

Coalition of Business and Technology Associations

Canadian Bankers Association

Canadian Chamber of Commerce

Canadian Federation of Independent Business

Canadian Marketing Association

Canadian Vehicle Manufacturers Association

Canadian Wireless and Telecommunications Association

Global Automakers of Canada

Interactive Advertising Bureau of Canada

Information Technology Association of Canada

Magazines Canada

News Media Canada

Email Sender & Provider Coalition

Retail Council of Canada

The Entertainment Software Association of Canada

December 10, 2018

Mr. Ian Scott

Chairperson and Chief Executive Officer

Canadian Radio and Telecommunications Commission

Les Terrasses de la Chaudière

1 Promenade du Portage

Gatineau, Québec

J8X 4B1

RE: Compliance and Enforcement Information Bulletin CRTC 2018-415

Dear Mr. Scott

I am writing to you on behalf of a coalition of 14 business associations that represent virtually every business in Canada. On November 5, 2018, the Canadian Radio and Telecommunications Commission issued Compliance and Enforcement Information Bulletin CRTC 2018-415 (the "Bulletin"). The collective members of our coalition have serious concerns with the broad potential liability for electronic intermediaries as suggested by the Bulletin.

The CRTC's interpretation of Section 9 of Canada's Anti-Spam Legislation (CASL) is both incorrect at Law and harmful to Canada's continuing transformation to a digital economy.

Most troublingly, the Bulletin suggests that a broad range of intermediaries could be liable under Section 9 for violations of CASL by third parties simply by providing the services or facilities used by such third parties to contravene CASL, or by providing technical assistance or advice, even if the intermediary did not intend to assist in a contravention of CASL or was unaware that its activities enabled or facilitated contraventions of CASL by the third party.

Such a broad interpretation of Section 9 of CASL is not supported by established principles of statutory interpretation or existing jurisprudence on accessorial liability.

Moreover, suggesting that virtually any organization engaging in electronic commerce, or providing a web-based service, may be liable for the CASL violations of third parties, with no actual or constructive knowledge that third parties were using that organization's products, platform, software, tools or services, runs directly counter to the stated objective of the Act. Far from facilitating and encouraging electronic commerce and the growth of the digital economy, this approach will impede the development and operation of the digital sector.

The costs and administrative burden of fulfilling the additional compliance obligations of active monitoring and intercepting bad actors suggested in this Bulletin may be enormous, especially for start-ups and small businesses. Moreover, the mere possibility of such expanded liability will increase the risk profile for intermediaries, driving up both insurance and capital costs. This could have the unintended consequence of driving up costs for consumers. Ultimately, this will result in a downturn of electronic commerce in Canada – precisely the opposite of what CASL was intended to achieve.

The members of the associations that make up the Coalition regularly interact with multiple regulatory authorities. Regulatory and legal compliance is a priority, however, this is far more accessible when facilitated by meaningful consultation between agencies and industry regarding enforcement interpretations. As a coalition, we would greatly appreciate the opportunity to meet with you and your staff to discuss how this guidance Bulletin will be applied in order to achieve both the compliance objectives of the CRTC and the legislative policy objective of CASL to encourage the growth of electronic commerce in Canada.

Best regards,

A handwritten signature in black ink, appearing to read 'S. Smith', written in a cursive style.

Scott Smith
Senior Director, Intellectual Property and Innovation Policy
Canadian Chamber of Commerce