



CASL - Private Right of Action Delayed Indefinitely

Posted by [Derek A. Lackey, Editor](#) / June 07, 2017

"June 7, 2017 Ottawa Innovation, Science and Economic Development Canada

The Government of Canada is suspending the implementation of certain provisions in Canada's anti-spam legislation (CASL) in response to broad-based concerns raised by businesses, charities and the not-for-profit sector.

The provisions, known as Private Right of Action, would have allowed lawsuits to be filed against individuals and organizations for alleged violations of the legislation.

The provisions were scheduled to come into force on July 1, 2017, but have now been suspended indefinitely." [Press Release on Industry Canada website](#) We expect this decision to be reviewed after the review of the law is completed later this year.

Section 47 (1) of the Canadian Anti Spam Legislation is titled Private Right of Action and it allows an individual who has received spam (promotional messages without consent) to collect \$200 in damages without providing any proof of these damages. While there is much more to Section 47 the essence is it allows for class action lawsuits against businesses sending emails and text messages without your permission.

"Canadians deserve to be protected from spam and other electronic threats so that they can have confidence in digital technology. At the same time, businesses, charities and other non-profit groups should have reasonable ways to communicate electronically with Canadians. We have listened to the concerns of stakeholders and are committed to striking the right balance."

The press release goes on to say: ""

What does it mean to organizations emailing Canadians?

In fact, very little. The major brands will breathe a sigh of relief as they would have been the initial targets of class action suits. Everyone else would have felt little impact from the Private Right of Action other than the increased awareness it may have brought to CASL and our Government's efforts to reduce the spam in our inboxes. Many large brands can spend the final half of 2017 doing business rather than strategizing over defending CASL class action suits.



The intent of CASL is:

The law was passed in 2010 and came into force July 1, 2014 with Section 8 Installation of Computer Program coming into force in January 2015. While for the most part Industry Canada crafted a well thought out opt-in or permission-based system, (as opposed to many other countries who have an opt-out system like Can Spam in the US) there are some aspects of CASL that should be re-considered after 3 years of enforcement in the marketplace.

"That review process was allowed for in the writing of the law and can take place as of July 1, 2017. Many insiders believe this review should take place as soon as possible and we have it on good sources that Minister Bain will be making formal requests to do so." states Derek A. Lackey, President of the Direct Marketing Association of Canada. The relevance of the review to the indefinite delay of enforcing the Private Right of Action is simple: to introduce the Private Right of Action before the wording of the law is confirmed and reviewed has the potential of creating consumer misunderstandings, unwarranted costs for many of the leading brands in Canada and significant legal costs defending what could amount to be frivolous lawsuits from consumers who are not clear about consent. In particular the various forms of implied consent standard set forth by CASL.

Lackey adds, "In other words, a brand may not have your Express Consent to send you emails but they may well meet the measures of Implied Consent. [\(more details about consent\)](#) With no clear understanding of the distinctions, the consumers may launch class actions suits without merit, yet brands will have to incur costs and management time to defend themselves."

This potential chaos has been delayed indefinitely. The CRTC will continue their efforts to bring organizations into compliance, yet we cannot help but think some of the urgency to become compliant may have been falsely impacted. July 1, 2017 is an important date regardless of the delay of the Private Right of Action. The end of the grace period - the transitional period that allowed us to clean up our PROVEN consent is over. So all organizations using email to promote their products and services need to be following CASL or even better, implement a CASL compliance program.

We believe the CRTC Enforcement Team will be very busy for the foreseeable future.

