

Canada's Anti-Spam Legislation: Background

What is CASL?

Canada's Anti-Spam Legislation (CASL) establishes rules for sending commercial electronic messages (CEMs) and installing computer programs, and prohibits the unauthorized alteration of transmission data. Most importantly, the legislation requires that consent be obtained before sending a CEM or installing a computer program. CASL applies to every CEM sent from or accessed by a computer system located in Canada and to every computer program installed on a computer system located in Canada.

CASL provides the Canadian Radio-television and Telecommunications Commission ("CRTC") - the enforcement agency under the legislation - with new investigatory powers, as well as the ability to impose administrative monetary penalties of up to \$10 million per violation. CASL also includes a private right of action that allows individuals and companies sue and recover damages resulting from violations of the Act.

What is the status of CASL?

CASL was passed in December 2010; however, the law is not yet "in force", meaning that it does not currently have legal application. Both the CRTC and Industry Canada (the government department responsible for the legislation) are required to develop implementing regulations before the law can come in to force. The CRTC regulations were finalized in March 2012, while the Industry Canada regulations are yet to be finalized. A second set of draft regulations were published by Industry Canada for comment in January 2013, with the comment period closing on February 4, 2013. It seems reasonable to assume that final Industry Canada regulations - which will include a coming-in-to-force date for the law and regulations - will be published in late spring/early summer 2013. It is expected that the government will provide at least six months of time after publishing the final regulations before bringing the law in to force in order to allow industry to prepare.

Resources

Canada's Anti-Spam Legislation, <http://www.canlii.org/en/ca/laws/stat/sc-2010-c-23/latest/sc-2010-c-23.html>

Electronic Commerce Protection Regulations (CRTC),
<http://www.crtc.gc.ca/eng/archive/2012/2012-183.htm>

Industry Canada's draft Electronic Commerce Protection Regulations,
<http://www.gazette.gc.ca/rp-pr/p1/2013/2013-01-05/html/reg1-eng.html>

CRTC Guidelines on the interpretation of the Electronic Commerce Protection Regulations (CRTC) (CRTC 2012-548), <http://www.crtc.gc.ca/eng/archive/2012/2012-548.htm>

CRTC Guidelines on the use of toggling as a means of obtaining express consent under Canada's anti-spam legislation (CRTC 2012-549), <http://www.crtc.gc.ca/eng/archive/2012/2012-549.htm>

Government of Canada Anti-Spam Resource page,
<http://fightspam.gc.ca/eic/site/030.nsf/eng/home>

CRTC Twitter Account (English) <https://twitter.com/CRTCeng>; (French)
<https://twitter.com/CRTCfra>

nNovation LLP CASL overview, <http://www.nnovation.com/practice-expertise/canadas-anti-spam-legislation/>

CASL FAQ – Members Only,
<http://www.espcalition.org/membersonly/briefings/ESPC%20CASL%20Q&A%20-%2011Jan2013.pdf>