

# A Marketer's Guide to Canada's Anti-Spam Law (CASL)

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CASL (Canadian Anti-Spam Law) goes into effect on July 1, 2014. With the enforcement date for sending of CEMs (Commercial Electronic Email) fast approaching, Silverpop has prepared a high-level background on the law and some best practices you can take to prepare.

Work on CASL began in December 2010. Since then, it's had many revisions/updates, and in December 2013 it was finally passed into law with a (mostly) go-live date set for July 1, 2014. Sections of the act related to the unsolicited installation of computer programs go into effect on Jan. 15, 2015, with private right of action (limiting civil litigation) going into effect July 1, 2017. While these areas are important, for the purpose of this document we're going to focus mostly on messages sent to email addresses.

The main takeaway for CASL is that it's strictly opt-in (express consent). In other words, you can only send CEMs when you have prior expressed consent (permission). In this respect CASL differs from CAN-SPAM, which largely focuses on opt-out, generally meaning you can send commercial email as long as you have a working opt-out link and process opt-outs within 10 business days.

When CASL goes into effect, it will generally prohibit the sending of CEMs without the recipient's consent (permission), including messages to email addresses, social networking accounts and text messages sent to a cell phone.

## Primary Requirements for CASL Compliance

As with any law, there are some primary aspects you should be concerned with and have a plan in place to address. For CASL these include:

- **Identification** – Must identify sender and include prescribed contact info
- **Unsubscribe** – Must include a working unsubscribe mechanism
- **Unsubscribe Processing** – Must process all unsubscribe requests in 10 business days, without delay
- **Consent** – Must have expressed or implied consent for all recipients residing in Canada (more on this later)
- **Opt-in** – Proof of expressed opt-in

## What Is Consent?

Consent is vital to CASL. There are two types of consent — express and implied.

1. **Express consent:** The recipient has given explicit consent to receive CEMs (e.g., by checking an unchecked checkbox on a form).
2. **Implied consent:** There is an existing relationship and/or the recipient has provided an email address but not expressly stated they would like to receive further communication (and has not opted out).

It's important to note that by July 1, 2017, you must obtain express consent for any recipients in your list or database that have not previously given express consent to receive commercial email and reside in Canada. Silverpop's recommendation is to proactively seek express consent for all recipients in your database since it would take significant effort to identify/track and ensure that all recipients residing in Canada at the time of sending a CEM have provided express consent. Please note: There are significant penalties for violation of CASL. Play it safe and seek consent for all recipients.

## Transitional Provision for Existing Email Contacts (Implied Consent)

If you have (or had) existing business or non-business relationships that already include communications by commercial electronic message, you'll have three years to upgrade these contacts from implied to express consent.

The "implied consent" category encompasses any recipients who have opted in through a Web form with a pre-checked opt-in, instances in which the sender and recipient have an existing business (or non-business) relationship, and occasions in which the recipient has supplied an email address and has not included a statement that indicates they do not wish to receive CEMs.

Important: ANY new recipient opt-ins obtained starting July 1, 2014, MUST have expressly consented. In other words, the recipient must give explicit consent to receive CEM (e.g., by checking an unchecked checkbox on a form). Failure to obtain, track and maintain proof of express consent is in direct violation of the law.

## What Does CASL Mean to You?

Most marketing databases or lists can be broken into categories as they relate to CASL compliance. To try to simplify, we've created the diagram below, which illustrates which recipients fall into which category. The good news is because Silverpop is a permission-based ESP, a large portion of the contacts in your list or database should fall into the first category of express consent. In other words, most Silverpop clients already have an existing process for capturing express consent AND have detailed records indicating as such.

For any records in your database that do not match one of the first three categories below, express consent will need to be obtained. Any that fall under the last category below (Purchase/No Consent) should be removed from your list.

Type of Consent	Compliant	Recommendations
Express Consent		No additional consent is needed for recipients that fall into this category.
Existing Business Relationship		You have a two-year rolling window each time a recipient makes a purchase. Any recipients approaching the 24-month window without a purchase should be moved into one of the categories below.
Exemptions/Exclusions		See exclusions and exemptions charts. No additional consent is needed for any recipients matching one or more exclusions/exemptions.
Implied Consent		Additional (Express) consent will be needed for any recipients in this category. This includes any recipients not matching one of the categories above.
Purchase/No Consent		Purchased lists are against Silverpop's Terms of Service. Also, if proof of consent is not readily available, the record/list should be removed. All recipients not matching a category above should also be removed from your list/database.

## Exclusions & Exemptions

CASL provides a number of exemptions and exclusions from seeking express consent. We've listed a few below.

Please note that with the B2B communications referenced in the chart below, the exemption only applies if certain criteria are met, including but not limited to:

- An email sent within a business or sent between businesses
- An email sent in response to a business request, complaint or offered in a professional capacity by a recipient that has conspicuously published their electronic address

### CASL Exemptions

The following types of messages are exempt:

- B2B communications
- Messages to those with whom you have an existing non-business relationship/donations or gifts, etc.
- Communications to those with whom you have an existing business relationship within a two-year period
- Messages sent to consumers in response to a request for information
- Messages sent to enforce a legal right
- Third-party referrals/Forward to a friend
- Communications sent between those with personal relationships within organizations
- Messages sent between organizations with an existing relationship
- Communications sent to satisfy legal obligations
- Messages sent to foreign states with anti-spam legislation

### CASL Exclusions From Consent

The following messages do not require express consent:

- Communications that provide a quote or estimate
- Messages that facilitate a transaction previously agreed to
- Warranty/recall/safety or security related emails
- Communications relating to purchase or ongoing maintenance of memberships, loans, etc.
- Messages that deliver goods or services/product updates or upgrades

## What's Required in an Email When Seeking Express Consent?

When seeking expressed consent from an existing list/database, there are some elements the message must contain to be compliant:

- Clear purpose/request for consent
- Contact information of sender or group seeking consent
- Name of person/group seeking consent
- Clear unsubscribe

## How Are Transactional Emails Handled Under CASL?

Although transactional emails can be sent, they must not contain ANY reference to personal or product promotion. And while transactional messages don't require consent, they must link to the unsubscribe page. A recommendation here would be to offer a preference center where recipients can opt out of marketing messages.

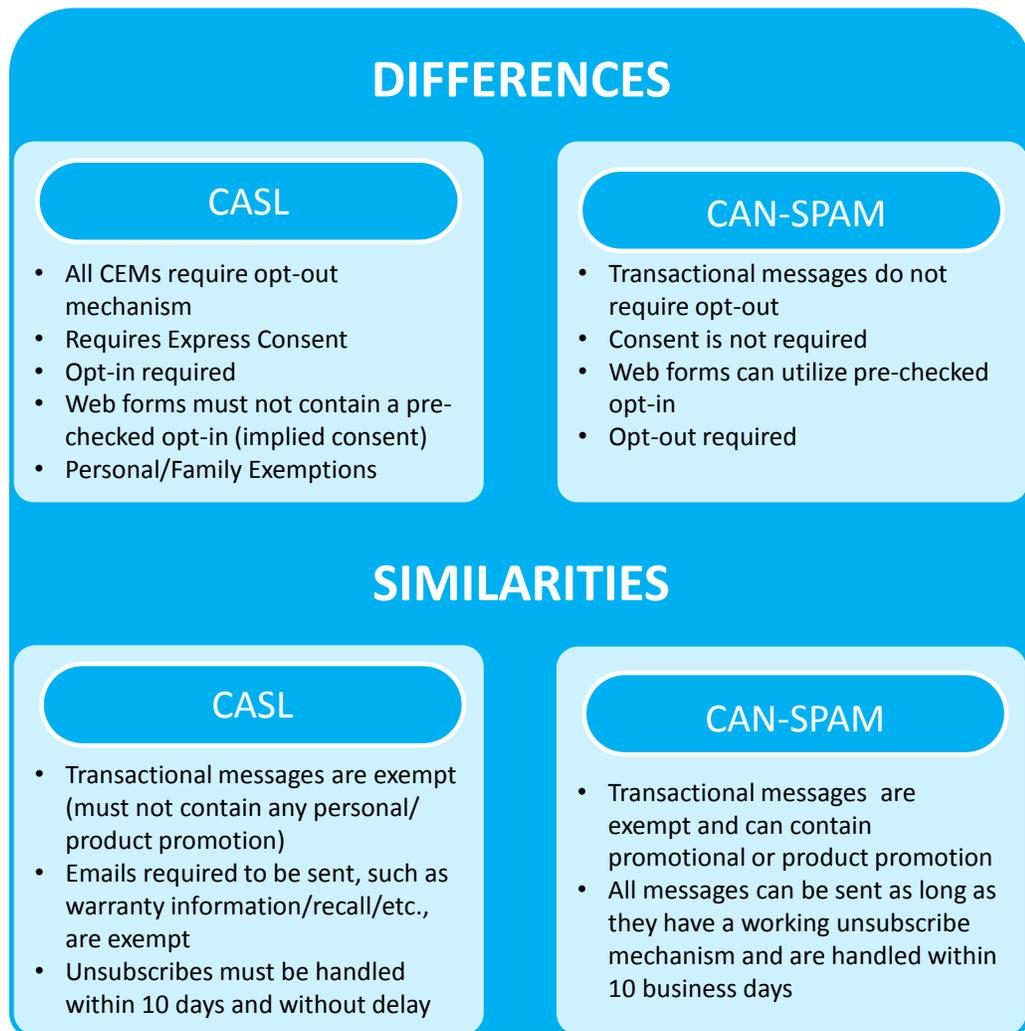
Also note: Any commercial content, including a request for consent for future CEMs, would be considered a commercial email. A recommendation would be to send two messages — one strictly transactional, followed a day later with an upsell CEM to people who have not unsubscribed from future commercial messages.

## Differences and Similarities in CAN-SPAM and CASL

While there are some important differences to note in CAN-SPAM (U.S. anti-spam law) and CASL, it's also important to note their similarities (see chart below for a high-level description of both).

As mentioned earlier, the most important takeaway is that CASL is an opt-in law, requiring proof of opt-in. In contrast, CAN-SPAM is opt-out focused, mainly requiring the ability to opt out anyone who chooses to no longer receive your emails. Thus, under CAN-SPAM purchased lists could be identified as "legal," though a very bad practice and against Silverpop's Terms of Service. CASL makes purchasing of lists illegal.

Again, while the law requires proof of opt-in only for recipients residing in Canada, most of the world has moved to an opt-in versus opt-out law. Silverpop's recommendation would be to adhere to the most restrictive law to avoid any chance of non-compliance.



## CASL Preparation

It's important to restate that the enforcement date for CASL is July 1, 2014. If you haven't started already, you should develop a plan to ensure CASL compliance. Below are a few points to help get you started.

### 1) Meet internally and devise a plan

- Ensure proper stakeholders are aware (this includes legal counsel, etc.).
- Make sure all internal policies and procedures are updated.

### 2) Inventory your data collection methods

- Determine the different ways you currently collect data and ensure they are in compliance with CASL. Remember, any forms cannot have a pre-checked opt-in.

### 3) Identify and determine how your email is being sent

- Ensure that any third-party companies and/or ESPs have tools and mechanisms in place to ensure CASL compliance.

## Hefty Fines for Non-Compliance

Finally, non-compliance with CASL comes with hefty fines:

- \$10 million per violation for a corporation
- \$1 million per violation for individuals

For the sake of your bottom line and the quality of your database, it's important you take inventory and put a plan in place to ensure compliance – soon.

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### Related Resources:

CASL - [fightspam.gc.ca/eic/site/030.nsf/eng/home](http://fightspam.gc.ca/eic/site/030.nsf/eng/home)

CAN-SPAM - <http://www.fcc.gov/guides/spam-unwanted-text-messages-and-email>