

CANADIAN ANTI-SPAM LEGISLATION (CASL) Protecting Canadians while ensuring that businesses can continue

On July 1, 2014 the Canadian Anti-Spam Legislation (CASL) took effect. This new amendment makes it illegal to send electronic messages to customers or potential customers in Canada without their permission. Over the years, spam has become an increasing problem for Canada. According to the Cisco 2008 Annual Security Report, Canada was ranked fourth on the Spam by Originating Country list.

Awareness and education are important in ensuring that businesses are proactive in preventing spam. Also make sure your company has network security programs, spam filters and anti-virus software to protect your own computer systems. The transition period for implied consent to receive electronic messages ends July 1, 2017. On July 1, 2017, the private right of action will be enforced and companies will become liable for not following the guidelines.

What Are the Changes for Businesses Communicating with Canadian Customers and Other Businesses?

Under CASL, there are new guidelines for businesses to follow on what they may and may not do. Listed by communication channel below are what companies may not do:

Email

- Send emails without the recipient's permission
- Misdirect URLs to a link other than what is intended
- Provide false or misleading information to promote products or services
- Collect electronic addresses without permission
- Install computer programs without consent

Text

- Send text messages without permission
- Provide false or misleading information to promote products or services
- Collect electronic addresses without permission

Social Networking

- Send messages to social networking accounts without permission
- Provide false or misleading information to promote products or services
- Collect electronic addresses without permission
- Install computer programs without consent

Websites

- Misdirect URLs to a link other than what is intended
- Provide false or misleading information to promote products or services
- Obtain individuals' personal information by accessing their computer system
- Collect electronic addresses without permission
- Install computer programs without consent

Online Chat

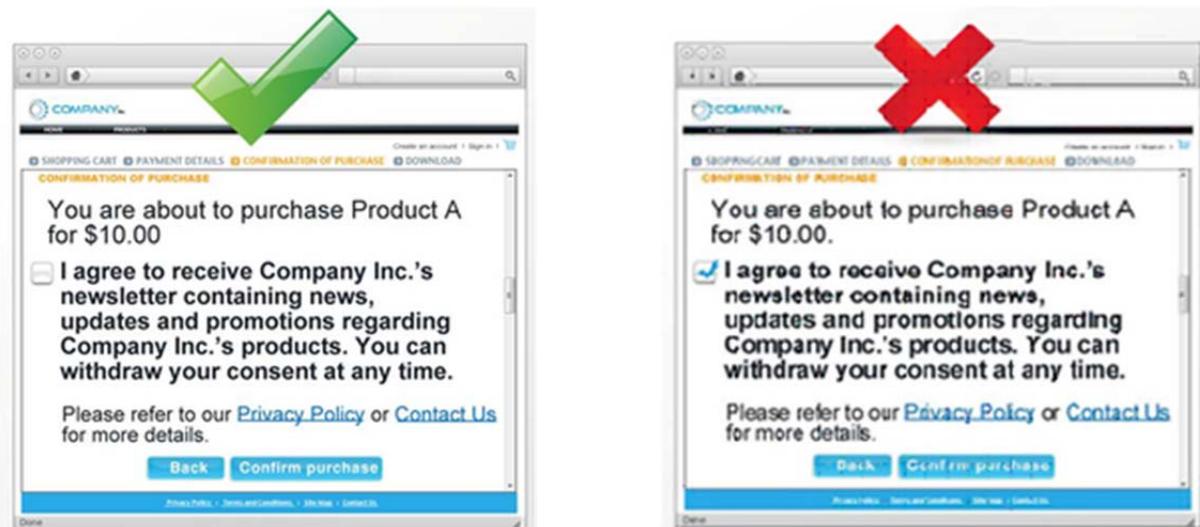
- Misdirect URLs to a link other than what is intended
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How Is Consent Defined?

Customers and prospects must clearly agree to receive messages from your business. They can provide consent either in writing or verbally. The verbal consent must be recorded. When seeking consent, businesses must provide the following:

- The name of the person or business seeking consent
- Your company's contact information
- The purpose of the message
- A statement that customers can unsubscribe at any time

Once consent is obtained, it does not expire unless the recipient withdraws at any point. A free electronic mechanism that lets recipients unsubscribe must be made available. Companies are not allowed to provide a pre-checked box and count that as permission to send messages. However, a blank box can be used for the recipient to check off. Here is a visual representation of what companies may and may not do:



If a company obtains a customer's or prospect's business card, that is implied permission to send a message. However, businesses are not allowed to send messages to a customer or prospect if:

- The recipient has stated that they do not wish to receive messages
- The message is not related to the person's job functions or duties

Proof of Approval

It is the sender's responsibility to prove they have permission to send a message, whether they have written or verbal permission.

Under CASL, permission is implied if you already have existing *business* relationships or existing *non-business* relationships. If your customer or prospect has done the following within the past two years, you have an existing *business* relationship:

- Purchased or leased any products from your company
- Accepted a business or investment opportunity with your company
- Entered into a written contract with your company
- Made an inquiry with your company or placed an application regarding anything listed above

If the message recipient has done the following within the past two years, you have an existing *non-business* relationship (applies to charities or nonprofits):

- Made a donation or given a gift to your charity or nonprofit
- Done charity work for or on behalf of your charity or nonprofit
- Has been a member of your charity or nonprofit

Each time the business relationship is renewed it begins a new two-year implied consent period.

Penalties

Penalties under CASL vary but can be severe. Penalties include:

- Administrative Monetary Penalties (AMP): Fines of up to \$1 million per violation for individuals and \$10 million per violation for corporations
- Vicarious liability: Directors and employees can be found liable for wrongful acts committed on behalf of their corporations
- Private rights of action: Individuals can sue another individual or organization for damages causing harm or loss after receiving an unwanted CEM.

How Do the Changes Affect AnswerNet Clients and Their Customers?

The company can continue to send electronic messages to your customers with whom AnswerNet already has an existing relationship. However, we will need to obtain written or verbal permission to send electronic messages to your new customers or prospects.

AnswerNet is committed to providing our customers with the people, services and technology to help you run your business your way. Offering educational tools and materials is part of our commitment, and they are provided free of charge or obligation. All AnswerNet white papers, training materials, brochures and presentations may be reproduced and distributed freely, provided appropriate authorship credit is assigned to AnswerNet.