



**Canadian Vehicle
Manufacturers' Association**
Association canadienne
des constructeurs de véhicules

November 9, 2017

Hon. Dan Ruimy, P.C., M.P.
Chair, House of Commons Standing Committee on
Industry, Science & Technology (INDU)
House of Commons
Ottawa, ON K1A 0A6

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Re: Statutory Review of Canada's Anti-Spam Law

Dear Mr. Ruimy:

The members of the Canadian Vehicle Manufacturers' Association (CVMA), FCA Canada Inc., Ford Motor Company of Canada, Limited and General Motors of Canada Company, are writing to you in your capacity as Chair of the House of Commons Standing Committee on Industry, Science & Technology and its work regarding the legislative review of Canada's Anti-Spam legislation (CASL). We greatly appreciate the government's detailed review and encourage the committee to take the time necessary to ensure critical shortfalls of CASL are addressed.

The CVMA worked with Industry Canada (*now Innovation, Science & Economic Development*) during the development of the legislation to communicate our concerns that provisions were much broader than intended, that is, to protect Canadians from spam, malware and spyware. Many of our concerns remain as the legislation and subsequent regulations took an overly prescriptive approach and, in doing so, created unanticipated consequences on government priorities including innovation and trade. We recommended a comprehensive legislative review prior to enacting the private right of action given our concerns with the legislation.

It is critical that the CASL legislative framework is able to respond to current and future innovation without compromising the legislation's original purpose and objective to protect Canadians from spam, malware and spyware. Product characteristics contemplated today will not be the products of tomorrow and certainly not those of next year. CASL should support both technological innovation available to Canadian consumers and the ability of the government to fulfill the objectives under CASL.

The government now has the opportunity, and the need, to undertake comprehensive revisions to the legislative language in order to address areas of the legislation that hinder both technological innovation available to Canadian consumers and the ability of the government to truly fulfill the objectives under CASL.

Emerging and advanced vehicle technologies which include sophisticated computer systems are designed and implemented on a North American basis. Updates and enhancements of vehicle computer systems and programs are necessary and useful to optimize the performance of the vehicle and an update to one program may require adjustments to a number of other computer programs on the vehicle. In addition, updates or enhancements to computer systems may be required to create the necessary interface that will permit the consumer to access and download new applications and technologies. It is important that CASL provisions reflect and support the government's innovation agenda objectives and not inadvertently impede innovation by increasing costs to industry, and increasing inconvenience to consumers with vehicle updates/upgrades, which if not undertaken, will impact vehicle efficiency.

The following information was provided to the previous government during the development of the legislation and remain our priority concerns to be addressed under this legislative review:

Issue	Negative Impact in Context of automotive manufacturers	Recommendation	Rationale
Private Right of Action (CASL sections 47 – 55)	Availability of statutory damages and broad legislative drafting in CASL makes frivolous and questionable lawsuits likely. The disproportionately high costs and negative publicity associated with such law suits will negatively impact innovation.	Remove from the legislation or amend to restrict standing to sue to those businesses who are directly impacted by spam, spyware and other online threats.	There remains significant uncertainty about what organizations must do to comply with CASL. Until this uncertainty is addressed, the benefits of private enforcement of CASL are outweighed by the negative impacts of frivolous and questionable lawsuits.
Computer programs (CASL section 10(8) (a))	<p>The operation of an automobile is increasingly dependent on computer programs.</p> <p>The express consent requirement in CASL applicable to the installation of computer programs may, as a practical matter, impede automobile manufacturers from effectively using wireless means to install warranty, recall, safety and security upgrades and updates.</p>	<p>Replace sections related to the installation of computer programs to specifically address only malicious software.</p> <p>Define “malicious software” to mean: “a computer program designed to:</p> <ul style="list-style-type: none"> i) Disrupt or deny operation of a computer system or other computer program; ii) Disrupt or deny access to or use of the resources of a computer system; or iii) Collect personal, financial or proprietary information stored on the computer system; that, in each case, is installed without authorization. <p>Define “without authorization” to mean “without authorization of the owner or an authorized user of the computer system, including where authorization is obtained with an intent to deceive or defraud or where a computer system is accessed in contravention of an Act of Parliament.”</p> <p>Ensure that “cookies” are not deemed to be computer programs.</p>	Adding clarity that the legislation regulates only malicious software will benefit consumers by improving the performance and security of their computer systems, without compromising the purpose of the computer program provisions in CASL.

<p>Transactional and service related messages (CASL section 6(5))</p>	<p>Automobile manufacturers use electronic means to communicate product, warranty, recall, safety and security information.</p> <p>Consumers may become confused and inadvertently unsubscribe from receiving messages that they want to receive.</p>	<p>Narrow the scope of “commercial electronic message” so that CASL regulates only messages the primary purpose of which is (a) advertising, marketing, promoting or otherwise offering a product, good, service, land, business, investment or gaming opportunity, or (b) promoting a person, including the public image of a person, as being a person who does anything referred to in (a). Doing so will provide needed clarity as to when CASL’s e-messaging rules apply and ensure that these rules do not apply to factual or transactional messages.</p> <p>A narrowed scope of “commercial electronic message” would then make section 6(6) unnecessary and it should be removed.</p>	<p>A narrowed scope will help to avoid confusion among consumers about the significance of an unsubscribe mechanism and will enable industry to use electronic means to send messages that are clearly of benefit to consumers particularly in respect of warranty, recall, safety, and security information.</p>
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The CVMA also supports the submission being made by a Coalition of Business and Technology Associations¹. The members of the coalition share a consensus position as to the challenges with the legislation and to the recommendations that would address those challenges.

The CVMA encourages the committee to take the time needed to undertake a comprehensive review of this complex legislation and ensure issues and impacts are addressed effectively. This legislation needs the flexibility to respond to current and future innovation without compromising technology advancements nor the original intent. The CVMA would be very pleased to provide any additional information that would be helpful or to discuss in greater detail.

¹ Coalition of Business and Technology Associations:
 Canadian Bankers Association
 Canadian Chamber of Commerce
 Canadian Federation of Independent Business
 Canadian Marketing Association
 Canadian Wireless Telecommunications Association
 Canadian Vehicle Manufacturers’ Association
 Electro-Federation of Canada
 Entertainment Software Association of Canada
 Global Automakers of Canada
 Information Technology Association of Canada
 Interactive Advertising Bureau of Canada
 Magazines Canada
 Retail Council of Canada

Thank you for your attention to this important review process. Please do not hesitate to contact me directly at 416-364-9333 if I can be of further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Nantais'.

Mark A. Nantais
President

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