

CASL 101

Canada's New Anti-Spam Legislation
September 2014

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Disclaimer

This presentation has been prepared by the



**EFILE Association of Canada/
Association de TED du Canada**

to provide general information with respect to Canada's
Anti-spam Legislation (CASL).

This material is not to be considered legal advice. Further, it
does not reflect an interpretation of CASL and/or any related
regulations.

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About CASL

- The Canadian Anti-spam legislation is being administered by three government agencies: the CRTC, Competition Bureau and the Office of the Privacy Commissioner (OPC).
 - CRTC – enforcing the sending of commercial electronic messages (CEMs) without consent; alter transmission data in the course of a commercial activity without consent and installing a computer program in the course of a commercial activity without consent
 - Competition Bureau – enforcing violations with respect to misleading and deceptive practices/representations, including false headers, subject lines
 - Privacy Commissioner in relation to collection or use as described in PIPEDA (Personal Information Protection and Electronic Documents Act).

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Important Dates For Legislation

- Sending of CEM's (Commercial Electronic Messages) – email, text, social media messaging - In effect July 1, 2014
- Computer program downloads – in effect January 2015
- Private right of action provision in force – July 1, 2017

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What is a CEM

- A CEM (Commercial Electronic Messages) is defined as *any electronic message that encourages participation in a commercial activity*.
- **Electronic message** is defined to mean a message sent by any means of telecommunications, including a text, sounds, voice or image message.
- Excludes two-way voice communications, faxes or voice recordings to a telephone account.

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Requirements to Send CEMS

- Must have express consent or an existing business relationship (implied consent)
 - Need to manage database
- CEM must include required information about sender
- CEM must include an Unsubscribe option
- Includes Business to Business unless there is an existing business relationship in place prior to sending the CEM

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Consent

Express Consent:

- The end-user must take a positive action to indicate their consent
- Express Consent must be Opt-in (cannot be pre-populated box)
- Cannot be bundled with other consents
- Sender of CEM must be able to provide proof of the existence of consent in response to an enforcement action (when, why and how)
- Cannot use a CEM to obtain Express Consent
- Social media – a ‘like’, ‘friend’ or ‘follow’ not considered consent or constitute a personal relationship
- Forward to a friend – must include a disclosure or business could be liable

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Consent cont'd

- **Implied consent** - if there is an existing business relationship and a communication via CEM has been made prior to July 1, 2014
- **Transition Provision for Implied Consent:**
 - After July 1/2014, existing business relationship, have entered into a purchase transaction over the last two years.
 - Transitional provision for existing business relations prior to July 1, 2014 and have sent them a CEM before July 1, 2014, then have three year transitional period from date of transaction.

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CEM must Include

- **Information that must be included in CEM:** (can be a link in text message)
 - Complete mailing address of sender
 - Electronic means of communication (phone number/email address/web address)
 - Unsubscribe mechanism
 - If sent by third party, then on whose behalf it is sent
 - Link to Privacy policy

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Unsubscribe Mechanism

- **Unsubscribe Mechanism:**
 - No additional cost to recipient to unsubscribe their email address
 - No additional effort on recipients part, must be part of the electronic means message was sent
 - Electronic address unsubscribe message is sent to must be valid for 60 days after the person unsubscribes
 - Must take effect within 10 business days from when the request was made
 - Can be granular where person can choose which items to unsubscribe from

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Exceptions

- Personal or family relationship exists between sender and recipient
- Sending a response to an inquiry (quote or estimate)
- As part of a transaction previously agreed on between the sender and recipient
- Provide factual information about an ongoing account for a product or service

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Enforcement

- **Enforcement:**
 - Individual fines up to \$1 million
 - Corporation fines up to \$10 million
 - Civil litigation after July 1, 2017
- Link to Government website:
<http://fightspam.gc.ca/eic/site/030.nsf/eng/home>

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