



## **ANTI-SPAM BILL C-28: ARE YOU UPHOLDING THE LAW?**

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On December 15, 2010, the Canadian Parliament adopted its first anti-spam Bill, following the United States as well as many European countries that have opted to take a similar stance in the last few years. The Bill is expected to come into force during the coming months.

Since the onset of electronic mail, the volume of spam has been evolving swiftly, reaching a record number in 2010, representing 90% of all emails being sent around the world. In fact, Canada is currently ranked 4<sup>th</sup> worldwide as a source of spam.

In an attempt to counteract the growth of spam, Bill C-28 will regulate electronic communications to improve email policies put forth by corporations as well as individuals.

### **Bill C-28 Objectives**

Bill C-28 pertains to all commercial messages being sent out to an electronic address, whether it be a text, audio or a visual message. It is not strictly limited to emails per se, but rather, it encompasses all messages sent through social networks such as Facebook and Twitter, that are commercial in nature, which extends itself to all content, hypertext links, and other information that would lead one to think that the object of the message is intended for commercial gain.

It is therefore forbidden to send, to have someone send, or to permit the sending of a message intended for commercial gain to an electronic address. However, this prohibition includes exceptions regarding the recipient's consent – whether express or implied – as well as the content of the actual message.

### **Express Consent**

To be express, the consent must have been given in clear and precise terms with regard to the subject matter of the message, i.e. the receipt of emails of a commercial nature.

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### Implied Consent

The implied consent is subject to many terms, for instance:

- the prohibition will not be applicable if the recipient and the sender are related or if there exists between them a relationship of a personal nature,
- the consent will be implied if a business relationship exists between the two parties; this being the case for up to two (2) years after the sale of a product or a service to the recipient by the sender of the email,
- the conspicuous publication of an email address on a Web site or its transmission to the sender without any further details – most notably the fact that he or she does not wish to receive emails of a commercial nature – is tantamount to an implied consent.

### Exclusions and Exceptions

Furthermore, some electronic messages will be excluded from the scope of the Bill due to their content, for example:

- a request for information to a person carrying on business,
- a message pertaining to an ongoing business relationship (such as a purchase confirmation),
- a reply to a query regarding prices or other information relevant to a purchase by the recipient.

### Information Identifying the Sender

As to the contents of the message, the Bill is very specific in that all electronic messages must contain:

- the name of the sender or the name of the person on whose behalf messages are being sent,
- the relevant information that would allow the recipient to communicate with the sender.

The message must also provide a mechanism that enables the recipient to discontinue receipt of further emails, i.e. an “unsubscribe option”.

Bill C-28 is not limited to the regulation of emails, and also provides other prohibitions aimed at countering piracy and infringement. In this context, the installation of software on a recipient’s computer without his or her consent is strictly prohibited. The recipient’s consent will be required, and must be obtained after having clearly described the function, purpose and consequences of said installation. Upholding these rules is fundamental as the fines imposed on those who do not can reach upwards of a million dollars for individuals and up to ten million dollars for corporations.

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