

Canada's Anti-Spam Law (CASL)

Don't let the name fool you – even if you aren't a “spammer,” [Canada's Anti-Spam Law \(CASL\)](#) contains important regulations for your business. This anti-spam law, which is often referred to as the toughest in the world, went into effect in 2014 and governs commercial electronic messages (CEMs) such as emails and SMS messages.

What is CASL?

Canada's Anti-Spam Law (CASL) went into force on July 1, 2014. CASL requires businesses to obtain either express (opt-in) or implied consent to send electronic messages, such as emails and texts, that are sent in connection with a “commercial activity.” This includes electronic marketing communications like coupons or other sale alerts, event invitations and new product/service announcements.

Highlights of CASL include:

- CASL considers a “commercial electronic message” (CEM) any electronic message that encourages participation in a commercial activity.
- CASL applies to email, telephone and instant messaging accounts, and any other similar accounts.
- Some social media accounts may constitute a “similar account” depending on how the platform and its functions are used. A Facebook wall post would not be included; however, messages sent to users via a social media messaging system (such as Facebook's Messenger or LinkedIn messaging) would qualify as sending to an electronic address.
- Consent must be given by the recipient either orally or in writing (written consent can be electronic).
- Pre-checked boxes will not be allowed as consent. Recipients must indicate explicit consent by checking a box or typing into a field.
- All electronic marketing will need to clearly and prominently identify the sender, including sender's contact information.
- All electronic marketing must include a free unsubscribe mechanism.
- Express/opt-in consents received before CASL is enforced will be considered compliant.
- Express consent does not expire until the recipient withdraws their consent.

Information contained in this document should not be considered legal advice; it is for informational purposes only. We assembled this content to educate marketers and better assist them in maintaining compliance in their efforts. Consult your compliance department or legal counsel for specific guidance.

When giving consent to one organization, recipients can give consent to related third parties at the same time. However, consent to receive third-party CEMs is only valid if recipients can unsubscribe from the message and alert the original organization that they have withdrawn their consent. The original organization must then notify each third party that consent has been withdrawn.

What constitutes a commercial electronic message (CEM)?

If one of the purposes of your message is to encourage the recipient to participate in a commercial activity, then it is a CEM. CEMs include promotions or offers to purchase, sell, barter, or lease a product or service, offers to provide a business or investment opportunity, or promotion of a person who intends to do any of the above.

Simple inclusion of a logo, a hyperlink or contact information in an email signature does not necessarily make it a CEM. However, a tagline in a message that encourages the recipient to purchase a product or service would make the message a CEM.

What is the timeline for full adoption and enforcement of CASL?

Due to the law's sweeping nature, CASL has a three-year rollout period:

- On **July 1, 2014**, the majority of the legislation came into force, including Section 6, which relates to the sending of commercial electronic messages.
- On **January 15, 2015**, Section 8, which deals with the installation of computer programs without a device owner's consent, came into force.
- On **July 1, 2017**, the three-year grace period for verifying and confirming opt-in will end. After that date, if you don't know the source, circumstances and language used to obtain opt-in from an individual, you will want to refrain from sending CEMs to that person or run the risk of violating the law. CASL requires businesses to be able to show where, when and how consent for being contacted via commercial electronic messages was obtained for every individual that receives CEMs from that organization.

The sections of CASL that deal with the private right of action were also initially slated to come into force on July 1, 2017. Those provisions have been suspended indefinitely, pending review by the Canadian government.

Does it apply to me and my company?

Yes, if you operate in Canada or if your company markets to Canadian customers or prospects. CASL applies to CEMs that are sent or accessed by a computer system located in Canada. Simply routing a CEM through Canada is not enough to engage CASL, however.

**Commercial
electronic messages
(CEMs) should have:**



Consent



Identification



**Unsubscribe
Mechanism**

What do I need to do to be compliant?

There are three general requirements for sending a CEM to an electronic address.

1. You must have expressed or implied consent to send a message.
2. You must clearly and simply identify yourself and anyone else on whose behalf the message is sent.
3. In every message you send, you must provide a way for recipients to unsubscribe from receiving messages in the future.

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.

Silence or inaction on the part of the end-user cannot be construed as providing express consent. For example, a pre-checked box cannot be used as it assumes consent. Express consent must be obtained through an opt-in mechanism, as opposed to opt-out. The recipient must take a positive action to indicate consent, such as checking an empty box or typing their email address into a field.

Are there any exemptions?

CASL does allow for some exemptions for sending commercial electronic messages, including:

- CEMs sent between family and friends (a close “personal relationship” where there is voluntary two-way communication between the individuals; corporations cannot have a personal relationship)
- CEMs sent within or between organizations with an existing relationship
- CEMs solicited or sent in response to complaints, inquiries or requests
- CEMs sent due to a legal obligation or to enforce a right
- CEMs sent from instant messaging platforms where the required identification and unsubscribe mechanisms are clearly published on the user interface
- Limited-access, secure, confidential accounts (i.e. banking portals)
- CEMs sent to listed foreign countries where it is reasonable to believe that the message will be opened in a listed foreign country that has similar rules as CASL
- CEMs sent by registered charities for the primary purpose of fundraising
- CEMs sent by political parties seeking contributions

Under CASL, telecommunications service providers (TSPs) need consent to install certain computer programs. TSPs will be permitted to install computer programs without consent for two purposes only:

- Preventing illegal activities that pose an imminent risk to network security
- Updating or upgrading devices across an entire network

Referrals

There is an exception for sending CEMs to referrals. The referral must be made by an individual who has an existing business, non-business, family or other personal relationship with both the sender and the recipient of the CEM. Also, the full name of the individual who made the referral and a statement that the CEM is sent as a result of a referral must be in the CEM.

Obtaining Consent

A partial exemption allows businesses to send one single message to obtain consent for future messages. The CEM must still contain the identity of the sender and an unsubscribe mechanism. Any following CEMs must comply with CASL in full.

What are the penalties?

Violations of CASL may result in an administrative monetary penalty of up to \$1 million per violation for individuals and up to \$10 million for businesses. Directors, officers and agents of a corporation can be liable if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation.

What if I don't sell in Canada or I don't know if my recipients are in Canada?

Most businesses that include online or global operations often do not know exactly where each recipient is located. The best practice would be to adhere to CASL across the board, but if that is not feasible for your organization, consult your legal team to determine the best course of action.

If you collect any data that might indicate that a recipient is in Canada (mailing address, phone number, domain name, etc.), you could be opening yourself up to CASL violations. Remember that you are responsible for proving valid, CASL-compliant consent if there are complaints.

How can ClickDimensions help with CASL compliance?

For each of the three primary requirements, [ClickDimensions' email marketing and marketing automation tools](#) can help you comply with CASL:

Consent

Use [ClickDimensions forms](#) to collect consent when a recipient joins your mailing list or requests your emails. Our [form builder](#) contains a variety of different form fields, so you could include a checkbox, radio button or text field to capture the recipient's information and their express consent. The date and time the recipient gives consent is captured with the [posted form](#), helping to prove compliance if needed.

If you would like more information about adding ClickDimensions' marketing automation tools to your Microsoft Dynamics CRM platform, contact our sales department at sales@clickdimensions.com.

Identification

Using the [ClickDimensions drag and drop editor](#), easily create email templates that include your contact information in the header or footer. [Dynamic content](#) can automatically add the sender's contact information into the message.

Unsubscribe Mechanism

[ClickDimensions subscription management tools](#) allow recipients to choose which emails they would like to receive from you by letting them opt in or out of your [lists](#). The subscription management page will show the recipient their current email preferences and allow them to change them, including unsubscribing to all emails. Links to the [subscription management page](#) can be included in your email templates.

If you are a current ClickDimensions customer and have questions about how to implement these services, please contact our Help Center at help@clickdimensions.com.

For more information about the CASL, visit the Government of Canada's website at http://www.ic.gc.ca/eic/site/030.nsf/eng/h_00230.html.