

CASL is Coming July 1, 2014

Canada's Anti-Spam Law (CASL) is intended to regulate commercial electronic messages (CEMs). It was passed on December 15, 2010 and comes into effect on July 1, 2014. CASL is intended to stop or at least significantly discourage spam as well as malicious code or spyware. It is designed to be very broad and covers e-mail as well as any other commercial message sent electronically. Fines are hefty with a maximum of \$10 million per violation for an organization. It is essential that your company is aware of these regulations and is in compliance with them before July 1st.

The first consideration for businesses is to determine whether or not you are sending CEMs. The answer is almost certainly yes, which means you are subject to this Act. The Act defines a CEM as an electronic message that:

- a) *Offers to purchase, sell, barter or lease a product, goods, a service, land or interest in or right in land;*
- b) *Offers to provide a business, investment or gaming opportunity;*
- c) *Advertises or promotes anything referred to in paragraph (a) or (b); or*
- d) *Promotes a person, including the public image of a person, as being a person who does anything referred to in any of the paragraphs (a) to (c), or who intends to do so.*

The message itself is not the only element that defines it as a CEM. The Act states that it also includes "*the hyperlinks in the message to content on a website or other database, or the contact information contained in the message*".

The key element in CASL is the obtaining of consent. Consent can be either implied or express but both types of consent require that the recipient provide the consent before a CEM is sent. The CEM must also contain the following information:

- Why consent is being obtained (i.e. the purpose of the CEM);
- The name of the business or person requesting consent;
- If consent is being sought on behalf of someone else, who that person is (i.e. in the case of list rental or sharing);
- The mailing address and telephone number, e-mail address or web address of the person seeking consent; and
- A statement indicating that the recipient can withdraw their consent.

Express consent is always the preferred method and involves the recipient agreeing to receive the CEMs. If done through a form, electronic or otherwise, the recipient must check an opt-in box rather than an opt-out. This is considered positive consent. Express consent is valid until the recipient revokes it.

Implied consent is generally based on an existing business relationship or existing non-business relationship between the sender and receiver. It can also be assumed if someone has published their e-mail address "conspicuously" (for example an online directory) without a statement that they do not wish to receive unsolicited CEMs at that address. The CEM must also be relevant to the recipient in a business or official capacity. Implied consent can also be obtained if the recipient provides their e-mail address without indicating they do not want to receive unsolicited commercial electronic messages.

It is important to know that implied consent has a time limit. If there is an existing business relationship, there is a two year time limit that starts from the date of the last transaction or when a contract or subscription ends. However, if the existing business relationship comes from an inquiry or application, the consent is only valid for 6 months. Proof of consent must be obtained before the CEM is sent and the marketer must retain this documentation. Proof might include business cards, consent recordings, web or paper forms, etc. All documentation should clearly show the date of the consent.

Unsubscribe links must be part of every CEM and they must remain valid for a period of 60 days. Any unsubscribe must be processed no later than 10 business days after the unsubscribe request is received. If practical, a selective unsubscribe could be used by marketers. This would allow recipients to choose which types of communication they wished to receive from the company (e.g. newsletters, coupons, promotional offers, etc.) rather than an all or nothing unsubscribe option.

There is a grandfathering clause to provide a transition period for marketers. If the marketer has an existing business or non-business relationship with the recipients which included sending of CEMs, there is an implied consent for a three year period starting July 1. This provides marketers with breathing space to obtain express consent. However, the identification and unsubscribe requirements are still in place.

There are exemptions to CASL. One of these is if there is a family relationship between the sender and recipient or a personal relationship between them. These exemptions would protect the "refer-a-friend" marketing campaigns that rely on family and friends to pass along a promotional message.

A second exemption is communication sent within an organization or between organizations that have a relationship and the communication relates to the activities of the recipient organization. Other exemptions relate to communication being sent outside Canada, those sent over a closed network, as well as by charities and political parties.

CASL has important requirements for companies that share (lend/rent) lists with third parties. If the originating party has consent, the third party may send a commercial electronic message to that recipient with the same disclosure and unsubscribe measures in place. The unsubscribe, however, must allow the recipient to unsubscribe not just from that third party but the originating party as well as any other third parties to whom the originating party has shared the list. This is going to be quite complex and will have an impact on those providing lists containing electronic addresses for recipients.

What you need to do:

1. Document all digital marketing initiatives your company is currently participating in.
2. Document all data sources used for creating lists.
3. Document any consents you currently have for recipients on your lists.
4. Update your electronic communications with the appropriate disclosure and unsubscribe features.
5. Develop policies and procedures around consent and electronic communications and ensure your staff understands and complies with them.

Many companies have been proactive and are sending communications to existing recipients requesting consent to continue sending CEMs to them. This could be as simple as an e-mail (with the appropriate disclosure and unsubscribe) asking them to reply back if they would like to continue to receive valuable updates and offers from your company. Make sure to keep a record of these consents and remove any recipients that do not respond.

CASL will affect every business that communicates electronically with customers and prospects in Canada. It is important that you know the requirements and adhere to them. The following link will provide additional information on compliance with CASL.

<http://fightspam.gc.ca/eic/site/030.nsf/eng/home>

CASL and Direct Mail

The implementation of CASL is going to create a significant disruption in legitimate commercial electronic messages in Canada. This presents an excellent opportunity to remind marketers of the enduring value of direct mail. Direct mail is the most direct way to communicate with customers and prospects and does not carry the risk of a multi-million dollar fine.

Pat Donahue, Postmaster General of the USPS spoke to members of the AMSP this week at their annual conference. He reminded mailers of key elements for the most effective direct mail:

1. Personally relevant and therefore of interest to the recipient
2. Actionable so that recipients may respond quickly
3. Creative to catch the recipients' attention.

Starting with our September newsletter, we will include expert tips and tricks to make direct mail as effective as possible. Let's work at turning CASL into an opportunity to promote the medium that has always provided a high and consistent ROI to marketers: Direct Mail!



Last Newsletter until September!

With summer approaching, we thought you might like to find some lighter reading material for your holidays! We won't be publishing a newsletter in July or August but will restart with industry and product updates in September. Whether your plans include travel or enjoying your neighbourhood, sports with the kids or gardening at home, we wish you a warm and relaxing summer!

iAddress™ Web Training

Flagship Software continues to offer **Web Training!**

If you are a new customer, would like a refresher course on **iAddress™** or if you have new hires, please contact Carolyn at 1-866-672-0007 ext. 3 or carolyn@flagshipsoftware.com to schedule a web session.



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