

Canada's Anti-Spam Legislation (CASL)

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Canada's Anti-Spam Legislation (CASL)

1. What is CASL and what is its intent
2. When does it come into effect?
3. Does it apply to me?
4. Consent
5. Exemptions
6. Penalties
7. Compliance Tips

What is CASL & Its Intent

Officially:

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

Key Dates

July 1, 2014 – Majority of CASL comes into effect

July 1, 2015 – Application to computer programs

July 1, 2017 – Private Right of Action

Does CASL Apply to Me?

Do you send Commercial Electronic Messages (CEM)?

An electronic message having regard to the content thereof, hyperlinks or contact information contained therein, it would be reasonable to conclude its purpose (or one of its purposes) is to encourage participation in a commercial activity

CEM (the electronic part)

- Emails
- Instant messages
- Texts
- Electronic correspondence

CEM (the purpose part)

- Content of the message
- Are there hyperlinks that direct you to website content or database?
- Is company contact information included?

Examples may include:

- Offers to buy, sell, lease, etc.
- Offers to provide a business or investment opportunity
- Promoting a person who does or intends to do any of these things

**We know we are
sending CEMs.**

Now what?



3 General Requirements for Sending CEMs

1. Consent
2. Identification information (of sender)
3. Un-subscribe mechanism

Consent

- Express
 - Affirmative action to 'opt in'
- Implied
 - Some sort of existing relationship but no specific or deliberate action taken by recipient

Consent - Express

- Someone signs up on a website
- Someone request addition to a list by way of phone or other direct communication
- Checks an unchecked box during the buying process

Don't forget to keep records...

Consent - Express

Express Consent Request Must Include:

- Purpose of request (i.e. to email you promo materials)
- Company name and contact information
- Statement that consent can be withdrawn at any time
- Unsubscribe mechanism (effective within 10 days)

and...Must be affirmative

Consent - Implied

Existing Business Relationship

- Did business in past 2 years (purchase, lease, other contract)
- Downloaded trial version of product (2 years)
- Received inquiry or application regarding the above within past 6 months
- Party conspicuously published their email or provided it to you without indicating they do not want to receive unsolicited messages and the message is relevant to (their) business

Consent - Implied

Non-Business Relationship

- Membership in a volunteer organization, club, etc.
- Made a donation or gift

All must have been within past 2 years

Consent - Examples

1. Someone who attends a sales event or sees you at a trade fair and expresses interest in your business?
2. Person provides their email address to receive educational or informational materials?

Implied consent, 6 month time period

Consent - Examples

3. Someone refers you to a third party and you send a CEM to that third party?

If the 3rd party giving the referral has a personal or business relationship with you AND the recipient, then OK

Must include identity of the referral source

Consent – Additional Points

Burden of Proof

- Onus on sender
- Obtain express consent, properly document
- Track items like: date, time, IP address, form used, link clicked in email, record voice (do follow up email) etc.

Additional Points

- Express Consent never expires, unless recipient requests to be removed/un-subscribed
- CASL does not require you to re-obtain express consent again following July 1st, 2014
- Electronic Message that contains a request for consent to send CEM is a CEM

Consent Not Required (Sole Purpose)

- Providing estimates or quotes if requested
- Warranty, product recall and safety information
- Relates to the completion of an existing transaction or facilitates an existing transaction

Consent Not Required (Sole Purpose)

- You make an inquiry to a person involved in a business activity, about that activity
- Providing factual info regarding product/good/service the Recipient purchased
- Delivery of product/good/service, updates, that Recipient entitled to receive as part of purchase

Identification of sender and un-subscribe mechanism still required

Exemptions

Messages sent:

- Within an organization
- Between parties with personal or family relationships
- In regards to legal obligations or to enforce legal rights or actions
- By person who reasonably believes the message will be accessed in a foreign country that maintains its own anti-spam laws (Industry Canada list)
- To inquire re commercial goods or services
- By charities or political party/organizations

How About Social Media

A direct message is different than a message posted on a wall or blog

Organizations should review their use of social media platforms and how they are used to ensure compliance with CASL



Penalties

Penalty/Fine

- \$200 per breach, not to exceed \$1,000,000/day
- up to \$1 million per violation for individuals
- up to \$10 million per violation for corporations

Other Liability

- Directors/Officers of corporations potentially liable if directed, authorized, acquiesced, or participated in commission of violation
- Vicarious liability for violations of employees

Factors for Penalty

- Purpose of penalty, previous violation, financial benefit, voluntarily paid compensation



General Points

Transitional period for Implied Consent

- Deemed consent for 3 years (unless withdrawn) where existing relationship that involved exchange of CEMs

CASL wont apply to CEMs if sent to countries with their own anti-spam laws

- Follow where Recipient is.

Private Right of Action Deferred

- Until July 1, 2017, only the Government will be able to take action under CASL

CASL – How to Prepare

1. Know the dates
2. Internal awareness campaign
3. Do an audit of all your online communications
 - Newsletters, transactional messages (text, SMS, etc.), Social Media
 - Ensure you have a compliant 'un-subscribe' mechanism in every CEM

CASL – How to Prepare

4. Review existing databases
 - Determine current levels of consent
 - Identify where current informational requirements and formalities are lacking
5. Manage your contact lists and make every effort to collect all required express consents!
6. Establish a Compliance Team and Policy
(Due diligence can be a defense)

CASL – How to Prepare

How to Take advantage of the Transitional Rule:

- The 3 years for implied consent (as opposed to the 2 years) is only valid if you've been mailing your (implied consent) contacts prior to July 1, 2014
- Identify all your contacts having implied consent (but who you are not currently emailing, and figure out a reasonable reason to email them

Contact Us

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