

There Is More To CASL Than “Spam” – Rules For The Installation And Use Of Computer Programs



You may have thought you heard everything about Canada’s anti-spam law (commonly known as “CASL”) since it came into effect this past July, but CASL has additional rules coming into effect on January 15, 2015 dealing with the commercial installation and use of computer programs on another person’s computer system.

The rules apply to almost any computer program installed on a broad range of computing devices as part of a commercial activity. The rules are not limited to malware, spyware or harmful software.

There are potentially serious implications for Canadian businesses that distribute computer programs, including any business that has created a mobile app for distribution. In addition, foreign businesses that distribute computer programs to computer systems located in Canada are also captured. Businesses will now need to shift their focus from the rules for commercial electronic messages and consider the implications of these other rules under CASL.

Unfortunately, the rules are challenging to interpret and apply because CASL uses ambiguous terminology (such as, the meaning of “computer program”, and “computer system”). For example, it is unclear whether the rules would apply to an online store for mobile apps where the app installation is initiated by the user of the computer system and automatically downloaded using an online process. Industry Canada and the CRTC have issued limited guidance to address these challenges. However, the CRTC has indicated that additional guidance would be provided for these rules.

The general prohibition for the installation of computer programs under CASL provides that, subject to limited exceptions, a person must not, in the course of a commercial activity, either install or cause to be installed a computer program on any other person’s computer system (or having so installed or caused to be installed a computer program, cause an electronic message to be sent from that computer system) unless the person has obtained the express consent of the owner or an authorized user of the computer system. Express consent must be obtained through an opt-in mechanism and contain prescribed requirements set out under CASL.

CASL rules also apply to the installation of updates and upgrades to a computer program. However, in particular circumstances an additional express consent does not

need to be obtained under CASL.

There are significant monetary penalties for contravention of the rules. Liability may also extend to employers and directors and officers of a corporation.

As a result, businesses need to be aware of the breadth of CASL's rules and of any guidance from regulators, consider the implications the rules have on regular business activities and implement appropriate compliance measures prior to the rules coming into effect.

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