

Sending Commercial Electronic Messages: Guide on Canada's Anti-Spam Legislation

CMA Members can access the full Guide [here](#).

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THIS DOCUMENT PROVIDES GENERAL INFORMATION. IT DOES NOT CONSTITUTE LEGAL ADVICE. Those with specific questions about the legislation and regulations should seek independent legal advice.

PURPOSE AND CONTEXT

This guide contains essential information for marketers about Canada's Anti-Spam Legislation (CASL). The full CMA Guide on CASL, which is available to employees of CMA member organizations, provides answers to a series of frequently asked questions. Readers can identify the questions most relevant to their initiatives and easily obtain the information and guidance they need to comply with the law and best practices.

CASL is the federal law that deals with spam and other electronic threats and regulates a broad range of activities. The aspects of CASL that are most relevant for marketers are the rules about sending "Commercial Electronic Messages" (CEMs) sent into or from Canada.

Before sending a CEM, make sure you:

1. Have consent (or meet an exception in CASL) to email the individuals on your list(s).
2. Indicate in the email the sender of the email along with contact details.
3. Include an unsubscribe mechanism and have a system to action unsubscribe requests in a timely manner.
4. Are not providing misleading or false information.

CASL enforcement is shared between three government agencies, each having specific responsibilities:

- The Canadian Radio-television Telecommunication Commission (CRTC) is responsible for CASL violations that deal with the sending of CEMs, that alter transmission data and that install software in the course of a commercial activity without consent.
- The Office of the Privacy Commissioner of Canada (OPC) is responsible for violations regarding the illegal harvesting of data.
- The Competition Bureau is responsible for matters relating to false and misleading representations.

CASL does not apply to:

- Voice, facsimiles or auto-recorded voice calls (robo-calls);
- Broadcast-type electronic messaging on social networking platforms (e.g., Tweets or posting on a Facebook Timeline); or
- Display advertising.

CASL violations can carry significant monetary penalties with fines of up to \$1 million for individual offenders and up to \$10 million for companies for each infraction. Non-compliance with CASL could cause significant harm to an organization's reputation and financial well-being, so marketers should familiarize themselves with their obligations pertaining to CASL.

CASL also includes provisions for the installation of computer programs and mobile apps. This guidance document focuses on FAQs related to sending CEMs. If you are in the sector of developing or delivering mobile apps and computer program installation, refer to the [Computer Installation section of CASL](#). The three government agencies recently [issued a reminder to the Canadian mobile app sector](#) of their obligations under CASL, specifically advising organizations to review the promotion, installation and use of mobile apps practices.

INTRODUCTION

Modern marketers need to have a broad skill set that includes knowledge of marketing compliance and best practices. The CMA and its members recognize that compliance with all relevant laws and maintaining high standards of practice is a fundamental responsibility to the public and the foundation for a successful and strong business community in Canada.

A CEM is a commercial email, or a message sent electronically that encourages participation in a commercial activity. This includes but isn't limited to email, SMS/text messages and private messages sent on social networking platforms. The type of content in the message can include the promoting or selling of a product or service, information about events, offers, details in an email signature (if it is commercial in nature), an incentivized survey, and more.

Sending CEM Requirements

Prior to sending a CEM, the following CASL requirements must be met:

- 1) Consent to send an email;
- 2) Identification and contact details included in the CEM; and
- 3) An unsubscribe mechanism is present in the CEM.

Consent

There are two types of consent under CASL: **Express** and **Implied**. Consent is required prior to sending a CEM unless the message is exempt. The onus to prove consent is on the sender, so marketers must ensure their record-keeping accurately captures proof of consent for each recipient.

The CMA is the leader in providing legislative and regulatory guidelines and articulating best practices for the marketing profession in Canada. As the self-regulatory body for the marketing profession in Canada, we provide educational resources to maintain and strengthen the professionalism and integrity of the marketing community. Our [Canadian Marketing Code of Ethics and Standards](#), which is widely recognized as a benchmark for effective self-regulation, is mandatory for members and regularly updated.

For more information, contact the [Public Affairs team](#) at CMA.

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CMA would like to acknowledge and thank the members of the [Ethics and Standards Committee](#), especially Andrew Schiestel, Filomena Henriques and Jacques Gaboury, for their help in updating this Guide.

This Guide is current as of April 9, 2021.

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