

Submitted on November 1st, 2017

By Cyberimpact in collaboration with the Canadian Federation of Independent Business

CASL: A Necessary but Badly Known Legislation

In business since 2007, Cyberimpact is one of the only Quebec companies dedicated to email marketing which offers a solution designed to help its users respect and comply with the requirements of Canada's Anti-Spam Legislation (CASL). The company has invested hundreds of thousands of dollars to develop a simple and risk-free tool for the use of email marketing in Canada. Based in Terrebonne, QC, Cyberimpact employs about 20 professionals who are fully dedicated to maximize the use of email marketing.

Cyberimpact congratulates the House of Commons for conducting a review of the Legislation. Three years after its entry into force, the timing appears appropriate to take a look at the law and its impacts on stakeholders.

With the support of the Canadian Federation of Independent Businesses (CFIB), Cyberimpact is pleased to file a motion to help the Government improve the law. Our argument is based on several surveys conducted since the entry into force of CASL by both Cyberimpact and the CFIB, as well as comments and feedback received and compiled over the years.

The Law Still Remains Unknown

Canada's anti-spam law has been in effect since July 1, 2014. Three years after its entry into force, we see that it is still relatively unknown by entrepreneurs and marketing professionals working in Canadian SME.

Cyberimpact recently surveyed users of its email marketing solution (poll conducted in October 2017) and some rather disturbing conclusions have been drawn from this survey, to which several hundred people responded. These conclusions echo the feedback we have been receiving since the legislation came into effect in 2014.

Our study reveals that Canada's anti-spam law (CASL) still remains unknown for more than one out of two users. More disturbing still, is that the majority of them have no idea as to the consequences they are exposed to if they break the law.

- 42% of email marketing users claim not to know the law.
- 49% are not aware of the consequences of the law.

Unfortunately, we find that Canada's anti-spam law remains a mystery for most people concerned, and even among the people who send emails as a marketing tactic.

The Canadian Federation of Independent Business (CFIB) also surveyed its members in July of 2015, more than one year after CASL came into effect. This survey across Canada was responded to by nearly 8,000 business leaders. 73% of respondents said they are not completely aware of the requirements of the law for their business practices.

In two years, this proportion has probably decreased, but by how much? We are comfortable in saying that the majority of people are unfamiliar with the requirements of CASL, and especially at the SME level. It is all the more surprising that this lack of knowledge is also found with people who use email marketing.

The general population also misunderstands the law and the complaints they file are often inadmissible. For example, many Canadians don't realize that when they make a purchase, implied consent is obtained by the merchant.

Considering the lack of comprehension of the details of the law, we agree with the decision to delay the private right of action. Our survey also shows that users agree with this postponement in a proportion of 66%.

The Government Must Do a Better Job of Educating

Cyberimpact's study with its customers reveals something else: the Government needs to do a better job of educating and bringing about awareness among SMEs.

- 69% of people polled think that the Government didn't do a good job raising awareness among SMEs.

The Government must clarify the question consent management. There is a lack of clarity in the regulations that confuses Canadians.

We believe that the official information from the Government and the CRTC is not simple, clear and easy to be found. The popularization of legal semantics is severely lacking. Implied consent, express consent, it would be advantageous to explain the fundamental differences.

We suggest the development of a formal training program run by the Government or the CRTC. There could be a system of accreditation for trainers that would allow private companies to train other Canadian companies about compliance. Why not also create an online training curriculum? Such training program should not be considered a prerequisite for sending commercial emails, but an official source of information in order to demystify the legislation.

The Clarification of the Notion of Consent

The concept that it is necessary to have the consent of the recipient in order to send a commercial electronic message is relatively easy to understand.

Where it gets complicated is with the notion of implied consent. You have implied consent from someone if you can prove to have a relationship with them. This can leave a lot of room for interpretation, as the period of validity for the consent varies according to the type of relationship in question. It becomes complex and burdensome for many Canadian SMEs to manage.

We recommend to better define concrete situations which, under the law, constitute an implied consent and other situations which are not acceptable. We also recommend standardizing the validity period of implied consent. For example, any implied consent could have a validity period of 24 months. We suggest that every implied consent be valid for 24 months. We must clarify situations that could lead to misinterpretation. For example, which implied consent expiration should we apply when a person/company receives a business card or finds a publicly posted email address on a website, etc.

The Perception That the Act Reduces Our Competitiveness With the Rest of the World

58% of Canadian companies that use email marketing feel disadvantaged when compared to American companies. 46% say the law had a negative impact on their sales efforts.

This fact confirms the need to better inform Canadian businesses and to lighten the law, while maintaining its general spirit.

For the Creation of a Public Register of Complaints

According to our survey of Cyberimpact users, 75% of people say that the Government is not effective in dealing with complaints regarding the anti-spam law.

The first of May 2017, the CRTC had received 922,262 denunciations under CASL. And nearly 250,000 new complaints since last November. This represents more than 300,000 complaints per year.

The Government, acting through the CRTC, seems to have a lot of trouble dealing with the large volume of complaints. The process for filing complaints should include a search on the company to facilitate the process of handling them. The complainant could also check if he/she is the only to have made a complaint and the ability to add it to an existing group.

In Conclusion

We believe that CASL has merit and is necessary. We understand and share its objective of reducing spam. Email marketing has always been effective when it respects the ethics and best practices. It is for this reason that we encourage the government to publicize the law and build on its unique aspects. Failing to do so, leads us to believe that the competitiveness of Canadian SMEs will be affected, especially in a context of globalization.

We remain at the disposal of the House of Commons and the Standing Committee on Industry, Science and Technology to meet and further explain our views on the legislation.