



Messaging Anti-Abuse Working Group

Canada's Anti-Spam Legislation (CASL) Training

Video 2 of 4

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Moderated by Neil Schwartzman, CAUCE

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Messaging Anti-Abuse Working Group (MAAWG)

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The views expressed in the presentation are not those of the Canadian Radio-television & Telecommunications Commission, the Competition Bureau, or the Office of the Privacy Commissioner of Canada.

Moreover, the information and advice provided herein does not constitute legal advice and should not be used as a substitute for seeking legal counsel.



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
A. Overview and next steps B. Substantive requirements under CASL, <i>Competition Act</i> and PIPEDA	C. Enforcement and penalties	D. Comparison to U.S. CAN-SPAM Act	E. Practical implementation issues – liability issues F. Practical implementation issues – operational issues

Note: The interactive Q&A sessions for this training course are available to MAAWG members by logging onto www.MAAWG.org and navigating to the 22nd General Meeting Presentations page

C: ENFORCEMENT AND OVERSIGHT

André Leduc

Senior Policy Analyst, Industry Canada

Enforcement Overview

Combination of public and private enforcement:

1. Regulatory enforcement – including administrative monetary penalties (AMPs)
 - Administrative as opposed of criminal
2. Private Right of Action

Public Enforcement: Three Agencies

- Canadian Radio-television and Telecommunications Commission (CRTC)
 - Enforcement agency with powers available under CASL
- Competition Bureau
 - False and misleading representations in electronic messages
 - AMPs regime already exists in the *Competition Act*
- Office of the Privacy Commissioner (OPC)
 - Enforcement of provisions in PIPEDA (address harvesting; dictionary attacks; collection of personal information through unauthorized access to a computer systems)
 - No AMPS

A New Role for the CRTC

- Supervises and regulates the telecommunications and broadcasting sectors
- Enforcement mandate under Do Not Call List
- First significant penalties imposed in December, 2010
- Investigator and adjudicator in first instance (contrast with Competition Bureau)

Investigatory Powers

- Preservation demands
 - Apply to TSPs
- Production notices
 - Apply to any person
- Warrants for entry and inspection
 - Can be brought on an *ex parte* basis

AMPS: Administrative Monetary Penalties

- Exist under a number of regulatory Canadian regimes
- Purpose: deterrence, not punishment
- Apply to violations of CASL
- CRTC has the ability to impose AMPs without going to court
- Maximum of \$1 million for individuals, \$10 million for organizations per violation
- Significant degree of flexibility
 - Number of factors to be considered
 - Penalties can be suspended

Other Remedies Available to LEA

- Injunctions and restraining orders (s.41)
- Undertakings (s.21) (NB. Limits the PRA)
- Offences (s.42, s.43, s.46)

Extended Liability

- Orgs are vicariously liable for actions of employees and agents
- Directors and officers are liable for actions of corporations
- Is prohibited to “aid, induce, procure or cause to be procured the doing of any act contrary to any of sections 6 to 8.” (so-called “follow the money”)

Private Right of Action (PRA)

- PRA can be exercised by any person affected by a violation of CASL as well as related provisions in *Competition Act* and PIPEDA
- Remedies:
 - Damages suffered and expenses incurred
 - Statutory damages of \$200 per violation, up to \$1 million per day
- Class actions possible
- Enforcement agencies have right to intervene

Protection for Honest Mistakes

1. Undertakings & Compliance (s.21)
 - At any time
 - Restricts other action (notice of violation and statutory damages under PRA)
2. Due Diligence Defence and Common Law Principles (s.33)
 - Cannot be found liable
 - Justification or excuse consistent with the Act
3. Factors to be Considered re: AMPs (s.20)
 - Nature and scope of violation
 - Financial benefit
 - Any relevant factor

Review & Appeals

- Can request CRTC to review production notices and preservation demands
- CRTC decisions can be appealed to Federal Court of Appeal

Domestic & International Cooperation

- Coordination and consultation between 3 enforcement agencies responsible for compliance
- Information sharing and consultation between the three agencies and their international equivalents

Q&A: CASL TRAINING JUNE 2011

This Q&A segment is only available to MAAWG members

Because discussion at MAAWG meetings is confidential, access to the interactive portion of this training session is available only to members.

If you are a MAAWG member, you can view the Q&A for the CASL training session by logging in at www.MAAWG.org, then go to “Past Meeting Presentations” and select 22nd General Meeting (June 7-9, 2010 San Francisco).



**This video is presented by the
Messaging Anti-Abuse Working Group**

Canada's Anti-Spam Legislation (CASL) Training

can be viewed in four segments
from the public training pages at www.MAAWG.org.

This has been part 2 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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