

## Are You Prepared For Canada's New Anti-Spam Act? If Not, You Should Begin Preparing Or It Could Cost You Big!

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In December 2010, Parliament passed Bill C-28. This legislation, which has been called Canada's Anti-Spam legislation, is not yet in force but the Industry Canada website states that the Bill will come in to force in the Fall of this year after the regulations have been drafted. The preamble to this Bill states

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 ...

When I first read the preamble, I was alarmed (as you might be) that the Canadian Government was trying to discourage reliance on electronic means of carrying out commercial activities. My first thought was this is crazy -- why would the Government try to discourage electronic commerce or electronic communications when e-commerce brings in such wealth and is responsible for the creation of thousands of jobs in our country. However, after even a cursory review of the Bill, I was relieved to learn that the Government was not trying to kill e-commerce in Canada; rather, it is trying to regulate the use of electronic communication in an effort to curb the use of spam (unsolicited electronic messages) by penalizing those individuals or corporations (Federal or Provincial) who engage in such conduct and the penalties can be severe - a maximum of \$1 million dollars for an individual and \$10 million dollars for a corporation. In fact, the Government has stated that the intent of this new Anti-Spam legislation is:

... to deter the most damaging and deceptive forms of spam from occurring in Canada, creating a more secure online environment. It does this by addressing the sending of spam, the undesired installation of spyware and malware on the computers of businesses and individuals, and the alteration of transmission data. The bill also extends the provisions of the *Competition Act* concerning false and misleading marketing to electronic messages, and restricts the scope of certain exceptions under the *Personal Information Protection and Electronic Documents Act*.

On the surface, this appears to be a great idea. Everybody hates receiving spam, especially in the business setting, where it costs real money (both in actual currency and in time) to adequately protect ourselves from the potentially damaging effects of unsolicited e-mails and other electronic communications. We certainly hate when people use the Internet to steal our confidential information. So, what's the problem and why am I writing about this Bill? The problem is that despite the stated intent of Bill C-28, the Anti-Spam Act will apply to virtually all businesses and individuals (except those few who still live in the dark ages and don't know how to turn on a computer or use a cell phone, let alone a smartphone) and not just to those who intend on using technology for nefarious purposes. All well-meaning and legitimate businesses and individuals will have to comply or face potentially serious consequences. In order to comply, one will have to be familiar with the Act and with its regulations (once they are published) as many day-to-day activities employed by a massive number of businesses and

individuals may run afoul of this Act if a proper audit of electronic activities is not conducted and if appropriate policies and procedures are not implemented to ensure compliance. My clients and others may have to spend significant sums of money on the use of consultants, computing and software experts and lawyers to ensure compliance with the Act or face stiff penalties.

Stay tuned as I will be following this legislation closely and will continue to update my clients and followers of my blog on developments associated with the Anti-Spam Act and other laws pertaining to e-commerce in Canada.