- Coordination and consultation among the three enforcement agencies responsible for compliance (s. 56-59)
- Information sharing and consultation between the three agencies and their international equivalents (s. 60)
- A broadly defined Canadian link which stipulates that the legislation would apply to electronic messages sent to or from Canada (s. 12)
- Disclosure of information from organizations to the enforcement agencies with regards to any of the violations





Spam Reporting Centre

- A Spam Reporting Centre will be established to support enforcement of the legislation
- RFP for the Spam Reporting Centre expected on October 31
- The Spam Reporting Centre will ensure full and effective access to the database for all enforcement agencies.





Electronic Commerce Protection Regulations

- Industry Canada and CRTC regulations
- Proposed Regulations published for consultation in Canada Gazette Part 1
- Consultation concluded on September 7, 2011
- 55 submissions received (IC process)
- Analysis currently underway





Regs – Planned approach...

- Define “Family Relationship” and “Personal Relationship”
- Provide Conditions for the use of “Unknown Third Party Consent”
- Define “Membership, Club, Association and Volunteer Organization” for the purposes of existing non-business relationships





Regs – Feedback

- Broaden “personal relationship” definition
- Additional exemptions for Third Party Referrals
- Exemption for TSPs for installation of software for network security purposes
- Clarify of Commercial Electronic Message
- Add jurisdictional exemptions
- Broaden B2B exemption for existing business relationship between organizations





Regs – IC response...

...stay tuned.

- CRTC regulations on their own timeline
- ECOM analysing submissions; making recommendations to the Minister
- Better idea of time for regulations and enactment once the Minister provides direction





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Thank you



Andy Kaplan-Myrth

Policy Advisor
E-Commerce Branch
Industry Canada
andy.kaplan-myrth@ic.gc.ca



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