

Bill C-28 – Canada's Anti-Spam Legislation Readiness Checklist

With the Canadian Federal election now behind us, we are now one step closer to seeing the Canadian Anti-Spam Legislation (CASL) draft regulations posted for comment. As part of the May 18th cabinet shuffle, Christian Paradis was appointed Federal Industry Minister, replacing Tony Clement. This change could potentially push out the implementation date of Bill C-28 until early 2012, but an official announcement on timing has not been made.

Just to recap, Bill C-28, which passed in December 2010, creates a framework of rules and restrictions for **sending commercial electronic messages**. An "Electronic message", is described as "A message sent by any means of telecommunication, including a text, sound, and voice or image message. The Bill targets spammers, but legitimate email marketers must pay close attention as well, since fines and penalties for violations of this new legislation will be significant.

Email Marketers can use this interim time until implementation wisely by reviewing their own policies and practices, to ensure that once the Bill does become law that they are well positioned for compliance. Below are some specific areas that should be reviewed and updated if necessary.

Note: Inbox Marketer recommends organizations follow the best practices outlined below. However, until the legislation regulations are known, we cannot identify specific guidelines that must be followed to comply with Bill C-28.

Consent

While there will still be situations (identified in the legislation) where a consent exception or "implied" consent is allowed, obtaining express consent is by far preferable, as there is no time limitation attached. (In most cases, the legislation suggests, implied consent will expire two years after the end of an existing business relationship).

Although the CASL regulations may clarify what is required for "express consent", now is the perfect time for marketers to review all processes around obtaining "express" email permission from all points of acquisition, including websites, trade shows, points of sale, call centers, etc. That way, there will be ample opportunity for revised practices to be implemented. When obtaining express consent, the sender must ensure that:

- Subscribers are clearly informed about what they are consenting to receive from the sender. This means that the permission statement(s) should be clear and straightforward. For example:
 - "Please sign me up to receive Widget World's monthly newsletter, highlighting Widget industry news and special offers."
 - "I would also like to receive periodic product eAlerts from Widget World".
- The subscribe page should include a link to the sender's Privacy Policy.
- Details surrounding the provision of consent must be retained as proof if required. This means, the source (i.e. the vehicle where the person provided permission), the date the subscriber provided consent and the statement they consented to should all be documented and maintained in corporate records.
- Best practice recommendation is "double opt-in", which requires sending a message to the new subscriber's email address, requesting a click on a confirmation or activation link to confirm or activate the subscription. Double opted in subscriber lists typically receive the highest engagement metrics, as these recipients have taken an extra step and demonstrated their interest in subscribing.
- A welcome message or confirmation should be sent out promptly upon sign-up, confirming the subscription and summarizing the details of the online relationship.

Database Housekeeping

- Ensure all current database records identify permission status as either implied or express, and that supporting information

is readily available.

- Develop a plan, and policies and procedures to secure express permission from any implied consent records to obtain an explicit opt-in from them.
- Ensure that your data management system has the capability to manage time limits to assure compliance with Bill C-28 going forward. Specifically, until an implied permission subscriber has confirmed express permission, there will need to be a “stop send” date attached to the record to ensure compliance with implied permission time limits.

Identification

- Messages must identify the sender as well as the person on whose behalf message is sent.*
- The “From” address and name must be consistent with the branding presented at sign-up.
- Ensure that Subject lines are representative of the message content and are never misleading. Even though a commercial email message with a “FW” in front of the subject line, or a subject line that sounds official such as “Important Notice about your account” might induce higher Open Rates, misleading subject lines are unacceptable.
- Messages must include contact information for the sender (Postal address)
- Contact information must be active for at least 60 days after deployment to ensure recipients can easily contact the sender for any reason.

**More specific information and interpretation as to what (if any) Email Service Provider identification and contact information must be included within messages is anticipated via the regulations posting and comment period.*

Unsubscribes

- Commercial email messages must include a functioning unsubscribe mechanism, which allows recipients to unsubscribe easily (without any cost) from receiving future emails.
- The unsubscribe mechanism must be conspicuous and clear. It must be able to be completed by email. “Unsubscribes” must be processed as soon as possible - cannot send messages after 10 business days from the recipient activating the unsubscribe mechanism.
- Be sure to test the functionality of the unsubscribe mechanism with every deployment.

Preferences

If offering multiple communications, allow the recipient to selectively unsubscribe from individual subscriptions, in addition to being offered the option of unsubscribing to all publications.

The unsubscribe page is also good place to gain insights that can be very valuable to your email program. This can be accomplished by:

- Allowing the subscriber the option to change their email address, rather than having to unsubscribe and then re-subscribe with their new address
- Including a quick and painless poll, that asks why the recipient is unsubscribing, and presents a drop-down list of 4 or 5 possible reasons – one of which is always “Other – please specify”.
 - The poll must be presented as optional – and is usually offered on the confirmation page of the unsubscribe. The recipient cannot be required to do anything beyond indicating the desire to unsubscribe.

While the information above does not constitute legal advice, Inbox Marketer will continue to stay close to news and updates on Bill C-28, and make every effort to assist our clients in preparing for compliance in advance of implementation.