

ARE YOU READY?

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If your organization communicates with Canadians electronically, Canada's Anti-Spam Legislation (CASL) will affect how you do business.

CASL is a federal law governing electronic messages sent from organizations and individuals to Canadians for commercial purposes. It's intended to prevent, or at least limit, the number of unwanted and unsolicited commercial messages (spam) that Canadians receive daily. Broad and stringent, this law will dramatically affect how businesses can use email, text messages and social media to contact customers and prospects. The legislation begins to take effect on July 1, 2014.

From a business perspective, the central element of CASL is the need to acquire the consent of individuals, granting the business permission to send commercial electronic messages.

Business concerns and consequences

If your business communicates with Canadian customers, prospects, suppliers or partners via the Internet, CASL will affect you. Your business will need to acquire, document and store the consent provided by each individual, as well as address requests to withdraw consent. This means your organization will need to have in place the people, processes and infrastructure (or employ a trustworthy third-party service provider) to manage these records and prove that you gained consent from each individual with whom your business communicates.

The consequences of failing to comply with CASL are considerable. Corporations can be liable for government fines of up to \$10 million and individuals can be fined up to \$1 million. Businesses may be responsible for the action of hired agents as well as their own employees. And corporate executives and directors may share personal liability for corporate violations. What's more, people (either individually or collectively) who have received an electronic communication without having provided consent may sue the corporation (and the employees or agents involved in the violation) starting in 2017.

CONSENT EXPLAINED

Consent, according to CASL, takes two forms: express (or explicit) and implied.

Express consent: Of the two types, express consent is the most straightforward. To grant express consent, a person might fill out a form on a website, click a confirmation link in an email, or provide written or verbal consent granting the business permission to send messages. (As a marketer, you should consider verbal consent as the riskiest form; it's hard to document and prove.) In other words, a customer or prospect must take direct, affirmative action to grant your business express permission to contact him or her directly via electronic communications. This means no more pre-checked checkboxes will be allowed.

Express permission lasts indefinitely, or until the individual takes back his or her consent using an unsubscribe mechanism - which you must provide. There's no need for you to renew express consent for your existing contacts following July 1, 2014, but be sure that the mechanism by which they granted consent is CASL-compliant and that you've documented this consent.

Implied consent: According to CASL, a business has implied permission to communicate electronically with a person in *any* of the following situations:

1. You have an "existing business relationship" with that person (that is, you've made a sale to or purchase from, or signed a contract) in the last two years. With every new business engagement with that person, the implied consent extends for another two years.
2. The person has made an inquiry or application within the last six months in respect of anything that would be considered an "existing business relationship". This can include situations where the person has attended a webinar or made a business inquiry. Your business then has six months to obtain the individual's express consent.
3. Your organization has an "existing non-business relationship" with the individual, such as with a donor, volunteer or member of a registered charity, political party, club, association or other voluntary organization.

OR

4. The person has "conspicuously published" or has willingly given you his or her email address (without indicating that he or she doesn't want to receive unsolicited messages). This might include distributing his or her address on a publically accessible blog post or web page or providing a business card at a trade show booth.

It's important to note that, regardless of whether you have implied or express consent, CASL only grants you permission to contact people within the context of their job or role, or with information or requests relevant to the relationship you've established with them (e.g., volunteer, donor, member, etc.).

MORE THAN EMAIL

How other forms of electronic communications are affected

Computer programs or apps installed on a computer or mobile device

Organizations and individuals cannot install (or cause to be installed) a computer program on someone's computer system without the express consent of the owner or its authorized user. When seeking consent, you must clearly identify: the person or organization seeking the consent; the purpose for which consent is being sought; the nature and function of the executable files of the program; and the impact the program will have on the computer system. Note that elements commonly sent to computers when a person is using the web, such as HTML, cookies, JavaScript, etc., are exempt.

Social media

Broadcasting messages on social media platforms is still allowed. This includes status updates and tweets. To use these platforms to send direct messages to other users, however, requires consent from the recipient(s). An "unsubscribe" mechanism, if it isn't included in the media interface, must also be provided.

It's important to note that a "like" or "follow" from a user on your organization's social media channels does not constitute implied consent to contact that user directly. As such, your organization needs to capture direct messaging consent via some means independent of the social media platform.

EXCLUSIONS

Communications excluded from the act

There are forms of electronic communications that are excluded by the legislation, including messages:

- to family and friends
- to employees for business purposes
- to people who, it is believed, will receive the message in a foreign country (in which case, that country's laws will apply)
- to people to whom you've received a referral (This communication is limited to one business message that clearly identifies the person who referred your organization.)
- from Canadian-registered charities (for the purposes of fundraising)
- from a Canadian political party or candidate (for the purposes of raising contributions)
- that are a direct response to a submitted inquiry
- that convey information about product recalls, warranties and safety
- that are delivered by phone call (telemarketing), faxes and recorded messages ("robocalls").

IMPORTANT DATES

July 1, 2014 - The provisions governing electronic marketing take effect. From this date, you have implied consent to contact your email database for three years, providing 1) you have an “existing business relationship” or “existing non-business relationship” with the contact, 2) you emailed that contact prior to July 1, 2014 and 3) he or she does not opt out after July 1, 2014 (or has not opted out before this date).

January 15, 2015 - The provisions governing computer programs and apps take effect.

July 1, 2017 - CASL provisions on “private right of action” take effect and individuals and groups can now sue offenders. Also, the transition period for the implied consent granted beginning July 1, 2014 ends. At this point, you must have documented proof of consent to contact an individual. This could be proof that he or she actively granted you permission or that he or she has an existing business relationship with you that grants you implied consent.

A CASL-COMPLIANT EMAIL

A clearly identified sender ▶

An accurate, non-misleading subject line ▶

CASL has specific requirements that will affect how you write and format emails. The annotated email below illustrates these requirements.

From: Quarry <experiencestrategy@quarry.com>
To: Marketing Manager
Date: Wednesday, 14 May, 2014 12:06 PM
Subject: Zombies/phantoms/shadows: 3 threats to experience innovation (Get the article)

[View online version](#) | [Contact](#)



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Don't let these real dangers come between you and an exceptional customer experience.

Get the article today

Since you heard Glen Drummond speak at the Customer Experience Strategies Summit in Toronto recently, you're probably already considering the cognitive traps that may be distorting your view of your customers—and sabotaging your progress towards experience innovation. [Download *Zombies/Phantoms/Shadows: 3 Threats to Your Experience Innovation Initiatives*](#) and gain insights that will allow you to:

- Learn about three hidden and widespread threats to customer experience innovation.
- Understand the cognitive science underlying these threats.
- Equip yourself with a model to counter these threats and improve your experience innovation effectiveness.

You're receiving this email at ophillips@quarry.com because you recently attended the Customer Experience Strategies Summit in Toronto. If you don't want to hear from us with future emails, [just let us know](#)

This email was sent from: Quarry Integrated Communications
 1440 King St North | St. Jacobs, ON | N0B 2N0 | 1.877.723.2999 | www.quarry.com

An unsubscribe mechanism ▶

A physical mailing address plus one other way of contacting the sender ▶

In addition to the mandatory elements illustrated above, you must also meet the following two requirements, where relevant:

- When sending an email on behalf of another organization, both organizations must be identified.
- When sending based on a referral, the referrer must be identified.

Also bear in mind that the message you send the individual must be relevant to, and consistent with, the relationship you've established with him or her.

FREQUENTLY ASKED QUESTIONS

How are the mailing lists I rent or buy from other parties affected by CASL?

You can still use third-party lists, but there are restrictions. Each contact on the list must have agreed to be included on the third-party list. The source provider of the list must be identified in the email. And you must inform the list provider of anyone who wishes to unsubscribe.

Does CASL only apply to Canadian companies?

No, the law also applies to foreign companies contacting Canadian recipients.

How does it differ from the U.S. CAN-SPAM legislation?

The American anti-spam legislation is opt-out, meaning that the sender can assume he or she has permission to contact the recipient unless told otherwise. The Canadian law is opt-in and companies must have permission upfront to communicate with recipients. Also, CASL applies to various forms of electronic communications while CAN-SPAM only applies to email.

How can my organization capture someone's express consent?

Some common mechanisms used to solicit express consent include subscription forms on websites, a confirmation link embedded in an email and, somewhat riskier, oral or written consent. Note that express consent must involve some direct, affirmative action on the individual's part; pre-checked checkboxes cannot be used as part of the process.

Also, you must clearly identify the company the person is making the agreement with and the types of communications that the individual is agreeing to receive. The recipient must be informed that consent may be withdrawn at any time. And, if the individual is agreeing to email communications, your organization must send that person a welcome email.

What information does my organization have to record when receiving express consent to contact someone?

You need to capture the date and time the person granted your organization permission to contact him or her, the source (webpage, email, business card, etc.) of permission and, ideally, the IP address of the computer via which the individual gave consent. It's important to record the source of the consent because implied consent durations differ depending on how you gained the person's consent.

NEED HELP?



Whether you need clarification about the legislation or you're ready to prepare a company-wide CASL plan, Quarry can help.

As Practice Lead, Marketing Automation, David Chirakal and his team of Marketing Automation Specialists help Quarry clients with the strategic development, solutions design, execution and performance management of marketing automation initiatives. In this role, David increases our clients' operational efficiencies and delivers fantastic customer buying experiences.

About Quarry

Winner of MarketingProfs' Bright Bulb Awards 2013 – B2B Agency of the Year, Quarry is the buyer experience agency for savvy marketers who want to transform their business brand. Learn more at quarry.com.

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