

Are you prepared for Canada's new anti-spam law?

The Canadian federal government recently passed a new anti-spam law that is expected to take effect soon. The law is very broad and the penalties for non-compliance are very steep. Virtually every person and business in Canada (any many outside of Canada) will be affected by the law and will need to rethink how they send emails, voicemails and other telecommunications.

The law affects American and other businesses too, because it applies to any electronic message that is sent, routed or retrieved using a computer system in Canada. The law is broader and more onerous than American anti-spam legislation, so compliance with the US CAN-SPAM Act will not be enough.

For example, the US CAN-SPAM Act imposes consequences for e-mails that are sent contrary to an opt-out request. In contrast, the Canadian legislation prohibits any person from sending (or causing or permitting to be sent) a commercial electronic message unless the recipient expressly or implicitly consents to receiving the message.

Some other key points are as follows:

- **Not just e-mail:** The definition of "commercial electronic message" is very broad and includes any message sent by telecommunications (including e-mail, text messages, voicemail, social media communications, etc.) if the purpose of that message is to encourage participation in a commercial activity.
- **Consent:** Commercial electronic messages cannot be sent without the recipients' consent. Consent can be express or implied, and there are specific rules for how to obtain consent. There are also some limited exceptions to the consent requirement.
- **Identification:** All commercial electronic messages must identify the person who sent the message (and if different, the person on whose behalf it was sent); provide accurate contact information for these parties; and send out a mechanism by which the recipient may unsubscribe.
- **Unsubscribing:** The recipient must be able to unsubscribe using the same means by which the message was sent. There are specific rules and time limits for complying with unsubscribe requests.
- **Penalties:** The maximum penalty for a violation of the legislation is \$1,000,000 for an individual and \$10,000,000 for a corporation or other business entity. These fines are imposed per violation, and a violation is defined as being separate for each day that it continues.
- **Vicarious liability:** Violations under the Act create both direct and vicarious liability, and directors or officers of corporations may be personally liable for the corporation's violations. Employers are also liable for violations committed by their employees acting within the scope of their employment.

The law has been passed and will take effect on a date set by the federal Cabinet. This will likely happen soon. In the meantime, all businesses and business people should start preparing policies and systems to comply with the new law. Notably, consent is even required to send an email requesting consent to send further emails, so the best way to get consent is to request it before the new law comes into effect.

Chris Bennett is the head of the Technology and Intellectual Property Law departments at Davis LLP. You can reach him at 604.643.6308 or cbennett@davis.ca