



# Canada: Anti-Spam Legislation

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## SUMMARY

U.S. businesses should be aware that on July 1, 2014, Canada's anti-spam legislation comes into force. This legislation may affect how U.S. companies can communicate with their Canadian customers. Any commercial electronic messages (CEMs) sent to a computer in Canada will need to comply with the new rules. CEMs include emails, SMS texts, social media messaging and text, sound, voice or image messages but excludes regular mail and telephone. Computer programs and apps are also included in this Act and need to clearly identify their function and exact purpose to the downloader and may not operate in a manner contrary to the user's reasonable expectations. Cookies, HTML code and Java Scripts do not require consent as it has already been given by the user when visiting that website.

## OVERVIEW

The legislation addresses unsolicited commercial electronic mail (spam) by prohibiting the sending of commercial electronic messages without consent. The three main rules for CEMs are:

- 🍁 The sender must have the consent or implied consent of the receiver
- 🍁 The sender must clearly identify themselves and anyone else related to the message
- 🍁 There must be an option for the receiver to unsubscribe in every message sent

The consent of the receiver can be either verbal or written and cannot include pre-checked boxes. Consent can also include receiving a business card, as long as the CEM is related to the recipient and recipient has not indicated that they do not want to receive any promotions. For identification, the sender must be clearly identified in the CEM, along with any or all other material participants. If this cannot be included in the CEM, a hyperlink to a webpage with the necessary information must be used.

## EFFECTS ON U.S. BUSINESS

The Act applies to CEMs that are sending messages to a computer located within Canada, regardless of where the message originates. American companies conducting business with Canadians must comply with the Act. This may affect most electronic marketing and promotional campaigns.

## PENALTIES

Penalties will be applicable to violators of this Act. The maximum for an individual is \$1 million and \$10 million for a business. Directors, officers, agents and mandatories of a corporation are all liable if they have directed, authorized, assented to, consented in, or participated in the violation.

For more information please visit the Canadian Radio-television and Telecommunications Commission website at [www.crtc.gc.ca](http://www.crtc.gc.ca). Full text of the [Anti-Spam Legislation](#) is also available.

## CONTACT

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