



UNIVERSITY
OF MANITOBA

Office of Legal Counsel

IMPORTANT DISCLAIMER: This Fact sheet was created to provide general guidance on Canada's Anti-Spam Legislation as it applies internally to the University of Manitoba. It is for information purposes only and is not intended to provide you with specific legal advice and is subject to change. If you have specific legal questions about the legislation or messages you would like to send, please contact the Office of Legal Counsel.

1. FAQ's about Canadian Anti-Spam Legislation (CASL)

1.1 What is CASL?

CASL establishes rules for sending Commercial Electronic Messages (CEMs).

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

CASL will come into force on July 1, 2014.

1.2 What does CASL prohibit?

CASL prohibits the sending of Commercial Electronic Messages (CEM's) unless the sender of the message has obtained prior consent. Consent must be obtained in the manner set out in the legislation. Once the legislation comes into force, sending an email requesting consent will be considered a CEM and therefore prohibited.

1.3 When does CASL apply?

CASL applies to all electronic messages that are commercial in nature which are sent from university faculties, departments or administrative units. This means CASL applies to CEMs sent to alumni, potential students, students, members of the public, users of our facilities, members or former members of University associations, clubs or teams.

BUT many email communications the University sends are not commercial in nature, and therefore CASL does not apply to these messages. You can contact the Office of

Legal Counsel prior to sending an email to get an opinion as to whether your email is considered a CEM if you are concerned about whether CASL will apply.

1.4 Does CASL apply to CEMS sent to employees and students of the University?

CASL does not apply to employees of the University.

CASL applies to students. Again, remember many of the messages the University sends students are not commercial in nature and therefore CASL does not apply to those messages.

WHEN CASL DOES APPLY TO STUDENTS, it is assumed from the relationship that the University has with students that we have consent to send them CEMs in addition to our other email communications. This is called “implied consent” in the legislation.

When a CEM is sent to a student, the University will need to comply with CASL regarding the content of message AND the requirement to have an unsubscribe function.

2. Commercial Electronic Messages

2.1 What is a Commercial Electronic Message?

A Commercial Electronic Message (CEM) is defined as any electronic message that encourages participation in a commercial activity.

2.2 What’s an electronic message?

An electronic message is any message sent to an electronic account. Most of the electronic messages the University sends are in the form of emails, although text messages are included in the definition of electronic messages. Postings on Facebook or other social media sites are not electronic messages.

2.3 What’s 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”. Commercial Activities listed in CASL include purchasing, selling, bartering or leasing products, goods or services, and the advertising or promoting any of these activities.

2.4 What kinds of commercial activities does the University of Manitoba engage in?

The University of Manitoba considers the following to be commercial activities:

- Speaking series, Concerts and Plays (if we are charging entry fees or selling tickets for the event);
- Promotion and sale of products and services by the University Bookstore;
- Promotion and sale of publications;
- Promotions of third party commercial services and co-branded products (e.g. preferential credit card rates for alumni);
- Promotion of private sector or co-sponsored conferences or events;
- Student housing services;
- Awards Events where tickets are sold;
- Campus food services;
- Student recruitment;
- Promotion of new courses or academic programs or opportunities to prospective students and the general public;
- Solicitation for sponsorship;
- Promotion of Bison Sports team events ;
- Mini University;
- Promotion and recruitment of Junior Bison Sports Team; and
- Recreational services and classes.

2.5 What about providing email notices and information?

Providing email information to students, alumni or the general public about activities or facilities of the University will most likely not be considered advertising or promoting a “commercial activity”.

BUT, It may be hard to distinguish between the provision of general information and the promotion of the University's "commercial activities" (such as an email about a new Mini U camp course offering). When in doubt, treat an activity as though it is a commercial activity when sending the message and follow CASL's requirements or obtain an opinion from the Office of Legal Counsel prior to sending the message.

2.6 Is fundraising a commercial activity?

YES but there is an exemption in CASL for registered charities sending fundraising CEMs.

The exemption states: If the primary purpose of the electronic message is to raise funds for the University, then the message is exempt from CASL.

3. What are the CASL Requirements for Sending a CEM?

3.1 CASL contains the following three requirements for sending CEMs:

1. Before sending the message, you must have consent from the recipient to send that type of message to him or her.
2. In the CEM, you must identify the sender and provide detailed contact information about the sender.
3. In the CEM, you must give the individual a way to "unsubscribe" from further messages.

4. Obtaining Consent to Send a CEM

4.1 How do I get consent?

CASL recognizes that there are two kinds of consent:

- Implied Consent
- Express Consent

4.2 What is Implied Consent?

Implied consent means that you have not asked permission to send the CEM, but consent is implied based on the type of relationship the University has with the

recipient or based on the manner in which the recipient has posted his or her email address.

The University has implied consent:

1. when there is an 'existing business relationship' or an 'existing non-business relationship'; or
2. when the recipient has "conspicuously published" the electronic address without a statement that the person does not wish to receive unsolicited CEMs AND the message is relevant to the person's business, role, functions or duties in a business or official capacity; or
3. when the recipient has disclosed, to the person who sends the message, the electronic address without indicating a wish not to receive unsolicited CEMs, AND the message is relevant to the person's business, role, functions or duties in a business or official capacity (example: handing out of business card with and email address).

There are two types of relationship-based forms of implied consent set out in CASL:

- Business Relationship
- Non-business Relationship

4.2.1. Implied Consent from a Business Relationship:

- students/ prospective students
- person/ business under contract with the University
- users paying for goods and services
- individuals leasing/renting the University's facilities
- suppliers of goods and services to the University
- individuals who have inquired about, or applied, to enter into a business relationship with the University

4.2.2. Implied Consent from a Non-Business Relationship:

- students/ prospective students
- volunteers
- alumni members

- donors to the University
- active members of clubs or associations (and the CEM relates to that club or association)

4.3 Is Implied Consent forever?

Implied consent normally lasts for two years. For example, if somebody donated money to the university, you have a non-business relationship with them, which gives you their implied consent to send them CEMs for the next two years (or until they unsubscribe). After two years, that implied consent expires and no further CEMs may be sent.

If the person unsubscribes before the two year period is up, then we do not have consent to send them any further CEM's unless they provide express consent or enter into another business or non-business relationship with the University that renews our implied consent.

If you have somebody's implied consent, you should send them a message asking for express consent before the two-year period has expired.

4.3 What's Express Consent?

Express consent is someone expressly giving you permission to send them CEMs. This type of consent is in writing or by a person actively consenting on a website. Individuals may provide their consent in various ways. Such as: by signing a document, sending you an email confirming consent, entering information on a web page, or checking a box indicating they are providing consent or clicking an "I Consent" button on a web page .

Before, July 1, 2014, you can send an electronic message to your contacts and request consent. CASL prohibits these requests once it is in force on July 1, 2014 and you do not have a relationship which would allow for implied consent.

4.4 Is Express Consent forever?

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

4.5 When Requesting Express Consent what is needed in my message or form?

To obtain somebody's express consent, your message must include:

- the specific purpose(s) for which you're seeking their consent

- the name of the University’s unit, faculty, association, group etc. seeking consent
- the following contact information for the specific unit seeking consent (or a link to a website containing this information):
 - mailing address
 - telephone number and/or email address and/or web address
 - a statement indicating that the person whose consent is sought can withdraw their consent at any time

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.

An information sheet has been created by the Office of Legal Counsel that has example language for obtaining consent and is available upon request.

5. Content Requirements of a CEM.

5.1 I have Consent, what are the other requirements for sending a CEM?

All CEMS must include the following information:

- University Contact Information; and
- an Unsubscribe function

5.2 What Contact information do I have to provide?

All CEMs must contain the following contact information:

- the name of the University department or faculty 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 of the person responsible for the CEM

5.3 What Unsubscribe information do I have to provide?

All CEMs have to give subscribers the opportunity to unsubscribe from future CEMs. Your 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, the legislation requires you 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
- by clicking on a link that will take the user to a web page where he or she 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” or “UNSUBSCRIBE”
- clicking on a link that will take the individual to a web page where he or she can unsubscribe