

# Canada's Anti-Spam Legislation (CASL) Training

**Video 1 of 1**

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**Moderated by Neil Schwartzman, CAUCE**

Monday, June 06, 2011

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Messaging Anti-Abuse Working Group (MAAWG)

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Messaging Anti-Abuse Working Group

## MAAWG CASL Training Videos

(over 90 minutes of training)

<u>Video 1</u> 30 minutes	<u>Video 2</u> 17 minutes	<u>Video 3</u> 7 minutes	<u>Video 4</u> 37 minutes
<b>A. Overview and next steps</b>	<b>C. Enforcement and penalties</b>	<b>D. Comparison to U.S. CAN-SPAM Act</b>	<b>E. Practical implementation issues – liability issues</b>
<b>B. Substantive requirements under CASL, <i>Competition Act</i> and PIPEDA</b>			<b>F. Practical implementation issues – operational issues</b>

**Note: The interactive Q&A sessions for this training course are available to MAAWG members by logging onto [www.MAAWG.org](http://www.MAAWG.org) and navigating to the 22<sup>nd</sup> General Meeting Presentations page**

## A: OVERVIEW AND NEXT STEPS

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# Training Session Roadmap

(Read legislation at <http://bit.ly/khllvS>)

1. Overview and next steps
2. Substantive requirements under CASL, *Competition Act* and PIPEDA
3. Enforcement and penalties
4. Comparison to CAN-SPAM Act
5. Practical implementation issues – liability
6. Practical implementation issues – operational

# Goals

- Understand main requirements under CASL
- Be able to identify whether CASL applies
- Address fears and concerns
- Know what to do if you make a mistake
- Go beyond bare minimum for legal compliance (look at best practices)
- Facilitate discussion, answer questions

## How We Got Here

- April 24, 2009 – Bill C-27, the *Electronic Commerce Protection Act* (ECPA) introduced in parliament
- December 30, 2009: Parliament prorogued
- May 25, 2010 – reintroduced as the *Fighting Internet and Wireless Spam Act* (FISA)
- December 15, 2010 – Royal Assent (with no name)
- Regulations – Part 1 to be posted soon, Part 2 Fall 2011
- Coming into Force expected late 2011 early 2012

## Bill C-28: Overview

- Standalone legislation (CASL), and amendments to: PIPEDA; *Competition Act*; *Telecommunications Act*; *CRTC Act*
- CASL is a regulatory regime that applies to commercial activity: based on general branch of the Federal Trade and Commerce Power (91(2))



## Substantive Rules

- Section 6: regime for sending a commercial electronic message (CEM)
- Section 7: prohibition against unauthorized altering of transmission data
- Section 8: prohibition against installation of computer programs without consent
- Competition Act amendments: False and misleading information (content, sender info, locators)
- PIPEDA amendments: address harvesting; dictionary attacks; collection of personal information through unauthorized access to a computer systems

## Next Steps ...

- Regulations
  - Some PIPEDA amendments posted in Canada Gazette early April, balance to follow soon
  - Consultation period (60-75 days)
- Spam Reporting Center
- Coming into force – late 2011/early 2012

## Q&A: CASL TRAINING JUNE 2011

**This Q&A segment is only available to MAAWG members**

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## **B: SUBSTANTIVE REQUIREMENTS UNDER CASL, *COMPETITION ACT* AND PIPEDA**

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## CEM Regime: Application

- Applies to any message sent from or accessed by a computer located in Canada (applies to senders from outside of Canada)
- More than email: IM; SMS; social media; etc.
- Voice, fax currently excluded (covered by DNCL)
- No minimum # to be caught by rules

# Commercial Electronic Message

- Broadly defined to include any message with any semblance of commercial activity
  - Product or service
  - Business opportunities
  - Promotes an individual who does any of the above
- Message to request consent deemed to be CEM

## Three Fundamental Rules

1. Consent (express or implied)
2. Identification
3. Unsubscribe

## Consent: Exemptions

- Family or personal relationship (to be defined in the regulations)
- Inquiry or application regarding the recipient's commercial activity (i.e., message sent from purchaser to vendor)



## No Consent Required

- Quotes or estimates, if requested
- Facilitates commercial transaction
- Warranty or safety information
- Information about ongoing subscription, membership, etc.
- Information related to employment relationship or benefit plan
- Delivers good or service

\*Identification and unsubscribe requirements still apply

## Implied (deemed) consent

- Consent is deemed in four circumstances:
  1. Existing business relationship
  2. Existing non-business relationship
  3. Conspicuous publication of electronic address
  4. Recipient has disclosed electronic address to the sender
- No implied consent for referrals
- In most cases implied consent last for 2 years – window of opportunity to obtain express consent
- Transitional period for implied consent – 3 years for existing business and non-business relationships at coming into force

## Consent checklist

1. Does section 6 apply (see exemptions)?
2. If so, do I need consent (other requirements still apply)?
3. If not, can I rely on implied consent?
4. If not, how do I obtain express consent?

## Identification

- Identify sender as well as person on whose behalf message is sent
- Contact information for either of above

## Unsubscribe mechanism

- Must be functional for 60 days
- No cost
- Same means by which message is sent unless impracticable
- Include either electronic address or link
- Must process without delay (no messages sent after unsub submitted)

## Defining “Sent”

- Message is sent once transmission has been initiated
- Does not matter whether:
  - Message reaches destination
  - electronic address exists

## ***Competition Act Amendments***

- Prohibits false or misleading representations in:
  - Subject (subject line) or sender info (header, from line, etc.)
  - Locators
  - Content of message
- Materiality only applies to content of messages; lack of materiality means lower evidentiary burden
- PRA applies to these provisions

## PIPEDA Amendments

- Removes ability to rely on any exemptions for:
  - Address harvesting
  - Dictionary attacks
- Also prohibits the unauthorized collection of PI via a computer system
- PRA applies to any of these acts



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can be viewed in four segments  
from the public training pages at [www.MAAWG.org](http://www.MAAWG.org).

This has been part 1 of 4.

Our thanks to the presenters and moderator  
for developing the materials in this training session  
and allowing MAAWG to videotape it  
for the benefit of professionals worldwide.

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