

Canadian Anti-Spam Legislation (CASL)

FREQUENTLY ASKED QUESTIONS

The purpose of this document is to assist and guide U of R employees regarding their obligations under the Canadian Anti-Spam Legislation (CASL). This document summarizes the complex requirements of the legislation but is not intended to be a substitute for legal advice. If you have specific questions about CASL, contact the [Office of the University Secretariat](#).

General Questions

1.1. What is CASL?

The primary purpose of CASL is to control / deter the sending of unsolicited electronic “junk” emails (spam) and related activities (including the installation of computer programs / malware, address harvesting, and unauthorized altering of transmission data (phishing)). CASL prohibits the sending of commercial electronic messages (CEMs) to a specific electronic address unless (a) there is a relevant exemption or (b) the recipient consents and the message contains the prescribed content (i.e. the sender’s name and contact information, plus an unsubscribe mechanism).

1.2. When will CASL come into force?

The legislation came into force on July 1, 2014. On January 15, 2015, the rules respecting the installation of certain computer programs came into force. The federal government has delayed implementation of the provisions which provide individuals a private right of action to sue organizations that breach CASL (which were to come into force on July 15, 2017).

1.3. Who does CASL apply to?

CASL applies to most organizations in Canada, including the U of R.

1.4. What impact will CASL have upon U of R?

CASL will have a reasonably modest impact on the U of R as most electronic messages sent by U of R should not be subject to the legislation (as they are not pertaining to a commercial activity).

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

Those who violate CASL could face fines of up to \$10 million for an organization, and \$1 million for an individual. Further, officers, directors and agents can be held personally liable for their organization’s failure to comply with CASL.

2. Scope of CASL

2.1. What is meant by an “electronic message” under CASL?

An electronic message is one sent to a specific electronic address or account such as email, SMS (text messages), instant messaging (including through social media). The publication of blog posts or other publications on social media sites (e.g. Facebook, Instagram, Twitter) does not fall within the scope of CASL as they are not sent to a specific electronic address.

2.2. What types of electronic messages are regulated by CASL?

CASL applies to electronic messages that encourage participation in a commercial activity.

A “commercial activity” is broadly defined as “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 of commercial activities include:

- a. *Offers to purchase, sell, barter or lease a product, goods, or a service, etc;*
- b. *Offers to provide a business, investment or gaming opportunity; or*
- c. *Advertising or promoting anything referred to above in (a) or (b).*

An electronic message requesting consent to send further CEMs is itself a commercial electronic message requiring CASL compliance.

2.3. How does CASL impact the U of R?

The U of R is a public education institution established by an Act of the Legislature, and is not a commercial entity. Messages concerning activities relating to the U of R's core mission of education, research, and service (together with administrative activities that support them) (collectively, the “**Core Activities**”) are not of a commercial character and as such CASL does not apply to messaging regarding these activities. This does not mean, however, that all electronic messages sent on behalf of the U of R are exempt from CASL. The following questions provide context for which electronic messages on behalf of the U of R may be subject to CASL.

2.4. Can I send messages to recruit students or faculty or staff?

Yes. Electronic messages promoting or recruiting students into U of R programs are not commercial and therefore not subject to CASL. Content relating to applications, admissions and registration processes is also permissible. Similarly, faculty and staff recruitment is not commercial given the connection to the University Core Activities.

2.5. What kind of messages can I send to students?

Messages to students providing information about academic matters and educational programming (e.g. schedules, policies, instruction, examinations, course materials, emergencies), messages promoting events closely connected to the Core Activities (e.g. student athletic events, student

concerts, student art exhibits, student run conferences, career fairs) and messages relating to student life (e.g. student meal plans, student residences, sporting events) are not covered by CASL. However, messages promoting goods or services offered by the University that are not closely connected to the Core Activities (e.g. general merchandise in the bookstore), or messages promoting services offered by third parties, are subject to CASL and steps will need to be taken to comply (unless there is implied or express consent to receive such messages).

2.6. What about messages to faculty and staff?

Internal communications between U of R faculty and staff are not covered by CASL where they relate to the activities of the university, including those relating to university benefits and services (e.g. pension, health insurance, internal educational opportunities). Messages promoting services offered by third parties are caught by CASL, and steps will need to be taken to comply (unless there is implied or express consent to receive such messages).

2.7. What about University fundraising activities?

Electronic messages sent by or on behalf of the U of R for the primary purpose of raising funds / soliciting donations are not subject to CASL.

2.8. What about messages to alumni?

Communications concerning university education, research and service activities, campus news and fundraising are not commercial in nature. As well, the U of R has taken the position that members of the Alumni Association are members of a “club, association or voluntary organization” within the meaning of CASL, thereby giving the U of R implied consent to send CEMs to alumni until that consent is withdrawn. However, if a communication in part promotes third party products or services (such as insurance or credit card loyalty programs) it may require further steps to comply with CASL.

2.9. What about using electronic messages in relation to research activities?

Messages to funding agencies and collaborators are not covered, nor are communications with other researchers about research activities. Messages surrounding recruitment of research participants and the collecting of research data are also fine. However, electronic messages for the purposes of providing or seeking IP licensing opportunities or partners for commercial purposes would require CASL compliance.

2.10. What about continuing education courses or workshops offered to the public?

Continuing education, executive education, workshops and certificate programs support the U of R's mission and Core Activities and as such are not subject to CASL.

2.11. Can I promote specific events?

Promoting events that relate to any Core Activities (e.g. student athletic or artistic events, academic conferences, and research workshops) is not commercial activity. However, promoting events which are simply taking place at the U of R (e.g. non-university sporting events or artistic performances) would require compliance with CASL.

2.12. Does CASL apply to “mixed purpose messages”?

“Mixed-purpose” messages that are mainly connected to the U of R’s Core Activities, but which also contain other elements with a commercial purpose, would be subject to CASL. For example, if an electronic newsletter about the U of R’s educational programs contains an advertisement for a commercial sponsor or items of a commercial nature, the entire newsletter is considered to be a CEM and can only be sent to recipients from whom U of R has implied or express consent.

2.13. What are the exemptions to CASL?

There are certain electronic communications that are exempt from CASL. These include:

- a. where there is a personal or family relationship with the recipient;
- b. intra-business communications (messages sent within the U of R concerning U of R activities);
- c. inter-business communications (messages between the U of R and another organization with whom the U of R has a “relationship” and the message concerns the activities of the recipient organization);
- d. messages responding to a request, inquiry or complaint;
- e. messages sent to satisfy a legal right or to enforce or provide notice of existing or pending legal rights or actions; and
- f. messages sent by registered charities where the primary purpose is fundraising.

There are also CEM's where no consent is required. These include:

- a. messages providing quotes or estimates, if requested
- b. messages facilitating an agreed-to commercial transaction; and
- c. messages providing information about an ongoing subscription, membership, loan or a similar relationship.

3. Requirements for Commercial Electronic Messages

3.1. Do you need to get a recipient’s consent to send a CEM?

Yes, before sending a CEM that is subject to CASL, you must have the recipient's implied or express consent.

3.2. What is “implied consent”?

Implied consent may be deemed in existing business relationships and existing non-business relationships and in other circumstances as follows:

- a. Where the recipient has an Existing Business Relationship with the U of R through:
 - i. the purchase of a product or service, or the acceptance of a business opportunity within the preceding 2 year period; or
 - ii. the entering into of a contract by the recipient with the U of R that is currently in existence or has expired less than 2 years ago; or
 - iii. the U of R responding to a business inquiry made by the recipient within the last 6 months.
- b. Where the recipient has an Existing Non-business Relationship with the U of R through:
 - i. a donation or gift made by the recipient to the U of R within the last 2 years; or
 - ii. volunteer work performed by the recipient for the U of R within the last 2 years; or
 - iii. membership in a U of R club, association or voluntary organization within the last 2 years.
- c. Where the recipient has (i) conspicuously published his/her email address (ii) not indicated that unsolicited CEMs are not welcome; and (iii) the communication by the U of R to the recipient pertains to the recipient’s business role or duties; or
- d. Where the recipient has provided his/her email address to the U of R without indicating a wish not to receive CEMs.

Note: Implied consent usually lasts for two years. For example, the U of R has a non-business relationship with its donors, which provides implied consent to send them CEMs for two years after their last donation. If you have someone’s implied consent that could expire, you should send them a message asking for express consent before the two year period expires.

3.3. What is “express consent”?

Express consent is when a recipient gives a positive or explicit indication of consent to receive CEMs. It is preferable to obtain express consent in writing, as it makes it easier to verify that the consent was provided. You may request individuals provide their written consent in various ways, e.g. by signing a document, sending you an email, entering information into a web form, or clicking on a checkbox or an “I Accept” button on a web page.

3.4. What information do requests for express consent have to contain?

Requests for express consent must contain the following information:

- a. the specific purpose for which you are seeking consent;

- b. the name of the U of R unit seeking consent;
- c. the mailing address, and a telephone number, email address or web address, for the U of R unit seeking consent (or a link to a website containing this information); and
- d. a statement indicating that the person whose consent is sought can withdraw their consent.

Note: When seeking express consent, the recipient must always be allowed to “opt-in”, rather than having to “opt-out”. This means that if you are using a checkbox for consent, the box cannot be “pre-checked”.

3.5. Can the U of R obtain a “blanket consent” that covers multiple units/purposes?

It is preferable for each U of R unit to get its own consent, which is restricted to the particular needs of that unit, rather than seeking a “blanket consent” that covers multiple units and purposes. There are at least two practical difficulties with “blanket consents” in a university setting. The first is that a valid consent must identify the purpose for which you will send CEMs to the individual. With “blanket consents”, it may be difficult to identify and define all of the purposes of the consent in an intelligible and concise fashion. The second difficulty is that CEMs must contain information about how to unsubscribe from future CEMs. When an unsubscribe request is received in relation to a “blanket consent”, it will have to be communicated to all of the U of R units that were relying on the consent. Keeping track of these matters across several units could be quite challenging.

3.6. Do you have to keep a record of the consents you have received and unsubscribe requests?

Yes. CASL requires that you maintain a record of which recipients “opt-in” for the specific purpose for which consent was requested. The record should include the dates and means by which requests were sent, and consents, opt-outs or unsubscribe requests received.

Similarly, it is essential to track which electronic addresses have submitted unsubscribe requests to ensure that CEMs are not sent to them against the recipient’s wishes. Recipients who submit an unsubscribe request must be removed from the applicable Unit’s electronic mailing list within 10 days of receipt of the request.

Where the U of R is relying on implied consent to send CEMs the tracking record must record the “expiry date” of the implied consent.

3.7. What information do CEMs have to contain?

All CEMs must contain the following information:

- a. the name of the U of R Unit sending the message;
- b. the mailing address, and a telephone number, email address or web address, for the U of R Unit (or a link to a website containing this information); and

c. information about how to unsubscribe from future CEMs.

If it is not practicable to include all of the above information in the CEM, then the CEM must contain a clear and prominent link to a webpage that contains the information.

4. Other Considerations

4.1. Where can I get more information about privacy?

In addition to CASL, you must consider privacy issues when collecting and communicating personal information. For more information, see the University Secretariat website for privacy-related information and guidelines <http://www.uregina.ca/president/executive-team/ed-governance-univ-secretary/privacy-access.html>