



Rely on **TDS**

Get Ready for Canada's Anti-Spam Legislation

By Silvia de Sousa



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The Federal Government passed a new “anti-spam” Act in December 2010. If you are wondering why your inbox is still full of unwanted messages, it is because the Act is not yet in force. Since passing the Act, the Federal Government has been busy reviewing public comment on the associated regulations, which has led to revisions to the legislation. However, the Act and regulations are anticipated to finally come into force this summer. So, what do you need to know?

The Act targets more than just spam, including the non-consensual installation of computer programs and alteration of computer data (think malware and viruses). For businesses, however, the provisions in the Act that will have the most impact are those dealing with sending “commercial electronic messages”. Under the Act, if an exception does not apply, the sender of a commercial electronic message will have to ensure that he or she:

has obtained the consent of the recipient to send the message;

has included information that identifies the sender; and

has included information that enables the recipient to withdraw consent. Significantly, a commercial electronic message sent to a recipient to obtain consent to the receipt of a commercial electronic message is itself an electronic commercial message according to the Act. Therefore, businesses should avoid using commercial electronic messages to obtain initial consent from new customers to receiving commercial electronic messages once the Act is in force.

The CRTC has been given the responsibility of enforcing the Act's anti-spam provisions, and stiff monetary penalties are available. The maximum penalty is \$1 million per violation in the case of an individual and \$10 million per violation for entities, such as corporations. In light of the possible consequences for violating the Act, businesses that send commercial electronic messages should ensure that they are prepared to comply with the Act once it comes into force. It is important to note that the coming into force date will be the date for compliance with the Act. More information about the Act and regulations can be found at the Federal Government website, fightspam.gc.ca.

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Silvia's practice is concentrated in the area of business law with an emphasis on intellectual property law, life sciences law and technology law. Her practice also includes intellectual property transactions, commercial law, financings and licensing matters.