



CASL Compliance Preparing for the Next Deadline

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Objectives for this Session

- Provide a detailed understanding of section 8 of CASL (installation of computer programs).
- Help you determine to what extent the installation of computer program rules apply to your activities.



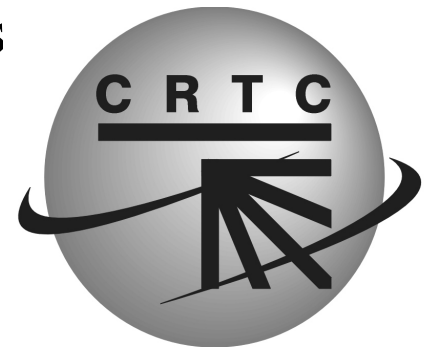
Key Dates

- Coming into force schedule:
 - **July 1, 2014:** Rules for sending CEMS and altering transmission data;
 - **January 15, 2015:** Rules for the installation of computer programs;
 - **July 1, 2017:** Private right of action.
- November 11, 2014 – CRTC published fact sheet on CASL's requirements for installing computer programs.
(http://www.crtc.gc.ca/eng/info_sht/i2.htm)



Why be Concerned about CASL?

- One of the strictest anti-spam regime in the world.
- No other countries have anti-malware/spyware rules that are similar to those in CASL.
- Very high liability - Administrative monetary penalties (AMPs) of up to \$10 million for organizations.
- Active regulatory body: CRTC investigators dedicated to CASL compliance.
- 85,000 complaints filed by Sept. 1, 2014.



Computer Programs (section 8)

- “A person must not, in the course of a commercial activity, install or cause to be installed a computer program on any other person’s computer system or, having so installed or caused to be installed a computer program, cause an electronic message to be sent from that computer system”, unless:
 - (a) Express consent of the owner or an authorized user of the computer systems has been obtained; or
 - (b) The person is acting in accordance with a court order.



Key Definitions

- “Computer program” – data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function.
- “Computer system” – A device that contains computer programs or other data, and performs logic and control, and may perform any other function.
- “Install” is not defined. **Self-installed software is not covered under CASL.**
- *NOTE: Computer systems could include PCs, smartphones, gaming consoles, industrial machines and appliances.*



Extra-Territorial Reach

- For section 8 to apply, the person installing or directing the installation of the computer program must be in Canada, or the computer system must be in Canada.



First Level of Disclosure

- **Basic Disclosure:**
 - ✓ Clearly and simply state the purpose for which consent is sought and identify the person seeking consent (by name, mailing address, and one of phone number, e-mail or web address).
 - ✓ Clearly and simply describe, in general terms, the computer program's function and purpose.



Second Level of Disclosure

- **Enhanced Disclosure:**
 - ✓ If the computer program performs certain functions, you must clearly and prominently describe the program's material elements, separately from the license agreement.
 - ✓ The description must include the nature, purpose and functions performed by the program, as well as the reasonably foreseeable impact on the operation of the computer system.
 - ✓ **CRTC Regs:** Obtain written acknowledgement that the person understands and agrees to the program's functions.

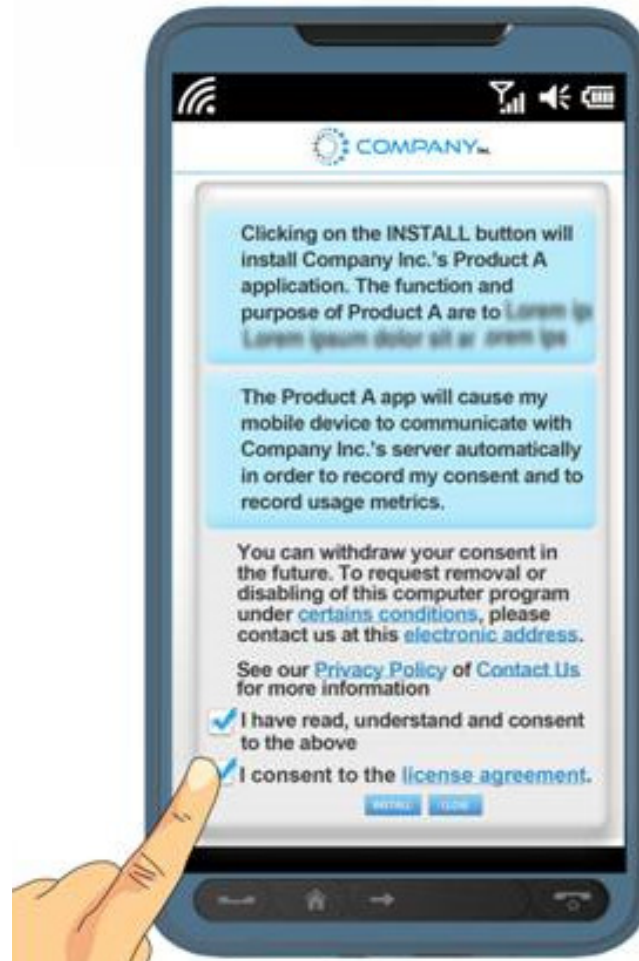


Enhanced Disclosure Triggers

- The program performs functions that the person knows and intends will cause the computer system to operate in a manner that is contrary to the reasonable expectations of the owner or authorized user:
 - Collecting personal information stored on the system;
 - Interfering with the user's control of the system;
 - Changing or interfering with settings, preferences, or commands, without the user's knowledge;
 - Changing or interfering with stored data in a way that obstructs, interrupts or interferes with the user's access to the data;
 - Causing the system to communicate with another system or device without authorization; or
 - Installing a program that may be activated by a third party without the user's knowledge.



Means of Obtaining Consent



CRTC Bulletin 2012-548



Empowering Organizations to Minimize Privacy Risks



Withdrawal of Consent

- When seeking express consent, you must state that consent can be withdrawn at any time.
- Also, a person who receives express consent for installation of an “enhanced disclosure” program must:
 - For one year after installation, ensure that the consenting person is provided with an electronic address through which to request the program’s removal or disabling.



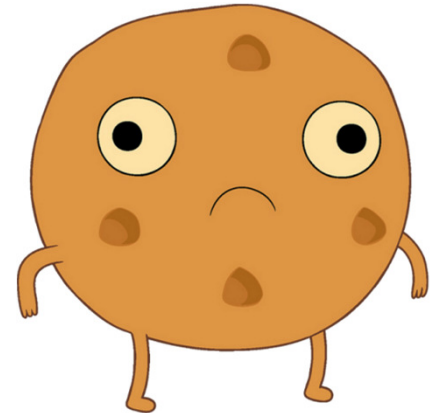
Deemed Consent – Section 10(8)

- A person is deemed to have expressly consented to installation of the following if the person's conduct is such that it is reasonable to believe that the person consents to the installation:
 - Cookies.
 - HTML code.
 - Java scripts.
 - Operating systems.
 - Programs installed by telecom service providers to protect network security or update/upgrade their network.
 - A program that is necessary to correct a failure in the operation of a computer system or program (IC Regs, s.6).



Cookie Confusion...

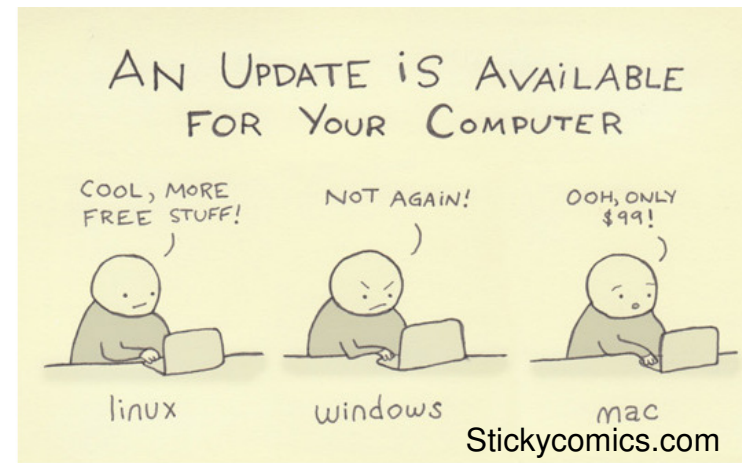
- Industry Canada:
 - Cookies are not executable computer programs – “they cannot carry viruses and cannot install malware, and are simply lines of text or data that are read from a web browser”.
- CRTC:
 - Cookies are computer programs but are not “installed” and so not subject to CASL.



Updates/Upgrades

- Consent is not required for an update/upgrade if:
 - ✓ The original program was installed with express consent;
 - ✓ The terms agreed to when the user originally provided consent notified the individual they would be entitled to receive an update or upgrade in the future; and
 - ✓ The upgrade is installed in accordance with those terms.

- *CRTC: An update or upgrade makes changes to or replaces previously installed software.*



Regulatory Impact Analysis Statement

- “For updates and upgrades to computer programs installed after CASL comes into force, *the Act* allows companies to get the consent of the owner or authorized user for future updates or upgrades to the computer program at the same time they obtain consent for the original installation, or when the user is downloading. That is, when a computer program is installed, consent must in general be requested in accordance with *the Act*, **but there are no requirements for the form of a request for consent to install updates and upgrades.”**



Timing for Computer Program Sections

- Effective January 15, 2015
- Transition period: You can update or upgrade computer programs until January 15, 2018, without express consent, if the program was installed on the computer system prior to January 15, 2015.



Prepare Now...

- www.fightspam.gc.ca for the law, regulations, information bulletins and FAQs.

Questions?

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