

Minister of
Innovation, Science and
Economic Development



Ministre de
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Développement économique

Ottawa, Canada K1A 0H5

Mr. Dan Ruimy, M.P.
Chair of the Standing Committee
on Industry, Science and Technology
131 Queen Street, 6th Floor
House of Commons
Ottawa, Ontario K1A 0A6

Dear Colleague:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond, on behalf of the Government of Canada, to the report by the Standing Committee on Industry, Science and Technology entitled *Canada's Anti-Spam Legislation: Clarifications are in Order*, presented to the House of Commons on December 13, 2017.

The Government of Canada extends its gratitude to the members of the Committee for their comprehensive review of *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 Committee's recommendations provide valuable guidance as the government continues its commitment to promoting the efficiency and adaptability of the Canadian economy by regulating certain commercial conduct that discourages the use of electronic means to carry out commercial activities.

The government would also like to express its appreciation to Canada's Anti-Spam Legislation (CASL) enforcement agencies, namely, the Canadian Radio-television and Telecommunications Commission (CRTC), the Competition Bureau, and the Office of the Privacy Commissioner of Canada, as well as to the numerous stakeholders, businesses of all sizes, charities, non-profit organizations, and experts who appeared before the Committee as witnesses for this important exercise. The views expressed throughout the review offer valuable insight as to how the Act has functioned during its first three years

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and how its effectiveness can be improved going forward. We also took note of the Supplementary Opinion of the New Democratic Party, which was put forward by Mr. Brian Masse, Member of Parliament and NDP Critic for Innovation, Science and Economic Development.

The government believes that the aim and principles of the Act address important issues and that consumers, businesses, and other organizations all benefit from increased trust in the digital economy and the means of communications that support it. Moreover, the government is of the view that a healthy electronic marketplace is key to a growing, competitive, knowledge-based Canadian economy, which in turn helps our businesses grow, innovate, export, and create quality jobs and wealth for Canadians.

The Committee's work has provided important insight on the areas of the CASL that may require clarification. As previously noted by our government, we believe that Canadians deserve an effective law that protects them from spam and other electronic threats while at the same time minimizing the cost and administrative burden of compliance for Canadian businesses, charities, and non-profit groups. Therefore, the government must now work with a diversity of stakeholders to identify concrete solutions that will ensure that the CASL strikes the right balance to achieve these goals. In this context, we note that many witnesses highlighted practices and legislative provisions in other jurisdictions. We believe that it would be worth revisiting developments that have occurred in international anti-spam laws, especially given that the work of the original Task Force on Spam was conducted over 12 years ago. Considering the continuously evolving cyber threat environment, any possible amendments to the CASL must also be mindful of emerging issues to ensure that the laws remain relevant and technologically neutral.

To this end, please find below the Government Response to the Parliamentary Committee's Report, grouped along key themes identified through the recommendations:

Adopting a short title for Canada's Anti-Spam Legislation

(Pertaining to recommendations 1 and 13)

The government agrees with the Committee's recommendation that consideration should be given to adopting a short title. We will need to assess the benefits versus the costs and potential risks of adopting a new short title for the Act. While the long title is relatively unknown, the public and stakeholders, including international stakeholders, have been referring to the Act as Canada's Anti-Spam Legislation—CASL. "CASL" is now commonly and broadly used to reference the legislation. Given the other recommendations related to ensuring clarity in the interpretation of the CASL, the government would want to hear from stakeholders regarding the potential impact of such a change.

Should a new short title be adopted, the government agrees to replace references to “Canada’s Anti-Spam Legislation” wherever they may appear in relevant government materials and publications and will collaborate with the CRTC, the Competition Bureau, and the Office of the Privacy Commissioner of Canada so that this recommendation can be implemented on their respective sites.

Clarification of certain definitions and provisions of the Act

(Pertaining to recommendations 2, 3, 4, 5, 6, 7, and 8)

The Committee recommends that the Government of Canada clarify a number of definitions and provisions in the Act to ensure that the provisions as enacted are clear and understandable for parties subject to the legislation and do not create unintended costs of compliance. In particular, the Committee recommends that the government clarify:

- the definition of “commercial electronic message” and notably the status of administrative and transactional messages vis-à-vis this definition;
- the provisions pertaining to “implied consent” and “express consent”;
- the definition of “electronic address”;
- whether business-to-business electronic messages fall under the definition of “commercial electronic message”;
- whether electronic messages listed under subsection 6(6) of the Act fall under the definition of “commercial electronic message”;
- how to best incorporate messages sent on behalf of an authorized person with regard to paragraph 6(2)(a) of the Act; and
- the application of the Act and its regulations to charities and non-profit organizations.

The government has noted the Committee’s concerns that the Act and its regulations require clarifications to reduce the costs of compliance and better focus enforcement and that a number of provisions warrant attention in this regard. We also note that many witnesses echoed the concerns raised about perceived ambiguities in the interpretation of certain provisions of the Act.

The government recognizes that the more explicit the legislation and its obligations are, the more effective the Act will be. We also intend to work closely with stakeholders to identify ways to improve the areas that are the object of the Committee’s recommendations. Clear obligations support both senders and consumers, and it is the government’s aim that the CASL be as clear as possible while remaining adaptable and neutral to technological developments.

Increase education and transparency related to Canada's Anti-Spam Legislation

(Pertaining to recommendations 9 and 12)

The government agrees that education and transparency are critical to the efficient operation of the CASL. Innovation, Science and Economic Development Canada officials have engaged their counterparts within the CRTC and other CASL enforcement agencies to explore various options to improve awareness and knowledge of the Act and its regulations.

The government, while respecting the CRTC's independence as an administrative tribunal, will work with the CRTC to examine how it can be more transparent in the methods, investigations, and determinations of penalties, as well as on the collection and dissemination of data on consumer complaints and spamming trends. We will also explore ways to optimize existing educational efforts and resources to achieve increased efficiency and effectiveness. To this end, the government will seek to leverage existing business relationships that have been fostered in the context of outreach efforts with business and civil society in the context of the implementation of the Innovation and Skills Plan.

Private right of action

(Pertaining to recommendation 10)

The government agrees to investigate further the impact of implementing the private right of action and to consider options for its implementation, including whether awards of damages should be based on proof of tangible harm. A decision on the private right of action will be part of the broader considerations that the government pursues through consultation with key stakeholders, thereby ensuring the CASL is effective, balanced, and delivers for Canadians.

Sharing of information by the CRTC with domestic law enforcement agencies

(Pertaining to recommendation 11)

The government agrees with the Committee's recommendation regarding information sharing. Given the scope of spam and the related cyber threats, information sharing and co-operation among enforcement agencies is critical to the enforcement of the law. The CRTC has already had success with information sharing, such as its collaboration with international law enforcement agencies to dismantle the Dorkbot botnet. More recently, the CRTC announced that it has entered into a memorandum of co-operation with Japan's Ministry of Internal Affairs and Communications to combat unsolicited commercial

electronic messages. Under this agreement, both jurisdictions agree to share information and provide investigative support to combat unwanted emails received by Canadian and Japanese residents. This agreement builds on existing co-operation and sharing agreements that the CRTC has concluded with Canada's closest international partners, including the United States, the United Kingdom, New Zealand, and Australia.

At the domestic level, CASL enforcement agencies have outlined their respective commitment to co-operation, coordination, and information sharing in an interagency memorandum of understanding that serves to bolster the effectiveness of the CASL regime. Moreover, the recent consultations on National Security and Cybersecurity have made it clear that additional information sharing and collaboration between federal departments and agencies could serve to enhance the privacy and security of Canadians, especially in an active online environment.

Additional collaboration with domestic law enforcement and national security agencies will assist CASL enforcement agencies in effectively discharging their respective mandates to ensure compliance with the legislation, thereby limiting the negative effects of spam and malware, and encourage the growth of Canada's digital economy. The government will consider how enforcement agencies could effectively share information with domestic law enforcement agencies to meet these objectives.

Once again, I thank the Committee for its faithful consideration of these important issues. The government is committed to facilitating innovation and an efficient marketplace, including in the digital realm, and will endeavour to further consider how to improve the CASL to meet these ends.

Sincerely,



The Honourable Navdeep Bains, P.C., M.P.