Canadian Anti-Spam Legislation

Presented by James Koons

Disclaimer: This is not legal advice. It is an overview of the new regulations.

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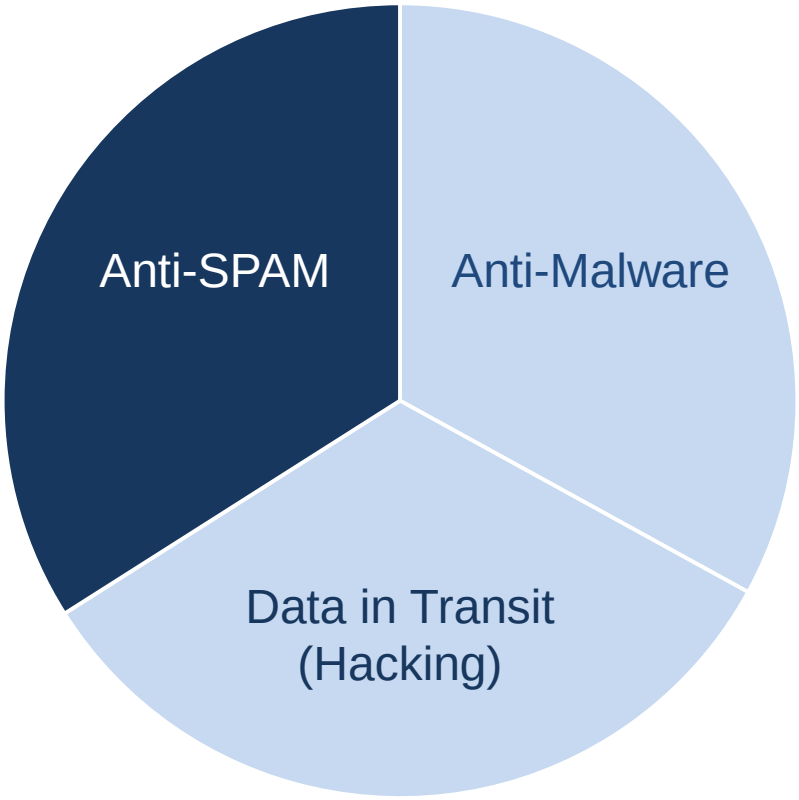
What is CASL?

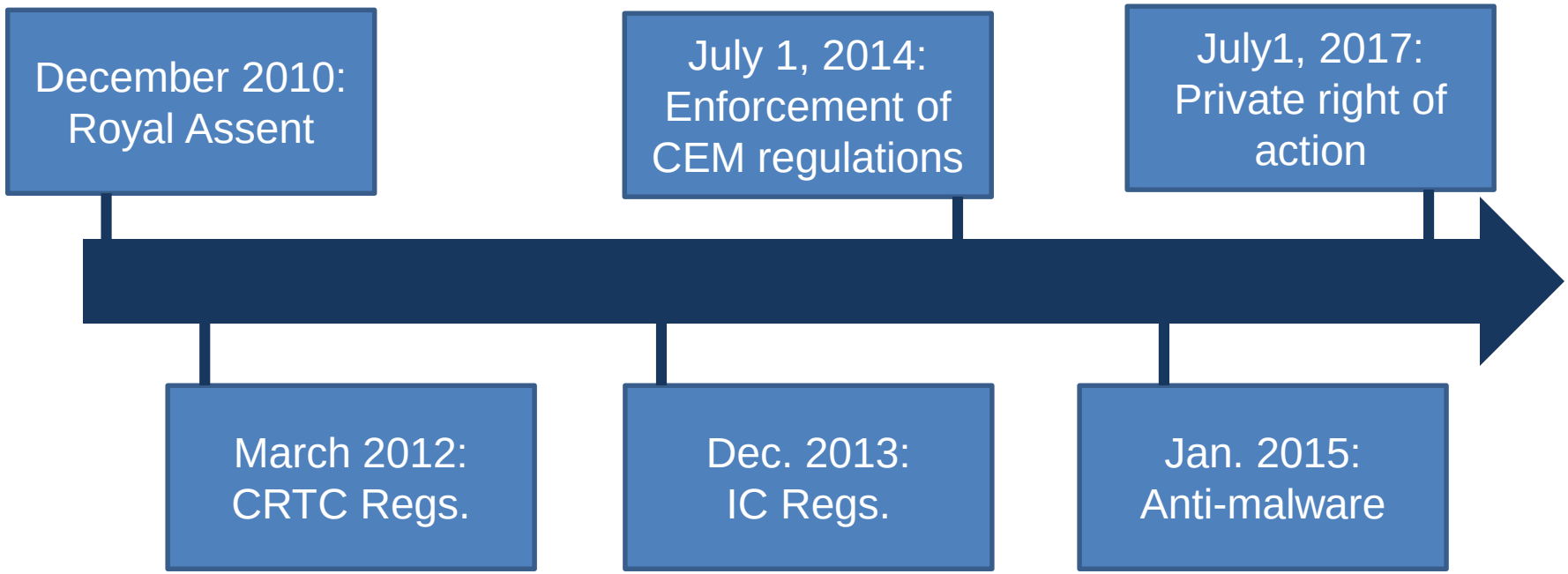


What is CASL?

Canadian Anti-SPAM Legislation

- Prohibits sending a commercial electronic message to an electronic address unless:
  - Recipient has consented – express, opt-in or defined “implied consent”
  - Message conforms with prescribed requirements
    - Identifies sender and contact info
    - Unsubscribe mechanism

Status


December 2010: Royal Assent
March 2012: CRTC Regs.
July 1, 2014: Enforcement of CEM regulations
Dec. 2013: IC Regs.
July1, 2017: Private right of action
Jan. 2015: Anti-malware

Who it Affects

- The definition of spam applies to all electronic messages, including those sent through social media and text messages sent to a cell phone.
- The law does not only target spammers. CASL will also address violations including:
  - The sending of unsolicited commercial electronic messages
  - False and misleading electronic representations online (including websites)
  - The unauthorized collection of electronic addresses
  - The unauthorized alteration of transmission data
  - The installation of computer programs without consent
  - The collection of personal information by accessing a computer system in contravention of an Act of Parliament
- Applies to all CEMs sent or received in Canada

Enforcement

- Enforced by CRTC
- Given extensive powers
- Penalties up to $10m per violation
- Private right of action

Penalties

Enforcement Agency/Mechanism	Target/ Application	Penalties
Canadian Radio-television and Telecommunications Commission (CRTC) (CASL)	Consent, prescribed identification requirements and unsubscribe requirements	Administrative monetary penalties (AMPs) up to $1 million/violation for individuals; $10 million/violation for organizations
Competition Bureau (Competition Act)	False or misleading representations in content, subject line, sender info	Can pursue civil or criminal remedies AMPs similar to those available to CRTC under CASL
Office of the Privacy Commissioner of Canada (PIPEDA)	Collecting, using disclosing electronic address without consent Address harvesting and dictionary attacks	No real powers for enforcement; can make recommendations or pursue order in Federal Court
Private right of action	Violations of CASL, Competition Act and PIPEDA	Allows for actual and statutory damages

Three Essential Rules

Consent	Identification	Unsubscribe
Express: clear notice, describe purposes, provide prescribed information **Implied:** 1. Existing business relationship 2. Existing non-business relationship 3. Conspicuous publication of electronic address 4. Recipient has disclosed electronic address to the sender	Apply when requesting consent and in content of CEM Identify sender as well as person on whose behalf message is sent Name by which person carries on business Contact info for either of above Mailing address and any of telephone number/email address/web address of either person Information must be set out "clearly and prominently"	Must be functional for 60 days No cost Same means unless impracticable Include either electronic address or link Must be able to be readily performed Must process without delay

Consent

- **Implied consent**
  - Existing business relationship
    - Engaged in commercial activity, existing written consent within previous 2 years
  - No business relationship
    - Made donation, gift, volunteer work, member in past 2 years
  - Published electronic address without disclaimer and related to capacity of recipient
- **Express consent**
  - Purpose
  - Identification of person seeking consent
  - No pre-checked boxes
  - Retain evidence of consent

Consent - Referrals

Email to a Friend

Your name:

Your email address:

Recipient email address:

Subject:

The recipient's email will include the following information:

<Your name> has recommended that you check out this page:

http://fightspam.gc.ca/eic/site/030.nsf/eng/h_00000.html

This page was sent using the "Email to a Friend" feature. Your email address has not been added to any list, and has not been retained on our site.

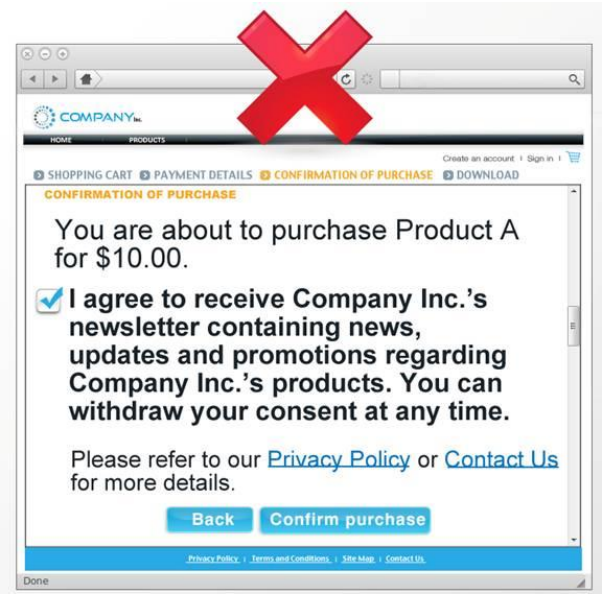
Send

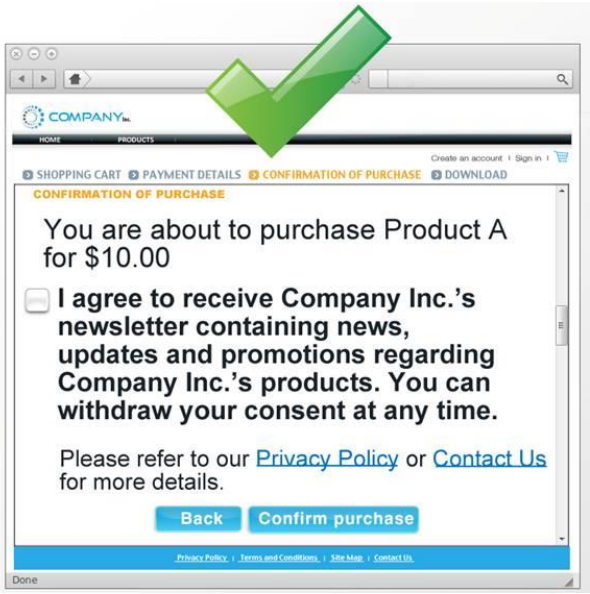
Consent - Exclusions

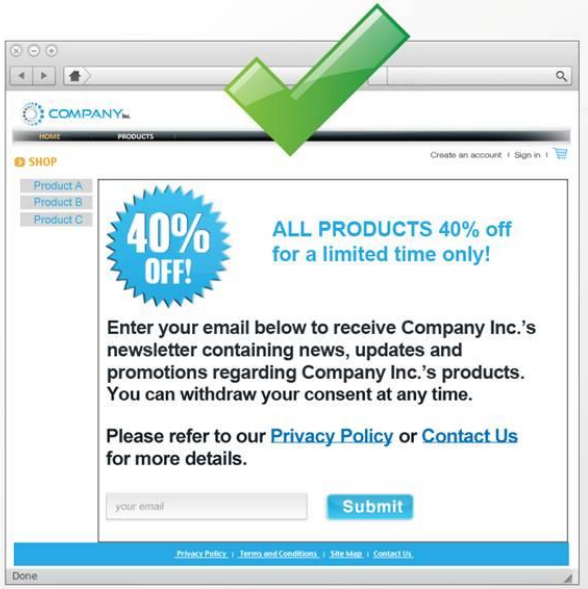
- Provides a quote or estimate
- Facilitates, completes or confirms a commercial transaction previously agreed to
- Provides information pertaining to warranty, recall, safety or security about a product purchased or used by the recipient
- Is about the ongoing use, purchase of subscription, membership, account, loan or similar ongoing relationship
- Provides information about an employment relationship or related benefit plan
- Delivers goods or services, including product updates or upgrades

Consent

Bulletin CRTC 2012-549







Consent

- Permission must be obtained before sending a CEM
- The permission must be able to be proven with clear consent. The burden of proof is on the sender
- No pre-checked boxes on forms. The consent must be an affirmative action by the recipient. (This means all acquisition points)

Exclusions - Complete

- **Personal / Family Relationship**
- Inquiry of Application
- Within Organizations
- Between Organizations
- In response to an inquiry or request
- To satisfy a legal obligation
- To provide a notice of legal rights
- Certain messaging platforms and accounts
- To foreign stats with anti-SPAM legislation
- Fundraising by charities/political parties/candidates

Identification

- Applies when requesting consent
- Applies when sending a CEM
- Sender must be identified
- Business name must be identified
- Contact information for sender or business
- Mailing address (and phone, email or www)

INFORMATION MUST BE CLEAR AND PROMINENT

Unsubscribe

- Must function for 60 days
- Must be processed within 10 days
- No costs may be incurred
- No “are you sure?” emails
- Unsubscribe link in transactional emails

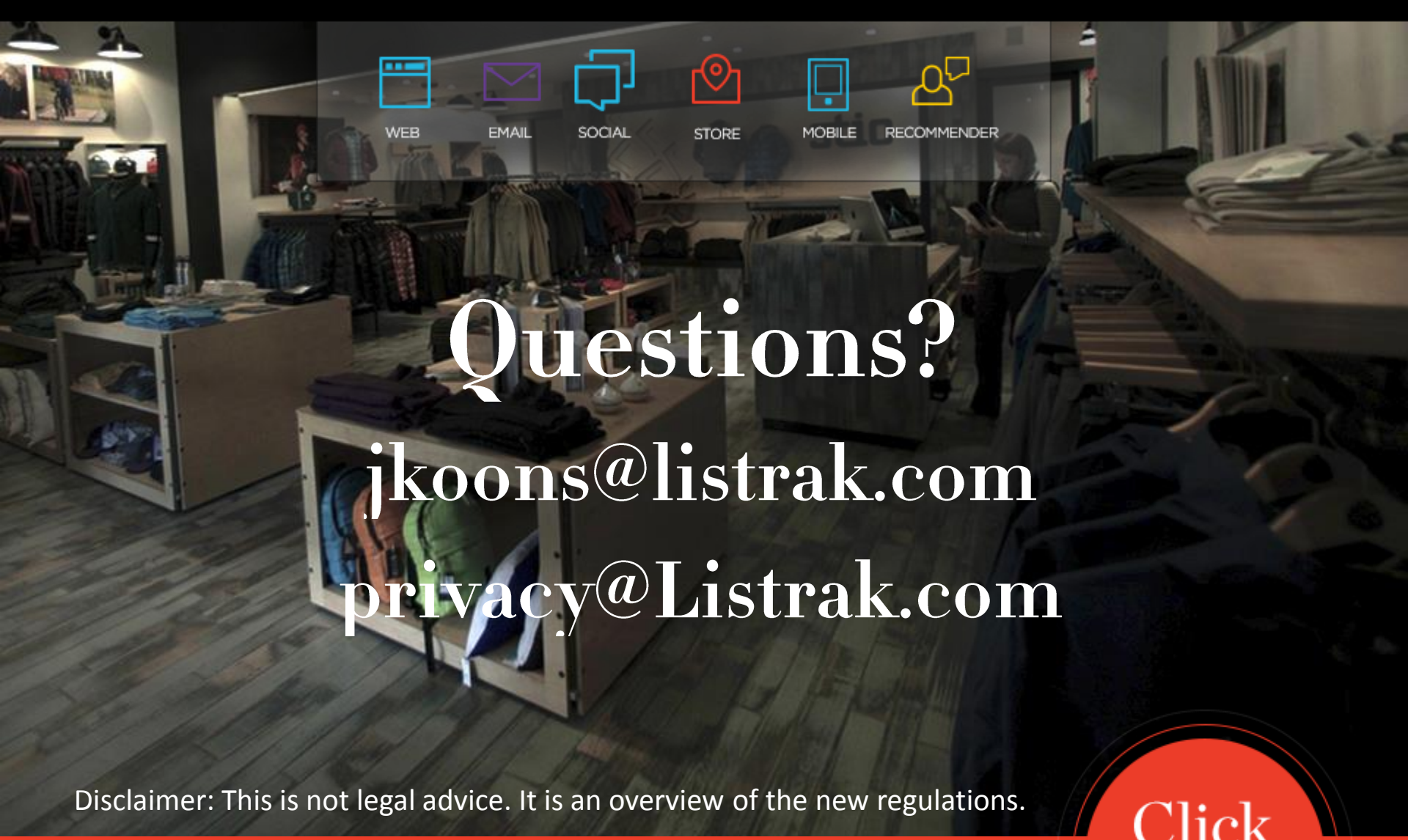
CASL vs CAN-SPAM

Requirements	US CAN-SPAM Act	CASL
Consent	▪ 'Notice and Choice' (Opt Out) ▪ Implied Consent if no prior unsubscribe ▪ 'Transactional' exemption	▪ Express Consent (Opt In) ▪ Implied Consent expires ▪ Upfront purpose for the consent ▪ Written, Oral, Electronic
Content	▪ Sender identity ▪ Mailing address ▪ Unsubscribe mechanism	▪ Sender identity ▪ Mailing address + Tel, Email or URL ▪ Statement that the person can withdraw at any time ▪ Unsubscribe mechanism
Unsubscribe	▪ Link to single form or Reply-To ▪ No obstruction or unnecessary steps ▪ Within 10 biz days, 30 day access	▪ "Able to be readily performed" (immediately) ▪ Max 10 biz days, 60 day access
Coverage	▪ Within U.S. ▪ Electronic Mail Only ▪ False/Misleading header representation ▪ Primary Purpose Rule	▪ "Accessed from a computer system in Canada" ▪ Any electronic message ▪ Downloadable software, *bad*ware ▪ Routing ▪ False/Misleading representation online ▪ *Any* new commercial encouragement

Resources

Visit our extensive CASL-compliance resource center for up-to-date preparation documents

www.listrak.com/casl



Questions?

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