



## **A Marketer's Guide to Becoming CASL Compliant**

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# CASL

## Canada's Anti-Spam Legislation





- What is CASL?
- Why is it being implemented?
- Who is impacted?
- When does it go into force?
- What are the core requirements?
- What exceptions exist?
- What counts as consent?
- How will it be enforced?
- How can C&A help?

- **Legislation** which outlines new requirements and rules for how **Commercial Electronic Messages (CEM)** are sent, such as:
  - Email
  - Instant Messages
  - Social Media Postings
  - SMS
  - Some voice communications
  
- **Commercial** refers to anything that encourages participation in commercial activities, including:
  - An offer to purchase, sell or lease goods or services
  - An offer to provide a business, sell or lease investment or gaming opportunity
  - Advertising or promotion of these activities or of a person carrying out or intending to carry out these activities

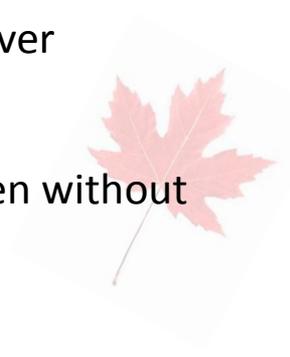


# Why is it being implemented?



## To Prevent:

- **Spamming** ...I'm a prince from a far off land, can I borrow your bank account to park my billions of dollars... [section 6]
- **Hacking** ... imagine what I could do if I controlled your computer... [section 7]
- **Malware / Spyware** ...you didn't know it, but you just installed a program on your computer so prepare for nonstop pop-up banner ads... [section 8]
- **Fraud** ... this week we're having a 75% off sale... but surprise, it's really only 15%... [section 75]
- **Harvesting** ... I'll build a big email database by grabbing every email address ever published on the web... [section 82 (2)]
- **Privacy Invasions** ... I'll just help myself to all of your personal information even without your permission... [section 82 (3)]



## **CASL applies to anyone sending CEMs to Canadians.**

“If the spammer is offshore, we have the ability under the law to co-operate with foreign governments, to share information and to bring proceedings together against individuals that are offshore.”

~ Andrea Rosen, the CRTC’s chief compliance and enforcement officer

**Rule of thumb:** CASL takes effect any time a Canadian computer is used to access the email or any CEM





# July 1, 2014

If implied consent is gathered before July 1, 2014, consent is considered implied until July 1, 2017 as part of the three year transition period.





## Different from PIPEDA:

- ❑ Permission must be obtained before sending email. The permission must be able to be proved with clear consent.
- ❑ No pre-checked boxes on forms. The consent must be an affirmative action.
- ❑ You are not allowed to confirm unsubscribes by sending an “Are you sure you want to unsubscribe?” email.
- ❑ If you are sending “on behalf of” another organization, both organizations must be identified.

## Carried over from PIPEDA:

- ❑ No false or misleading subject lines or from names. The sender must be clearly defined.
- ❑ Working unsubscribe mechanism. Any unsubscribe requests must be processed within 10 days and the unsubscribe link must be valid for 60 days after the send date.
- ❑ Must include a valid postal mailing address (P.O boxes are fine) and one of the following: web address with contact form, email address or phone number.



# What exceptions exist?



- ❑ **Family:** Email between family or people you have a personal relationship with.
- ❑ **Co-Workers:** Work-related emails sent between employees at the same company.
- ❑ **Business Relationships:** Employees at one company emailing employees of another company, if the companies have a business relationship.
- ❑ **Inquiries:** Responding to an inquiry that could be in the form of a question, complaint or solicitation.
- ❑ **Information Requests:** If someone requests more information from your company (could be for a quote, estimate, general information, membership inquiry, etc).
- ❑ **Donations:** A charity can contact someone if they made a donation in the past 18 months.
- ❑ **Legal:** Any legal message relating to a recall, copyright notice, or debt collection request.
- ❑ **Referrals:** One non-consented email can be sent for third party referrals provided that the person/organization making the referral has either a non-business or personal relationship with the recipient and sender. On top of that, the sender must clearly state who made the referral.
- ❑ **Transactions:** Transactional emails that do not contain any marketing language.



## Explicit Consent

- This is when the recipient gives you direct permission to email them (electronic, oral, written)

## Implied Consent

- This is an existing business or non-business relationship between the sender and recipient
  - Made a purchase from you or entered into a contract within the past 2 years
    - 2 years from purchase date, resets with new purchases
    - To communicate beyond the 2 years you need to obtain explicit consent
  - Six months prior to the message being sent, the sender received an inquiry

## ▪ Conspicuous Publication

- Must meet the following:
  1. Their email address is clearly published for viewing
  2. The address is not accompanied by a statement saying that they do not want to receive unsolicited messages
  3. The message is directly related to the person's business or official role.

## ▪ Shared Email Address with the Sender

- If someone gives you their business card then you can email them stuff that is related to their job/role





- Consent to receive those third-party CEMs is valid only if you can unsubscribe from the message and alert the original organization that you have withdrawn your consent. At that point, the original organization must notify all third parties that consent has been withdrawn.
- In essence, this introduces new CEM rules that must be followed by both the party obtaining consent and the parties using that consent.

- **Enforced by:**
  - The Canadian Radio-Television and Telecommunications Commission
  - The office of the privacy commissioner
  - The Competition Bureau
- **The Penalties:**
  - \$1-million for an individual
    - As of July 1, 2017
  - \$10-million for companies
    - As of July 1, 2014
- **Who can take legal action:**
  - Individuals have the right to take actions for the violations of their addresses (if they are found to be incorrect, they will be required to pay court/legal fees)
  - Honest mistakes need proper documentation showing Due Diligence

\*Proceeding may be initiated up to 3 years after the violation was noted by the CRTC.



## ■ Database Audit/Strategy

- Determine impacted contacts (Where Country = Canada or Blank)
  - Contacts where country is unknown are risks
- Normalize country values/ Data Washing Machine for segmentation

## ■ Subscription Strategy

- Ensure unsubscribe process is CASL compliant
- Build out a documentation strategy for recording consent (prove due diligence)
  - Capture Opt-in Method
    - Electronic/Form
    - Verbal/ Call
    - Written/ Letter
  - Capture Opt-in Type
    - Explicit
    - Implied – Business Relationship (2 years)
    - Implied – Requested Information (6 months)
  - Capture Opt-in Dates





- **Email Audit**
  - Ensure that emails are CASL compliant
- **Form Strategy**
  - Update forms to remove pre-checked Opt-in for Canadians
  - Update forms to capture Normalized Country Values
- **Campaign Strategy**
  - Build out a one-off campaign to obtain consent prior to July 1<sup>st</sup>
  - Build out automated campaigns to obtain consent prior to 2 year 'business relationship' expiry
- **Training**
  - Provide onsite or webinar based training for your Marketing and/or Sales team





The information provided in this document is intended to provide only general information and comment to marketers.

Although we make our best efforts to ensure that all information is accurate and timely, we cannot, and do not, guarantee that the information is either.





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