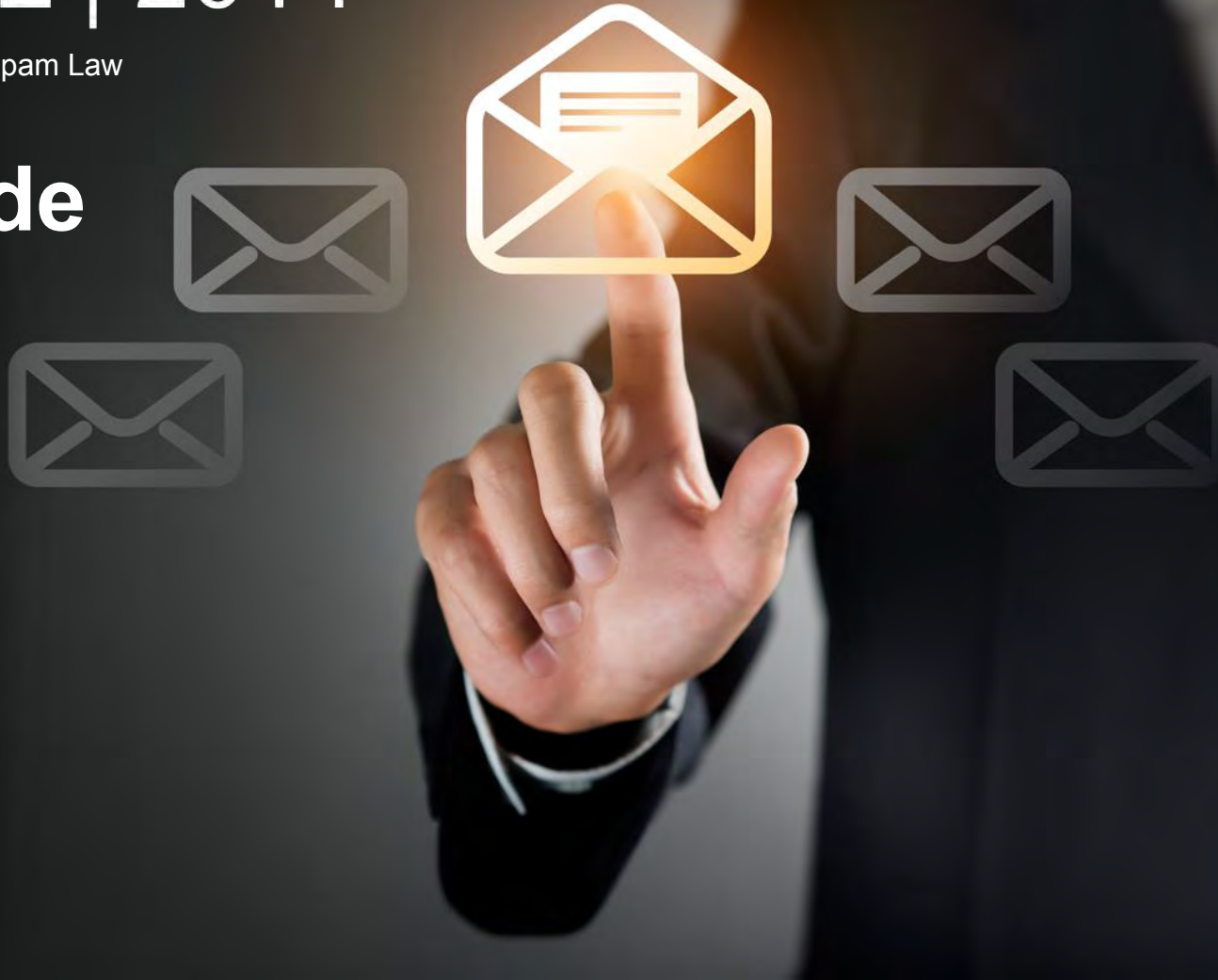


CASL | 2014

Canada's Anti-Spam Law

eGuide



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CASL:
Welcome

SCI MarketView

SCI MarketView is a leader in the Automotive Technology Industry. We provide high quality consumer information that automotive dealerships can use, and with over 5000 dealerships across North America, SCI MarketView is trusted to manage their leads and turn them into customers. Our **Real>Smart>View** philosophy empowers our customers and partners to navigate through their data, capture opportunities, and build their business.

Our **Retail Performance Group's** mission is to improve Lead Management and Digital Marketing processes at the automotive retail level. By focusing on the People, Processes and Technology that support an effective digital strategy, we help dealers sell more cars from their Internet Department.

For more information, visit us at www.scimarketview.com



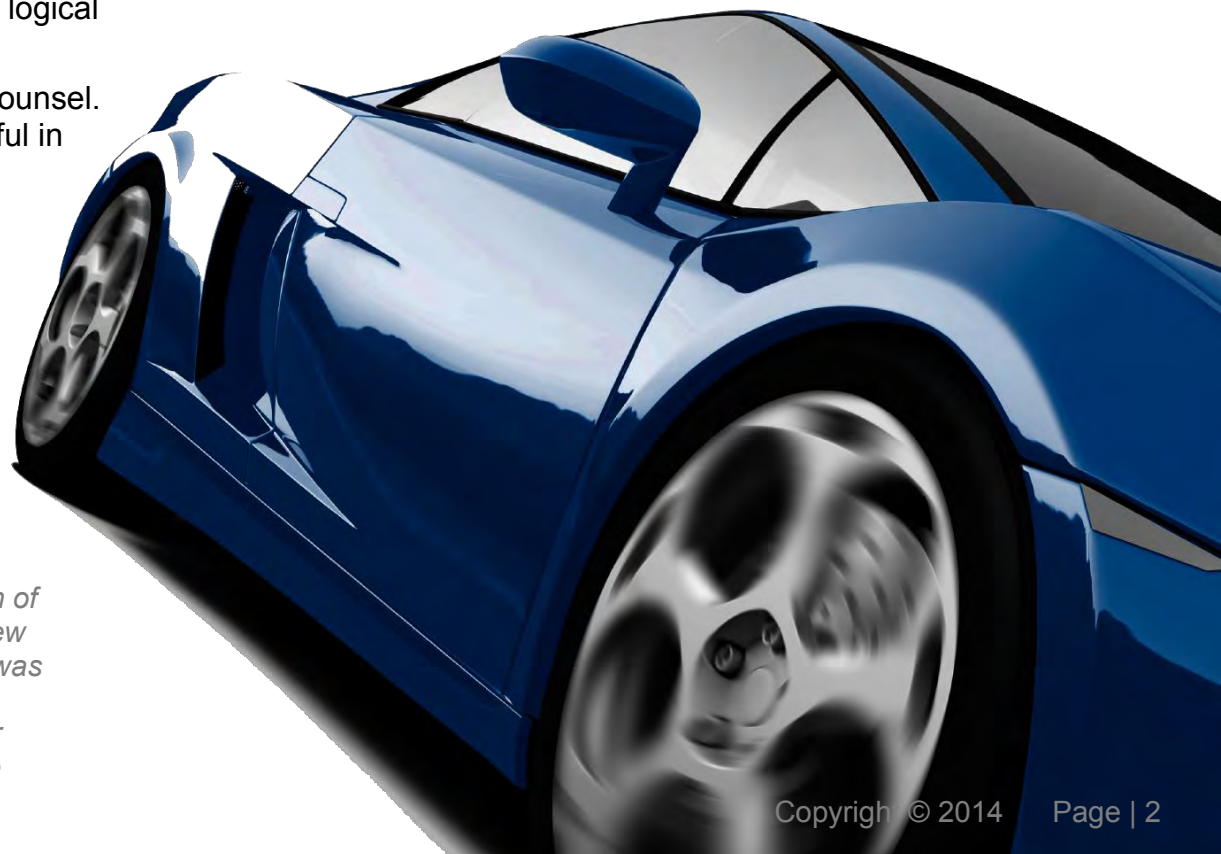


CASL:
Welcome

The CASL 2014 eGuide from SCI MarketView has been specifically created with the automotive industry in mind. This is not a comprehensive guide of the new Canadian Legislation nor is it to be used as legal counsel.

This eGuide is designed to give automotive dealers a leg up in this new world of eMarketing and electronic communications. In this guide, you will find the new law explained in simple terms and broken down for you in logical steps to use as you move forward.

For any and all legal matters, you should seek legal counsel. For straightforward information on how to be successful in this new world of CASL...keep reading.



Disclaimer

This eGuide provides general comments and interpretation of the new law. It is not intended to be a comprehensive review nor is it intended to provide legal advice. This information was created to provide a practical application to CASL in the automotive industry. SCI MarketView is not responsible for actions taken by readers. For all legal matters, readers are encouraged to speak with their own legal counsel.

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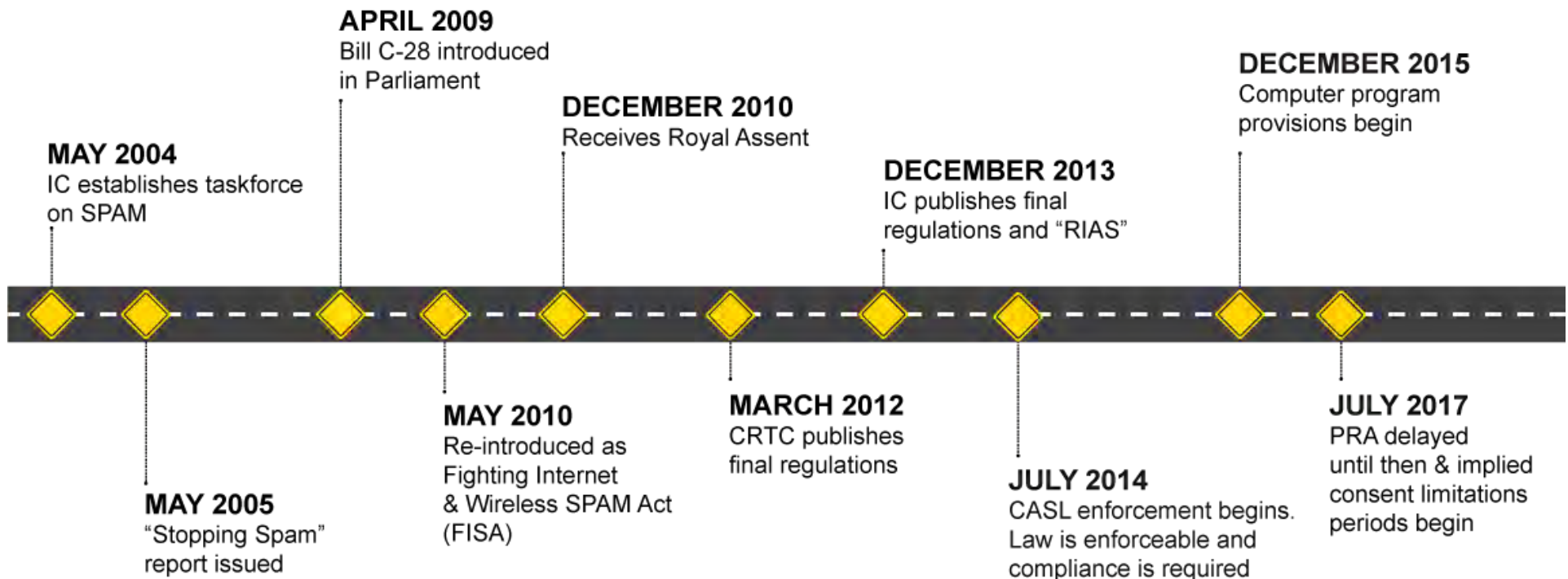


CASL: Overview

Timeline

It has been over a decade in the making; Canada's Anti-Spam Legislation (CASL), is driving a new, safer and simpler world of eMarketing.

CASL takes effect on July 1st, 2014 and will be among the most robust anti-spam laws worldwide. By taking the time to look at the map for the road ahead, your marketing plans will be uninterrupted. A valuable Step by Step guide has been provided by SCI MarketView available on scimarketview.ca.





Purpose

“The purpose of this Act is to promote the efficiency and adaptability of the Canadian economy by regulating commercial conduct that discourages the use of electronic means to carry out commercial activities, because that conduct:

- a) Impairs the availability, reliability, efficiency and optimal use of electronic means to carry out commercial activities*
 - b) Imposes additional costs on businesses and consumers*
 - c) Compromises privacy and the security of confidential information, and*
 - d) Undermines the confidence of Canadians in the use of electronic means of communication to carry out their commercial activities in Canada and abroad.”*
-

What is CASL Trying to Achieve?

The official stated goal of Canada’s Anti-Spam Legislation (CASL) is:

“An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities.”

What that means to us is that the Government of Canada is targeting spam sent to and from Canadians. They endeavor to do this by creating a new set of rules which tightly guide “CEM”s or Commercial Electronic Messages.

This guide will help you understand the many facets of CASL and what is required to become, and continue to be, compliant.

Source: An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (S.C. 2010, c. 23, Section 3)

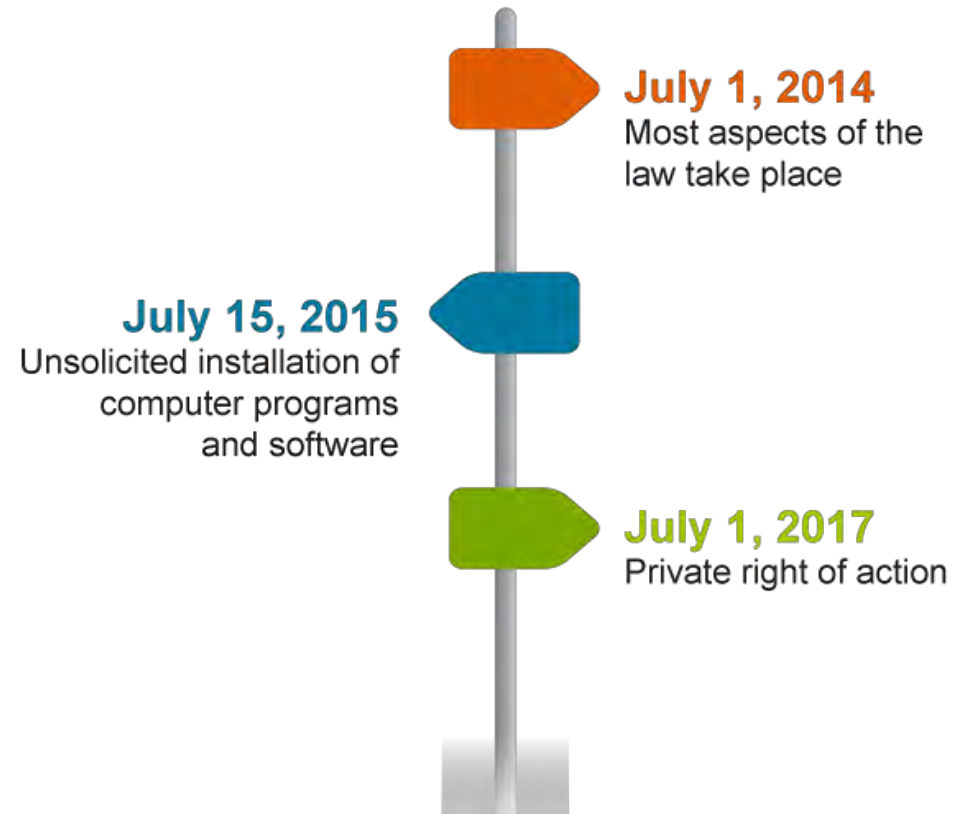


CASL: Overview

Phased Implementation

Can consumers take civil action against me if I break the rules? Good question and the answer is... not yet! Not until July 1st, 2017 will Canadian courts allow civil action against individuals and organizations infringing CASL.

This means the courts will not immediately be flooded with cases and businesses can get ready. However, make no mistake, the early adaptors will be years ahead and will be the big winners in the new CASL world of eMarketing. Let us help you navigate the road ahead so you can increase your sales while the real “egregious spammers” can deal with the legal actions that are coming.



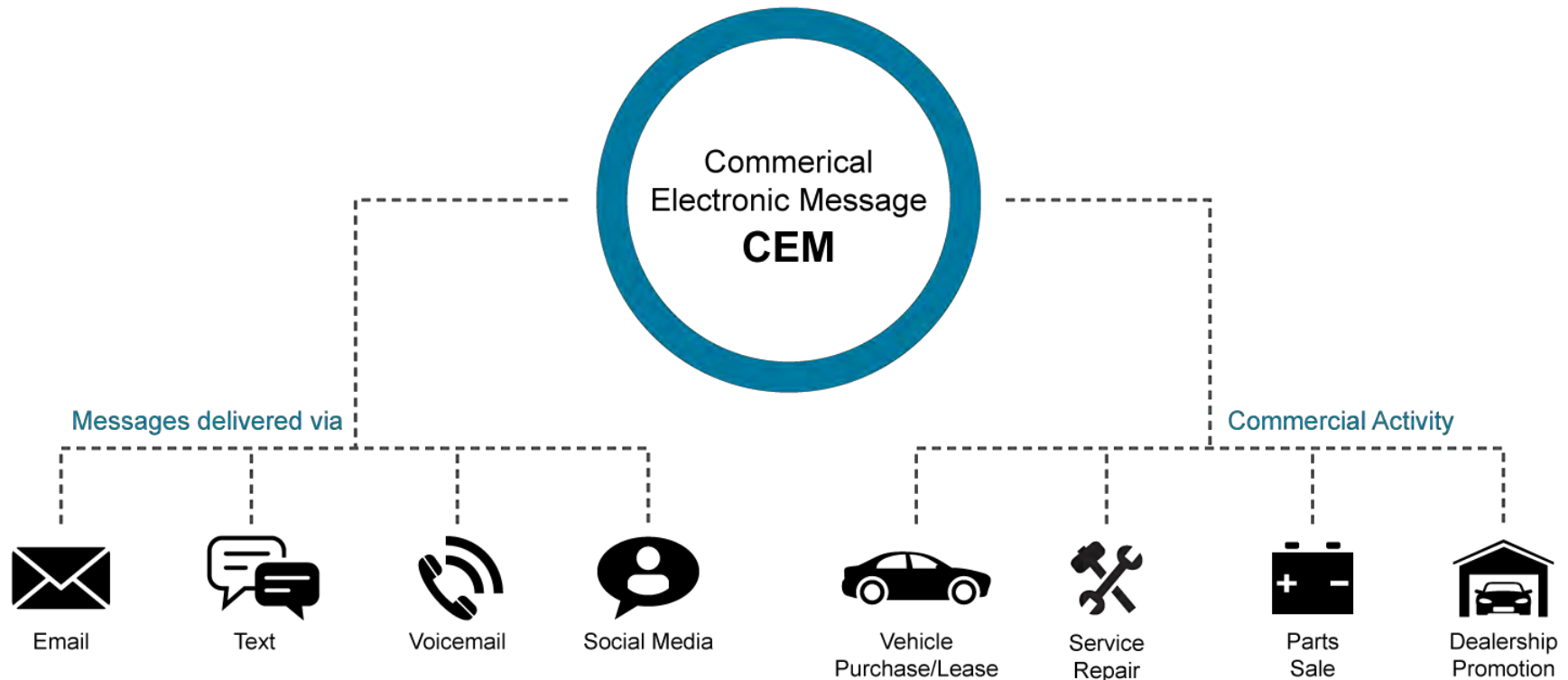


Commercial Electronic Message (CEM)

So, what exactly is a commercial electronic message or CEM?

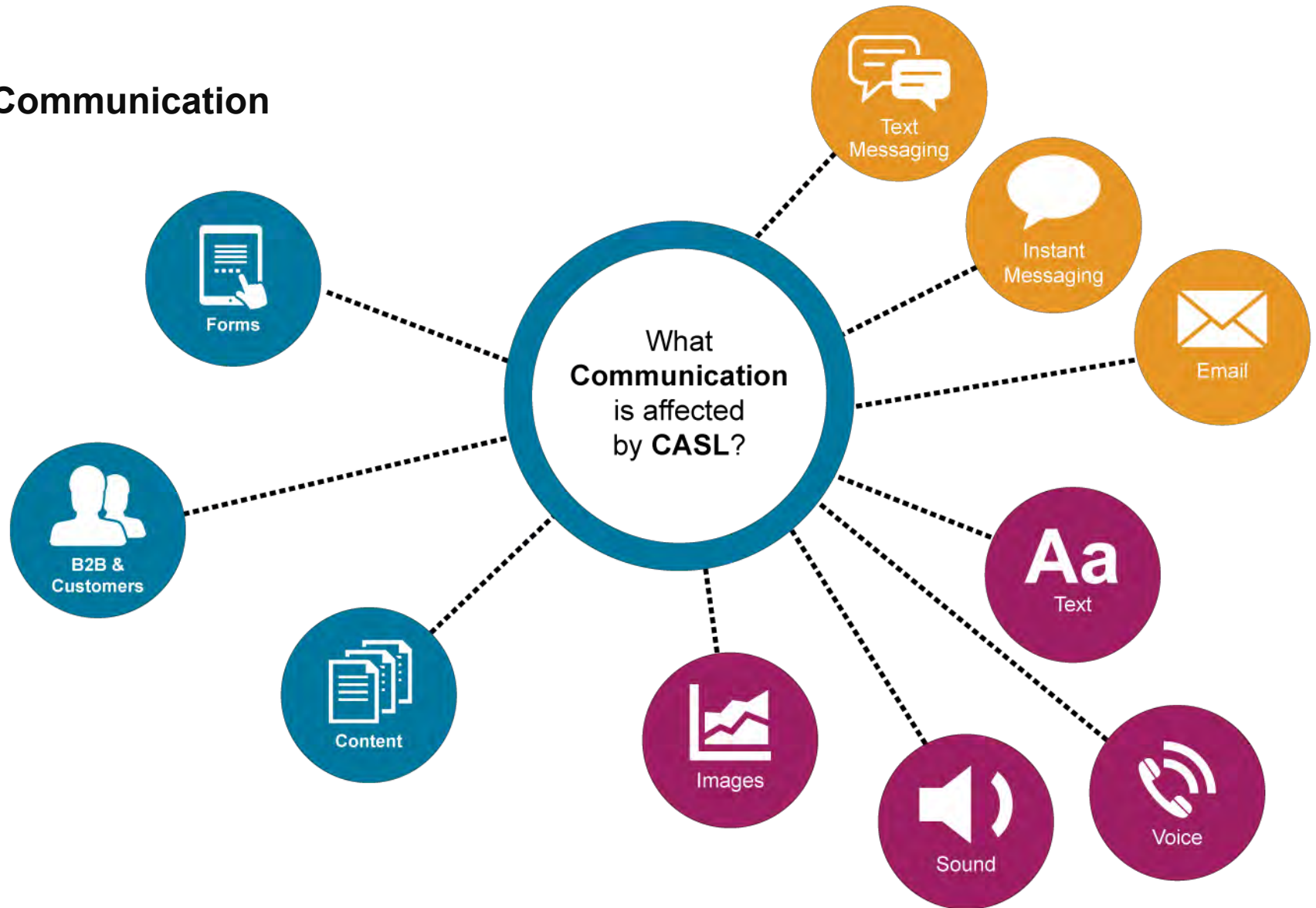
It is a description applied to any message sent by telecommunication which includes e-mail, text messages, voicemail, social media etc. sent for the purpose of getting the receiver to participate in a commercial activity.

CASL makes it unlawful to send (or cause/permit to be sent) any CEM unless the receiver has provided consent expressly or implicitly. We'll define consent further as we move forward.





Types of Communication





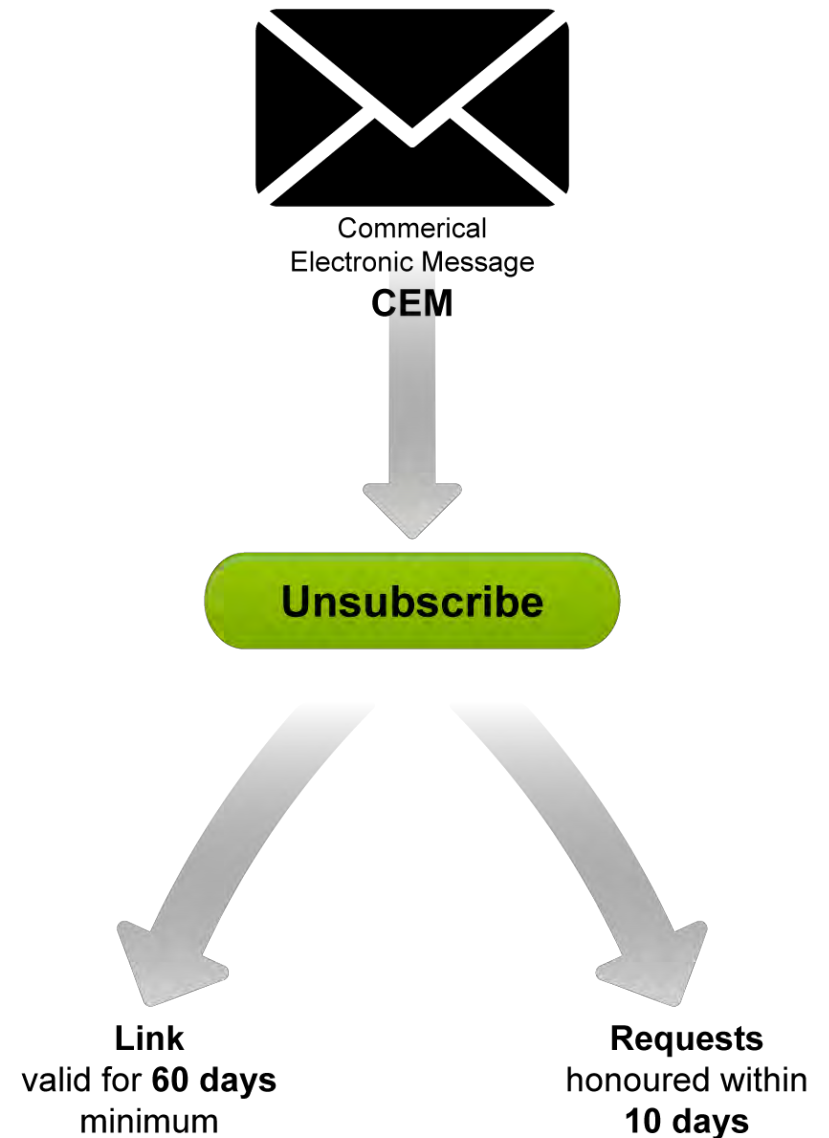
Unsubscribe Mechanism Requirements

With any CEM sent from an organization, or on behalf of an organization, it is required to include an unsubscribe mechanism through electronic address or web page link that works for a minimum 60 days after the message has been sent. This must be at no cost to the recipient and if a request to unsubscribe is received, it must be completed within ten business days of when the request was sent.

What does an acceptable unsubscribe mechanism look like?

It can be an email where a recipient can reply “Stop” or “Unsubscribe”. It can also be a link within an email that takes the recipient to a webpage where they can update their consent preferences or unsubscribe completely.

Another option is a SMS (Short Message Service or “Text”) with the word “Stop” or “Unsubscribe” sent from the recipient, or a link they can click on which takes them to a webpage where they can update their consent preferences or unsubscribe completely.





Aren't CASL and the Can-Spam Act the same thing?

Is CASL the same as Can-Spam?

United States anti-spam legislation, Can-SPAM came into effect in 2003 and was legislation that focused more on email. CASL however, includes all forms of digital communications including email, text messages (SMS), instant messaging, etc. Installed programs are now covered as well which means being a CASL compliant company is more than just focusing on your email mailing lists.

In the past, an “Opt-Out” was considered enough to protect consumers. However, with new technology and new rules, the CASL model is “Opt-In”. This means gaining consent from your customer, “Express” or “Implied”.

Can-Spam says you can email until a recipient says stop. CASL says you can't start without consent. When done correctly, this can actually mean happier customers and stronger more qualified leads.

Can-Spam only applies if the email has a commercial intent whereas CASL applies to **every** CEM sent, including any focused on commercial activity.





CASL:
Consent

Consent is the KEY to CASL

CASL is all about consent. When you have it, marketing changes very little. But without it, organizations are limited on how and when they can communicate through electronic messages. Under CASL, there are two scenarios where you have consent: **Express** and **Implied**.

Express Consent

Express consent (or **explicit** consent), is when the recipient has given you direct permission to contact them through electronic channels.

Requirements:

- Clearly describe the purposes for requesting consent
- Provide the name of the organization/person seeking consent, and identify on whose behalf consent is sought, if different
- Provide contact information such as a mailing address (PO boxes are valid), telephone number, email address or website address
- Indicate that the recipient can unsubscribe or withdraw consent at any time



IMPORTANT:

Express consent must be an affirmative action. NO pre-checked boxes on the form to secure consent are permitted.

Two common ways to acquire express consent:

1. Lead generation form on your website
2. Confirmation link in an email

Express consent **MUST BE** documented.

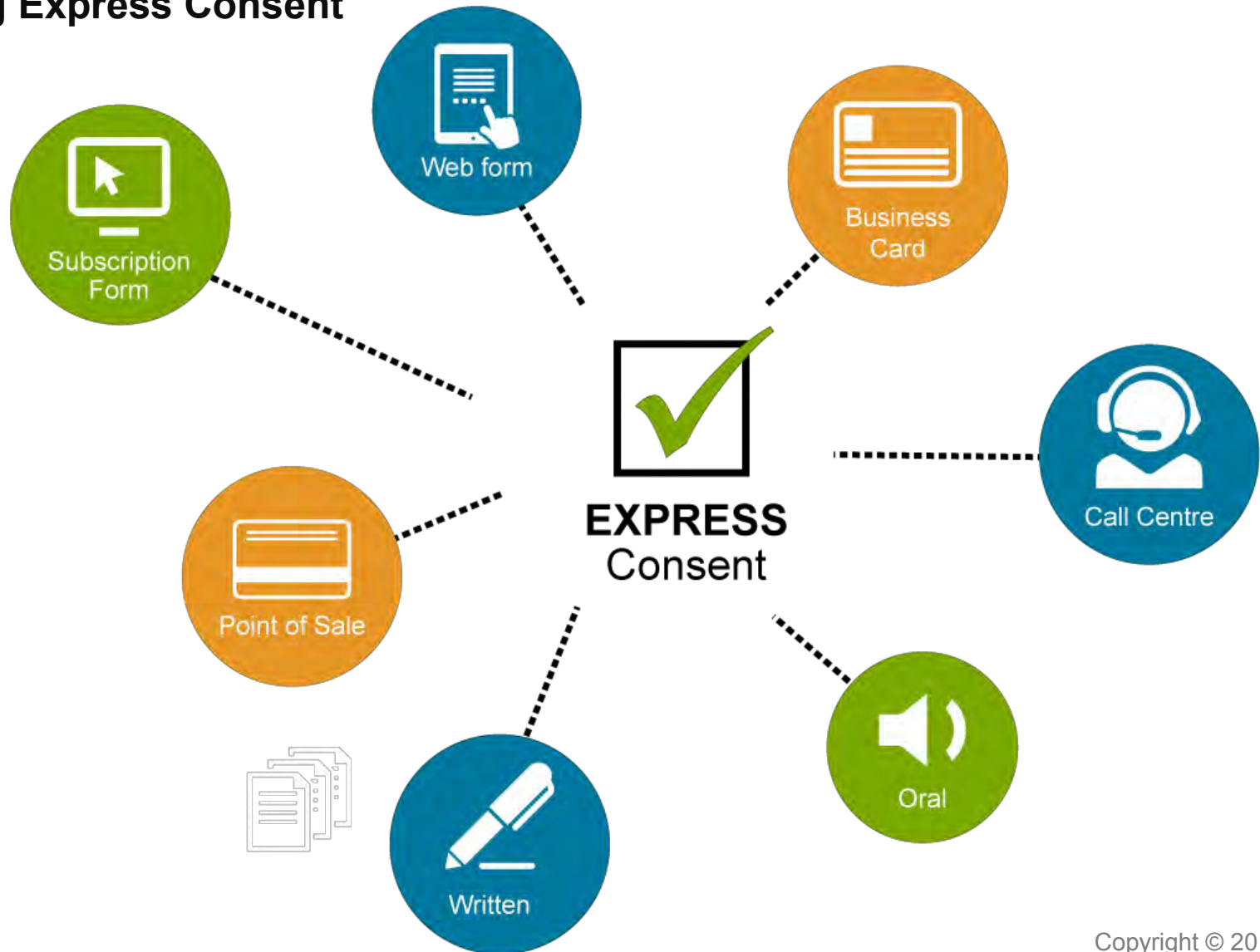
Proof of receipt of consent means tracking items such as the date, time, IP address, form used, link clicked in email, etc.

Express consent **DOES NOT** expire unless consent from the recipient is withdrawn.



CASL:
Consent

Collecting Express Consent





What is Implied Consent?

For every customer or potential customer with whom you have an **existing** relationship, you have “*Implied Consent*”, even if they’ve never explicitly requested you send them email.

The “Parliament of Canada” website (www.parl.gc.ca) states:

Those who can assume implied consent because of a business relationship must meet one of the following criteria (clause 10 (10)):

- *They sold, leased or bartered a product, goods, services, land or an interest or right in land to the message’s recipient within the 2 years before the message was sent.*
- *They provided a business, investment or gaming opportunity that was accepted by the recipient within the preceding 2 years.*
- *They entered into a written contract, which is still active or within the preceding 2 years, with the recipient for any reason.*
- *They received any kind of inquiry from the recipient within the previous 6 months.*



Key Insight

Whether it was parts, service, leasing or sales, any **customer interaction** within the **last two (2) years** provides you **Implied Consent** for **24 months** after July 1st, 2014, **unless consent is withdrawn**.

Any **customer inquiry** within the last **six (6) months** also gives you **Implied Consent**.

Implied Consent is good.

Express Consent is GREAT.



CASL:
Consent

Existing Business Relationships = Implied Consent

An “existing business relationship” exists when you and your customer have done business together within the last two years from the date the CEM was sent, and the customer has not withdrawn their consent.

Your customer may have bought a car or received an oil change. Any product or service purchased is valid. Entering into a written contract with you acts as Implied Consent.

It is important to note that during that two year window, if the customer makes another purchase from you, the clock resets and another two year window begins.

During this two year period, you should secure Express Consent, and you should try to do it right away. This way you never have to worry about the Implied Consent.

As stated above, an “existing business relationship” also exists when an inquiry has been made in the previous six months. This type of consent lets you respond to new customer leads without worrying about violating CASL. Secure Express Consent from these people so you can continue to email them after the six month window. It is important to note that any CEM sent to a customer with Implied Consent still requires the same unsubscribe mechanisms.





Transitional Provision and Consent Requirement

The Government of Canada website page dealing with Canada's Anti-Spam Legislation (<http://fightspam.gc.ca>) FAQ states:

“Knowing that people and businesses may need to change their practices when it comes to sending commercial electronic messages (CEMs), the legislation includes a transitional provision that relates to the consent requirement. There are two types of consent - express and implied. The transitional provision set out in section 66 of CASL applies to implied consent.

Under section 66, consent to send commercial electronic messages (CEMs) is implied for a period of 36 months beginning July 1st, 2014, where there is an existing business or non-business relationship that includes the communication of CEMs. Note however, that this three-year period of implied consent will end if the recipient indicates that they no longer consent to receiving CEMs. During the transitional period, the definitions of existing business and non-business relationships are not subject to the limitation periods that would otherwise be applicable under section 10 of CASL. Businesses and people may take advantage of this transitional period to seek express consent for the continued sending of CEMs.

In contrast, express consent does not expire after a certain period of time has passed. If you obtain valid express consent before July 1st, 2014, then that express consent remains valid after the legislation comes into force. It does not expire, until the recipient withdraws their consent.”



Key Insight

As laid out in Implied Consent, your existing business relationships are extremely valuable to your business, and even more so going forward.

Find a fun and meaningful way to reconnect with your existing “Business Relationships” and build your CASL compliant database.

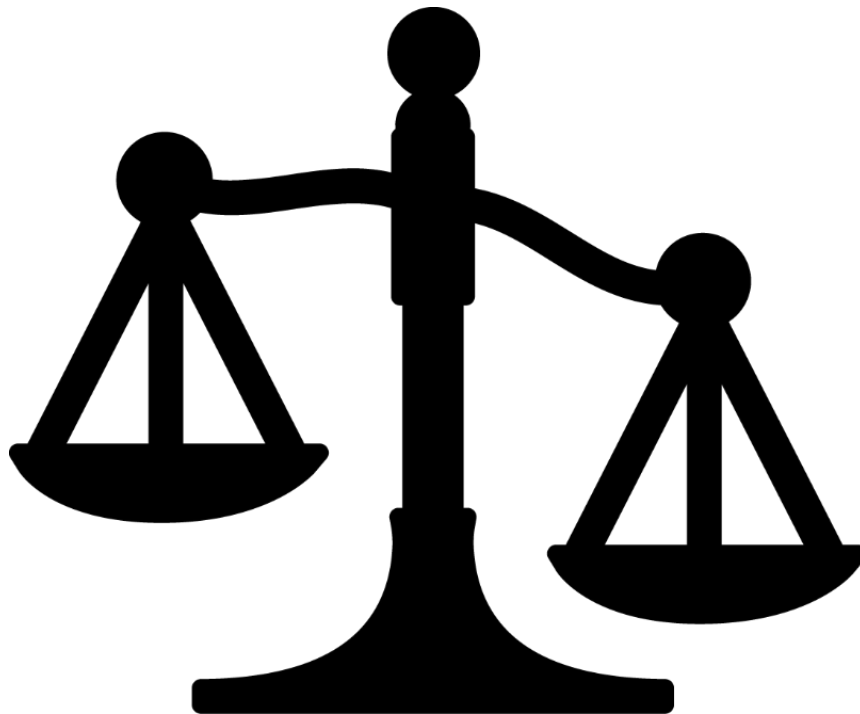


CASL: Penalties

What are the Penalties for Committing a Violation under CASL?

The Canadian Radio-Television and Telecommunications Commission website FAQ under Anti-spam (www.crtc.gc.ca) states:

“If you commit a violation under any of sections 6 to 9 of CASL, you may be required to pay an administrative monetary penalty (AMP). The maximum amount of an AMP, per violation, for an individual is \$1 million, and for a business, \$10 million. CASL sets out a list of factors considered determining the amount of the AMP.”



Key Insight

Due diligence is a factor in your defense, so keep records of all actions taken to train and implement CASL.

Remind your team to follow your new CASL compliant processes, spot check their email campaigns and outbound messages, schedule regular meetings to ensure your team stays on point and remind everyone of the penalties.



CASL: Penalties

There are two types of remedies:

After July 1st, 2017, administrative sanctions for sending emails which do not comply with the legislation and private right of action, including a class action, for the same reason, will allow an applicant to seek actual and statutory damages for receiving a non-compliant CEM. Therefore, these sanctions will allow a customer to whom you sent a CEM without appropriate consent, the ability to begin legal action.

Statutory damages may not be pursued if the person or organization against whom the contravention is alleged has entered into an undertaking or has been served with a Notice of Violation. Therefore, it is recommended that if a person or organization finds they have sent an electronic communication without appropriate consent and compliance, they should immediately contact the CRTC before a claim is made.



Private Right of Action
Emails do not comply.

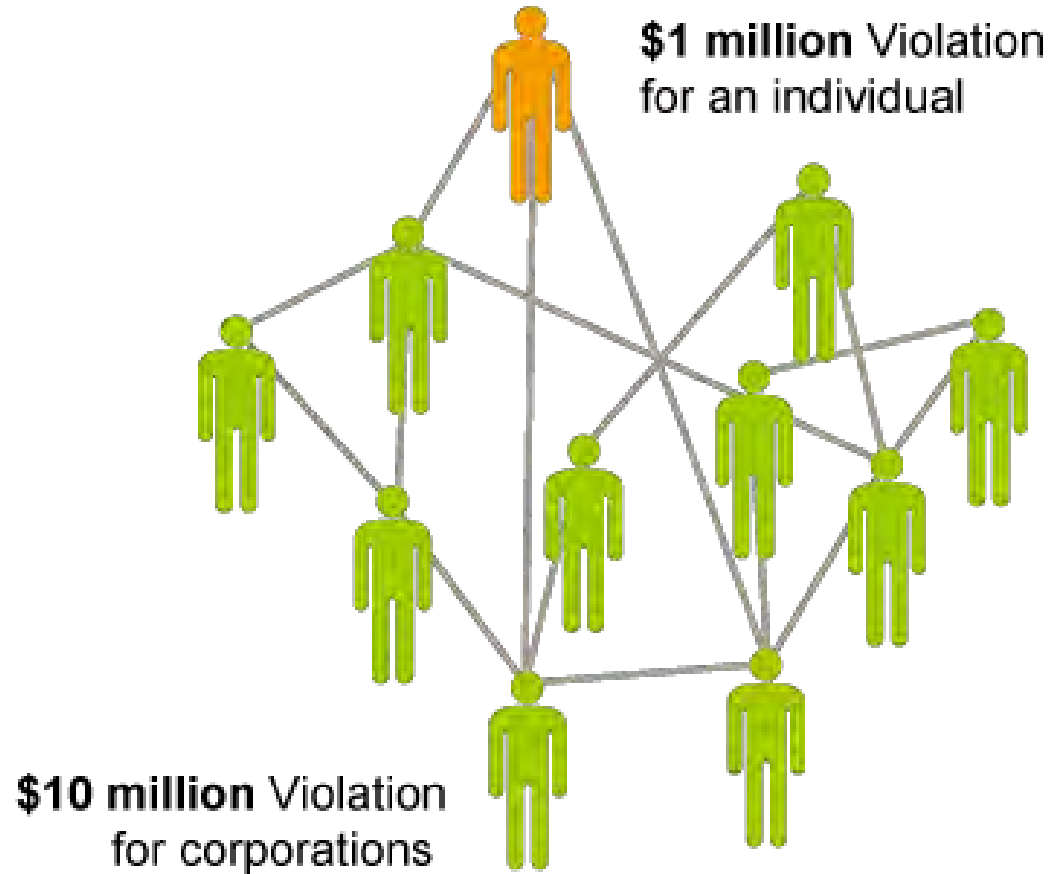


Administrative Sanctions
Emails do not comply.



CASL: Penalties

How much are administrative penalties?





CASL: Resources

The Government of Canada website related to CASL is available at:

<http://fightspam.gc.ca>

The full legislation is available at:

<http://laws-lois.justice.gc.ca/eng/acts/E-1.6/index.html>

Review the Regulatory Impact Analysis Statement from Industry Canada to help to qualify specific components of the law available at:

<http://fightspam.gc.ca/eic/site/030.nsf/eng/00271.html>

Visit www.scimarketview.ca regularly for updates on CASL and how they affect the automotive industry.

