

# CANADA'S ANTI-SPAM LEGISLATION (CASL): NEW RULES ABOUT INSTALLING COMPUTER PROGRAMS

Canada's Anti-Spam Legislation (CASL) came into effect July 1, 2014. On January 15, 2015, new rules about installing computer programs came into force. It is now illegal to install programs on another person's computer without consent. Members should review the new regulations and obtain legal direction in order to ensure they are compliant with the law.

*The new CASL provisions will apply to certain activities relating to magazine apps:*

## 1. DOWNLOADING AND INSTALLING A MAGAZINE APP

**You normally do not need to obtain consent under CASL** when the owner or authorized user of a computer or device installs software, such as a magazine application, on that device.

For example, the owner of a mobile device accesses an online app store to purchase and download a magazine app. Since the owner of the mobile device is installing the app on her/his own personal device, in most circumstances, your magazine does not need to obtain that person's consent.

If the owner of a tablet downloads your magazine app from your magazine's website and installs it on her/his device, in most circumstances, your magazine does not need to obtain that person's consent.

There may be special concerns, and you should seek specific legal advice, if any of the following apply:

- Any other software (whether yours or someone else's) is bundled with your app when it is installed;
- The app collects any personal information, such as an email address or location data that can be associated with an identifiable user;
- The app sends any messages or transmits any data without the user's knowledge or control;
- The app can be remotely activated or controlled;
- The app applies any encryption or other technology to control access to content or data which is stored on the device;
- The app changes or interferes with any stored commands, settings or data on the device; or
- The app otherwise does something the user would not reasonably expect, based on the information provided to the user.

## 2. INSTALLING UPDATES OR UPGRADES TO A MAGAZINE APP

**CASL applies when it comes to installing updates or upgrades to a magazine app.**

If the app was self-installed by the device owner and you therefore did not obtain consent to install updates or upgrades at the time they installed the app, you will need to obtain consent to install any updates or upgrades if these updates or upgrades are installed automatically, without user action.

**One way to do this is to request consent to automatically install future updates *when the device owner originally installs the app.***

You may also need to obtain **new** consent if the update or upgrade substantially changes the functionality of the app, particularly in the kinds of functions identified above as raising special concerns.



### 3. PUSH NOTIFICATIONS FROM A MAGAZINE APP

CASL can apply to push notifications sent from magazine apps, since under CASL, they may be considered to be commercial electronic messages (CEMs) sent in the form of private messages (PMs).

In the same way you need to obtain consent from people who install your magazine app to install updates or upgrades, you will also need to obtain consent to send push notifications.

One way to do this is to request consent to send push notifications *when the device owner originally installs the app*.

### 4. OBTAINING CONSENT

When seeking consent to install software, you must inform the owner or authorized user of the device of the function and purpose of that software. You must also separately, clearly and prominently call attention to and describe the function and purpose of any element of the app which performs any of the following functions in a manner the user would not reasonably expect:

- collect personal information stored on the device;
- interfere with the user's control of the device;
- change or interfere with any stored commands, settings or data on the device without the user's knowledge;
- send any messages or transmit any data without the user's knowledge or control; or
- permit remote activation by a third party.

The request must also satisfy the same rules that apply to a request for consent to send commercial electronic messages (CEMs). See *Your Definitive Guide to Canada's Anti-Spam Law*, a Magazines Canada exclusive tool for members, for more on obtaining consent.

### 5. UNINSTALLING SOFTWARE

If you obtain consent for the installation of software which performs any of the functions described above as requiring special disclosure, you must also provide the user with an email or other electronic address to which the user can send requests for help with removing or disabling the software. This contact address must be valid for at least one year and the assistance must be provided as soon as feasible upon request, at no cost to the user.

The CRTC anti-spam website has more information on the new rules governing the installation of computer programs.

