

Canadian
Code of Practice
for Consumer Protection
in Electronic Commerce

Endorsed by Federal, Provincial and Territorial Ministers
responsible for Consumer Affairs
January 16, 2004

Canada

Ontario

Québec

NOVA SCOTIA

New Brunswick
Nouveau Brunswick

Manitoba

BRITISH
COLUMBIA

Prince
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Island
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NEWFOUNDLAND
AND LABRADOR / GOUVERNEMENT DE
TERRE-NEUVE ET
DU LABRADOR

Yukon
Government

Northwest
Territories

Nunavut

Preface

The *Canadian Code of Practice for Consumer Protection in Electronic Commerce* establishes benchmarks for good business practice for merchants conducting commercial activities with consumers online. The Code leaves unchanged rights, remedies and other obligations that may exist as a result of consumer protection, privacy or other laws and regulations, or other general or sector-specific voluntary codes of conduct to which vendors may subscribe.

The Working Group on Electronic Commerce and Consumers, composed of representatives of different sectors of the economy, was set up in the Autumn of 1999 to develop the Code, based on the *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*, which were approved in August 1999. The Code is also consistent with the Organisation for Economic Co-operation and Development's *Guidelines for Consumer Protection in the Context of Electronic Commerce*. Draft versions of the Code were the subject of extensive consultations during 2001–2002. In January 2003, the Working Group approved the Code in principle as a model for effective consumer protection in electronic commerce (for a listing of the Working Group members who approved the Code in principle, see Appendix 1).

In Spring 2003, the Code underwent pilot testing by a number of private sector participants. The Code was then reviewed and finalized with input from the E-Commerce Leaders Code Review Committee (for a listing of E-Commerce Leaders Code Review Committee members, see Appendix 2).

The Code was endorsed¹ by federal, provincial and territorial ministers responsible for consumers affairs on January 16th, 2004. This code is now open to endorsement by private sector organizations and consumer organizations as representing good practice benchmarks for merchants engaging in consumer e-commerce.

The Code will be reviewed regularly to ensure its relevance to current technology and business practices and its effectiveness in promoting consumer protection in electronic commerce.

1. For the purposes of this document, endorsement constitutes agreement by the endorser that the Code represents good practice benchmarks for merchants engaging in consumer e-commerce. It does not represent an attestation that the endorser currently meets the terms of the Code. Attestations that any particular vendor or group of vendors meets the terms of the Code may take place through a number of implementation options, which are currently being explored.

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Definitions

Child: someone who has not reached his or her 13th birthday.

Consumer: an individual who engages in commercial activity for personal, family or household purposes.

Electronic commerce: a commercial activity that involves buying, selling, leasing, licensing or otherwise providing a good or service online, including over the Internet. This includes marketing as well as soliciting donations and operating contests and clubs.

Good or service: includes a good, service, contract for service or other item of value.

Personal information: any information about an identifiable individual.

Transaction: any agreement between a vendor and a consumer for provision of a good or service.

Vendor: an organization, whether a for profit business or a non-profit entity, conducting electronic commerce directly with consumers.

Principle 1: Information Provision

- 1.1 Vendors shall provide consumers with sufficient information to make an informed choice about whether and how to complete a transaction. All information that the vendor is required to provide pursuant to this Code must be:
 - a) clearly presented in plain language;
 - b) truthful;
 - c) conspicuous and easily accessible on vendors' Web sites at appropriate stages of consumers' decision making, particularly before consumers confirm transactions or provide any personal information; and
 - d) capable of being saved or printed by consumers.
- 1.2 Vendors shall ensure that their marketing practices, information and links on their Web sites are current, accurate and not deceptive or misleading to consumers, and that all objective claims can be substantiated.
- 1.3 Vendors shall identify themselves on their Web sites and provide information about their policies, including to whom consumers should direct claims, ask questions, register complaints or obtain warranty information, repair services and support related to the goods or services available through the sites. The information shall be available to consumers before they engage in transactions and shall include:
 - a) the vendor's legal name and the name(s) under which the vendor conducts business;
 - b) the address and telephone and fax numbers of the vendor's principal office and, when applicable, of local offices or agents;
 - c) any geographic, age or other restrictions on transactions;
 - d) the currency used by the vendor to quote the price and the payment methods and currencies the vendor accepts;
 - e) the vendor's cancellation, return and exchange policies, including any associated charges;
 - f) contact information for consumer service and support, including days and hours of operation, when applicable, and any associated charges;
 - g) details of the vendor's complaints process;
 - h) the vendor's policies on privacy and unsolicited e-mail; and
 - i) contact information for any seal or other self-regulatory programs or applicable dispute resolution processes in which the vendor participates, and, whenever possible, an online method of verifying its certification or membership.

- 1.4 Vendors shall make information available about the goods or services for sale in order that consumers can see it before they initiate transactions. The information shall include:
- a) a fair and accurate description of the goods or services offered for sale, including the terms of any service contracts and material information that consumers would otherwise have available to them when buying the goods or services offline (e.g. restrictions, health and safety warnings, or limitations or conditions of purchase, such as parental/guardian approval requirements and time restrictions); and
 - b) any guarantees and warranties concerning the goods or services.
- 1.5 Prior to the conclusion of transactions, vendors shall ensure that all terms and conditions of sale related to the transactions are available to consumers. Such information shall include:
- a) a description of the goods or services including the quantity to be purchased;
 - b) the full price to consumers, including:
 - the applicable currency;
 - any shipping charges, taxes, and specific reference to any other charges that the vendor is responsible for collecting;
 - when the vendor cannot reasonably ascertain the amount of potentially applicable charges (e.g. additional taxes, customs fees, custom broker fees, etc.), the fact that such charges may apply; and
 - when the full price cannot be worked out in advance, the method the vendor will use to calculate it, including any recurrent costs and the method used to calculate them;
 - c) payment terms, including the methods of payment available to consumers and any associated surcharges or discounts;
 - d) cancellation, return and exchange policies, including any associated charges;
 - e) applicable warranties, including any associated charges;
 - f) how the vendor will contact the consumer in the future (e.g. by e-mail, telephone, facsimile, letter);
 - g) any restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, the length of service contracts, or any geographic limitations applying to the offer; and
 - h) the time frame for shipping goods or activating service, how consumers will be notified when the vendor is unable to complete the order or service request within this time frame and, when applicable, options for delivery.

- 1.6 Vendors shall provide consumers with a record of the transaction as soon as possible after the transaction has been completed.
- 1.7 Except in the case of 1.8, when consumers contract for the ongoing provision of goods or services, vendors shall ensure:
 - a) that they disclose the following to consumers, prior to the conclusion of the transaction:
 - how often and to what address statements of account will be delivered;
 - how the consumer can change and correct such information; and
 - how the consumer can cancel the contract and the implications of any such cancellation;
 - b) that each invoice or statement of account identifies the vendor, the goods or services in question and the amount billed.
- 1.8 When goods or services are ordered for future physical delivery on a one-time basis, vendors shall provide consumers with a printed record of the transaction when the goods or services are delivered or provided, as appropriate. The record shall include information set out in 1.5 a) through d).

Principle 2: Language

- 2.1 When a vendor offers a good or service on its Web sites in a given language, the vendor shall use that language to:
 - a) provide all of its material information about the good or service, the vendor, the vendor's relevant policies, and the terms and conditions of the transaction and all other material information described in 1.3;
 - b) conduct online transactions regarding the good or service; and
 - c) provide customer service regarding the good or service.
- 2.2 When manufacturer good or service information or after-sales support is not available in the language that the vendor offered the good or service, this shall be so stated by the vendor in the language in which the transaction was conducted.

Principle 3: Contract Formation and Fulfilment

- 3.1 Vendors shall take reasonable steps to ensure that consumers' agreement to contract is fully informed and intentional. In particular, consumers shall be provided with a meaningful opportunity to correct or cancel the order before it is accepted and processed.
- 3.2 When an order cannot be fulfilled within the time frame originally specified, vendors shall promptly notify consumers, and provide them with the option of cancelling the order at no charge, except when doing so would be unreasonable.
- 3.3 When consumers contract for the ongoing provision of goods or services, and there is a material change in the good or service, or contract concerning the good or service, vendors shall:
 - a) promptly notify consumers of the change in accordance with 1.5 f);
 - b) through a simple online method of cancellation, provide consumers with a meaningful opportunity to decline further supply of the good or service, without incurring cost or further obligation; and
 - c) provide timely confirmation of any such cancellation.
- 3.4 Vendors shall not hold consumers liable for any charges related to a transaction in the following circumstances:
 - a) the transaction was not authorized by the consumer;
 - b) the good or service delivered was materially different from that described by the vendor;
 - c) the vendor failed to provide material information about the good or service;
 - d) the good or service was not delivered in the time specified, or under the conditions stated in the original offer; or
 - e) there was no adequate opportunity for the consumer to cancel an inadvertent transaction when the consumer acted reasonably.

Under these circumstances, vendors shall refund any payments consumers make, including, when applicable, any reasonable charges consumers pay directly to return the good in question to the vendor, in good order and within a reasonable time.

- 3.5 Vendors shall maintain effective controls designed to ensure that transactions are billed and completed as agreed, to promptly rectify any mistakes in transaction records, and to ensure that consumers are notified of any such correction.

Principle 4: Online Privacy

- 4.1 Vendors shall adhere to the principles set out in Appendix 3 with respect to the personal information they collect from consumers as a result of electronic commerce activities.
- 4.2 Vendors shall make their privacy policy easily accessible from the home page of their Web site or at a reasonably early stage of consumers' navigation, and whenever personal information is either requested or collected. Information that must be disclosed as part of the privacy policy includes the following:
 - a) the specific kinds and sources of information being collected and maintained online, the purposes for which the information is collected, how that information is being used, and to whom the information may be disclosed;
 - b) the choices available to consumers regarding the collection, use and disclosure of their personal information, how they may exercise and change these choices, and the implications of such choices;
 - c) how consumers may review and, when necessary, correct or remove such information; and
 - d) when the Web site uses "cookies," how and why they are used and the consequences, if any, of consumers' refusal to accept a cookie.
- 4.3 Vendors shall limit their collection, use and disclosure of personal information to that which a reasonable person would consider appropriate in the circumstances.
- 4.4 Vendors shall not disclose personal health information to affiliates or third parties for purposes other than the transactions unless specifically and expressly authorized by consumers in advance, through a clearly worded opt-in process. When seeking consumers' express consent to disclose the information, vendors shall list the information to be disclosed, all uses to which it may be put and all parties to whom it may be disclosed.
- 4.5 Vendors shall 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.
- 4.6 When consumer consent to the collection, use and disclosure of personal information is required, and cannot reasonably be implied, such consent shall be:
 - a) provided separately from consent to other terms and conditions of the contract; and
 - b) provided through a clearly worded, online opt-in or opt-out process. Opt-out processes must be highly visible and easy to execute.

- 4.7 When vendors transfer personal information to third parties, vendors shall remain responsible for the protection of that information. Accordingly, before any such transfer, vendors shall ensure, through contractual or other means, that the third parties comply with the privacy provisions of this Code.

Principle 5:

Security of Payment and Personal Information

- 5.1 Vendors shall maintain effective controls to protect the integrity and confidentiality of payment and other personal information consumers provide. Security mechanisms shall be consistent with current industry standards and appropriate to the type of information collected, maintained or transferred to third parties.
- 5.2 Vendors shall ensure that third parties who are involved in transactions and have access to personal or payment information comply with 5.1.
- 5.3 In fulfilment of this principle, vendors are encouraged to disclose to consumers the level of security used on their Web site. Vendors are encouraged to use certification services to support security claims and to provide Web site links to these certification services for validation.

Principle 6:

Complaint Handling and Dispute Resolution

- 6.1 Vendors shall provide consumers with access to fair, timely and effective means to resolve problems with any transaction.
- 6.2 Vendors shall offer an internal complaints-handling process that:
- a) is easily accessible online and offline;
 - b) is available to consumers free of charge;
 - c) is easy to use;
 - d) acknowledges complaints within seven business days of receipt and endeavours to resolve or address these complaints within 45 days of acknowledgment; and
 - e) records and monitors complaints.
- 6.3 When a consumer and a vendor cannot resolve a complaint, the vendor is strongly encouraged to offer to refer matters to an appropriate third-party dispute resolution service, use of which shall be at the consumer's discretion.

- 6.4 Any dispute resolution service(s) offered by the vendor in accordance with 6.3 shall:
- a) be available to be initiated online and irrespective of consumers' location;
 - b) be easily accessible to consumers (e.g. via a hyperlink from vendors' Web sites);
 - c) be easy to use;
 - d) be offered at nominal or no cost to consumers;
 - e) be expeditious, with reasonable time limits for each stage of the process;
 - f) be fair (i.e. meet the standards of due process);
 - g) commit vendors to abide by awards when consumers agree to them;
 - h) be operated by an independent and impartial body; and
 - i) be transparent in all aspects of its operations, including services, procedures, governance structure, dispute resolution personnel, and the results of dispute resolutions. With respect to the last, the dispute resolution service provider shall make public its arbitration case results and detailed statistics on its confidential dispute resolution results covering the number and type of complaints and the proportion resolved in the customer's favour.

Principle 7: Unsolicited E-mail

- 7.1 Vendors shall not transmit marketing e-mail to consumers without their consent, except when vendors have an existing relationship with them. An existing relationship is not established by consumers simply visiting, browsing or searching vendors' Web sites.
- 7.2 Any marketing e-mail messages vendors send shall prominently display a return e-mail address and shall provide in plain language a simple procedure by which consumers can notify vendors that they do not wish to receive such messages.

Principle 8: Communications with Children

- 8.1 All vendors have a social responsibility to determine whether the person with whom they are communicating or transacting is a child. When communicating with children, or when the content is likely to be of interest to children, the language must be age-appropriate, must not exploit the credulity, lack of experience or sense of loyalty of children, and must not exert any pressure on children to urge their parents or guardians to purchase goods or services.
- 8.2 Vendors shall take all reasonable steps to prevent monetary transactions with children.
- 8.3 Vendors shall not collect, use or disclose personal information of children without the express, verifiable consent of their parents or guardians, except as provided for in 8.5 and 8.6 below. When seeking parental consent, vendors shall clearly specify the nature of the proposed communications, the personal information being collected and all potential uses of the information.
- 8.4 Vendors shall not knowingly send marketing e-mail to children.
- 8.5 When contests or clubs are directed at children, vendors may collect children's personal information without parental consent and communicate directly with those children, when vendors:
 - a) collect the minimum amount of information required to provide the club membership or to determine the winner of a contest;
 - b) limit communications only to those required to provide the club membership;
 - c) in the case of contests, only deal with the parents or guardians of the winner(s) and do not contact the winner(s);
 - d) retain the information only as long as the children remain members of the club or until the conclusion of the contest; and
 - e) make no use of the information other than to provide the club membership or to determine a contest winner.
- 8.6 When vendors contract with third parties to provide a club membership or to determine the winner of a contest, vendors shall disclose only the personal information necessary for this, and shall ensure that the third parties agree to comply with principles 4 and 8.

Appendix 1:

Working Group on Electronic Commerce and Consumers

The following organizations participated in the Working Group:

- Alberta Government Services
- Bell Canada
- Cable Television Standards Foundation*
- Canadian Association of Internet Providers
- Canadian Cable Television Association**
- Canadian Council of Better Business Bureaus
- Canadian Marketing Association
- Canadian Wireless Telecommunications Association*
- Consumer and Business Services, Government of Ontario
- Consumers Association of Canada
- Information Technology Association of Canada*
- Office de la protection du consommateur, gouvernement du Québec
- Office of Consumer Affairs, Industry Canada, Government of Canada
- Option consommateurs
- Public Interest Advocacy Centre
- Retail Council of Canada
- Union des consommateurs

* The Cable Television Standards Foundation, Canadian Wireless Telecommunications Association and Information Technology Association of Canada were not present for the Working Group decision of January 10, 2003, to approve the Code in principle.

** The Canadian Cable Television Association abstained from the Working Group vote to approve the Code in principle.

Appendix 2:

E-Commerce Leaders Code Review Committee

The following organizations and companies participated in the E-Commerce Leaders Code Review Committee:

- Bayard Canada, The Owl Group
- Bell Canada
- Canadian Council of Better Business Bureaus
- Canadian Geographic Enterprises
- Consumer and Business Services, Government of Ontario
- Consumers Association of Canada
- Eagle.ca
- Fairmont Hotels & Resorts Inc.
- My Travel Canada
- Office de la protection du consommateur, gouvernement du Québec
- Office of Consumer Affairs, Industry Canada, Government of Canada
- Option consommateurs
- Pinkerton Flowers
- Public Interest Advocacy Centre
- Registries and Consumer Services, Government of Alberta
- Saltscapes.com
- Ticketmaster Canada
- Travel Industry Council of Ontario
- Union des consommateurs
- Via Rail Canada

Appendix 3:

Model Code for the Protection of Personal Information

These 10 principles form the basis of the *Model Code for the Protection of Personal Information* (CAN/CSA-Q830-96; published March 1996; reaffirmed 2001).

1. Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

2. Identifying Purposes

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

3. Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except when inappropriate.

4. Limiting Collection

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

5. Limiting Use, Disclosure and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

6. Accuracy

Personal information shall be as accurate, complete and up-to-date as is necessary for the purposes for which it is to be used.

7. Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

8. Openness

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

9. Individual Access

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

10. Challenging Compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

Note: The full text of the *Model Code for the Protection of Personal Information* can be obtained from the Canadian Standards Association's online store (<http://www.csa-intl.org/onlinestore/welcome.asp>). Click on "Catalogue" or "Shop Now!" and then type the product number (CAN/CSA-Q830-96) into the Search box.

You may also order the Model Code from:

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178 Rexdale Boulevard
Etobicoke ON M9W 1R3
1 800 463-6727 (in Canada)
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