



Canada's Anti-Spam Legislation (CASL) came into effect on July 1, 2014. The following is an overview of the requirements imposed by CASL and how it affects the sending of electronic communications.

Who is affected by CASL?

CASL applies to all electronic communications sent with a commercial purpose (commercial electronic messages, or CEM) from Canada or accessed in Canada. As a result, many everyday activities such as sending emails or e-newsletters to clients are subject to the new legislation.

What are the implications of breaching CASL?

Implications for breaching CASL can be significant. Administrative monetary penalties can be up to \$1 million for individuals and \$10 million for entities. The figure may be higher in the case of civil lawsuits. Directors and officers may be held personally liable for non-compliance of employees and agents unless they can demonstrate that they conducted due diligence to address CASL (i.e., ensuring that an appropriate process has been developed, implemented and monitored).

Recommendations

1. Create an inventory of e-addresses to which CEMs are sent.
2. Classify each e-address within one or more of the following categories (and, where applicable, specify the sub-category and expiration date). See **What constitutes "consent"?** and **Exemptions from CASL** below for more information.
 - (a) express consent obtained
 - (b) implied consent obtained
 - (c) exempt from the consent requirement
 - (d) exempt from CASL
 - (e) none of the above
3. For e-addresses that are identified as "none of the above" and all future contacts, create a process for requesting consent, and a system for maintaining your records of consents.
 - Consider obtaining express consent from individuals from whom you have obtained implied consent. Doing so will eliminate the need to track expiration dates.
 - Note that an electronic request for consent is itself considered a CEM.
4. Develop CASL policies and guidelines that include the following:
 - (a) creating and regularly updating a comprehensive list of the types of CEMs that are sent by your organization (e.g., newsletters, event promotions, two-way e-communications)
 - (b) updating templates used to send such CEMs to meet content requirements of CASL (see **Key requirements** below)
5. Provide training sessions to educate employees about your CASL policies and guidelines.
6. Update unsubscribe mechanisms and processes for giving effect to unsubscribe requests.

Key requirements

Organizations need to ensure that the following conditions are met before, or at the time of, sending a CEM:

1. **Consent** has been obtained.
2. The sender's **identification** and contact information have been provided.
3. An **unsubscribe mechanism** is in place.

What constitutes "consent"?

Consent can be explicit or implied. Explicit consent must be obtained through a positive opt-in mechanism, such as through a request for consent, whereby recipients can opt in to receive CEMs from the sender.

Generally, firms can demonstrate implied consent in the following circumstances:

- **Existing business relationship.** There is an existing business relationship arising from the purchase of a product or service within the prior two-year period.
- **Publication.** The recipient conspicuously published their contact information (e.g., on their website) without indicating that they do not want to receive communications, and the CEM is relevant to their business.
- **Business cards.** The recipient voluntarily discloses their email contact information and the CEM is relevant to the recipient's business.

Consent does not need to be obtained in the following situations:

- **Referral.** The CEM is sent as a result of a referral, the CEM discloses the full name of the referring party and the CEM states that the message is sent as a result of the referral (first time only).
- **Prior inquiry.** An inquiry or application was made by the recipient within the prior six months regarding certain commercial activities, including purchases or goods or services.
- **Transaction completion.** The CEM facilitates, completes or confirms a commercial transaction.
- **Factual information.** The CEM provides information about a product or service used or subscribed to by the recipient.

CASL's content requirements (i.e., identification and unsubscribe mechanism) still apply in the above circumstances.

Exemptions from CASL

CASL has outlined a number of exemptions from the CASL requirements. Most relevant are CEMs that

- are sent to family or friends
- consist solely of an inquiry or application related to the business of the recipient
- are sent in response to an inquiry or are otherwise solicited by the recipient
- satisfy a legal obligation or provide notice of existing or pending legal rights or actions
- are sent by an employee of an organization
 - to another employee of the same organization, and the message concerns the activities of the organization, or
 - to an employee of another organization, if the organizations have a relationship and the message concerns the activities of the recipient organization
- are sent by or on behalf of a registered charity, and the message has as its primary purpose the raising of funds for the charity (e.g., as opposed to the advertising of sponsors)

Computer programs

Individuals and firms that offer software applications or computer programs may be subject to additional requirements under CASL. In essence, CASL imposes an express opt-in consent regime on the installation of a computer program on another person's computer, smart phone or other computer-based device, whether or not the program is installed for a malicious or fraudulent purpose.

Contact us

Please contact a member of our [Regulatory Compliance Group](#) if you would like assistance in developing an operationally feasible CASL-compliant program, including

- (a) assessing whether a request for consent will be necessary or whether reliance on exemptions might be available (and more desirable)
- (b) building a process for obtaining consent and maintaining a current inventory of e-addresses
- (c) creating customized templates for each type of CEM sent by your organization
- (d) revising your policies and procedures manual
- (e) providing training sessions for your employees
- (f) responding to any other questions you may have

This nutshell is an overview only and it does not constitute legal advice. It is not intended to be a complete statement of the law or an opinion on any matter. No one should act upon the information in this nutshell without a thorough examination of the law as applied to the facts of a specific situation.