



Canada's Anti-Spam Legislation (CASL)

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Canada's Anti-Spam Legislation (CASL) took effect on July 1, 2014. This law will have a sizable impact on how U.S. businesses conduct their marketing efforts in Canada. The following is a summary of CASL and what it means to U.S. business.

WHAT IS CASL?

CASL significantly limits the way companies send Commercial Electronic Messages (CEM). A CEM is defined as any electronic message intended to encourage participation in a commercial activity. An electronic message includes email, text messages, VoIP phones, digital radio, digital TV and some aspects of social media. Under CASL, the sender of a CEM must have express or implied permission before sending the recipient a CEM.

CASL applies to any CEM sent from Canada OR to a recipient in Canada, including commercial electronic messages sent from the United States to recipients in Canada.

WHAT ARE THE REQUIREMENTS OF CASL?

While CASL does not ban sending CEMs, it requires that senders obtain prior consent before sending the CEM. This consent can be either express or implied. Senders must also provide identifying information in all CEMs. This information must be valid for 60 days after the message is sent. All CEMs must also include an obvious unsubscribe mechanism.

WHAT IS IMPLIED CONSENT?

According to CASL, consent is implied if the CEM falls into one of these four categories:

1. The sender has an existing relationship with the recipient (e.g. there has been a purchase by the recipient within the last two years or an inquiry within the last six months).
2. The sender has an existing non-business relationship with the recipient (e.g. the recipient current is or has been a member of a club or trade association in the past 2 years).
3. The recipient has conspicuously published his or her address and the message is relevant to the recipient's business or official capacity. (e.g. the recipient posting their email address on a website).
4. The recipient's electronic address has been provided to the sender, and the message is relevant to the recipient's business or official capacity. (e.g. the recipient giving a business card to the sender).

WHAT IS EXPRESS CONSENT?

If the sender's messages do not meet the qualifications for 'implied consent', the sender will need express consent. Express consent allows the sender to send CEMs to the recipient until the recipient revokes that consent. To gain explicit consent, the sender must get verbal or written approval (sender must keep records) by:

- Clearly and concisely explaining what the sender is seeking consent for, such as adding an email address to a distribution list
- Clearly and concisely explaining who the consent is being given for
- Having the user opt-in, by doing an intentional action such as checking a box in order to have their electronic address be approved for use on a distribution list

EXCEPTIONS FROM CASL:

The following are exemptions from the Canadian Anti-Spam Legislation:

- Messages between family members or people with personal relationships
- Inquiries or applications sent to a person relating to their business activity
- Responses to requests, inquiries or complaints
- Intra-organization messages and messages between organizations, if they have an existing business relationship, concerning activities of the recipient organization

EXCEPTIONS FROM DEFINITION OF CEM:

The following are exceptions from the definition of Commercial Electronic Message, although the communication must still comply with the CASL requirements as to form:

- Quotes or estimates that have been requested
- Completing or confirming a commercial transaction already agreed to
- Warranty or product recall or safety information
- Notification of factual information about ongoing use or purchase of goods or services under subscription, membership, account, loan or similar relationship
- Information directly related to employment relationship or related benefit plan
- Delivers products, goods or services that the person is entitled to receive under previous transactions
- Messages sent in response to a request, inquiry or complaint or otherwise solicited by the person to whom the message is sent
- Messages sent via secure closed messaging system through which messages can only be sent by account provider

ENFORCEMENT AND PENALTIES

CASL is enforced by the Canadian Radio-television Telecommunications Commission (CRTC). In their role as an enforcement agency, the CRTC has broad investigatory powers and the ability to impose administrative monetary penalties of up to \$10 million. Individuals affected by a violation also have a private right of action.

CASL was drafted as broadly as possible to capture all players in potential violations. Therefore, liability can be imposed on more than just the person that sent the message. Liability can also be imposed on employers, who are liable for acts of employees/agents within scope of employment /agency and corporate directors and officers, who are personally liable if they direct, authorize, or assent to, or acquiesce or participate in a contravention.

As the legislation is much more complex than this document is able to describe, the U.S. Commercial Service recommends that U.S. companies seek out legal advice in devising their marketing plans. For more information on CASL, visit the Government of Canada's website at www.fightspam.gc.ca.

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