



STAFF REPORT ACTION REQUIRED

11.

Canada's Anti-Spam Legislation Policy

Date:	October 26, 2015
To:	Toronto Public Library Board
From:	City Librarian

SUMMARY

On July 1, 2014, legislation known as “Canada’s Anti-Spam Legislation” or “CASL” came into effect. The purpose of the law is to prevent the receipt of unwanted commercial electronic messages or “spam”. CASL codifies pre-existing best practices related to e-mail marketing. Prior to the law coming into effect, the Toronto Public Library was using these best practices and continues to do so. As part of the Library’s corporate compliance program for CASL, a policy has been developed and is being recommended for Toronto Public Library Board approval. The policy is a written statement of the Library’s current practices in relation to 1) electronic messages sent to library users and 2) the installation of computer programs required to use library electronic services and provide additional provisions on training and maintaining electronic subscriber list records.

RECOMMENDATIONS

The City Librarian recommends that the Toronto Public Library Board:

1. approves the Canada’s Anti-Spam Legislation Policy.

Implementation Points

Communications, Programming and Customer Engagement will communicate the legislative and policy requirements to Library staff.

FINANCIAL IMPACT

This report has no financial impact beyond what has already been approved in the current year’s budget.

The Director, Finance and Treasurer has reviewed the financial impact statement and is in agreement with it.

DECISION HISTORY

The federal government's anti-spam legislation came into effect on July 1, 2014. Officially titled *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*, the law is better known as "Canada's Anti-Spam Legislation" or "CASL" for short.

Though the legislation came into effect on July 1, 2014, there is a three-year transition period. All the provisions of the law will not come into effect until July 1, 2017.

ISSUE BACKGROUND

The purpose of CASL is to prevent Canadians from receiving unwanted commercial electronic messages, especially those sent out in bulk to multiple recipients. These types of messages are known as "junk mail" or "spam". Electronic messages include e-mails, text messages, instant messaging and messaging through social media.

The law is intended to apply to electronic messages that "has as its purpose, or one of its purposes, to encourage participation in a commercial activity" (s. 1(2)). The definition of "commercial activity" contained in the legislation is "any particular transaction, act or conduct...that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit" (s.1(1)). The law provides no further clarification on what constitutes "commercial." The Canadian Radio-television and Telecommunications Commission ("CRTC") – which enforces the legislation along with the Competition Bureau and the Office of the Privacy Commissioner of Canada – has not provided further guidance on this definition in either its information bulletins or its rulings over the past year.

Due to this lack of clarity, the Federation of Ontario Public Libraries obtained a legal opinion which advised that "(w)hile a significant portion of public library services are free, given the broad definition of "commercial activity" in CASL, there is no doubt that public libraries engage in "commercial activity" and "recommended that, as a best practice, libraries assume that all electronic messages sent by library staff in the course of conducting library business are commercial electronic messages and treat them as such." As a result, member libraries of the Federation of Ontario Public Libraries, including the Toronto Public Library, agreed that it would be prudent for all members to have a CASL policy.

COMMENTS

In order to comply with the legislation, organizations may only send out commercial electronic messages when:

- a) the recipient has granted consent to receive messages from the sender;
- b) the message identifies the sender;
- c) the message provides information on how to contact the sender;

- d) the message provides an unsubscribe option.

Prior to the legislation coming into effect, the Library began using an e-mail marketing company that ensured electronic messages and electronic newsletters would only be sent with the recipient's consent and that our messages included contact information, an unsubscribe option and identified the Library as the sender. Note that the legislation codifies pre-existing best practices for the sending out of bulk electronic messages that the Library was already following prior to CASL.

CASL also contains provisions dealing with computer programs that came into effect in January 2015. The law prohibits the installation of a computer program (in the course of commercial activity) without the users' consent. The use of some library e-services, including Overdrive, Zinio, and Hoopla, require that users install computer programs or applications. However, these services ask for the consent of users prior to installing any program. The Library will ensure that its third party providers adhere to CASL.

The proposed Canada's Anti-Spam Legislation Policy is a written statement of the Library's existing practices, as noted above, plus provisions dealing with the record keeping of subscriber lists and a provision to provide CASL training to Library staff.

This policy aligns and supports the Library's 2016 - 2019 draft strategic direction by supporting awareness, convenience and use of library services. In consultations, residents have identified that they want more personalized service recommendations. To provide these recommendations, the Library will utilize e-mail and other forms of electronic messaging, and will continue to ensure these channels are used with the appropriate policy guidelines in place.

Toronto Public Library Foundation

CASL applies to registered charities when sending commercial electronic messages (CEMs). However, there is an exemption under CASL's regulations for messages sent by or on behalf of a registered charity where the primary purpose of the CEMs is to raise funds for the charity. Regardless, in consultation with legal counsel the Foundation has taken steps to ensure compliance with the spirit of CASL.

CONTACT

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SIGNATURE

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City Librarian

ATTACHMENTS

Attachment 1: Canada's Anti-Spam Legislation Policy