

Canadian Anti-Spam Legislation (CASL)

FREQUENTLY ASKED QUESTIONS

The purpose of this document is to assist and guide U of R staff and faculty members to understand their obligations under the Canadian Anti-Spam Legislation (CASL). The 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 Business Analyst, Reporting, External Relations at 306-585-4112.

1. General Questions

1.1. What is CASL?

The primary purpose of CASL is to deter unsolicited electronic “junk” emails, including spamming, hacking, malware, harvesting, fraud and privacy invasion. CASL prohibits the sending of commercial electronic messages to an electronic address unless (a) the recipient consents, and (b) the message contains the prescribed content (as discussed below).

1.2. When will CASL come into force?

The legislation came into force on July 1, 2014; however, there is a 3 year transition period. The rules respecting the sending of commercial electronic messages came into force on July 1, 2014. On January 15, 2015 the rules respecting the installation of certain computer programs came into force. As of July 1, 2017 individuals will have a private right of action to sue organizations that breach CASL.

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. For more information about the scope of the legislation, see the following sections of this FAQ.

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 and directors can also be held liable if they authorized, acquiesced in or participated in offending conduct.

2. Scope of CASL

2.1. What kind of electronic messages are regulated by CASL?

CASL applies to commercial electronic messages (CEMs) sent to an electronic address such as through email, SMS (texts) and social media. A CEM is defined as a message, based on the content, hyperlinks or contact information in the message, that promotes or has as its purpose, or one of its purposes, to 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”.

Thus, a CEM includes electronic messages that:

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

2.2. How does CASL impact the U of R?

CASL should not apply to messages related to the core activities of U of R. U of R, like other public educational institutions, is not a for-profit entity. However, there is no exemption for educational institutions under CASL, and a number of activities that the U of R engages in have a commercial nature or are outside of the core educational activities, and, therefore, may fall within the ambit of CASL. “Mixed-purpose” messages that are mainly connected to the U of R’s educational mandate, but which also contain other elements with a commercial purpose may not be excluded. For example, if an electronic newsletter about the U of R’s educational programs contains a small advertisement for a commercial sponsor or items of a commercial nature, the entire newsletter is considered to be a CEM.

As CASL is new and untested legislation, there is also a possibility that the Canadian Radio-television and Telecommunications Commission (CRTC) may come to a different conclusion as to whether the core activities of universities are within the scope of CASL. Therefore, units should implement reasonable strategies to be CASL compliant. The U of R will continue to monitor the implementation and enforcement of the legislation to see how this matter evolves.

2.3. What are the exemptions to CASL?

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

- a. where there is a personal or family relationship with the recipient;

- b. intra-business communications (representatives within the same organization);
- c. inter-business communications (between organizations where they have a “relationship” and the message concerns the activities of the recipient organization);
- d. responding to an inquiry or complaint respecting a business activity;
- e. satisfying a legal right or to enforce or provide notice of existing or pending legal rights or actions;
and
- f. CEM's sent by registered charities where the primary purpose is fundraising.

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

- a. quotes or estimates, if requested
- b. where the CEM facilitates an agreed-to commercial transaction; and
- c. information about ongoing subscription, membership, loan or a similar relationship.

3. Requirements for Commercial Electronic Messages

3.1. Do you need to get recipients' consent to send them CEMs?

Yes, before sending a CEM, 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. Existing business relationships:
 - i. the purchase of a product or service within the preceding 2 year period; or
 - ii. the entering into of a contract that is currently in existence or has expired less than 2 years ago; or
 - iii. responding to a business inquiry made by the recipient within the last 6 months.
- b. Existing non-business relationships:
 - i. a donation or gift made by the recipient to the sender within the last 2 years; or
 - ii. volunteer work performed by the recipient for the sender within the last 2 years; or
 - iii. membership in a 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 pertains to the recipient's business role or duties; or
- d. Where the recipient has provided his/her email address to the sender 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. The U of R may also have a non-business relationship with its alumni members.

That said, if you already have someone's implied consent, units should still be obtaining 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 webform, 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.

In addition to requesting the individual's express consent, it is also necessary to provide a privacy statement explaining your legal authority to collect personal information from the individual.

Note: Consent must always be “opt-in”, not “opt-out”. This means that if you are using a check-box 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 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 contact 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 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 who chose “opt-in” and “opt-out”. You need to be able to prove that the recipient has consented to receive CEMs.

3.7. What information do CEMs have to contain?

As mentioned above, very few of the messages sent by U of R are subject to CASL. However, 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 seeking consent (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 it must contain a clear and prominent link to a webpage that contains the information.