

July 1: Important changes to Canada's Anti-Spam Law

July 1, 2017, is not just Canada's 150th birthday. It is also the day when important changes to Canada's anti-spam law ("CASL") come into force.

CASL is one of the strictest anti-spam laws in the world. It applies to:

- Nearly all emails, texts, and other forms of electronic communication, when they are used for business purposes. ("commercial electronic messages" or "CEMs").
- Computer programs.

Two important changes to CASL come into force on July 1:

- The three year transitional implied consent period for sending CEMs to customers ends.
- Express consent will be needed to install or update computer programs.

A third scheduled change, the coming into force of provisions granting a private cause of action for breaches of CASL, has been suspended pending a review of CASL by a Parliamentary committee.

This note summarizes these changes.

Implied consent to send a CEM – existing business relationship

Current rule

- Businesses have implied consent to send CEMs to their customers, until July 1, 2017, unless the customer unsubscribes.

New rule – as of July 1

- Businesses have implied consent to send CEMs to their customers for:
 - Two years after the last sale
 - Six months after an inquiry
- Businesses must stop sending CEMs to customers who unsubscribe.
- Businesses need express consent to send CEMs to customers once this implied consent expires (unless another type of implied consent exists).
- Businesses can still contact these customers by telephone or regular mail.

What you should do

- Make sure that systems used to track implied consents recognize this change in the duration of implied consent.
- Make sure that staff who send CEMs know about these changes.
- Try to get express consent from customers before implied consents expire (an email asking for consent to send CEMs is itself a CEM).

Implied consent to update or upgrade a computer program

Current rule

- Software providers have implied consent to update or upgrade computer programs that were installed before CASL came into force.

New rule – as of July 1

- Express consent is required to update or upgrade any computer program.
- The requirements for obtaining consent are somewhat less for updates or upgrades in certain circumstances.

What you should do

- Make sure that express consent has been obtained for updates and upgrades before the update or upgrade can be installed.

Private right of action

Current rule

- Only the CRTC enforces most of CASL's provisions.

New rule – now suspended!

- At the last moment, the federal government suspended the coming into force of provisions making a private right of action available for breaches of CASL's provisions on CEMs and computer programs, as well as Federal privacy legislation (PIPEDA), and *Competition Act* provisions dealing with misleading representations in electronic messages (s. 74.011).
- This delay comes after lobbying from businesses.
- The government is asking a Parliamentary committee to review these provisions as part of its scheduled review of CASL.

What you should do

- Use this delay to ensure your business is compliant with CASL, PIPEDA, and the *Competition Act*.
- Review procedures and systems for sending CEMs to ensure they are compliant.
- Re-educate staff on the importance of complying with CASL, PIPEDA, and the *Competition Act*.

How we can help

- We can help you to review and update your existing compliance programs.
- We can help you to investigate and address any non-compliance internally.
- We can defend you in CRTC investigations and proceedings.

More information on CASL

Contact us

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