



To: Canadian Radio-television and Telecommunications Commission (CRTC)
From: Messaging Anti-Abuse Working Group (MAAWG)
Date: September 7, 2011
Subject: Call for comments on draft Electronic Commerce Protection Regulations
File number: 8665-C12-201109851

Dear CRTC:

1. We understand the Canadian Radio-television and Telecommunications Commission has requested comments on the draft Electronic Commerce Protection Regulations (<http://www.crtc.gc.ca/eng/archive/2011/2011-400-1.htm>). We ask you to consider the following response from the Messaging Anti-Abuse Working Group (MAAWG) in your recommendations and revisions. You have our permission to use the following material publicly to advance your work.
2. The Messaging Anti-Abuse Working Group (<http://www.maawg.org> - hereafter “MAAWG”) is an international non-profit, industry-led organization founded to fight online abuse such as botnets, phishing, fraud, spam, viruses and denial-of service attacks that can cause great harm to both individuals and national economies. MAAWG draws technical experts, researchers and policy specialists from a broad base of Internet service providers and network operators representing over one billion mailboxes, and from key technology providers, academia and volume sender organizations. The multi-disciplinary approach at MAAWG includes education, advice on public policy and legislation, development of industry best practices, guidance in the development of industry standards, and the facilitation of global collaboration.
3. We appreciate the opportunity to provide these comments from the messaging industry’s perspective. Our responses follow the order of the draft regulations as shown in the Appendix to Telecom Notice of Consultation CRTC 2011-400.

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*

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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.

COMMENTS:

4. We suggest that subsection (2) be rewritten to include a reference to content format and devices because some popular consumer gear, such as the iPad, cannot access flash content and there may be other similar technological concerns in the future. (*Italics have been added here to clarify this change*):

(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 *easily and readily accessed in text by any consumer device*, by a single click or another method of equivalent efficiency at no cost to the person to whom the message is sent.

5. We also suggest the Commission consider adding the following text to clarify this regulation:

- “Valid physical postal address” means the sender’s current street address, a post office box the sender has accurately registered with Canada Post, or a private mailbox the sender has accurately registered with a commercial mail receiving agency that is established pursuant to the Act for the Regulation of the Postal Service, the Canada Post Corporation Act, and other applicable laws and regulations.

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.*

COMMENTS:

6. Opt-out cannot require any information not present in the body of the original message, and action must be taken when the request is generated by the recipient, or by someone whom it is reasonable to believe is acting on behalf and with permission of the recipient, regardless of unsubscribe method selected.

7. The Commission should consider adding text to the effect that an email recipient cannot be required to pay a fee, provide information other than his or her email address and opt-out preferences, or take any steps other than sending a reply email message or visiting a single Internet Web page to opt-out of receiving future email from a sender.

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).

COMMENTS:

8. We are concerned about the lack of clarity in this regulation; there has been some mention that “in writing” might make a digital representation invalid as a form of soliciting disclosure. Furthermore, there may be a business case made for the validity of collecting consent verbally in some cases. It is our general feeling that section 4 is overly prescriptive and the Commission should consider simply withdrawing it. We believe those who collect consent should be held responsible to do so in any reasonable form that is verifiable and replicable, should they need to provide evidence in good faith to the Commission. At the very least, we strongly urge the CRTC to clarify the phrase “in writing” to include text along the lines of "represented in digital form.”

ADDITIONAL COMMENTS:

9. For the purposes for sending CEMs, "Privacy Protection for WHOIS" should never be used as it provides a misleading reference to the owner of the domain by obfuscating the actual registrant, but these services should be allowed for private persons non-commercial activities. The WHOIS contact information is the sole method to reach the domain owner and in many cases these services simply force researchers to jump through an unnecessary (and often times unsuccessful) process to contact the actual domain holder. We suggest the Commission draw up a regulation to this effect.

Sincerely,

/signed/

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