



CASL Compliance What You Need to Know

Will CASL apply to you and your organization?

Coming into effect on July 1, 2014, CASL has the potential to impact any individual or organization in Canada who sends e-mails, texts, social media messages or any other form of electronic communication to a recipient, whether they are businesses, consumers or individuals.

Failure to comply may lead to significant consequences and penalties:

- Monetary penalties of up to **\$10 million per violation for corporations** and up to **\$1 million per violation for individuals**
- Vicarious liability on corporations for acts of their employees and agents
- Corporate officers and directors may be held personally liable for corporate violations
- In 2017, provisions relating to the right of private prosecution (i.e. class actions) will come into force

What's prohibited?

- CASL prohibits the sending of commercial electronic messages in any form without consent of the recipient, unless a statutory implied consent or exemption rule applies. Express consent requires a positive action or opt in by the recipient.
- "Commercial" includes activities carried on without the prospect of gain, which potentially captures not-for-profit organizations and charities.
- Even with a recipient's consent, the sender of an electronic message will need to include certain identifying information in their electronic communications and provide a way for recipients to unsubscribe from receiving further messages.
- Prior consent is also required for the installation of software on another person's computer system or alteration of transmission data in electronic messages.
- CASL also prohibits a number of fraudulent and misleading activities such as phishing, hacking, malware and spyware, harvesting of email addresses and other activities.

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Important In Force Dates

- July 1, 2014, for most of CASL's requirements
- January 15, 2015, for prohibitions related to computer programs
- July 1, 2017, for private right of action

Exceptions to CASL compliance may apply to certain messages, for example:

- Messages sent by a business to another business where there is a relationship and the message concerns the activities of the business
- Messages sent internally within a business where the messages concern the activities of the business
- Messages sent in regard to a legal obligation, such as product safety recall or notice or sent to enforce a right
- Messages sent solely to respond to a consumer inquiry or business referral
- Canadian registered charities and political parties have limited exemptions for certain purposes
- Messages sent within an existing "family relationship" or "personal relationship"
- Messages sent where there is an "existing business relationship"
- Messages sent where there is an "existing non-business relationship"

New CASL consent required

- Consent under CASL can be express or implied. Implied consent may be time limited.
- Unlike most Canadian privacy laws which permit "opt out" consent, this form of consent is not sufficient under CASL for the receipt of messages by electronic means. Positive consent is required.

Many provisions are subject to interpretation. **Please contact a member of your CASL Team for assistance:**

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