

Business Must Prepare Now For New Rules Governing Communications with Customers

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New federal laws setting strict rules – and huge penalties if they are broken – for businesses reaching out to customers through e-mail, text messages, social media, voicemail and other electronic means, will come in to force later this year or in 2014.

They will make it much more difficult for businesses to initiate electronic communications with their clients.

Companies that prepare now will save themselves a huge hassle when the new statute -- colloquially known as the *Canadian Anti-Spam Act (CASA)* – comes into force.

CASA is a long and complicated piece of legislation, but here's what you need to know: when it is proclaimed in force, it will impose new and more onerous obligations on individuals and businesses that use electronic messages to communicate.

CASA does not affect just those businesses and people who love to clog your inbox with “deal of the day” drug sales, or news that you’ve won \$1,000,000. The legislation is broad enough to capture almost every message you send to a potential customer or business associate (with some enumerated exceptions).

The legislation prohibits an individual or company from sending commercial electronic messages via e-mail, text message, or social media, without the prior explicit consent of the recipient, unless there is a clear and defined pre-existing business relationship with the recipient, or the communication is clearly within one of the enumerated exceptions from CASA’s consent requirements. The request for consent must be specific about the nature of the intended communication (e.g. information about new products from the company or affiliated businesses).

What's a commercial message? Broadly speaking, it is anything that could reasonably be interpreted to encourage participation in a commercial activity.

Once the Act takes effect, even an e-mail message that includes a request for consent to send subsequent messages will be considered a "commercial electronic message" that requires explicit prior consent.

That will make it even more difficult to obtain consent for future communications, and that is why getting consent before the law comes into force is so important.

Do yourself a favour and start planning now for the onerous obligations under CASA. Review your organization's privacy policies and procedures, determine how your organization relies on electronic messages to communicate with clients and potential clients and what sort of messages it sends, and start compiling a list of phone numbers and e-addresses that you use for these purposes. If you don't have written consent to use each of these numbers and e-addresses for your particular purpose, and if the purpose is not covered by one of the CASA exceptions, plan to get that consent now.

Once the law has been proclaimed, every time you send a message without having the individual's explicit written consent to do so, you could be at risk of fines up to \$1,000,000 for individuals and \$10,000,000 for companies, per violation. There are statutory damages and private rights of action on top of those fines.

Canada's legislation is designed to be one of the toughest anti-spam laws in the world. Preparing for it, early and thoroughly, should minimize, to the greatest extent possible, its impact on your marketing and operations.