

Canada's Anti-Spam Legislation Becomes Effective July 1, 2014

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Canada recently enacted "Anti-Spam" legislation (CASL) affecting all businesses – *even those based in the United States* – sending commercial electronic messages to individuals in Canada. CASL becomes effective July 1, 2014.

As of July 1, 2014, CASL will prohibit:

- sending commercial electronic messages without a recipient's consent, including messages to email addresses and social networking accounts, and text messages sent to a cell phone;
- altering data in an electronic message which results in the message being delivered to a different destination without express consent;
- installing of computer programs without the express consent of the owner of the computer system or its agent, such as an authorized employee;
- using false or misleading representations online to promote products or services;
- collecting personal information through accessing a computer system in violation of Canadian federal law (e.g. the *Criminal Code of Canada*); and
- collecting electronic addresses by the use of computer programs or the use of such addresses, without permission.

CASL requires that any individual in Canada who accesses commercial electronic messages (including emails, text messages, social media alerts, IMs and voice messages) first give the sender(s) of those messages advance permission to send those messages. Permission may be granted implicitly and will be presumed where a relationship with a customer already exists, or may be granted explicitly when businesses obtain written/documented consent to send the recipient commercial messages.

CASL also addresses electronic threats to commerce, such as installation of computer programs and

changes to transmitted data, without express consent – in order to curb threats such as the installation of malware and other computer viruses.

Under CASL, consent to send commercial electronic messages may be implied for up to 36 months (beginning July 1, 2014) *PROVIDED* the business sending the commercial electronic messages has an existing business or non-business relationship with individuals receiving such messages prior to July 1, 2014. However, the implied consent ends with respect to any individual receiving the electronic messages who expresses a desire to no longer receive such messages.

Also under CASL, businesses who obtain express consent to send commercial electronic messages to individuals prior to July 1, 2014, may continue sending such messages, and the express consent remains valid until any individual receiving the electronic messages expresses a desire to no longer receive such messages – and then only terminates with respect to the given individual.

Violations of CASL may result in monetary fines of up to \$10 million (Canadian) for businesses, and \$1 million for individuals.

Businesses directing commercial messages toward clients in Canada should make sure they obtain consent to send such messages, maintain accurate and up-to-date lists of individuals to whom they send such messages, and devise an “unsubscribe” mechanism by which individuals may express their wish to no longer receive such commercial messages.

CASL will be enforced by the Canadian Radio-television and Telecommunications Commission, the Canadian Competition Bureau, and the Canadian Office of the Privacy Commissioner. It will allow the three agencies to share information with governments of foreign states when such information may be relevant to proceedings in foreign states and related to conduct which is substantially similar to conduct prohibited by CASL.

CASL also creates a private right of action for individuals affected by conduct which allegedly runs afoul of CASL.

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