

CANADA'S ANTI-SPAM LEGISLATION (CASL)

Canada's Anti-Spam Legislation (CASL), created in 2014, is the federal law dealing with spam and other electronic threats and to reinforce best practices in email marketing, combat spam and related issues. The purpose of CASL is to protect your clients and your business from cyber threats like identity theft, phishing, and the spread of malware.

This legislation applies to any commercial electronic message (CEM) therefore it will affect almost all businesses.

Before sending any electronic messages, you must consider: Is one of the purposes to encourage the recipient to participate in commercial activity?

Some examples of CEM's Include:

- Offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- Offers to provide a business, investment or gaming opportunity;
- Promoting a person, including the public image of a person, as being a person who does anything referred to above, or who intends to do so

In order to comply with the legislation, the following three general requirements outlined below must be fulfilled:

1. Consent

- Express (Recommended)
 - Consent can be obtained either in writing or orally. In either case, the onus is on the person who is sending the message to prove they have obtained consent to send the message.
 - In contrast, express consent does not expire after a certain period of time has passed. It does not expire, until the recipient withdraws their consent.
- Implied
 - For most existing business relationships, consent is implied for 2 years from the date you conduct a business transaction with the person, or until the person withdraws their consent. It is implied for 6 months if someone contacts you for information about your services. Once that period has ended, you will have to obtain the individual's express consent to send any further CEMs.

Note that you will have to track the deadlines for each relationship when relying on implied consent, therefore, while this approach may at first seem more appealing, we recommend obtaining express consent.

2. Identification

Regardless of the type of consent, or the type of existing relationship, the ACT requires that all your electronic communications contain the following:

- Your name/business name
- Your business mailing address
- Either your phone number, email address or web address

3. Unsubscribe Mechanism

Under CASL, you must include an 'unsubscribe' option in all CEM's that you send. An example would be adding a hyperlink to your email that allows the individual to unsubscribe by simply clicking it.

REFERRALS

It is important to note that only the first CEM sent as a result of a referral will be exempt from the consent requirement, and the following conditions apply:

The referral must be made by an individual who you have an existing business relationship, non-business relationship, family or personal relationship with. This same individual must have a similar relationship with the person he or she is referring you to.

PENALTIES

Non-Compliance could result in substantial fines! The maximum fine for an individual is \$1,000,000 and for a business is \$10,000,000.