CRTC Issues $1.1 Million Penalty for CASL Violation

March 06, 2015

On March 5, 2015, the Canadian Radio-television and Tele-communications Commission ("**CRTC**") issued the first Notice of Violation under Canada's anti-spam law (commonly known as "**CASL**"). The Notice, which imposes a $1.1 million administrative penalty, was issued to Compu-Finder for sending commercial electronic messages ("**CEMs**") without the recipients' consent and with an ineffective unsubscribe mechanism.

CASL

CASL creates a comprehensive regime of offences, enforcement mechanisms and potentially severe penalties designed to prohibit unsolicited or misleading CEMs, the unauthorized commercial installation and use of computer programs on another person's computer system and other forms of online fraud.

For most organizations, the key parts of CASL are the rules for CEMs. Subject to limited exceptions, CASL prohibits the sending of a CEM unless the recipient has given informed consent (express or implied in limited circumstances) to receive the CEM and the CEM complies with prescribed formalities (including an effective and promptly implemented unsubscribe mechanism) and is not misleading.

Violation of CASL's CEM rules can result in administrative penalties (up to $1 million per violation for individuals and up to $10 million per violation for organizations), civil liability through a private right of action (commencing July 1, 2017) and vicarious liability on employers, directors and officers. CASL gives the CRTC regulatory and enforcement authority regarding CEMs and other matters.

Compu-Finder Notice of Violation

The Notice of Violation issued to Compu-Finder relates to four violations of CASL, between July 2 and September 16, 2014, involving emails promoting Compu-Finder's business-related training courses. The CRTC explained that Compu-Finder sent emails without the recipients' consent and emails that included an ineffective unsubscribe

mechanism. According to the CRTC, Compu-Finder's emails accounted for 26% of all complaints for the industry sector submitted to the CRTC's Spam Reporting Centre.

The CRTC's Chief Compliance and Enforcement Officer explained: "...Compu-Finder flagrantly violated the basic principles of the law by continuing to send unsolicited commercial electronic messages after the law came into force to email addresses it found by scouring websites. … By issuing this Notice of Violation, my goal is to encourage a change of behaviour on the part of Compu-Finder such that it adapts its business practices to the modern reality of electronic commerce and the requirements of the anti- spam law".

CASL's enforcement procedures require Compu-Finder to pay the penalty, contest the Notice or negotiate an undertaking (settlement) with the CRTC. If Compu-Finder unsuccessfully contests the Notice, Compu-Finder may appeal the CRTC's decision to Canada's Federal Court of Appeal.

The CRTC's news release includes an important warning for all organizations that send CEMs regulated by CASL: "We take violations to *[sic]* the law very seriously and expect businesses to be in compliance".

More information about CASL is available at blg.com/en/AntiSpam.

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