

National law: [CASL - Canada's Anti-Spam Legislation](#), created in 2014

“CASL protects consumers and businesses from the misuse of digital technology, including spam and other electronic threats. It also aims to help businesses stay competitive in a global, digital marketplace.”

This guidance is intended to give marketers an overview of CASL requirements for your e-commerce work, please ensure you check with your own legal counsel on how these may apply to your activities.

Additionally, before sending out any commercial emails in Canada, please review the law and resources provided by the [Government of Canada](#). Depending on the [consent](#) received, different requirements are triggered.

- **Main notice and consent requirements of CASL:**
 - **In general, CASL prohibits:**
 - Sending commercial electronic messages (CEMs) without user’s consent, including email, social media, text messages, and any future technologies.
 - Altering the transmission data in an electronic message so the message is sent to a different destination without user’s express consent
 - Installing software on users’ electronic devices without consent (including, in some cases, updates and upgrades, even if you were the one who installed the original software)
 - Using false or misleading representations to promote products or services online
 - Collecting personal information by accessing a computer system or electronic device illegally
 - Harvesting addresses (collecting and/or using email or other electronic addresses without permission)
 - Knowingly supporting others in violations of the law (i.e. as a service provider)
 - For detailed explanations, see [Canada's anti-spam legislation](#) on the CRTC website.
 - **For implied consent** (notice and choice, including pre-checked boxes), you must meet the following deadlines to send Commercial Email Messages (CEMs):
 - At the end of a subscription, contract, barter or other transaction then you have 24 months to continue to send commercial emails, unless the consumer opts-out prior to that time.

Please review your email program with your legal counsel to ensure that your program is meeting appropriate legal requirements.

- If the consumer has bought in the past from the marketer, or third party who sends emails on behalf of the marketer, and didn't sign up to receive promotional emails then you have two years from the date of purchase to get explicit consent.
 - Clearly identify the person who sends the email message and the person -- if different – on whose behalf it is sent.
 - The contact information provided in the email needs to be valid for a minimum of 60 days after the message has been sent.
 - Every time the consumer purchases again from the same company or renews a subscription – the clock restarts with the newest purchase date or end date of a new subscription.
 - Implementing double opt-in will also provide the proper consent needed for your email program.
- If a consumer contacts you with an inquiry, or requests a quote, then you have 6 months after the response to the inquiry to send CEMs.
- **For express consent** the subscriber has to take an affirmative action to opt-in to receiving the CEMs (i.e., checking a box, or other action to opt-in to receiving emails -- it cannot be inferred from silence, pre-ticked boxes or inactivity). You may continue to send CEMs to subscribers who have provided express consent unless, or until, they have revoked their consent.
 - To gain express consent this information must be presented on the page/form at the time of collection:
 - Postal address
 - Contact information (one of: email, web link, or phone number)
 - A statement indicating the subscriber can unsubscribe at any time
 - Some companies have chosen to employ express consent because of concerns about:
 - enforcement of CASL, and/or
 - costs, time and resources to track requirements of both implied and express consent for new clients; otherwise you might need to employ complex tracking measures and protocols for different groups/categories.
- **Create a compliant unsubscribe process:**
 - Clearly identify yourself in the CEM.
 - Provide a method for a recipient to readily contact you: email address, web form or phone number.
 - The unsubscribe method must be live for 60 days after an email is sent. You can't confirm unsubscribes by sending an email asking "are you sure?"

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- Unsubscribes need to be processed without delay—and certainly within 10 business days.
- Unsubscribe process should be by the same means unless impracticable.
- Companies cannot charge consumers to opt-out. However, a company is not held responsible if consumers have plans that charge for text messages/emails.
- Provide appropriate links in the footer of emails:
 - Link to privacy policy statement.
 - Link to unsubscribe process indicating that recipient can unsubscribe at any time.
 - Both transactional and marketing emails must have these links.
 - You can still provide subscribers a link to a preference center but they must not be required to “login” to change their preferences.

Covered Commercial Email Message Types

Country	Promotional	Factual (I.e. Transactional, Relationship)	Remarketing (I.e. Abandoned cart)	Mixed Content	Refer-a-Friend Mechanism
Canada	Covered	Covered	Covered	Case-by-Case	Brand responsible for end-recipient's prior consent, notice and choice.

- **Penalties/enforcement:**

Three government agencies share the responsibility for enforcing CASL:

- The [Canadian Radio-television and Telecommunications Commission \(CRTC\)](#) can issue administrative monetary penalties for violations of [sections 6 through 9 of CASL](#)
- The [Competition Bureau](#) can seek administrative monetary penalties or criminal sanctions under the *Competition Act*
- The [Office of the Privacy Commissioner of Canada](#) focuses on 2 types of violations: collecting personal information by accessing a computer system or electronic device illegally (usually through spyware, which collects your information without consent and can change the way your computer works) and harvesting electronic addresses.

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Additional Resources:

- [Enforcement highlights from October 1, 2020 to March 31, 2021](#)
 - Since CASL came into force in 2014, enforcement efforts have resulted in more than \$1.4 million in fines. Of this amount, approximately \$805,000 is from administrative monetary penalties and \$668,000 from negotiated undertakings.
 - CASL enforcement can go beyond the organization and directly issue AMPs to the directors of the company.
- Review the ANA Email Experience Council's [A Digital Marketer's Guide to Canada's Anti-Spam Law](#).
- [Personal Information Protection and Electronic Documents Act 2000 \(PIPEDA\)](#)
- [Privacy Act 1985 \(The Privacy Act\)](#)

Last updated: November 2021

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