

Technology

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First Penalty Imposed on an Individual Over Violations of Canada's Anti-Spam Legislation

For the first time, on March 9, 2017, the Canadian Radio-television and Telecommunications Commission (CRTC) imposed a penalty on an individual for violating Canada's Anti-Spam Legislation (CASL). The anti-spam provisions of CASL generally prohibit, subject to limited exceptions, the sending of commercial electronic messages (such as email) unless the recipient has expressly consented to receiving the message, among other requirements.

The Decision

The CRTC's decision relates to three email campaigns, totalling 58 emails, sent by an individual advertising his design, printing and distribution services. The email campaigns took place during the Summer and Fall of 2014. Interestingly for this campaign size, 50 people complained to the CRTC.

About two years after the email campaigns, and after an investigation, the CRTC issued a notice of violation. The individual disputed the notice of violation, arguing that he may have been the victim of identity theft or that someone unknown to him may have accessed his unsecured internet connection. The CRTC did not accept the explanation and ultimately found, on a balance of probabilities, he had violated CASL.

The CRTC considered various factors in assessing the amount of the penalty, including: (a) the purpose of the penalty; (b) the nature and scope of the violation; (c) any financial benefit obtained from the violation; (d) the individual's ability to pay the penalty; (e) the individual's lack of cooperation with the investigation

and his continued violations after being made aware of the investigation. The CRTC imposed a \$15,000 penalty.

Implications

Although a \$15,000 penalty may seem small to large organizations, this decision highlights that the CRTC is not only concerned with large-scale violations of CASL; it will investigate and take appropriate measures in respect of violations by any persons about whom it receives complaints.

For further information on the CRTC's decision or CASL compliance, contact any member of our Tech Group.

Goodmans Tech Group

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