



Telecom Notice of Consultation CRTC 2011-400

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Ottawa, 30 June 2011

Call for comments on draft Electronic Commerce Protection Regulations (CRTC)

File number: 8665-C12-201109851

*The Commission calls for comments on new draft regulations, Electronic Commerce Protection Regulations (CRTC), with respect to the form and certain information to be included in commercial electronic messages (CEMs) and with respect to requests for consent for the sending of CEMs, the alteration of transmission data in electronic messages, and the installation of computer programs. The draft regulations are made pursuant to legislation which gives the Commission powers to regulate certain forms of electronic contact. The deadline for the receipt of comments is **29 August 2011**.*

Introduction

1. On 15 December 2010, royal assent was given to *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*, S.C. 2010, c. 23 (the Act).
2. The Act gives the Commission the authority to regulate certain forms of electronic contact consisting of the sending of commercial electronic messages (CEMs), the alteration of transmission data in electronic messages, and the installation of computer programs on another person's computer system, in the course of a commercial activity. The fundamental underlying principle is that such activities can only be carried out with consent.
3. Under subsection 64(2) of the Act, the Commission may make regulations, among other things, prescribing the form and certain information to be included in CEMs and requests for consent with respect to the sending of CEMs, the alteration of transmission data in electronic messages, and the installation of computer programs. A copy of the draft *Electronic Commerce Protection Regulations (CRTC)* is set out in the Appendix to this notice.

Structure and content of the proposed regulations

4. The proposed regulations prescribe the form and certain information to be included in a CEM. They establish that a CEM must set out information that identifies the sender of the message and, if different, the person on whose behalf the message is

sent, as well as, if applicable, the names of those persons' businesses. The CEM is also to include information that would enable the recipient to readily contact such persons. Further, the proposed regulations prescribe that this information, as well as the unsubscribe mechanism, be set out clearly and prominently.

5. The proposed regulations also specify a particular form by which information relating to the sender of the message and the unsubscribe mechanism may be accessed, in circumstances where it is not practicable to include such information in a CEM, for instance, because of character limitations.
6. Section 6 of the Act prohibits the sending of a CEM unless there is express or implied consent from the recipient of that message. Section 7 of the Act prohibits, absent express consent, the alteration of transmission data in an electronic message which results in the message being delivered to a different destination. Section 8 of the Act prohibits the installation of a computer program unless express consent has been obtained. The Commission's proposed regulations prescribe the form of a request for express consent for the purposes of subsections 10(1) and 10(3) of the Act. More specifically, the proposed regulations stipulate that any request for express consent must clearly identify the person seeking consent and, if different, the person on whose behalf consent is sought, and, if applicable, the names of those persons' businesses. In addition, it is proposed that contact information be included for such persons, and further, that there be a requirement to include a statement which states that consent may be withdrawn using the contact information provided.
7. The focus of the final segment of the proposed regulations is the installation of computer programs in the course of a commercial activity, which, as noted above, is addressed in section 8 of the Act. The proposed provisions prescribe that additional information be provided when requesting express consent if a computer program that performs a function set out in subsection 10(5) of the Act is to be installed. In such circumstances, the proposed regulations prescribe the manner in which the computer program's material elements must be brought to the attention of the person from whom consent is being sought, and further establish that the person seeking consent must obtain a written acknowledgement from the person from whom consent is sought that they understand and agree that the program performs the specified functions.

Call for comments

8. The Commission calls for comments on the form and content of the proposed *Electronic Commerce Protection Regulations (CRTC)*, made under the Act, which are set out in the Appendix to this notice.

Procedure

9. The Commission will accept comments from interested persons that it receives on or before **29 August 2011**. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding provided that the procedures for filing set out below have been followed.

10. Persons can file their comments with the Commission by using the following comments link or by writing to the Secretary General (by mail: CRTC, Ottawa, Ontario, K1A 0N2; by fax: 819-994-0218).
11. If a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due.
12. Submissions longer than five pages should include a summary.
13. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets.
14. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

Important notice

15. All information provided as part of this public process, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.
16. The personal information provided will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
17. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be made available in PDF format.
18. The information provided to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.

Location of CRTC offices

19. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Quebec J8X 4B1
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Regional offices

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Dartmouth, Nova Scotia B3A 4S5
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205 Viger Avenue West, Suite 504
Montréal, Quebec H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East, Suite 624
Toronto, Ontario M4T 1M2
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Regina, Saskatchewan S4P 0M8
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Secretary General

**Appendix to Telecom Notice of Consultation
CRTC 2011-400**

Electronic Commerce Protection Regulations (CRTC)

DEFINITION

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.*

INFORMATION TO BE INCLUDED IN COMMERCIAL ELECTRONIC MESSAGES

2. (1) For the purposes of subsection 6(2) of the Act, the following information must be set out in any commercial electronic message:
 - (a) the name of the person sending the message and the person, if different, on whose behalf it is sent;
 - (b) if the message is sent on behalf of another person, a statement indicating which person is sending the message and which person on whose behalf the message is sent;
 - (c) if the person who sends the message and the person, if different, on behalf of whom it is sent carry on business by different names, the name by which those persons carry on business; and
 - (d) the physical and mailing address, a telephone number providing access to an agent or a voice messaging system, an email address and a web address of the person sending the message and, if different, the person on whose behalf the message is sent and any other electronic address used by those persons.
- (2) If it is not practicable to include the information referred to in subsection (1) and the unsubscribe mechanism referred to in paragraph 6(2)(c) of the Act in a commercial electronic message, that information may be provided by a link to a web page on the World Wide Web that is clearly and prominently set out and that can be accessed by a single click or another method of equivalent efficiency at no cost to the person to whom the message is sent.

FORM OF COMMERCIAL ELECTRONIC MESSAGES

3. (1) The information referred to in section 2 and the unsubscribe mechanism referred to in paragraph 6(2)(c) of the Act must be set out clearly and prominently.

(2) The unsubscribe mechanism referred to in paragraph 6(2)(c) of the Act must be able to be performed in no more than two clicks or another method of equivalent efficiency.

INFORMATION TO BE INCLUDED IN A REQUEST FOR CONSENT

4. For the purposes of subsections 10(1) and (3) of the Act, a request for consent must be in writing and must be sought separately for each act described in sections 6 to 8 of the Act and must include
 - (a) the name of the person seeking consent and the person, if different, on whose behalf consent is sought;
 - (b) if the consent is sought on behalf of another person, a statement indicating which person is seeking consent and which person on whose behalf consent is sought;
 - (c) if the person seeking consent and the person, if different, on whose behalf consent is sought carry on business by different names, the name by which those persons carry on business;
 - (d) the physical and mailing address, a telephone number providing access to an agent or a voice messaging system, an email address and a web address of the person seeking consent and, if different, the person on whose behalf consent is sought and any other electronic address used by those persons; and
 - (e) a statement indicating that the person whose consent is sought can withdraw their consent by using any contact information referred to in paragraph (d).

SPECIFIED FUNCTIONS OF COMPUTER PROGRAMS

5. A computer program's material elements that perform one or more of the functions listed in subsection 10(5) of the Act must be brought to the attention of the person from whom consent is being sought separately from any other information provided in a request for consent and the person seeking consent must obtain an acknowledgement in writing from the person from whom consent is being sought that they understand and agree that the program performs the specified functions.

COMING INTO FORCE

6. These Regulations come into force on the day on which they are registered.