

Canadian Anti-Spam Legislation (CASL)

FREQUENTLY ASKED QUESTIONS

IMPORTANT: This FAQ is intended to assist UofL staff and faculty members to understand their obligations under CASL. It is an overview of the complex requirements of CASL and is not intended to be a substitute for legal advice. The implementation of CASL will continue to be monitored and this page will be updated as new information or issues come to light. Please check this page often.

1. General Questions

1.1 What is the purpose of the Canadian anti-spam legislation?

The primary purpose of the Canadian anti-spam legislation (usually called CASL) is to control spam (unsolicited Commercial Electronic Messages, or CEMs). CASL also prohibits:

- the unauthorized altering of transmission data (an example being when an individual causes an electronic message to be sent to a destination that is different from that which the sender intended)
- the installation of computer programs without consent (e.g., viruses, spyware)
- the provision of false or misleading information in the sender information
- the unauthorized collection of personal information using computer software

1.2 What is the status of CASL?

The majority of CASL, including those provisions governing the sending of commercial electronic messages (CEMs), will be in force as of **July 1, 2014**. Other aspects of CASL will be phased in over time. For example, provisions relating to computer programs will be in force as of January 15, 2015 while provisions providing for a private right of action won't come into force until July 1, 2017.

1.3 Does CASL apply to CEMs sent to people in the United States or other countries?

Yes. CASL applies to all CEMs that are sent by the UofL, including CEMs sent to individuals outside Canada. If you are sending CEMs to other countries, you may also have to comply with those countries' anti-spam laws.

1.4 Does CASL apply if we use a third party to send a CEM?

Yes. CASL applies not only to CEMs we send ourselves but also to CEMs we "cause or permit to be sent" by third parties, such as direct mail services.

1.5 What are the penalties for non-compliance with CASL?

CASL imposes penalties for noncompliance of up to \$10 million for an organization and \$1 million for an individual. Also, effective July 1, 2017 anybody who receives a CEM without providing their consent has a private right of action against the organization sending the CEM, and may be entitled to receive up to \$200 per violation. Officers, directors and agents can be held personally liable for their organization's failure to comply with CASL.

2. Commercial Electronic Messages

2.1 What is a commercial electronic message?

A commercial electronic message (CEM) is defined as any electronic message whose content – including the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message – encourages participation in a commercial activity, regardless of whether there is an expectation of profit.

2.2 What is an electronic message?

An electronic message is any message sent to an electronic account, e.g. an email, a text message, or a message using social media such as Facebook. Interactive two-way voice communications, fax messages or voice recordings sent to a telephone account are not considered to be electronic messages. If you're calling somebody to offer a product or service, that's not a CEM. Please keep in mind, however, that promotional phone calls may be regulated by the Do-Not-Call List. See <https://www.lnntc-dncl.gc.ca/index-eng> for more information about the Do-Not-Call List.

2.3 What is a commercial activity?

A commercial activity for the purposes of CASL is "any particular transaction, act or conduct or any regular course of conduct **that is of a commercial character**, whether or not the person who carries it out does so in the expectation of profit". Examples provided include purchasing, selling, bartering or leasing products, goods or services, or land; providing a business, investment or gaming opportunity; or advertising or promoting any of these activities. In assessing this, consider all aspects of the message, including:

- its content
- the hyperlinks in the message to content on a website or other database
- the contact information contained in the message
- that CASL applies even if only one of the purposes of the message, not necessarily its primary purpose, is to encourage participation in a "commercial activity"

2.4 What kinds of commercial activities does the UofL engage in?

Generally, commercial activities are performed in return for fees or other gain, but CASL's definition of "commercial activity" is very broad because it covers activities of a "commercial character" regardless of whether or not there's an expectation of profit. Therefore, UofL services of a commercial nature will be considered "commercial activities" under CASL even if the services are not intended for profit.

Some examples of commercial activities at the UofL are:

- Promoting third-party commercial products or services (eg. preferential credit card rates for alumni, musical instrument rentals)
- Promoting or recruiting students for programs run by non-University organizations (eg. privately-run hockey camp)
- Promoting events that are not closely related to the core activities of the University (eg. professional music or sporting event held in university facilities)
- Promoting the purchase of products or goods offered by the University that are not closely connected to core activities of the University (eg. branded merchandise in the UofL Bookstore)
- Promoting services offered by the University that are not closely connected to core activities (eg. rental of facilities for film shoots, private music lessons, lease of space on University servers to third parties)

Messages that relate **solely** to the core educational activities of the University would likely not be considered "commercial" in nature. Providing information to alumni or the general public about the activities or facilities of the UofL (for example, a press release about the results of a research project) would not be considered to be promoting a commercial activity. Student recruitment, or promotions of new courses or academic programs to prospective students, are probably not a commercial activities because they do not have a "commercial character".

The mere fact that a message involves commercial activity, hyperlinks to a person's website, or business related electronic addressing information does not make it a CEM under CASL if none of its purposes is to encourage the recipient in additional commercial activity. However messages that have a mixed purpose (ie. those that, for instance, relate to core educational activities but also contain commercial content or otherwise promote or encourage participation in commercial activity) are

subject to CASL. It is also important to recognize that if the message has multiple purposes each purpose must be evaluated to understand whether the message is a CEM.

It may, admittedly, be difficult to draw a clear line between general information and promotion of “commercial activities” and between whether a message relates solely to core activities or has a mixed purpose. When in doubt, it is prudent to treat an activity as though it is a commercial activity. For more information please log in to “Applying CASL to UofL Activities”.

2.5 Is fund-raising a commercial activity?

Messages that are sent by or on behalf of a registered charity, such as the University, for the *primary purpose of raising funds* for that charity are not commercial activities and are exempt from the consent and form requirements set out in the CASL.

“Raising funds” includes activities that fall under the Canada Revenue Agency (CRA) fundraising definition, and which charities report when calculating their fundraising ratio. Activities that fall under the CRA fund-raising definition include:

- Soliciting donations;
- Tickets to dinners, golf tournaments, and other fund-raising events;
- Lotteries, and;
- Fun runs and similar events.

“Primary purpose” means that the bulk of the message concerns raising funds (such as seeking donations or selling tickets to an upcoming fund-raising event).

2.6 What about newsletters and surveys?

Newsletters and surveys would not generally be considered “commercial” to begin with, so would not be affected by CASL. However, newsletters that contain paid advertisements, or which encourage the purchase of third party products, goods or services, are likely to be considered CEMs.

2.7 What does CASL mean for our use of social media?

Depending on how you use social media, CASL may not have much effect. Posting on Twitter, Facebook, LinkedIn, or other social media platforms is considered broadcasting, and not affected by CASL. Direct commercial messages to an individual’s personal inbox on the social media platform will be subject to CASL.

3. CASL Requirements

3.1 What are the requirements for CEMs under CASL?

Essentially, CASL contains the following three requirements for sending CEMs:

1. CONSENT
2. IDENTIFICATION & NOTICE
3. UNSUBSCRIBE

Information on each of these requirements is provided below.

See the “Model Language” for samples of compliant CEMs and Unsubscribe notices.

(1) CONSENT

3.2 How do I know if I need consent to send a message to somebody?

Consent under CASL is only required to send a “commercial electronic message” (CEM).

3.3 Are there exclusions?

Yes. The following specified types of message are excluded from the definition of CEM and so CASL does not apply to them:

- messages sent within the university that concern university activities
- messages sent by the university to another organization if the university has a relationship with that organization and the message concerns the activities of the organization
- messages that respond to an inquiry, request or complaint or was otherwise solicited
- messages to satisfy or provide notice of a legal obligation or to enforce a legal right
- messages sent by the University for the primary purpose of fund-raising
- messages sent for the purpose of following up on a third party referral, where the person referring has an existing relationship with the third party. This only allows **one** initial CEM to be sent and the CEM must disclose the name of the person who made the referral and contain a statement that the message is being sent as a result of the referral

Under CASL, no consent is needed to send the following messages:

- quotes or estimates that were previously requested by the recipient;
- messages that facilitate, complete or confirm a commercial transaction that the recipient previously agreed to enter into or that is already underway;
- warranty information, product recall information or safety or security information about a product, good or a service that the recipient has used or has purchased;
- factual information about goods or services offered under the recipient's subscription, membership, account, loan or similar relationship;
- information directly related to an employment relationship or related benefit plan in which the person to whom the message is sent is currently involved, is currently participating or is currently enrolled; or
- delivering a product, good or a service, including product updates or upgrades that the recipient is entitled to receive under the terms of a transaction they previously entered into.

3.4 We think some of our messages are CEMs. Does this mean we have to stop?

CEMs can still be sent to individuals who have given express or implied consent.

3.5 What is express consent?

Express consent is when an individual gives you permission to send them any type of message, including CEMs. Express consent can be obtained in a number of ways, including:

- signing up on your website to receive messages;
- checking a box on a paper form (such as a membership application);
- providing an email address, if it is clear that you intend to send CEMs; and,
- verbal or written requests to receive messages.

Express consent, once obtained, only expires if the individual withdraws it. In the same way that express consent can be obtained in many ways, it can also be withdrawn in many ways.

3.6 We send emails asking people to uncheck a box if they want us to stop sending them messages. If they do not uncheck the box, is this express consent?

A "pre-checked box" is not sufficient for obtaining express consent under CASL.

3.7 What is implied consent?

Various types of relationship between the University and third parties will provide you with implied consent to send them CEMs. These relationships include instances where an individual or organization has:

- donated to the University in the last two years (either cash or in-kind contributions);

- volunteered for the University in the last two years;
- been a member of an association in the last two years;
- entered into a contract with the University in the last two years;
- purchased a good or service from the University in the last two years; or
- made an inquiry about University commercial offerings in the last six months.

Implied consent is transactional. For example, every time someone enters into a contract with the University, the two-year implied consent period begins again.

3.8 Are we still allowed to contact people who are referred to us?

If your message is not commercial, there would be no restrictions on contact. In the case of a “third party referral” you are allowed to send one CEM, as long as you specify how you obtained the email address. A message asking for consent is itself a CEM, so if you send such a message and do not receive a response, you may no longer send CEMs to that email address.

3.9 Someone gave me his/her contact information. Is this implied consent to send him/her a CEM?

This would be implied consent if:

- the recipient has not indicated a wish not to receive unsolicited CEMs; and
- your message is relevant to the recipient’s business, role, functions or duties in a business or official capacity.

3.10 Are there differences between obtaining consent under the CASL and obtaining consent under the *Freedom of Information and Protection of Privacy Act (FOIP)*?

Yes. The requirements and obligations for obtaining express consent under CASL are separate and distinct obligations and differ from the requirements for obtaining consent under FOIP. CASL does not alter the University’s obligations under FOIP.

For more information about FOIP and the requirements for obtaining consent under that legislation, please see the UoL’s Privacy Office website: <http://www.uleth.ca/hr/privacy-office>.

3.11 Do we have to keep a record of the consents and consent withdrawal requests we have secured?

Yes. If you send a CEM without being able to prove that the recipient has consented to receive it, you are placing University at risk of a potentially substantial fine under the CASL.

(2) Identification & Notice

3.12 If we have consent, either express or implied, are there any other requirements?

Yes. All CEMs must contain all of the following identification and notice information:

- the name of the unit sending the message;
- up-to-date contact information for the unit sending the message, which must include:
 - Mailing address, and
 - Phone number and/or email address and/or link to a webpage that contains this information;
- a statement notifying the recipient that his/her consent can be withdrawn at any time.
- an unsubscribe mechanism.

(3) Unsubscribe

3.13 What is required for the unsubscribe mechanism?

As stated above, all CEMs must contain an unsubscribe mechanism. This means that you must give the individual a way to “unsubscribe” from further messages at no cost to the individual. Your unsubscribe mechanism must be easy to access and use and must be valid for at least 60 days after you send the CEM. If you receive a request to unsubscribe, you must comply within 10

business days. *Also, once a person unsubscribes you cannot subsequently send them an electronic message asking for their consent because such a message is itself a CEM.*

3.14 What methods of unsubscribe mechanisms are acceptable?

When you send CEMs by email, you may offer one or both of the following unsubscribe methods:

- sending an email; and/or
- clicking on a link that will take the user to a web page where he or she can unsubscribe

When you send CEMs by text message, then you must offer both of the following unsubscribe methods:

- replying to the text message with the word “STOP”; and
- clicking on a link that will take the individual to a web page where he or she can unsubscribe

The unsubscribe option is key to establishing due diligence.

4. More information

4.1 Where can I get more information about the CASL?

You may direct your questions about CASL and its impact on University activities to caslinquiries@uleth.ca.

For more information on CASL compliance, please log in to the “Quick Reference Guide”.

General information on CASL and its requirements can be obtained from the Canadian Radio-television and Telecommunications Commission (CRTC) and the Government of Canada at www.fightspam.gc.ca.

4.2 Where can I get more information about privacy?

In addition to CASL, you must also consider privacy issues whenever you are collecting, using or disclosing personal information.

For more information, see the University’s Information and Privacy Office’s website at <http://www.uleth.ca/hr/privacy-office>.