

CANADIAN ANTI-SPAM LEGISLATION (CASL) – THE BASICS

WHAT IS IT?

- A new law intended to reduce spam, spyware and malware.
- Restricts the sending of Commercial Electronic Messages (“CEM’s”) such as e-mails, text and instant messages, etc..
- Restricts the installation of computer programs and software on the devices of others.
- The bulk of the provisions come into force on July 1st, 2014.
- Anyone that sends commercial electronic messages in Canada or to Canadians or that causes computer software or programs to be installed on another’s computer must comply.

HOW DOES IT WORK?

- Prohibits the sending of CEM’s unless:
 - o One of the exemptions in the Act or Regulations apply; or
 - o The sender has obtained the required prior consent (express or implied) to the sending of the message **and** have provided the prescribed information with the ability to easily unsubscribe from further messages
- Restricts the installation of software or programs onto the systems of others without **express** consent.
- Onus is on the sender of a message to prove compliance with the Act and Regulations.
- Large penalties possible for non-compliance. Maximum penalty of \$1,000,000.00 for individuals that fail to comply and \$10,000,000.00 for corporations. Directors and Officers can also be vicariously liable.

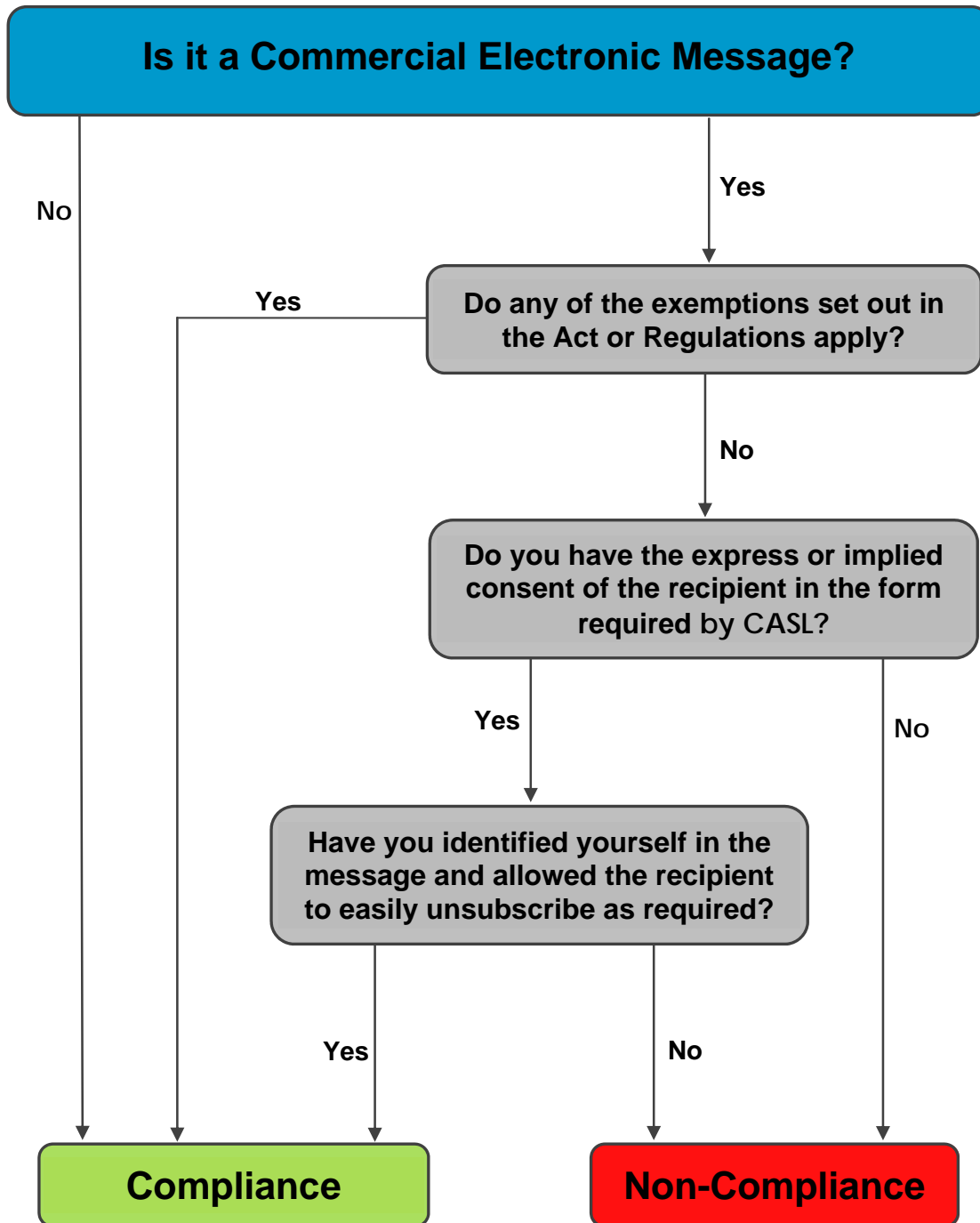
COMPLIANCE TIPS

- 1) Determine if you’re sending a Commercial Electronic Message. Includes any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit. Can be very broad.
 - Includes emails, text messages and instant messages that encourage participation in commercial activities.
 - Must consider the purpose of the message and its contents (any hyperlinks, business contact info., etc.).
 - It is fact specific – must look at it on a case by case basis.
- 2) Determine if an exemption applies, in which case the normal rules do not apply. Exemptions include:
 - Messages sent to family members or to personal friends (as defined in the Act and Regulations)
 - Messages sent to a recipient outside of Canada in a prescribed country
 - Messages sent by charities for the **primary** purpose of raising funds for the charity
 - Messages sent within a business or between businesses that have an ongoing business relationship
 - Messages sent in response to a request, inquiry or complaint or that are otherwise solicited by the recipient
 - Messages sent to someone engaged in a commercial activity consisting solely of an inquiry about that activity
 - Third party referrals where the name of the referring party is disclosed and other requirements are met
- 3) If no exemption applies, obtain consent in the prescribed form. Consent can be express or implied. The onus is on the sender to prove consent, failing which, consent will be deemed not to have been obtained (must keep records).
Express Consent (Does not expire unless consent is withdrawn)
 - Must be opt-in, not opt-out (pre-checked opt-in boxes and unchecked opt-out boxes are not permitted).
 - Silence does not equal consent. The recipient must take positive action. Requests must be clearly identified.
 - Requests for consent must state their purpose, that consent can be withdrawn, and contain other information.**Implied Consent (Only valid for a limited period of time)**
 - Consent may be implied for existing business and non-business relationships (must be a commercial relationship or non-commercial relationship within last 2 years or a business inquiry made within the last 6 months).
 - Consent is implied where one posts an email address inviting communications w/o a request not to spam.
- 4) Provide the name of the sender, contact information and an easy unsubscribe mechanism in all CEM’s.
 - Contact information must be valid for 60 days after a CEM is sent.
 - Requests to unsubscribe must be complied with within 10 days of the request.

ADDITIONAL INFORMATION

- Computer program provisions come into force on January 15th, 2015. They provide that computer programs may only be installed after express consent has been obtained and strict information and form requirements are met.
- Private right of action provisions, creating civil remedies for breach of the Act and Regs, come into force in 2017.
- Under certain circumstances existing express consents may be grandfathered in.

COMPLIANCE GUIDELINES FOR SENDING COMMERCIAL ELECTRONIC MESSAGES



The foregoing is only a brief summary of the analysis that should be completed in order to determine compliance with CASL. Reference should also be made to the Act and Regulations, as well as the interpretation guidelines published by the CRTC.

More information can be found at www.fightspam.gc.ca or by contacting David van Moorsel by e-mail at david@twinriver.ca.

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