



Conseil de la radiodiffusion et des
télécommunications canadiennes

Canadian Radio-television and
Telecommunications Commission



Canada's Anti-Spam Legislation

Information Session
2014

Canada

This presentation has been prepared by Commission staff to provide general information with respect to Canada's Anti-spam Legislation. This material is not to be considered legal advice nor is it binding on the Commission itself. Further, it does not reflect an interpretation of CASL and/or its accompanying regulations by the Office of the Privacy Commissioner, the Competition Bureau or Industry Canada.



Purpose of Session

Our purpose for today's session is to offer as much predictability and transparency as we can, within the limit of our confidentiality obligations. This will also enable us to be effective in the discharge of our enforcement mandate.

- Enforcement of *CASL*
- Undertakings
- *CASL* Regulations
- *CASL* Information Bulletins
- Additional Guidance Material
- Communications Products

Overview of CASL - Legislative roles

Administration	Violation	Addressing
<p>CRTC</p> 	<p>The legislation includes violations respecting:</p> <ul style="list-style-type: none"> • sending of commercial electronic messages (CEMs) without consent • alter transmission data in the course of a commercial activity without consent • Installing a computer program in the course of a commercial activity without consent 	<ul style="list-style-type: none"> • Spam (s.6) • Botnets (s.8) • Malware (s.8) • Network re-routing (s.7)
<p>Competition Bureau (CB)</p> 	<p>Amends the <i>Competition Act</i> to include violations respecting:</p> <ul style="list-style-type: none"> • Misleading and deceptive practices/ representations, including false headers, subject lines, etc... 	<ul style="list-style-type: none"> • False or misleading representations online (incl. websites and addresses)
<p>Office of the Privacy Commissioner (OPC)</p> 	<p>Amends <i>Personal Information Protection and Electronic Documents Act (PIPEDA)</i> to include contraventions involving:</p> <ul style="list-style-type: none"> • The collection and use of personal address information without consent • The collection of personal information by illegally accessing, using, or interfering with computer systems 	<ul style="list-style-type: none"> • Address harvesting (steal email contacts) • Dictionary attacks (Systematically guessing email addresses to spam) • Spyware (Personal Info)



CASL Tripartite MOU

- Agreement between 3 CASL Enforcement Agencies
 - CRTC, Competition Bureau and the OPC
- The purpose is to set out a framework respecting:
 - cooperation and coordination among Participants in relation to enforcement activities under CASL; and
 - the treatment of information that is shared among the Participants for the purpose of facilitating enforcement activities.



Main Elements of the legislation

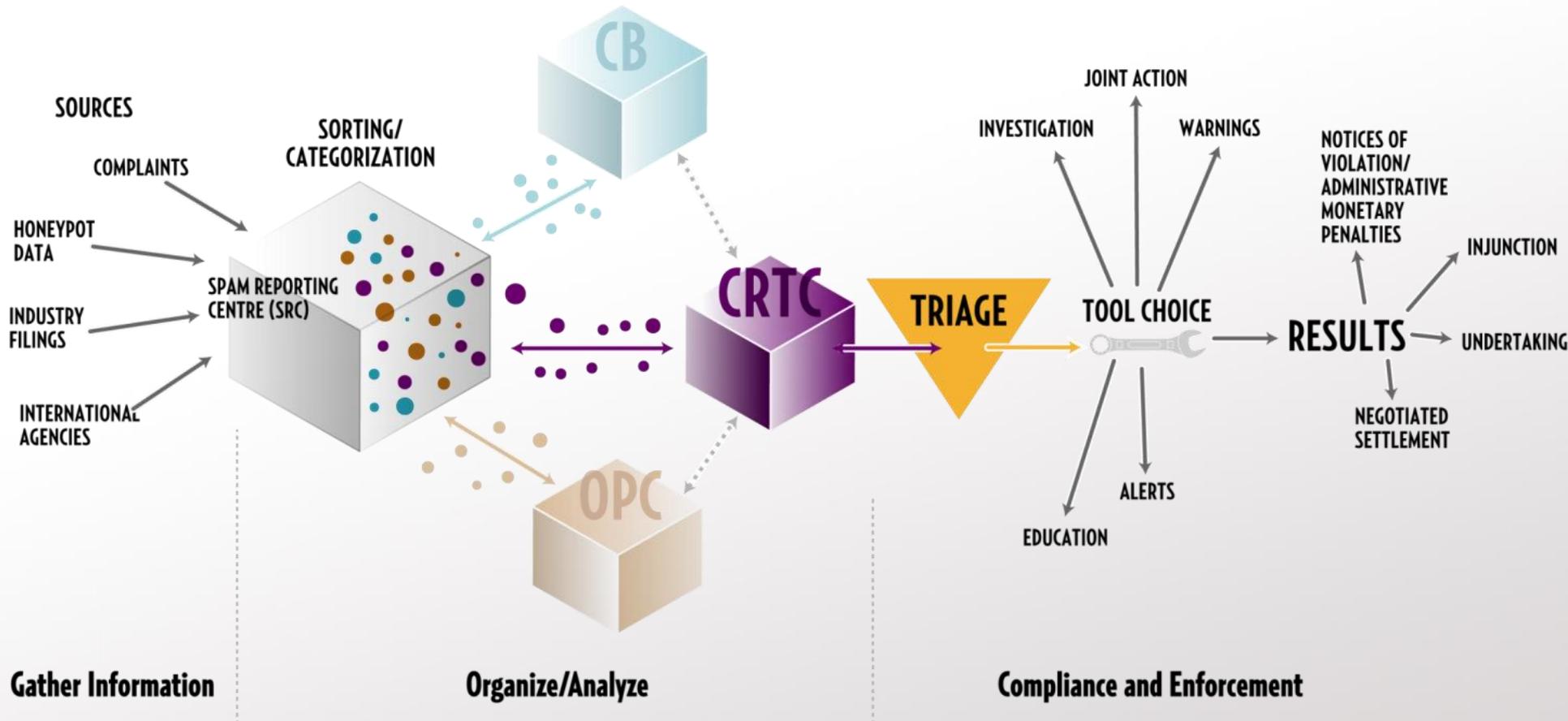
The legislation addresses the recommendations of the Task Force on Spam with a comprehensive regulatory regime that uses economic disincentives instead of criminal sanctions to protect electronic commerce and is modelled on international best practices. The regime includes:

- New Violations
- Administrative Monetary Penalties (AMPs)
- Domestic and International Cooperation
- Extended Liability (follow the money)

Support mechanism:

- A Spam Reporting Centre

CRTC Enforcement Process





Consequences of a violation

- **Administrative Monetary Penalties (AMPs)**
 - maximum penalty for individual =
\$1,000,000 / violation
 - maximum penalty for an organization =
\$10,000,000 / violation
- **Extended Liability**, including:
 - **vicarious liability**
 - **director/officer liability**

Compliance Continuum

Enforcing Compliance

Voluntary (Alternative Case Resolution, Undertakings)

Involuntary (Warnings, NOVs, AMPs & Injunctions)

Monitoring for Recidivism

Investigating Non-Compliance

Intel Gathering (SRC & honeypots)

Investigative Techniques
(Preservation Demands, Requests For Information, Notices To Produce & Search & Seizures)

Promoting Compliance

Communication & Outreach
(Education, Publications, Conferences, Websites)

Promotion of Self-Regulation
(Voluntary Codes & Compliance Programs)

Advocacy (Public Consultations, Policy and Research Partnerships)

Partnership Approach





What is Success?

Direct

- Increased compliance with legislation
- Change Canada's reputation as spam haven
- Reduction in infected electronic devices

Indirect

- Adoption of Best Common Practices (BCP's)
 - Enable / encourage many new Best Practices in the industry
- Create a level playing field for companies
- Cost savings for Business and Consumers
- Reduction in Consumer losses
- Increased Consumer protection, empowerment, and confidence in the e-marketplace



***CASL* Regulations**



CASL Regulations

- CASL Contemplates two categories of regulations:
 - Governor in Council regulations (managed by Industry Canada)
 - CRTC regulations (for which the Commission is responsible)
- Both sets of regulations were published in the Canada Gazette for a 60 day comment period
- CRTC Regulations were made in March 2012
- GIC Regulations were made in December 2013



CRTC CASL Regulations

- The final CRTC regulations were made on March 28, 2012
- The Regulations relate solely to the CRTC's mandate under CASL, namely, Section 6 to 8
- They include:
 - Reg 2: Information to be included in CEMs
 - Reg 3: Form of CEM
 - Reg 4: Information to be included in a request for consent
 - Reg 5: Specified functions of computer program



Information Bulletins



Purpose of Information Bulletins

The CRTC has published the following two information bulletins to help Canadian businesses better understand *CASL* and facilitate compliance:

1. Certain provisions of the Electronic Commerce Protection Regulations (CRTC)

(Compliance and Enforcement Information Bulletin CRTC 2012-548)

2. The requirement to obtain express consent under *CASL* when using Toggling

(Compliance and Enforcement Information Bulletin CRTC 2012-549)



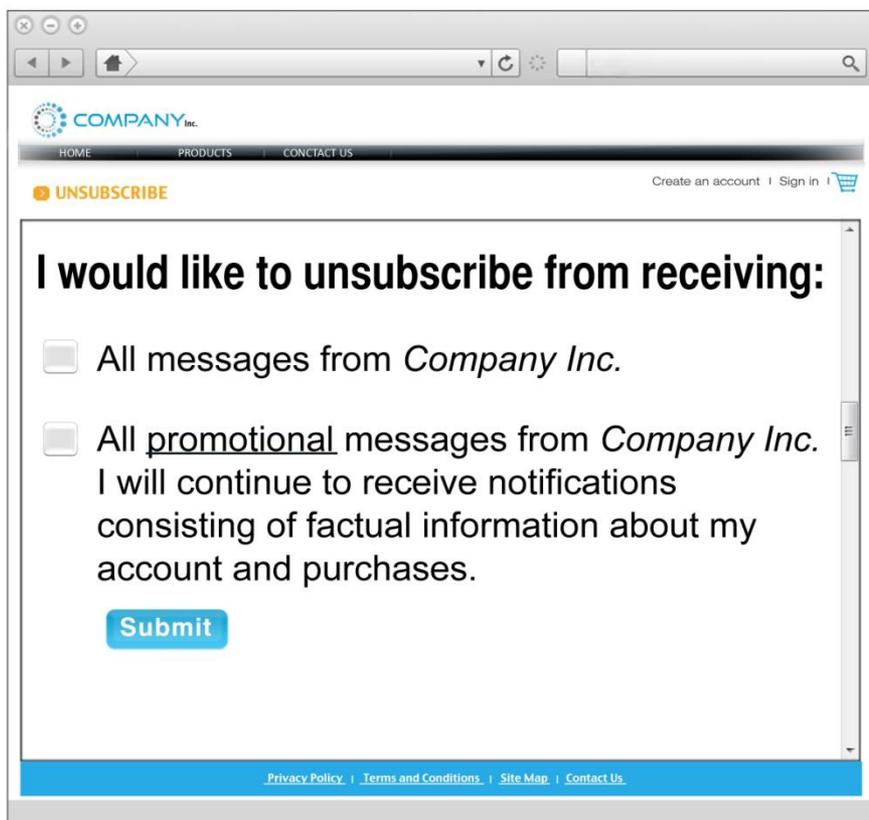
The Electronic Commerce Protection Regulations (CRTC) Information Bulletin

Information to be included in a CEM (Reg 2)

- Sender(s) must be identified
 - Including Affiliates
- CEMs must include the sender's mailing address
 - Definition
 - Valid for 60 days

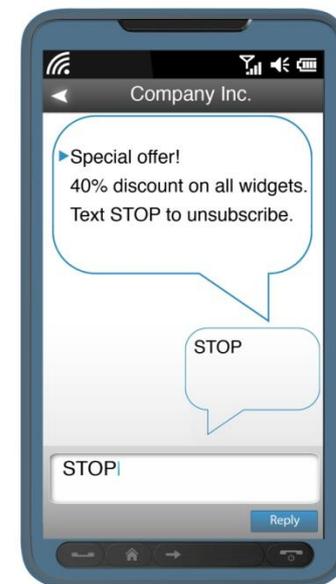
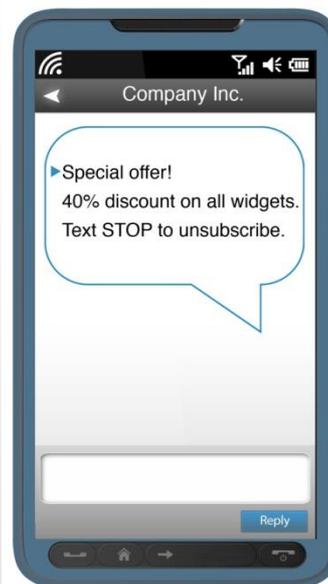
The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

Form of CEM (Unsubscribe Mechanism) – (Reg 3)



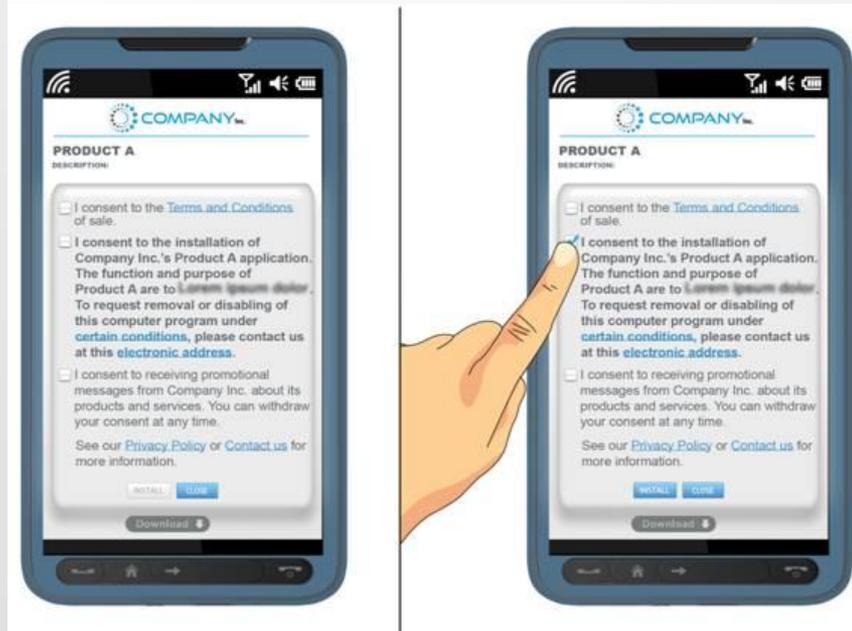
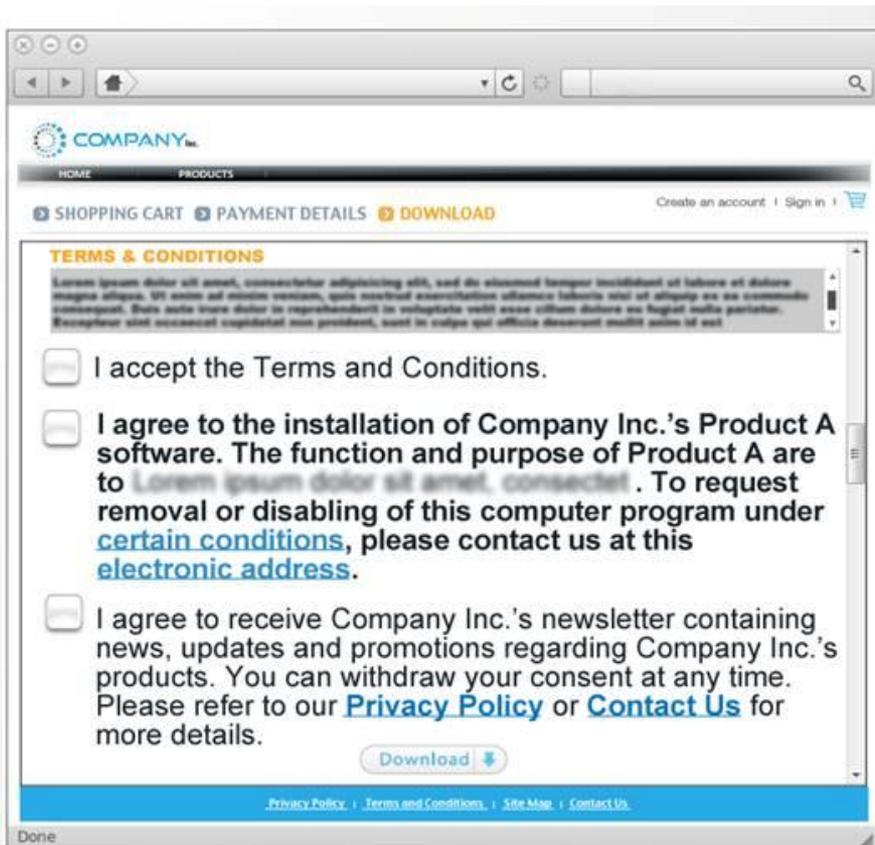
The screenshot shows a web browser window with the following elements:

- Browser address bar and navigation buttons.
- Company Inc. logo and navigation menu (HOME, PRODUCTS, CONTACT US).
- Links for "Create an account" and "Sign in".
- A prominent "UNSUBSCRIBE" button.
- Form title: "I would like to unsubscribe from receiving:"
- Two radio button options:
 - All messages from *Company Inc.*
 - All promotional messages from *Company Inc.*. I will continue to receive notifications consisting of factual information about my account and purchases.
- A blue "Submit" button.
- Footer links: Privacy Policy, Terms and Conditions, Site Map, Contact Us.



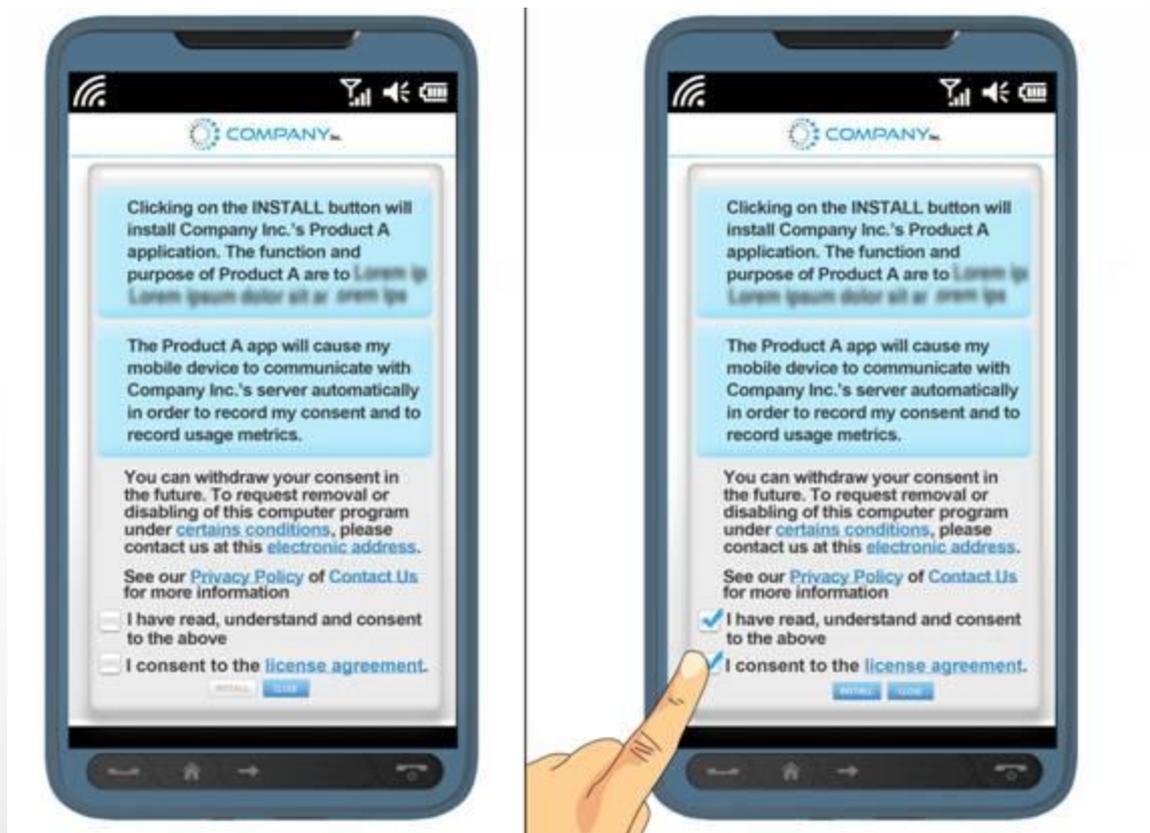
The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

Information to be included in a request for consent – (“sought separately”) – (Reg 4)



The Electronic Commerce Protection Regulations (CRTC) Information Bulletin (continued)

Specify functions of computer programs (Reg 5)



Use of Toggling Information Bulletin

- What is Toggling?



COMPANY INC.

HOME PRODUCTS

SHOPPING CART PAYMENT DETAILS **CONFIRMATION OF PURCHASE** DOWNLOAD

Create an account | Sign in

CONFIRMATION OF PURCHASE

You are about to purchase Product A for \$10.00.

I agree to receive Company Inc.'s newsletter containing news, updates and promotions regarding Company Inc.'s products. You can withdraw your consent at any time.

Please refer to our [Privacy Policy](#) or [Contact Us](#) for more details.

Back Confirm purchase

Privacy Policy | Terms and Conditions | Site Map | Contact Us



COMPANY INC.

HOME PRODUCTS

SHOPPING CART PAYMENT DETAILS **CONFIRMATION OF PURCHASE** DOWNLOAD

Create an account | Sign in

CONFIRMATION OF PURCHASE

You are about to purchase Product A for \$10.00.

I agree to receive Company Inc.'s newsletter containing news, updates and promotions regarding Company Inc.'s products. You can withdraw your consent at any time.

Please refer to our [Privacy Policy](#) or [Contact Us](#) for more details.

Back Confirm purchase

Privacy Policy | Terms and Conditions | Site Map | Contact Us



COMPANY INC.

HOME PRODUCTS

SHOP

Product A
Product B
Product C

40% OFF! ALL PRODUCTS 40% off for a limited time only!

Enter your email below to receive Company Inc.'s newsletter containing news, updates and promotions regarding Company Inc.'s products. You can withdraw your consent at any time.

Please refer to our [Privacy Policy](#) or [Contact Us](#) for more details.

your email Submit

Privacy Policy | Terms and Conditions | Site Map | Contact Us



ADDITIONAL GUIDANCE MATERIAL



Personal and Family Relationships

- Section 6 of CASL does not apply to a CEM sent to an individual with whom the sender has a “personal or family relationship”, as defined in paragraph 2(b) of the GiC Regulations .
- A “personal relationship” involves direct, voluntary, 2-way communication.
 - In each case, the non-exhaustive list of factors set out in paragraph 2(b) (e.g. sharing of interests, frequency of the communication, etc.) will be taken into consideration.
- As explained in the RIAS, the definition of “personal relationship” should remain limited to close relationships.
 - The purpose is to establish limits and prevent potential spammers from exploiting this concept in order to send CEMs without consent.
- A “personal relationship” is one that exists between individuals.
 - Legal entities, such as a corporation, cannot have a personal relationship. Someone who sends a CEM on behalf of a corporation may not claim to have a personal relationship with the recipient.



Express consent obtained prior to CASL

- If you obtained valid express consent prior to CASL coming into force, you will be able to continue to rely on that express consent even if your request did not contain the requisite identification and contact information
- All CEMs sent after CASL comes into force must contain the requisite information, meet all form requirements and contain an unsubscribe mechanism
- CASL requires the sender to prove having obtained valid express consent.



Transitional period for implied consent

- Section 66 deems implied consent for a period of 36 months (unless the recipient withdraws consent earlier)
- There must be an existing business relationship or existing non-business relationship
- The relationship must include the communication via CEMs
- During the transition period, the definition of existing business relationship and non-business relationship is not subject to the limitation periods (6 months and 2 years) that would otherwise be applicable under CASL, for implied consent to exist.



Business to Business

- Commercial electronic messages (CEMs) sent by an employee, representative, consultant or franchisee of an organization to:
 - Another employee, representative, consultant or franchisee of the organization
 - Message must concern the activities of the organization
 - An employee, representative, consultant or franchisee of another organization
 - The organizations must have a relationship; and
 - Message must concern the activities of the organization to which the message is sent
- Consent not required to send the CEM
- No requirement to add information requirements, and an unsubscribe mechanism to the CEM



Quotes/estimates vs Requests, inquires and complaints

- If you are sending a CEM that is a response to a **request, inquiry or complaint**, requested by person to whom the message is sent, you do not need to comply with section 6 of CASL. Therefore you do not need consent or to meet the information requirements and add an unsubscribe mechanism to the CEM.
- If you are sending a CEM that provides a **quote or estimate** for the supply of a product, goods, a service, land or an interest or right in land, if the quote or estimate was requested by the person to whom the message is sent, you do not need consent (express or implied). However, you are still required to meet information requirements and to add an unsubscribe mechanism to the CEM.



Messages sent and received on an 'electronic messaging service'

- If a messaging service, by its nature, makes information required under section 6 of the Act **readily available** to the recipient, then it would be redundant to require such information in each individual message.
- Such information must be **readily available** as part of the messaging service and not as part of the device used to access the message.
- In such circumstances, messages sent may be exempt.



‘Limited-access secure and confidential account’

“sent to a limited-access secure and confidential account to which messages can only be sent by the person who provides the account to the person who receives the message”

- The only persons who may access such accounts consist of the person who owns or provides the account, and the account-holder.
- Further, within those accounts, communication is one-way: messages can only be sent by the person who owns or provides the account. The acct-holder is unable to send messages to the account owner.
- Secure portals / financial services / online banking sites hosted by banks are an example of such accounts.



CEMs sent to foreign countries

Paragraph 3(f) of the GiC Regulations excludes some CEMs sent from Canada to a foreign country from the application of section 6 of CASL (e.g. consent & unsubscribe requirements), if certain conditions are met:

1. The foreign country must be listed in Schedule 1 to the Regulations.
 - These are countries that have their own anti-spam legislation.
2. The CEM must be sent in compliance with the provisions in the foreign law that address conduct that is **substantially similar** to the conduct prohibited in section 6 of CASL.
3. The sender (or person who causes or permits the CEM to be sent) must **reasonably believe** that the CEM will be accessed in a foreign state listed in Schedule 1.



Registered Charities

- Commercial electronic messages (CEMs) sent by or on behalf of a 'registered charity' as defined in s. 248(1) of the Income Tax Act, are excluded from section 6 of CASL.
- The **primary purpose** of the CEM must be to raise funds for the charity, you are excluded from section 6 of CASL.
- CASL does not apply



Political Parties and Candidates

- Commercial electronic messages (CEMs) sent by or on behalf of a political party or a person who is a candidate, for publicly elected office, are excluded from section 6 of CASL.
- The **primary purpose** of the CEM must be soliciting a contribution, as defined in subsection 2(1) of the Canada Elections Act
 - ‘contribution’ means monetary or non monetary contribution.
- Certain terms in paragraph 3 (h) of the Regulations are defined in the *Canada Elections Act*, such as “political party” and “candidate.”
- CASL does not apply



Third Party Referrals

- Consent not required to send the first commercial electronic message (CEM), if sent, following a referral by an individual who has an existing business relationship, existing non-business relationship, family or personal relationship
- Any of the above relationships must exist with the person who sends the message AND with the individual to whom the CEM is sent.
- Full name of individual who made the referral and statement that message is sent as a result of referral must be within the message
- Message must still contain requisite contact information and unsubscribe mechanism



Personal Relationships and Social Media

- A “personal relationship” requires that the real identity of the individual who alleges a personal relationship is known by the other individual involved in such a relationship (as opposed to instances where a virtual identity or an alias is used).
- Using social media or sharing a same network does not necessarily reveal a personal relationship between individuals.
- The mere use of buttons available on social media websites – such as clicking “like” on *Facebook*, voting for or against a link or post on *Reddit*, accepting someone as a “Friend” on *Facebook*, of clicking to “Follow” someone on *Twitter* – will generally be insufficient to constitute a personal relationship.



Specified Computer Programs – Network Security

Solely:

- If the computer program is installed for a purpose set out in one of the paragraphs of section 6 of the Regulations, and also for another purpose, then section 6 of the Regulations does not apply.

Network:

- This term refers to the telecommunications service (as defined in subsection 1(1) on the Act) that is provided by the TSP to its current clients.
 - These services include a feature of a service delivered by means of *telecommunications facilities*, including network routers and servers, regardless of whether the TSP owns, leases or has any interests in or right to the equipment and software used to provide *the telecommunications service*.

Failure:

- Means that the computer program does not function properly and is not consistent with consumer expectations.



Existing Non-Business Relationship - Membership

- You may rely on the existing non-business relationship to imply consent, to members of an association, club or voluntary organization, however, you must still meet the information requirements and add an unsubscribe mechanism to your CEMs.
- You should ensure that you are only sending to members.
- “Membership” means the status of having been accepted as a member of a club, association or voluntary organization in accordance with its membership requirements.
- You should also ensure that your association falls within the following:
 - a club, association, or voluntary organization is a non-profit organization
 - organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any purpose other than personal profit
 - no part of its income is payable for the personal benefit of any member unless the member is an organization whose primary purpose is the promotion of amateur athletics in Canada.

- Future Informative Guidance Material
 - Cross Country Information Sessions and Speaking Engagements
 - Webinars
 - Information Bulletins
 - Staff Guidance Material
 - FAQs posted to the CRTC Website
 - Infographics and Informative Videos