

# CANADA'S ANTI-SPAM LEGISLATION AND REGULATIONS



# Disclaimer



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# Purpose

## Industry Canada

- Provide a high level overview of what the Act applies to and what it requires, so that business can understand their obligations.

## CRTC

- Provide an overview of how the CRTC will interpret the Act and regulations, with a view to being transparent and predictable.

# Contents

- 1) What you need to know if your business sends **Commercial Electronic Messages**
- 2) What you need to know if your business **installs software** on other people's devices



# 1) Sending **Commercial Electronic Messages**

- CEMs and Requirements
- ID and unsubscribe
- Consent
- Exemptions
- Special Cases
- Coming into Force

# Do I send “Commercial Electronic Messages”?

A Commercial Electronic Message (CEM) is a *message whose purpose is to encourage participation in a commercial activity*

- CASL does not apply to:
  - non-commercial activity
  - voice, facsimiles or auto-recorded voice calls (robo-calls)
  - broadcast messaging including tweets and posts

# Sending to An Electronic Address?

- Under CASL an electronic address could be
  - An email account
  - A telephone account
  - An instant messaging account
  - Any similar account

# What Must be Included in Each CEM?

- Clearly identify yourself
- Provide a method where the recipient can readily contact you
- Provide a working unsubscribe mechanism:
  - Functional for 60 days
  - No cost
  - Same means unless impracticable
  - Include either electronic address or link
  - Must process without delay



# Do I Have Consent?



## Express Consent

- Did the recipient say “yes” to receiving your CEM?
- An individual must take action to “opt-in” to a stated purpose

## Implied Consent

- Can you show that you have an existing business or non-business relationship?
- Did the recipient disclose their address to you?
- Is the address published? Is there a statement saying they don’t wish to be contacted?

# Do I Have Consent?

*Can you show where you got each electronic address?*

- You need to track how you obtained consent of each individual to whom you send CEMs.
- **Note:** A message sent seeking consent to send CEMs is also considered a CEM

# When is Consent Not Required?



- Quotes or estimates
- Messages that facilitate or confirm transactions
- Provides warranty, recall, safety or security information
- Provides information about
  - ongoing use or ongoing purchases
  - ongoing subscription, membership, accounts, loans or similar
  - employment relationships or benefit plans
- Delivers a product good or service, including updates and upgrades

# Is My Message Exempt?



CASL does not apply to messages if:

- You have a **Personal Relationship** with the recipient
  - individuals have a personal relationship (taking into consideration any relevant factors); and
  - you've had direct, voluntary, two-way communication.
- You have a **Family Relationship** with the recipient
  - marriage, common-law partnership or any legal parent-child relationship; and
  - you've had direct, voluntary, two-way communication.

# Is My Message Exempt?



CASL does not apply to messages that are sent:

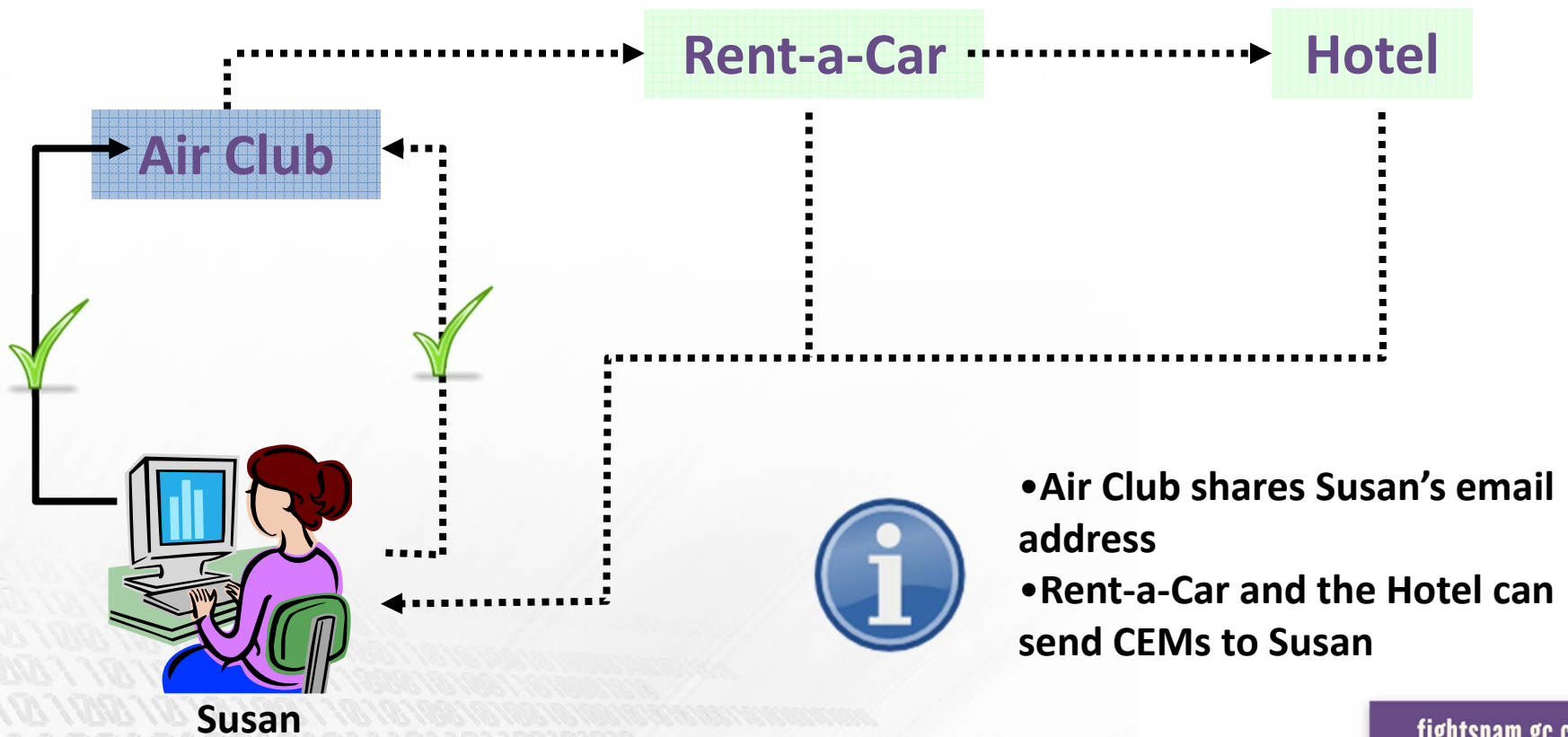
1. Within or between business, where there's an ongoing relationship;
2. In response to a request;
3. To enforce a legal right or obligation;
4. Via closed messaging systems;
  - a) Proprietary system
  - b) Messaging systems where ID and unsubscribe included on platform
5. To a foreign jurisdiction in compliance with their spam law; (see Schedule 1 in the ECPR)
6. By registered charities raising funds
7. By political candidates or organizations, soliciting political contributions

# Special Cases – Unknown Third Parties

**A person can get consent on behalf of yet to be determined third parties**

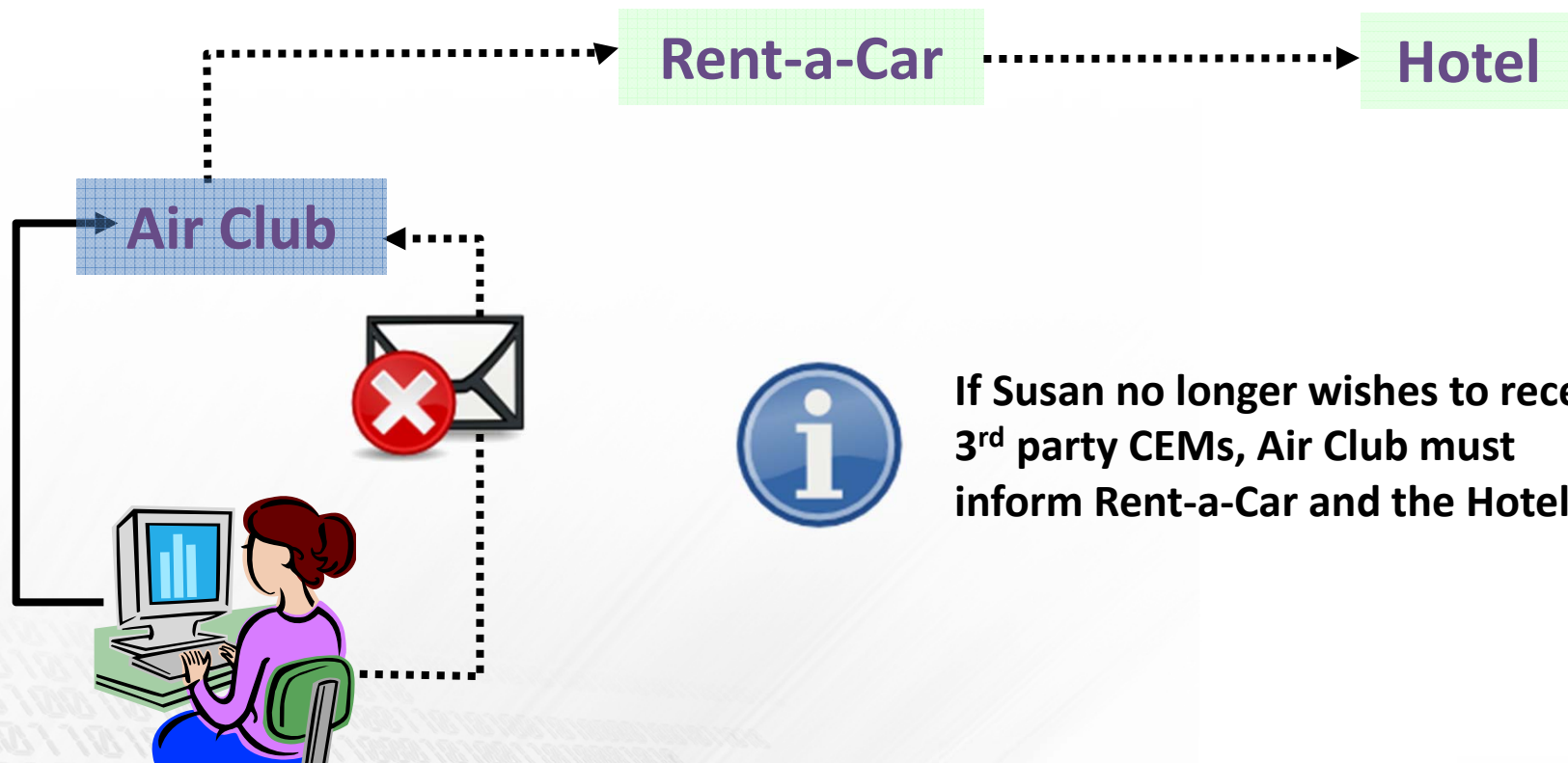
- All parties relying on consent obtained by others are accountable for managing that consent.
- ID and unsubscribe requirements still apply

# Special Cases – Unknown Third Parties



Susan  
"Send me CEMs AND let  
Third Parties send me CEMs"

# Special Cases – Unknown Third Parties

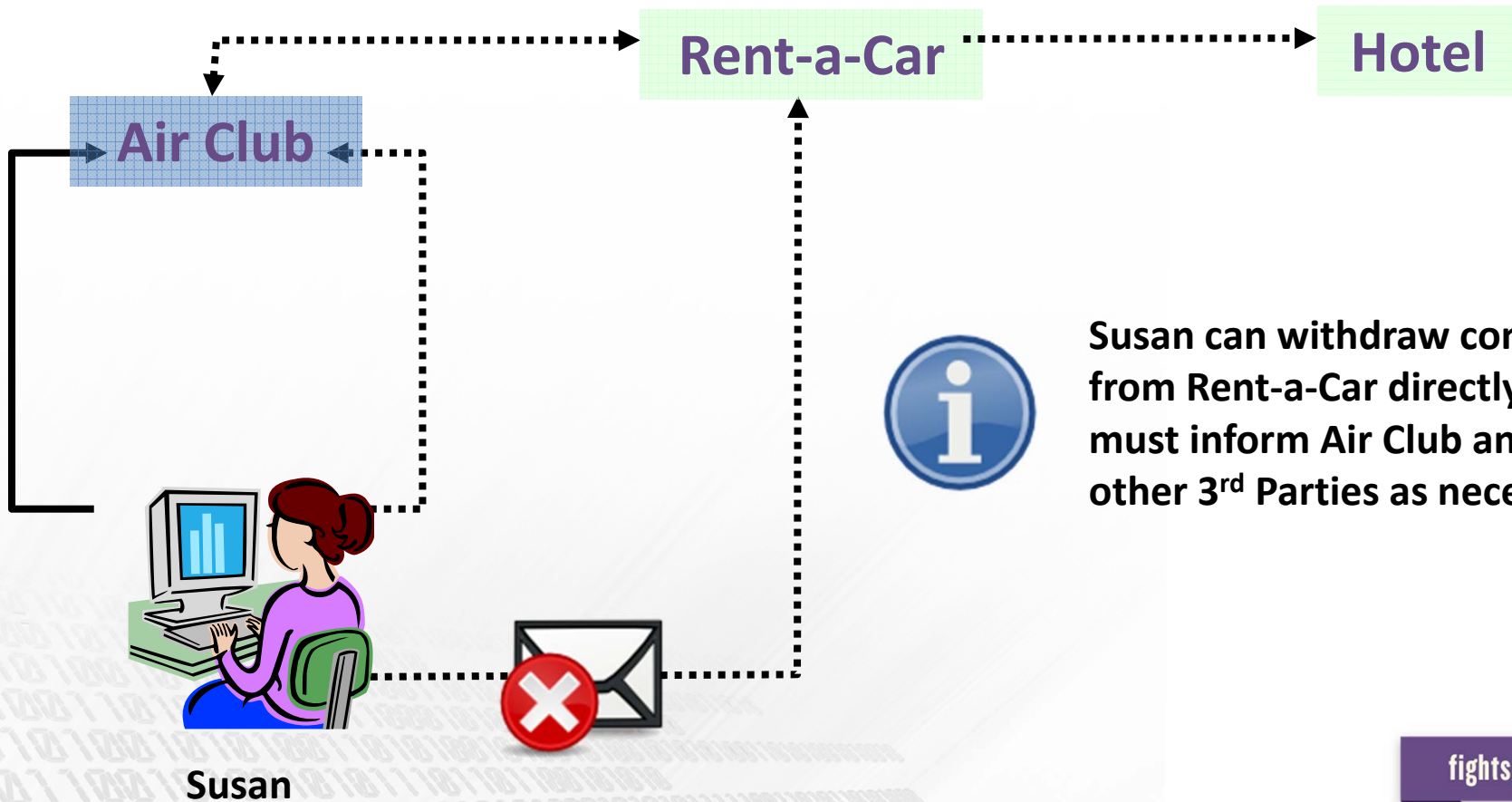


If Susan no longer wishes to receive 3<sup>rd</sup> party CEMs, Air Club must inform Rent-a-Car and the Hotel

Susan



# Special Cases – Unknown Third Parties

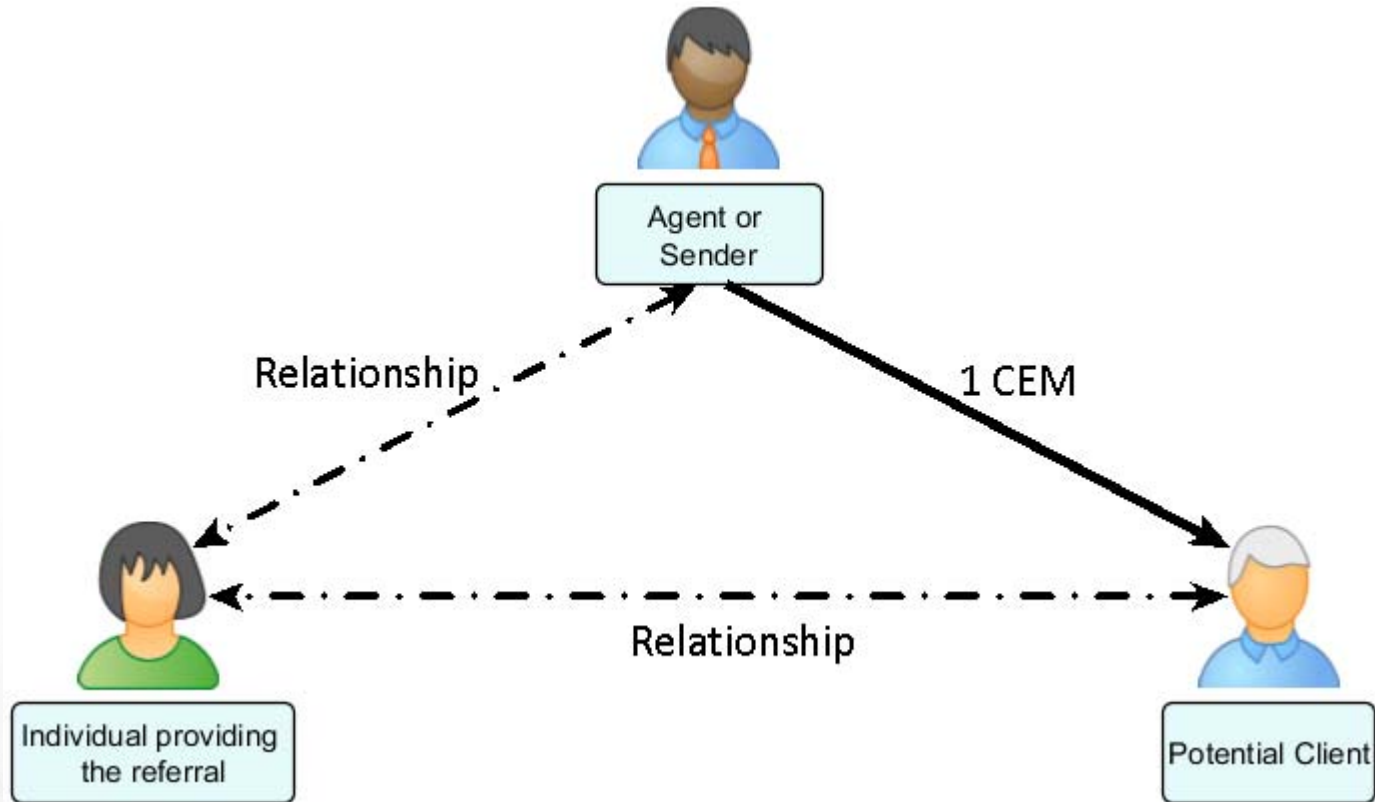


Susan can withdraw consent from Rent-a-Car directly, who must inform Air Club and other 3<sup>rd</sup> Parties as necessary

# Special Cases – Third Party Referrals

- You may refer a prospective client to another person if you have an existing relationship with the prospective client
- If you receive a referral, you may send one CEM to the prospective client
  - CEM must include the full name of the individual who made the referral

# Special Cases – Third Party Referrals



# When Do I Need To Be Ready?



## Coming Into Force

- Most of the Act comes into force **July 1, 2014**
  - You will need consent from any new client and each CEM must include ID and an unsubscribe mechanism

## Transitional Provisions

- Implied consent to continue sending CEMs to existing contacts for 3 years

# What Should I do to Prepare?



- **Examine your messages**
  - Do you send CEMs?
  - Are they covered by CASL?
- **Provide ID and unsubscribe mechanism**
  - Clearly identify yourself
  - Provide an unsubscribe mechanism in every CEM
- **Get consent**
  - Clear express consent or implied consent
- **Manage your contact list**
  - Make sure you can demonstrate consent for every recipient
  - Be able to act on unsubscribe requests



## 2) Installing software on other people's devices

- Consent
- Special Cases
- Coming into Force

# When Do I Need Consent?

- You need to have express consent when installing a computer program on someone else's device
- The only exception is when you are acting in accordance with a court order

# Do I Need To Seek Consent?

There are certain categories of programs where a person is considered to have provided express consent to installation:

- When TSPs install software to
  - Protect their networks
  - Upgrade or update their networks
- When addressing a failure in the system software or hardware
- If the program you're installing is a
  - A cookie,
  - HTML code,
  - Java Scripts,
  - An operating system,
  - A program executable only through the use of another computer program that you previously obtained consent to install



# When Seeking Consent

- Does your program:
  - Collect personal information?
  - Interfere with the owner's ability to control their device?
  - Change settings or preferences without the owner's knowledge?
  - Interfere with data, preventing the owner from accessing it?
  - Cause the device to communicate with another without the knowledge of the owner?
  - Install any software that can be activated by a third party?

**If YES, you must make this clear when requesting consent and it must be separate and apart of the licence agreement or EULA**

- This ensures people understand what they're consenting to

# Consent for Program Updates

Consent is required to install program updates or upgrades

- Consent can be assumed for updates and upgrades that fall into previously discussed categories
- Consent to updates or upgrades may be sought in advance of the actual installation
- Requests for consent for updates and upgrades must respect additional requirements if triggered

# When Do I Need to be Ready?



## Coming into Force

- Software provisions come into force **January 15, 2015**

## Transitional Provisions

- **3 year transitional period** for updates and upgrades to existing computer programs
- For any software installed prior to January 15, 2015

# What Should I do to Prepare?



- **Examine your software**
  - Are you installing on another computer?
  - Is it a type of program for which you can assume consent?
  - Does the program include functions that trigger enhanced requirements when seeking consent?
- **Get consent**
  - If necessary, develop a mechanism to seek and obtain consent before installing the program

# How Can I Report Spam?

*As of **JULY 1<sup>st</sup> 2014**  
you'll be able to report spam  
and other violations at  
[Fightspam.gc.ca](http://Fightspam.gc.ca)*

fightspam.gc.ca

CANADA'S ANTI-SPAM LEGISLATION

# Where Can I Get More Information?

[Fightspam.gc.ca](http://Fightspam.gc.ca)

Government of Canada / Gouvernement du Canada

Canada.gc.ca | Services | Departments | Français

## Canada's Anti-Spam Legislation

Canada's Anti-Spam Legislation

Reader Rating: 2.92

### CANADA'S LAW ON SPAM AND OTHER ELECTRONIC THREATS

#### Individuals



The new law will help Canadians avoid spam and other electronic threats:

- [How to recognize spam](#)
- [Protect yourself online or while mobile](#)
- [Protect your electronic devices from threats](#)

#### Businesses and Organizations



The new law will affect any individual, business and organization that:

- [Makes use of commercial electronic messages](#)
- [Is involved with the alteration of transmission data](#)
- [Produces or installs computer programs](#)

[fightspam.gc.ca](http://fightspam.gc.ca)

CANADA'S ANTI-SPAM LEGISLATION

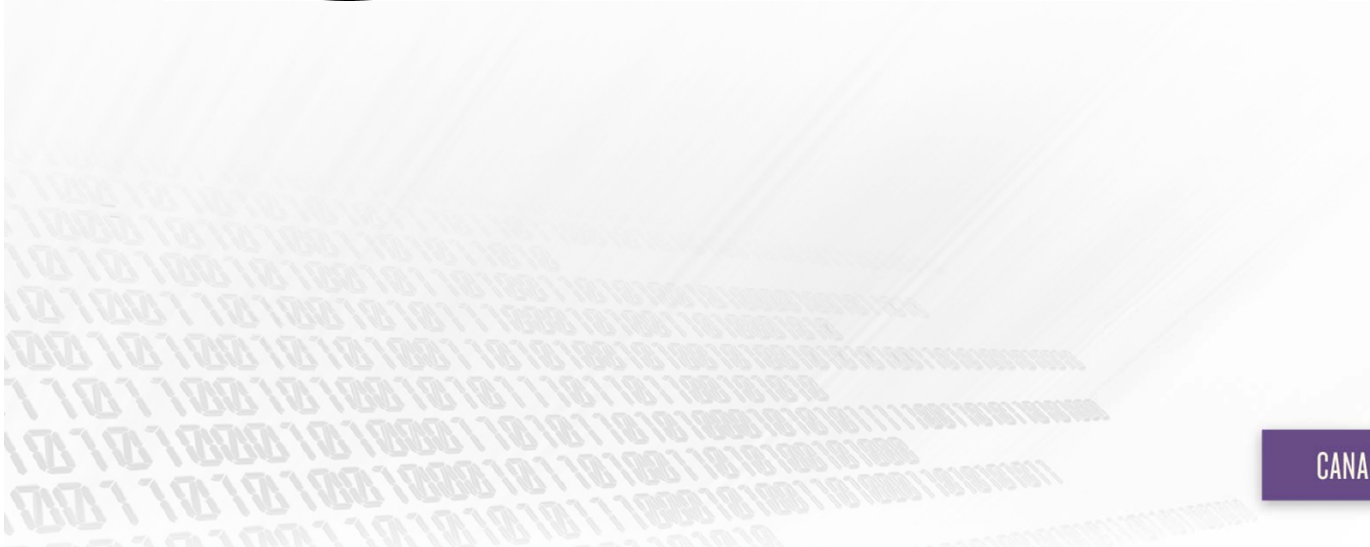


# Questions?





# Canada



[fightspam.gc.ca](http://fightspam.gc.ca)

CANADA'S ANTI-SPAM LEGISLATION