

Information Technology

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New Rules for Consumer E-Commerce

Canada has recently taken steps to standardize the rules protecting consumers who engage in internet transactions. Some of these changes may have a substantial impact on the operations of businesses with publicly available interactive websites.

The two major developments concern the endorsement of a common code of conduct for e-commerce consumer protection by the federal and provincial governments and the soon to be implemented new consumer protection legislation and regulations in Ontario.

Canadian Code of Practice for Consumer Protection in Electronic Commerce

On January 16, 2004, federal, provincial and territorial ministers responsible for consumer affairs met in Winnipeg. The ministers endorsed the Canadian Code of Practice for Consumer Protection in Electronic Commerce ("Code"). The Code, developed cooperatively with business groups, consumer groups and governments through a process that began in 1999, establishes benchmarks for good business practices for merchants conducting online commercial activities with consumers.

The Code is voluntary and leaves unchanged rights, remedies and other obligations provided by consumer protection and privacy laws, regulations and codes of conduct. The Code is consistent with the Organisation for Economic Co-operation and Development's Guidelines for Consumer Protection in the Context of Electronic Commerce.

A copy of the Code can be found at:

<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/vwGeneratedInterE/ca01861e.html>

Obligations Under the Code

The Code covers a wide spectrum of important consumer issues, such as the provision of clear and adequate information, the language of the website, contract formation and fulfillment, privacy, security of payment and personal information, redress, unsolicited E-mail and children. Some of the practices which the Code recommends for vendors are:

- Vendors should not hold a customer liable for any charges relating to the transaction if there was no adequate opportunity for the consumer to cancel an inadvertent transaction when the consumer acted reasonably.
- Vendors should make their privacy policies easily accessible from their home page or at a reasonably early stage of navigation. Information that must be disclosed as part of the privacy policy includes when the web site uses "cookies", how and why they are used and the consequences of the consumer's refusal to accept a cookie.

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- Vendors should not, as a condition of sale, require consumers to consent to the collection, use or disclosure of personal information beyond that necessary to complete the sale.
- Vendors should offer an internal complaints-handling process that is easily accessible online and offline, available to the consumer free of charge, easy to use, acknowledges receipt of the complaint within 7 days of receipt and endeavors to address the complaint within 45 days of acknowledgement.
- Vendors should not transmit marketing emails to consumers without their consent except where they have an existing relationship with them. Searching, browsing or visiting the vendor's site does not establish an existing relationship.
- Marketing messages sent by vendors should prominently display a return address and provide a simple procedure for consumers to notify the vendor that they do not wish to receive more marketing emails.
- Vendors should not knowingly send marketing e-mail to children.
- Vendors should not collect personal information on children without their parent's or guardian's consent except when clubs or contests are directed at children and the information collected is limited to what is necessary for club membership or the contest and is not used for other purposes.

Draft Regulations under the New Consumer Protection Act

The new Ontario *Consumer Protection Act, 2002* (the "Act"), which has not yet been proclaimed into force, legislates many new rules applicable to on-line consumer transactions. Further detailing such consumer protection measures, in December 2003 draft regulations under the Act were published for comment.

The Act and the draft regulations implement the Internet Sales Contract Harmonization Template approved by Canada's consumer ministers in May 2001

to harmonize consumer protection legislation in electronic commerce across Canada.

Some of the provisions of the Act and the draft regulations most likely to impact e-commerce with consumers are:

- The supplier is deemed to warrant that the services supplied under a consumer agreement are of reasonably acceptable quality.
- Before the consumer enters into an internet agreement, vendors must give them certain information set out by the regulations, some of which may be more than internet merchants customarily provide. For example, the vendor must disclose delivery arrangements, including the name of the carrier, the method of transportation and the place of delivery.
- An agreement that requires that disputes be submitted to arbitration is invalid insofar as it prevents a consumer from exercising a right to commence a court action under the Act.
- A consumer agreement can no longer prevent a class action.

A copy of the draft regulations can be found at:

http://www.cbs.gov.on.ca/mcbs/english/consultation_docs.htm

A copy of the Harmonization Template can be found at:

<http://strategis.ic.gc.ca/epic/internet/inocabc.nsf/vwGeneratedInterE/ca01642e.html>

If you have any questions about the Code or the new Consumer Protection Act and its draft regulations and how they may affect your business, please contact:

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