Canada’s Anti-Spam Legislation (CASL) Quick Guide

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Casl guidelines

Banfield has prepared this guide on Canada’s Anti-Spam Law (Casl) to help provide guidance on how you can tailor your email marketing services in a way that complies with the Casl, which will be coming into effect on July 1st, 2014. Within this document we will provide you with a detailed overview of the Casl changes to email marketing, some tips to help you reorganize your campaigns, as well as some additional resources if you wish to learn more about Casl.

We are not lawyers

It should be made clear from the outset that this document has been prepared by Banfield email marketing and communication professionals, and not legal professionals.

We have spent a great deal of time researching the Canada’s Anti-Spam Law (Casl), and are confident that the guidelines presented in this document will satisfy the new laws regulating commercial electronic messages (CEMs). However, this document should not be considered actual legal counsel.

Essentials of Casl

Casl is very similar to other anti-spam legislation passed in other countries, such as the Can-spam Act of 2003 in the United States, or the Australian Spam Act of 2003. Casl however is more strict and specific in some areas, especially in regards to consent of the recipient.

Due to similarities with other long-standing anti-spam laws, virtually all email marketing services already provide the tools and templates that meet the standards imposed by Casl. However, few, if any, email services are Casl compliant by default, and the responsibility to comply to Casl, or any other anti-spam laws remains with the organization sending the emails.

The CRTC has summarized the basics of Casl in 3 sections; consent, identification and an unsubscribe mechanism, which we will elaborate on.

Consent

You must receive consent from any recipients of your commercial electronic messages (CEMs) to demonstrate their interest in being contacted by your organization. Casl defines two types of consent that are allowed, “implied consent” and “express consent”. For the purposes of this document we will focus only on contacts that have shown express consent, but for more information on the difference between these types of consent, an article on the subject is available here. However, no matter the type of consent, the burden to prove the consent exists lies with your organization.

Proving consent is facilitated by most email services, which typically keep track of how and when email contacts are added to the contact list. For example, if a newsletter subscriber is added to a contact list by submitting their own email through an online form, that method of sign-up is recorded as such. However, if a contact is imported into a contact list from a spreadsheet by the list’s administrator, the contact’s method of sign-up is recorded differently, and some additional form of documented consent would be required by the sender in order to comply with Casl.

Even though newsletter signup forms are permissible under Casl, and the language in the signup must be clear, there can be no ambiguity about what the potential subscriber is signing-up to. The subscriber must perform a positive action for the consent to be valid; non-action can never be considered consent. The CRTC provides an example scenario illustrating this. The valid sign-up of the contact must also be followed by a confirmation receipt for most email services, this takes the form of a confirmation email with a link that requires clicking by the subscriber before they are added to a contact list. This method of confirming the contact is usually referred to as double opt-in verification. Which, according to the CRTC, does comply with the standards required under Casl.
What are acceptable forms of obtaining express consent under the Act?

Figure 1: Unacceptable express consent mechanisms – An example of toggling that assumes consent.

The pre-checked box puts the onus on the person whose consent is being sought to take action in order to indicate that he or she does not consent, generally by unchecking the box. Consequently, inaction on the part of the person whose consent is being sought is considered to be equivalent to that person’s consent.

Figure 2: Acceptable express consent mechanisms – Checking a box to indicate consent

The Commission considers that since express consent requires a positive or explicit indication of consent, express consent can be obtained through opt-in consent mechanisms.

Figure 3: Acceptable express consent mechanisms – Typing an email address into a field to indicate consent

The Commission notes that following receipt of express consent, confirmation of this receipt should be sent to the person whose consent was being sought.

Identify

The CASL requires your organization to provide accurate contact information within the body of the email; typically this is placed in the footer. At the very least, the contact information must consist of the name of the person or company sending the CEM and their correct mailing address. It is good and common practice to go beyond this and include a phone number, website address, or any other relevant contact information about the sender.

Unsubscribe mechanism

Additionally, you must ensure that all emails being sent to your subscriber lists contain a working unsubscribe mechanism. Most email services already offer unsubscribe mechanisms that typically appear as a text link in the footer of an email along with the contact information.

It is also good practice to include a permission reminder, something to remind the sender why they are receiving the CEM. Here is an example message used by Apple in their CEMs:

*You are receiving this email because you are a Registered Apple Developer who is opted-in to receive marketing or technical information. If you would prefer not to receive future communications from Apple Developer you may unsubscribe.*
CASL compliance checklist

Here is a short list of all the steps that you need to follow in order to ensure your organization’s compliance with CASL for the sending of marketing emails.

- **A Clearly Written Sign-up Form**
  The contacts that make-up your list of recipients must have, at some documented point in time, agreed to a clearly written statement accurately describing what is being sent to them.

  Here is a CASL compliant example newsletter sign-up statement created by the CRTC:

  *I agree to receive Company Inc.’s newsletter containing news, updates and promotions regarding Company Inc.’s products. You can withdraw your consent at any time.*

- **Sign-up form requires a positive action for consent to be valid**
  A positive action could be the checking of a checkbox, or the entering of an email address into a newsletter sign-up form.

- **An email confirmation is required**
  Before a contact can be added to your email-marketing list, a confirmation email needs to be sent to the submitted address. This confirmation email should reiterate the terms of consent. It is often a good idea to provide a link for the subscriber to click to ensure the email is valid and to confirm their willingness to be added to a list of contacts.

- **The contact list should record the how, when and why a subscriber was added**
  Most email marketing services will track “how” and “when” a subscriber was added to your email list. If the subscriber signed-up through a subscription form the “why” is explained by the content and acceptance of the sign-up form. Only in the cases of implied consent would the why need to be added by the list administrator.

  If there is any uncertainty about how, when or why a contact was added to your email marketing list, you must have that contact resubscribe through a CASL compliant sign-up process.

- **Emails must include correct contact information**
  The content of any email sent to your subscriber list must include, at a minimum, your organization’s name and valid mailing address. The addition of a contact email address and phone number is often included.

- **You emails must feature a functional unsubscribe mechanism**
  By default, most email marketing services will include a working unsubscribe link in the footer of emails it sends. However, it is also good form to also include a reminder to the recipient why they are receiving the email.

CASL information resources

If you want to learn more about CASL, we have included some online resources that will provide you with an in-depth understanding of the CASL and the coming changes to email marketing campaigns.

- **Government of Canada’s CASL site**
- **CASL FAQs**
- **CRTC Guide to CASL**
- **Industry Canada Digital Policy Branch’s guide to Bill C-28: Canada’s Anti-Spam Legislation**
- **Government of Canada’s Justice Laws Website, S.C. 2010, c. 23, Section 6, Requirements and Prohibitions**
- **Two paths to prepare for CASL: Express and implied consent (itbusiness.ca)**
- **A marketer’s guide to being CASL ready (itbusiness.ca)**
- **What Canada’s new anti-spam law means to you (deloitte.com)**
- **Compliance and Enforcement Information Bulletin CRTC 2012-549 - Guidelines on the use of toggling as a means of obtaining express consent under Canada’s anti-spam legislation**
- **Email Marketing and Canada’s Anti-Spam Law (ExactTarget, PDF)**
- **Constant Contact’s FAQ about CASL (constantcontact.com)**
- **What does the Canadian Anti-Spam law mean when it talks about implied and express permission? (constantcontact.com)**
- **Answering Questions About Consent and CASL (exacttarget.com)**
- **Staying on the right side of Canada’s Anti-Spam Legislation (campaignmonitor.com)**
- **How to Get Subscriber Consent for Canada’s Anti-Spam Law (whatcounts.com)**
- **CASL Compliance: What You Need to Know (benchmarkemail.com)**
- **MailChimp’s guide to CASL (mailchimp.com)**

Need a hand with CASL?

If you still need a hand understanding the CASL requirements or would like some help reorganizing your email-marketing campaigns, feel free to give us a call and we will gladly work with you to make sure your campaigns comply with the new legislation.