



COMPLIANCE GUIDE TO CANADA'S ANTI-SPAM LEGISLATION (CASL)

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Introduction

This guide aims to assist businesses and marketing professionals in complying with Canada's Anti-Spam Legislation (CASL).

The law affects all electronic communications channels used for promoting products and services to any and all recipients in Canada.

CASL will regulate all communications aimed at recipients residing in Canada and is coming into effect on July 1st, 2014.

While CASL is technically applicable to "commercial electronic messaging," the regulation is applicable to any and all messages, opening regular business communications to be potentially interpreted as violating the regulation.

Any violations to CASL could result in potential liabilities. Private right of action, allowing persons to take civil actions against CASL violators is coming into force in July 2017.

What does this guide provide?

This guide will provide you with compliance instructions and explanations to most common questions on CASL, and identify:

- **Types of communications that fall under CASL**
- **Messages exempt from CASL**
- **Implied consent under CASL**
- **Express consent under CASL**
- **Obtaining express consent under CASL**
- **Relevant compliance deadlines**

CASL is applicable to:

email

text

SMS

instant messaging

text

sound

voice

images & video

Does CASL apply to your communications?

If you respond to any of the following questions with a "yes", then CASL applies to your communications.

- **Is your message sent to or from a computer in Canada**
- **Is your message "electronic"?** This encompasses email, telephone, SMS (see above).
- **Does your message promote a service or a product?**

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Are there exemptions to CASL?

There are exemptions provided to select electronic communications, including messages:

- to recipients with personal or family relationship;
- legal or juridical obligation messaging;
- completion of an commercial inquiry;
- employment or benefit related information;
- delivery of goods and services, including product updates;

There are select marketing messages which also fall under exemption under CASL, as per following:

- communications sent to foreign recipients;
- messages with individuals with whom you have an existing or personal relationship;
- messages answering inquiries;
- messages pertaining to applications;
- inter-organisational communications pertaining to a pre-existing relationship;
- political or charitable messages, including fundraising messages;

Do I have Implied Consent?

You can comply with CASL by obtaining consent from your recipients. For example, there is Implied Consent and it may apply to you if:

- you have an existing business or non-business relationship with the recipient;
- your recipient is a public figure, with publicly available email address, and you are contacting them in relation to their professional role;
- messaging is relevant to business or official capacity of recipient;

How do I obtain Express Consent?

Obtaining consent for sending emails with commercial messaging while complying with CASL has to meet the following conditions:

- recipients must provide prior consent: this can be implicit or expressed;
- sender must be clearly identified: message must clearly identify who the sender is and display contact information;
- consenting recipients must provided an Express Consent acknowledgment, the receipt of which should be kept for posterity;
- sender must provide unsubscribe options, and any requests for unsubscription must be complied with within ten working days.

To obtain Express Consent, the sender should send a specific, permission-obtaining message clearly indicating the intent and purpose of future electronic communications. The consent obtained should be kept as a receipt.

Liability & Consequences

The burden of proof of consent falls to sender, rather than to a recipient of an electronic message.

CASL applies to all recipients in Canada and is enforced by the Canadian Radio-Television Telecommunications Commission (CRTC).

In 2017, the regulation will allow for CRTC to apply financial penalties of up to \$10 million for infringements to CASL, and individuals affected by a violation will also be able to engage in a private right of action.

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Can I still post commercial messages on social media or web sites?

CASL applies only to emails, texts and instant messages, as well as any similar messages which entail electronic addresses.

CASL however, does not apply to any commercial information posted online, such as your website, blog or social media.

Can I obtain Express Consent after July 1st?

Express Consent obtained before or after July 1st, 2014 will be valid until recipients withdraw or unsubscribe from participation.

Can I continue to use my email lists for commercial purposes?

If you have implied or express consent you can continue to use your email lists under following conditions:

- you have previously provided services or products, and
- they have not requested you to stop;

Where can I find out more?

Government of Canada tips and resources, along with the full text of CASL legislation are accessible at following:

<http://fightspam.gc.ca>

About the Author

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For more information, visit our site at

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Disclaimer

The guide provided by BC Realty Solutions is an interpretation of the Canadian Anti-Spam Law.

The guide is for informational purposes only, designed to assist marketers and businesses in complying with CASL. The guide does not constitute a legal advice.

For legal assistance, please refer to a professional legal agency.