



# Canada's Anti-Spam Legislation

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### Regulations

#### 81000-2-175 (SOR/DORS)

His Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to subsection 64(1) of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*<sup>a</sup>, makes the annexed *Electronic Commerce Protection Regulations*.

### ELECTRONIC COMMERCE PROTECTION REGULATIONS

#### DEFINITION

Definition of  
"Act"

**1.** In these Regulations, "Act" means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*.

#### FAMILY AND PERSONAL RELATIONSHIPS

Family and  
personal  
relationships

- 2.** For the purposes of paragraph 6(5)(a) of the Act,
- (a) "family relationship" means the relationship between an individual who sends a message and the individual to whom the message is sent if those individuals are related to one another through a marriage, common-law partnership or any legal parent-child relationship and those individuals have had direct, voluntary, two-way communication; and
  - (b) "personal relationship" means the relationship between an individual who sends a message and the individual to whom the message is sent, if those individuals have had direct, voluntary, two-way communications and it would be reasonable to conclude that they have a personal relationship, taking into consideration any relevant factors such as the sharing of interests, experiences, opinions and information evidenced in the communications, the frequency of communication, the length of time since the parties communicated or whether the parties have met in person.

#### EXCLUDED COMMERCIAL ELECTRONIC MESSAGES

Excluded  
messages —  
Section 6 of Act

- 3.** Section 6 of the Act does not apply to a commercial electronic message
- (a) that is sent by an employee, representative, consultant or franchisee of an organization
    - (i) to another employee, representative, consultant or franchisee of the organization and the message concerns the activities of the organization, or
    - (ii) to an employee, representative, consultant or franchisee of another organization if the organizations have a relationship and the message concerns the activities of the organization to which the message is sent;

(b) that is sent in response to a request, inquiry or complaint or is otherwise solicited by the person to whom the message is sent;

(c) that is sent to a person

(i) to satisfy a legal or juridical obligation,

(ii) to provide notice of an existing or pending right, legal or juridical obligation, court order, judgment or tariff,

(iii) to enforce a right, legal or juridical obligation, court order, judgment or tariff, or

(iv) to enforce a right arising under a law of Canada, of a province or municipality of Canada or of a foreign state;

(d) that is sent and received on an electronic messaging service if the information and unsubscribe mechanism that are required under subsection 6(2) of the Act are conspicuously published and readily available on the user interface through which the message is accessed, and the person to whom the message is sent consents to receive it either expressly or by implication;

(e) that is sent to a limited-access secure and confidential account to which messages can only be sent by the person who provides the account to the person who receives the message;

(f) if the person who sends the message or causes or permits it to be sent reasonably believes the message will be accessed in a foreign state that is listed in the schedule and the message conforms to the law of the foreign state that addresses conduct that is substantially similar to conduct prohibited under section 6 of the Act;

(g) that is sent by or on behalf of a registered charity as defined in subsection 248(1) of the Income Tax Act and the message has as its primary purpose raising funds for the charity; or

(h) that is sent by or on behalf of a political party or organization, or a person who is a candidate—as defined in an Act of Parliament or the legislature of a province—for publicly elected office and the message has as its primary purpose soliciting a contribution as defined in subsection 2(1) of the Canada Elections Act.

*Excluded  
messages —  
Paragraph  
6(1)(a) of Act*

**4.** (1) Paragraph 6(1)(a) of the Act does not apply to the first commercial electronic message that is sent by a person for the purpose of contacting the individual to whom the message is sent following a referral by any individual who has an existing business relationship, an existing non-business relationship, a family relationship or a personal relationship with the person who sends the message as well as any of those relationships with the individual to whom the message is sent and that discloses the full name of the individual or individuals who made the referral and states that the message is sent as a result of the referral.

*Existing  
business or  
non-business  
relationship*

(2) An existing business relationship or an existing non-business relationship has the same meaning as in subsection 10(10) or (13) of the Act, respectively.

## CONDITIONS FOR USE OF CONSENT

*Person whose  
identity is  
unknown*

**5.** (1) For the purposes of paragraph 10(2)(b) of the Act, a person who obtained express consent on behalf of a person whose identity was unknown may authorize any person to use the consent on the condition that the person who obtained it ensures that, in any commercial electronic message sent to the person from whom consent was obtained,

(a) the person who obtained consent is identified; and

(b) the authorized person provides an unsubscribe mechanism that, in addition to meeting the requirements set out in section 11 of the Act, allows the person from whom consent was obtained to withdraw their consent from the person who obtained consent or any other person who is authorized to use it.

*Person who  
obtained  
consent*

(2) The person who obtained consent must ensure that, on receipt of an indication of withdrawal of consent by the authorized person who sent the commercial electronic message, the authorized person notifies the person who obtained consent that consent has been withdrawn from, as the case may be,

- (a) the person who obtained consent;
- (b) the authorized person who sent the commercial electronic message; or
- (c) any other person who is authorized to use the consent.

*Notification of  
other  
authorized  
person*

(3) The person who obtained consent must without delay inform a person referred to in paragraph (2)(c) of the withdrawal of consent on receipt of a notification of withdrawal of consent from the person referred to in that paragraph.

*Give effect to  
withdrawal of  
consent*

(4) The person who obtained consent must give effect to a withdrawal of consent in accordance with subsection 11(3) of the Act, and, if applicable, ensure that a person referred to in paragraph (2)(c) also gives effect to the withdrawal in accordance with that subsection.

## **SPECIFIED COMPUTER PROGRAMS**

*Specified  
programs*

**6.** The following programs are specified for the purposes of subparagraph 10(8)(a) (vi) of the Act:

- (a) a program that is installed by or on behalf of a telecommunications service provider solely to protect the security of all or part of its network from a current and identifiable threat to the availability, reliability, efficiency or optimal use of its network;
- (b) a program that is installed, for the purpose of updating or upgrading the network, by or on behalf of the telecommunications service provider who owns or operates the network on the computer systems that constitute all or part of the network;
- (c) a program that is necessary to correct a failure in the operation of the computer system or a program installed on it and is installed solely for that purpose.

## **MEMBERSHIP, CLUB, ASSOCIATION AND VOLUNTARY ORGANIZATION**

*Membership*

**7.** (1) For the purposes of paragraph 10(13)(c) of the Act, membership is the status of having been accepted as a member of a club, association or voluntary organization in accordance with its membership requirements.

*Club,  
association or  
voluntary  
organization*

(2) For the purposes of paragraph 10(13)(c) of the Act, a club, association or voluntary organization is a non-profit organization that is organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any purpose other than personal profit, if no part of its income is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of that organization unless the proprietor, member or shareholder is an organization whose primary purpose is the promotion of amateur athletics in Canada.

**COMING INTO FORCE**

S.C. 2010,  
c. 23

**8.** (1) These Regulations, except section 6, come into force on the day on which sections 6, 7, 9 to 11 and subsection 64(1) of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* ("the Act"), chapter 23 of the Statutes of Canada, come into force, but if they are registered after that day, they come into force on the day on which they are registered.

Section 6

(2) Section 6 comes into force on the day on which section 8 of the Act, referred to in subsection (1), comes into force.

[a](#)

S.C. 2010, c. 23

**SCHEDULE**

(Paragraph 3(f))

**LIST OF FOREIGN STATES**

Albania	France	Peru
Antigua and Barbuda	Gambia	Philippines
Argentina	Georgia	Poland
Armenia	Germany	Portugal
Australia	Ghana	Puerto Rico
Austria	Greece	Qatar
Azerbaijan	Grenada	Romania
Bahamas	Guatemala	Russia
Bahrain	Hong Kong	Saint Lucia
Bangladesh	Hungary	Saint Vincent and the Grenadines
Barbados	Iceland	Saudi Arabia
Belarus	India	Serbia
Belgium	Indonesia	Sierra Leone
Belize	Ireland	Singapore
Bhutan	Israel	Slovakia
Bosnia	Italy	Slovenia
Botswana	Jamaica	South Africa
Brazil	Japan	South Korea
British Virgin Islands	Jordan	Spain
Bulgaria	Kazakhstan	Sri Lanka
Burkina Faso	Kenya	Sweden
Burma (Myanmar)	Latvia	Switzerland
Cambodia	Liechtenstein	Tanzania
Cameroon	Lithuania	Thailand
Cayman Islands	Luxembourg	Tonga
Central African Republic	Macedonia	Trinidad and Tobago
Chile	Malaysia	Tunisia
China	Malta	Turkey
Colombia	Mauritius	Turks and Caicos
Costa Rica	Moldova	Uganda
Croatia	Montenegro	Ukraine
Cyprus	Morocco	United Arab Emirates
Czech Republic	Mozambique	United Kingdom
Denmark	Namibia	United States of America

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Regulations - Canada's Anti-Spam Legislation

Dominica  
Dominican Republic  
Ecuador  
Estonia  
Finland

Nepal  
Netherlands  
New Zealand  
Norway  
Pakistan

United States Virgin Islands  
Venezuela  
Vietnam  
Zambia

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