Canada’s New Anti-Spam Legislation

Canada’s Anti-Spam Legislation (CASL)
CASL is new legislation that is intended to prohibit the sending of unsolicited commercial electronic messages (CEM) to recipients who have not consented to being sent such messages. ‘Recipients’ can be defined as individuals, corporations, groups, etc. This legislation, which applies to CEM sent from or accessed in Canada, is expected to come into force during 2014 (date yet to be confirmed). Until such time as the law does come into force, every organization should begin to prepare. (Update: the legislation was finalized in December 2013 and will come into force as of July 1, 2014.)

Commercial Electronic Messages (CEM)
CEM can include email, text messages, sound, voice or image messages and social media messages. Messages must be of “commercial character” to be considered as CEM (e.g., advertisements and other promotions, an offer to purchase goods, sell goods, or present a business opportunity). If your message contains a hyperlink, it is considered CEM.

Consent
Either express consent or implied consent must be obtained before sending CEM. Express consent means that the individual has opted-in. Implied consent applies to existing business relationships, conspicuously published email addresses (e.g., recipients’ email address posted publicly on their website), approved existing non-business relationships (e.g., becoming a member of an association implies that you allow that organization to contact you) and recipients who have previously given their email address to the sender, provided that the CEM is relevant to the recipients’ business, role, functions or duties. Consent is valid only for two years and it must be tracked. A number of consent exemptions exist, for example if there is a family relationship, or if a requested quote or estimate is being provided. Warranties, product recalls, upgrades, safety and security information are all exempt as well.

Penalties
CASL will be enforced by the Canadian Radio-television Telecommunications Commission (CRTC). Penalties are up to $1 million per day for individuals and up to $10 million per day for organizations. Under CASL, employers may be considered liable for their employees’ actions.

Regulations
CEM must clearly identify the sender, including the sender’s contact information (mailing address and either telephone number, email or website address). Messages must have a readily accessible opt-out or unsubscribe mechanism. Unsubscribe requests must be processed within 10 days.

Ensuring Compliance
- Database must be capable of tracking consent and offering unsubscribe options for all your communication products.
- Update privacy policy to include some of this new legislation.
- Educate staff members on the new requirements and determine how the new legislation may affect each department.
- Determine if you need to obtain consent and if so, how you will obtain consent.
- Determine what content must be included in your future CEMs (i.e., contact information, unsubscribe mechanism).
- Provide information and support to assist members with their own compliance.

Questions? Visit www.fightspam.gc.ca or contact CVMA’s Communications team at communications@cvma-acmv.org or 613-236-1162 ext. 128.

(Prepared by CVMA Communications, June 6, 2013)
Preparing for Canada's Anti-Spam Legislation – Commercial Electronic Messages

In July 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL). To help you understand the impact and begin planning for compliance now, CVMA is providing a series of information bulletins on the core provisions of the regulations. This month we’re examining the topic of Commercial Electronic Messages. There are two key requirements under the proposed anti-spam law: the obligation for the sender to obtain consent from the recipient before sending a commercial electronic message (CEM), and the obligation to include certain information that identifies the sender and enables the recipient to withdraw consent. Certain CEMs are exempted from these requirements (exemptions will be the subject of a future bulletin).

What is a Commercial Electronic Message (CEM)?
CEM is an electronic message sent by any means of telecommunication that encourages participation in a commercial activity, regardless of whether there is an expectation of profit. Electronic messages do not cover facsimile-to-phone or normal voice-to-voice telephone communication. Electronic messages include:

- Email, text, sound, voice and image messages, social media content that is delivered to an email inbox;
- Applies also to smartphones and personal digital assistance devices.

How to determine the commercial nature of a message:
Electronic messages with a 'commercial character' may do one or more of the following:
- Offer, advertise or promote goods, products or services, business or investment opportunity;
- Advertise or promote a supplier or sponsor;
- Direct the recipient to a location, telephone number, contact information or web page which is considered to have a commercial purpose.

Examples of CEMs:
- An e-newsletter which provides all sorts of information that is not commercial in nature, but that contains a link to a sponsor's website;
- An online client satisfaction survey;
- A mass email providing general information about your business or organization;
- An electronic message that requests consent to send a CEM, is in itself a CEM.

Only messages of commercial nature fall within the scope of the Anti-Spam Legislation. These include messages sent from organizations to consumers, organizations to other organizations, and individuals to other individuals. However, if it's not a CEM, then it is not subject to the CASL requirements.

What you can do in anticipation of CASL?
Take inventory of the electronic messages currently sent by your organization – identify what kinds of CEMs are currently being sent (email messaging, text messaging, instant messaging, social media messaging), to whom they are sent, and why they are sent.

Next month’s bulletin: Understanding Consent

Whenever CASL comes into force, almost every business and organization in Canada will be affected. Questions? Visit www.fightspam.gc.ca or contact CVMA's Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128. Please note: This is intended as a general guide only based on the draft regulations and the information available to date (August 2013).
Preparing for Canada's Anti-Spam Legislation – Understanding Consent

In July 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL). To help you understand the impact and begin planning for compliance, CVMA is providing a series of information bulletins on the core provisions of the regulations. Last month we described Commercial Electronic Messages (CEM). This month, we’ll examine Consent. Before sending a CEM, you must obtain consent from the intended recipient. There are two types of consent: implied consent and express consent. Your CEM must identify you as the sender and provide a way for the recipient to withdraw their consent (i.e., an unsubscribe mechanism).

What is implied consent?
Implied consent applies to existing business relationships, conspicuously published email addresses (e.g., recipients' email address posted publicly on their website), approved existing non-business relationships (e.g., becoming a member of an association implies that you allow that organization to contact you) and recipients who have previously given their email address to the sender, provided that the CEM is relevant to the recipients’ business, role, functions or duties. Implied consent is valid only for two years and it must be tracked.

What is express consent?
Express consent means that the individual has agreed (orally or in writing) to receive CEM from you. With express consent, you can continue communicating with an individual until they unsubscribe or ask you to stop sending them messages.

Tracking consent
You must be able to store a record of the date, time and manner in which you obtained written consent. Oral consent must be tracked by audio recording or verification by an independent third party.

Exemptions
A number of consent exemptions exist, for example if there is a family relationship, or if a requested quote or estimate is being provided. Warranties, product recalls, upgrades, safety and security information are all exempt as well.

What you can do in anticipation of CASL?
Determine if you need to obtain consent and if so, how you will obtain consent. Establish how you will maintain a record of each consent you obtain.

Next month’s bulletin: Penalties

Whenever CASL comes into force, almost every business and organization in Canada will be affected. Questions? Visit www.fightspam.gc.ca or contact CVMA’s Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128. Please note: This is intended as a general guide only based on the draft regulations and the information available to date (September 2013).
Preparing for Canada's Anti-Spam Legislation – Penalties

In July 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL). To help you understand the impact and begin planning for compliance, CVMA is providing a series of information bulletins on the core provisions of the regulations. We have already examined Consent, which is required in order to send a Commercial Electronic Message (CEM). This month, we will explain the Penalties for non-compliance.

Who will enforce CASL?
Penalties will be enforced by three federal agencies: Canadian Radio-television Telecommunications Commission (CRTC), Competition Bureau and Office of the Privacy Commissioner of Canada. CRTC will have primary enforcement responsibility and the authority to seek ex parte warrants (i.e., without any notice) for investigatory searches.

CRTC will investigate the following issues:
- The sending of non-compliant CEM.
- The alteration of transmission data without express consent (e.g., directing internet users to a website they did not intend to visit).
- Installation of computer programs without express consent.

The Competition Bureau has amended the Competition Act and will now be responsible for:
- Ensuring that Canadian businesses include the correct content in CEM, including false or misleading subject matter, sender and locator information.

The Office of the Privacy Commissioner of Canada will enforce two types of conduct under the Personal Information Protection and Electronic Documents Act (PIPEDA):
- The collection of personal information through access to computer systems contrary to an act of Parliament.
- Electronic address harvesting (i.e., the process of electronically obtaining a large number of email addresses with the intention of bulk emailing or spamming).

A separate right of action also exists for individuals and organizations who wish to bring a lawsuit to court against someone they allege has violated CASL.

What are the penalties for non-compliance?
The maximum monetary penalty for a violation of CASL is set at $1 million for an individual per day and $10 million for a business per day. It is important to note that company directors or officers may be personally liable for their organization's violations. Criminal sanctions (e.g., imprisonment) are also a possibility if the Competition Act has been violated.

What you can do in anticipation of CASL?
If you have not reviewed the three previous CVMA bulletins, take some time to familiarize yourself with CASL and the core provisions, including Consent and Commercial Electronic Messages. Then, start to make plans for bringing your business into compliance.

Next month’s bulletin: Regulations

When CASL comes into force on July 1, 2014, almost every business and organization in Canada will be affected. Questions? Visit www.fightsspam.gc.ca or contact CVMA’s Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128. Please note: This is intended as a general guide only based on the draft regulations and the information available to date (October 2013).
Preparing for Canada’s Anti-Spam Legislation – Regulations

In July 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL). To help you understand the impact and begin planning for compliance, CVMA is providing a series of information bulletins on the core provisions of the regulations. We have already examined Consent, which is required in order to send a Commercial Electronic Message (CEM). We have explained the Penalties for non-compliance and this month we are navigating through the Regulations associated with CASL. There are two sets of regulations tied to CASL – Industry Canada regulations and Canadian Radio-television and Telecommunications Commission (CRTC) regulations. Industry Canada’s regulations are currently under review and are expected to soon be finalized. The CRTC has already finalized the following regulations for CASL:

Information to be included in CEMs
- Information that identifies the sender and the person or business on whose behalf CEM is being sent (i.e., business name, mailing address, telephone number or email/web address of sender).
- If CEM is being sent on behalf of another person or business (e.g., third party e-newsletters) the message must identify the sender and the person or business on whose behalf the message is being sent.

Form of electronic message
- Information to be included in CEMs (as listed above) must be set out clearly and prominently.
- An unsubscribe mechanism must be provided that is easily accessible, clearly referenced in the CEM (e.g., an unsubscribe link at the bottom of the message) and available at no cost.
- The sender will have 10 days to comply once a recipient has unsubscribed.

Information to be included in request for consent
- Sender must identify themselves and state the purpose for which they are seeking consent.
- If seeking consent on behalf of another person or business, name of person or business seeking consent as well as name of person on whose behalf it is sought must be provided.
- Consent must be obtained either orally or in writing.

Specified functions of invasive computer programs
- Businesses that install computer programs on another person’s computer must follow a number of regulations to protect the privacy of their software users, including a description of the function and purpose of the computer program to be installed.
- Full disclosure of any elements that may be associated with using the program must be provided, such as collection of personal information, installed settings or data stored on the computer, causing an individual’s computer to communicate with another computer system or installing a program that may be activated by a third party without knowledge of the user.

What you can do in anticipation of CASL?
Familiarize yourself with CASL and the core provisions, including Consent, Commercial Electronic Messages, and Penalties. Make plans for the set-up of your unsubscribe mechanism (e.g., unsubscribe mechanism could reside on your website and offer a series of checkboxes for the user to unsubscribe to individual products) and how your client database will capture unsubscribe requests. Consider drafting a script response for your reception staff to use when dealing with unsubscribe requests.

Next month’s bulletin: Compliance

Whenever CASL comes into force, almost every business and organization in Canada will be affected. Questions? Visit www.fightspam.gc.ca or contact CVMA’s Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128. Please note: This is intended as a general guide only based on the draft regulations and the information available to date (November 2013).
Preparing for Canada’s Anti-Spam Legislation – Checklist for Ensuring Compliance

In July 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL). To help you understand the impact and begin planning for compliance, CVMA is providing a series of information bulletins on the core provisions of the regulations. We have already examined Consent, which is required in order to send a Commercial Electronic Message (CEM). We have explained the Penalties for non-compliance and the Regulations associated with CASL. This month, we are providing you with a Checklist for Ensuring Compliance.

**Checklist for Ensuring Compliance**

- Have you read CVMA’s five previous CASL fact sheets and familiarized yourself with the legislation?
- Have you taken inventory of your current communication efforts and identified what kinds of CEMs are currently being sent?
- Have you determined how CASL will apply to your messages?
- Have you identified any CEMs that will qualify to be exempted from CASL?
- Do you need to obtain consent for any of your CEMs?
- How will you acquire consent?
- What content must be included in your future CEMs?
- Have you updated your CEM templates to ensure that all mandatory information is included?
- How will you offer unsubscribe options for all your communication products?
- Is your database capable of tracking consent and unsubscribe requests?
- Is your database service provider aware of CASL and ready to help you implement any necessary changes?
- Will you draft a scripted message for your reception staff to use when managing unsubscribe requests by email or telephone?
- Have you updated your privacy policy to include some of this new legislation?
- Have you educated your employees on the new requirements?
- How will you train new employees to ensure they are aware of the requirements associated with CASL?
- How will you monitor your compliance?

**What you can do in anticipation of CASL?**

This month’s Compliance checklist completes CVMA’s review of CASL. As it currently stands, CASL is expected to come into force sometime during 2014. If you have not already started working on your plans for complying with CASL, now is the time to consider how your business will implement the changes that may be required in order to meet the regulations associated with this incoming legislation.

Whenever CASL comes into force, almost every business and organization in Canada will be affected. Questions? Visit [www.fightspam.gc.ca](http://www.fightspam.gc.ca) or contact CVMA’s Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128. Please note: This is intended as a general guide only based on the draft regulations and the information available to date (December 2013).
Canada’s New Anti-Spam Legislation has been finalized and will come into force on July 1, 2014. In order to allow businesses time to come into compliance, the following dates have been set for enforcement of CASL:

- **July 1, 2014**: Majority of CASL and the associated Regulations come into force.
- **January 15, 2015**: Provisions in CASL related to unsolicited installation of computer programs or software come into force.
- **July 1, 2017**: Private Right of Action comes into Force, allowing individuals and organizations to bring a lawsuit to court against someone they allege has violated CASL.

**What you can do in anticipation of CASL?**

If you have not already started working on your plans for complying with CASL, now is the time to consider how your business will implement the changes that may be required in order to meet the regulations associated with this incoming legislation. In 2013, we provided an overview of the proposed Canadian Anti-Spam Legislation (CASL) and a series of information bulletins to help you understand the impact of this new law and begin planning for compliance. Review each bulletin listed below and then consult the checklist for compliance to determine what action needs to be taken to ensure you will be in compliance when the legislation comes into effect on July 1, 2014.

**Canada’s New Anti-Spam Legislation:**  

**Commercial Electronic Messages:**  

**Understanding Consent:**  
http://www.canadianveterinarians.net/news-events/news/CASL-understanding-consent

**Penalties:**  
http://www.canadianveterinarians.net/news-events/news/casl-penalties

**Regulation:**  
http://www.canadianveterinarians.net/news-events/news/CASL-regulations

**Checklist for Compliance:**  

Questions? Visit www.fightspam.gc.ca or contact CVMA’s Communications team at communications@cvma-acmv.org or 613.236.1162 ext. 128.