

Canadian Anti-Spam Legislation (CASL)

FREQUENTLY ASKED QUESTIONS

1. General Questions

1.1. What is CASL?

The primary purpose of CASL is that it regulates the distribution and receipt of Commercial Electronic Messages (CEMs).

CASL also prohibits the unauthorized altering of transmission data; the installation of computer programs without consent (eg. viruses, spyware); and the provision of false or misleading information either in the content of your message or the sender information.

The majority of CASL, including those provisions governing the sending of CEMs, came into force on **July 1, 2014**. The provisions relating to computer programs came into force on **January 15, 2015**.

1.2. 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 UAlberta, including CEMs sent to individuals outside Canada. If you are sending CEMs to other countries, you may also have to comply with those countries' respective anti-spam laws.

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

Yes. CASL applies not only to CEMs we send internally by UAlberta, but also to CEMs the university "causes or permits to be sent" by third parties, such as direct mail services.

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

CASL imposes administrative monetary penalties for noncompliance of up to \$10 million for an organization, and \$1 million for an individual. Officers, directors, and agents can be held personally liable for their organization's failure to comply with CASL.

The Canadian Radio-television and Telecommunications Commission (CRTC) is tasked with enforcing the provisions of CASL. You can visit their website for a review of [recent CASL enforcement actions](#) or [other information](#).

2. Commercial Electronic Messages

2.1. What is a Commercial Electronic Message?

A Commercial Electronic Message (CEM) is defined as any message to an electronic account (ie, emails, text messages, and direct messages on a social media platform) **that encourages participation in a commercial activity**, regardless of whether there is any expectation of profit.

A CEM does not include interactive two-way voice communication, fax messages, or voice recording sent to a telephone account. Telephone calls that offer a product are not CEMs but



may be regulated by the federal Do-Not-Call List. See [here](#) for more information about the Government of Canada's Do-Not-Call List.

2.2. What is a commercial activity?

Under CASL, a "commercial activity" is 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 provided in CASL include:

- purchasing, selling, bartering, or leasing any products, goods or services, or land;
- providing a business, investment, or gaming opportunity; or
- advertising and/or promoting any of these activities.

In assessing the "commercial character" of a message, one is expected to look at all aspects of the message, including:

- The content of the message;
- Any hyperlinks in the message to website content or other information; and
- The contact information included with the message.

2.3. How does CASL impact the University of Alberta?

As a public education institution, the University of Alberta not a commercial entity and any electronic messages that communicate, support, or promote the university's core activities and mandate (ie, teaching, learning, scholarship, and research) are not considered to be "commercial activities."

Consequently, most of the UAlberta's electronic messaging is not subject to CASL. However, if a message does not relate to the UAlberta's core activities and mandate, CASL may apply if the message has a commercial character to it.

For more guidance on whether CASL might apply, and what this means, please refer to the [CASL Application at UAlberta document \(CCID protected\)](#).

It can be difficult to determine whether an electronic message may be related to UAlberta's core activities and mandate, and therefore whether CASL applies. If you are uncertain about the application of CASL even after reviewing these documents, please contact the Office of General Counsel at gcounsel@ualberta.ca for more specific advice.

2.4. Is fund-raising a commercial activity?

Messages that are sent by or on behalf of a registered charity, such as UAlberta, **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 CASL.

2.5. What are "mixed purpose" messages?

Any electronic message that includes a commercial aspect (even if that aspect is only part of the message) may render the whole message "commercial" and thus subject to CASL.

"Mixed purpose" messages can only be sent to recipients from whom the UAlberta has implied or express consent. Examples of mixed purpose messages might include:



- Newsletters that include advertisements from or promotion of sponsors, affinity partners, or non-educational UAlberta merchandise; or
- Newsletters that include the promotion of third-party events, conferences, programs, etc.

2.6. What are the requirements for Commercial Electronic Messages?

Essentially, CASL contains the following three requirements for CEMs:

1. You must have the consent of the individual before the message is sent;
2. You must identify yourself and provide your contact information; and
3. You must give the individual a way to “unsubscribe” from further messages.

The following questions (sections 3 to 5) are relevant where you are sending CEMs within the meaning of CASL. They are not relevant to messages that are not CEMs as contemplated in CASL (and set out in Question 2.3).

3. Consent Requirements

3.1. What are the two kinds of consent?

CASL is based on an opt-in system, which means that you need to have the person’s consent before you send them a CEM. An electronic message that is designed to request a person’s consent is itself a CEM under CASL.

Under the legislation, there are two kinds of consent: *implied* consent and *express* consent.

3.2. What is implied consent?

Implied consent may arise out of an existing business relationship. For example, UAlberta has business relationships with:

- Current students;
- Individuals leasing UAlberta-owned facilities;
- Suppliers of goods and services to UAlberta; and
- Individuals who have inquired about, or applied, to enter into a business relationship with UAlberta.

Implied consent may also arise out of an existing non-business relationship. UAlberta has non-business relationships with the following groups of individuals:

- Volunteers at UAlberta;
- Donors to UAlberta; and
- Alumni members of UAlberta.

Third, implied consent may arise if an entity has given you or has conspicuously published their business contact information. For example, you could send a business-related CEM to a business if it prominently posts its email on its website. Please note that this type of implied consent only applies to businesses and their representatives, not to private individuals.

Implied consent normally lasts for two years. For example, if somebody volunteered at the UAlberta, you have a non-business relationship with them, which gives you their implied consent to send them CEMs for the next two years.



After two years, the implied consent expires. If you have somebody's implied consent, you should send them a message asking for express consent before the implied consent period expires.

3.3. What is express consent?

Express consent should be in writing, but can also be oral. Individuals may provide their consent in various ways (e.g., by signing a document, sending you an email, entering information into a webform, or clicking on an "I Accept" button).

Once you have secured someone's express consent, you may continue to send them CEMs indefinitely unless the individual "unsubscribes" from further messages.

To secure somebody's express consent, you have to identify:

- The specific purpose for which you are seeking their consent;
- The name of the UAlberta unit seeking consent;
- The following contact information for the UAlberta unit seeking consent (or a link to a website containing this information):
 - mailing address
 - telephone number and/or email address and/or web address; and
- A statement indicating that the person whose consent is sought can withdraw their consent.

In addition to requesting the individual's consent, it is also necessary to provide a privacy statement explaining why you are collecting personal information from the individual. [Model consent and privacy language](#) can be used to provide additional guidance.

If oral consent is obtained, the same information set out above needs to be obtained from and/or provided to the person whose consent is being sought. In addition, in order to establish the onus that you have properly obtained the person's consent, oral consent must:

- Be capable of being verified by an independent third party, OR
- Be contained within a complete and unedited audio recording of the consent.

3.4. How do you request somebody's express consent?

The easiest way to request express consent is to do so when an individual applies for a service.

You can also proactively request somebody's express consent by mailing or handing them a printed form to complete and return to you. However, after July 1, 2014, CASL restricts your ability to request express consent using electronic messages, such as emails. When you send an electronic message requesting consent, this message is itself a CEM. Therefore, you can only use an electronic message to request express consent if you have prior implied consent to do so. In other words, what you are really doing is "converting" implied consent into express consent.

Consent must be "opt-in," not "opt-out." This means that if you are using a check-box for consent, the individual must check the box to explicitly indicate his or her consent. The box cannot be "pre-checked." Here is an example of an acceptable consent mechanism using a check-box:



I agree to receive messages from UAlberta Faculty of XXX related to [purpose of message]..

You may withdraw your consent at any time. Refer to our [privacy policy](#) or [contact us](#) for more details.

The required contact information of the UAlberta business unit seeking content would be contained in a link from the “contact us” statement.

3.5. If somebody gives you their business card, are they giving you their consent to send them a CEM?

This is not express consent because express consent must be in writing. This might, however, be implied consent if the individual is inquiring about entering into a business relationship with UAlberta.

3.6. Can we get blanket consent from students or other individuals for UAlberta to send them CEMs?

There are at least two practical difficulties with “blanket consents.” The first is that a valid consent must identify the purpose for which you may contact the individual. 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 a valid consent must identify somebody at UAlberta the individual can contact if they want to withdraw the consent. When a consent withdrawal is received, it will have to be communicated to all of the departments/units that are relying on the consent. Keeping track of all of the departments/units relying on a particular consent could be quite challenging.

For the above reasons, it is usually better for each unit to secure and track its own consents, which should be restricted to the particular needs of that unit.

3.7. Are there differences between obtaining consent under CASL and obtaining consent under the FOIPP Act?

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 the *Freedom of Information and Protection of Privacy Act* (Alberta) (FOIPP Act). CASL does not alter the UAlberta’s obligations under the FOIPP Act.

For more information about the FOIPP Act and the requirements for obtaining consent under that legislation, please see the UAlberta’s Information and Privacy Office website: <https://www.ualberta.ca/information-and-privacy-office/index.html>.

3.8. Do you have to keep a record of the consents and consent withdrawal requests you have secured?

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



3.9. Are there any exceptions to the consent requirement?

Yes. Messages relating to the ongoing employment relationship don't require consent. UAlberta can send unsolicited emails to its employees for the purpose of managing the employment relationship.

In addition, and as noted above, messages sent by a registered charity (such as the UAlberta) for the primary purpose of raising funds for that charity are exempt from the consent requirements in CASL.

Most importantly, electronic messages that do not promote, offer, advertise, or encourage participation in a commercial activity (ie. electronic messages that are not CEMs) are not subject to the requirements of CASL and, therefore, do not require the consent of the intended recipient.

4. Identification Requirements

4.1. What are the identification requirements for CEMs?

All CEMs must contain the following information:

- the name of the UAlberta unit sending the message;
- contact information for the unit (or a link to a website containing this information):
 - mailing address
 - telephone number and/or email address and/or web address; and
- information about how to unsubscribe from future CEMs

[Model language for CEMs](#) can provide additional guidance on these identification requirements.

5. Unsubscribe Mechanism

5.1. What are the requirements for unsubscribe mechanisms?

All CEMs have to give subscribers the opportunity to unsubscribe from future CEMs. Your unsubscribe mechanism must be easy to access and use. Your unsubscribe mechanism must be valid for at least 60 days after you send the CEM. If you receive a request to unsubscribe, you have to comply within 10 business days.

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

- By email; or
- By clicking on a link that will take the user to a web page where they 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 they can unsubscribe.

[Model unsubscribe language](#) can provide additional guidance on these unsubscribe requirements.



Even when providing messaging that is not commercial in nature, it is usually good business practice to provide recipients with the opportunity to unsubscribe where that messaging is provided to parties external to the UAlberta and/or not integral to the relationship between the institution and recipient.

6. More Information

6.1. Where can I get more information about CASL?

You may direct your questions about CASL and its impact on the UAlberta to the UAlberta's Office of General Counsel at gcounsel@ualberta.ca.

As noted above, general information on CASL and its requirements can be obtained from either the [Canadian Radio-television and Telecommunications Commission](#) or the [Government of Canada](#).

6.2. 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 UAlberta's Information and Privacy Office's website at <https://www.ualberta.ca/information-and-privacy-office/index.html>.

6.3. Where can I get more information about the other aspects of CASL?

Information about the other aspects of CASL; specifically, where an organization is involved in the alteration of transmission data and/or where an organization produces or installs computer programs, can be obtained by contacting the UAlberta's Office of the Chief Information Security Officer (CISO) at ciso@ualberta.ca.