



WARUCC 2017 Session 8.2
CASL, Spam and Higher Education
or What is a CEM Anyway?

David Johnston

June 2017

Agenda

- Overview of Canada's Anti-Spam Legislation (CASL)
- Commercial Electronic Messages
- CASL Requirements
- Observations and Conclusions
- Resources
- Questions Period

Disclaimer

- I am not a lawyer.
- The presentation provides an overview of the law's requirements and key elements. It does not offer legal advice.
- Those requiring a legal opinion on any aspect of the legislation should consult a legal authority.

- While the presentation is on a UFV template it does not necessarily represent the views of my employer.

CASL Background

- Federal legislation which came into effect on July 1, 2014
- The primary purpose of CASL is to control **spam**
 - Spam is very broadly defined
 - Additional aspects dealing with unsolicited installation of computer programs & altering data
- Commercial electronic messages (CEMs) require consent, unsubscribe, and identification in a very formal way
- Post-Secondary Education is not excluded

CASL Background

- Is separate and different from FIPPA
- Currently complaint based enforcement
- Private Right of Action was to begin in July 2017 but has been suspended pending a review of the legislation
- CASL allows for large financial penalties
- Have been several decisions where significant monetary penalties have been levied

CASL Background

- W. Rapanos – \$15,000 lack of consent, lack of specified elements and not working unsubscribe (March 2017)
- Blackstone Learning \$50,000, lack of consent (Oct 2016)
- Compu-finder \$1,100,000, lack of consent, and not working unsubscribe
- Rogers Media \$200,000
- Porter Airlines, \$150,000
- Plenty Of Fish, \$48,000

What is a Commercial Electronic Message?

- Email, text message, instant message
- Direct message using Twitter, Facebook, LinkedIn
- Encourages participation in a commercial activity
 - i.e. offering, advertising, promoting a product, a service or a person
- Links in the message to a commercial website may make a seemingly non-commercial email commercial

What is a Commercial Electronic Message?

- CASL only applies to electronic messages that are “Commercial Electronic Messages” (“CEMs”)
- “commercial activity” is essentially 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 products, goods or services, or land; providing a business, investment or gaming opportunity; OR advertising or promoting any of these activities

What is a Commercial Electronic Message?

- To determine if a message is commercial, consider the content of the message, the hyperlinks in the message and content they point to and consider whether it is reasonable to conclude the purpose of the message, or one of its purposes, is to encourage participation in commercial activity

The Good News

- Many institutions have adopted a relatively consistent interpretation of core activities that support the educational mission.
- Messages regarding the core activities of the institution are NOT commercial electronic messages (CEMs) - CASL legislation does not apply.
- Core activities of the Institution:
 - Are activities that are central to the mandate and responsibilities of the school
 - Include, but are not limited to, student and staff recruitment, applications, admissions, administrative actions, communication on teaching, learning, scholarship and research, academic communication between faculty and students, continuing education
 - Are not activities of other organizations

The Bad News

- Many institutions are not really paying attention to the messages that are sent
- Some, while taking an institutional position, have delegated responsibility to the individual department
- At some point one of us is going to be tested

Core vs Non-Core Activities

CORE

- Promoting events that relate to your activities; athletic events, student concerts, conferences organized by your institution
- Your teaching, learning and research activities
- Recruiting faculty and staff to work at the institution

NON-CORE

- Promoting third party events, rental of conference and meeting facilities
- Promoting educational programs or events held on campus but organized by others
- Informing alumni about affinity partners

Pop Quiz

- Your bookstore wants to send a marketing email to students
 - 1) Tell them about all the books and supplies they can get on campus.
 - 2) Tell them about branded gear and coffee mugs
- Which one can they send?

CASL Exclusions & Exemptions

- **A message is EXCLUDED if it is:**
 - within the institution & the message concerns institutional activities (aka The Core)
 - between institution and another organization if they have a relationship & the message concerns the activities of the organization to which it is sent
 - by or on behalf of institution for the primary purpose of fundraising
 - in response to an inquiry, request or complaint, or was otherwise solicited
 - to satisfy or provide notice of a legal obligation, or to enforce a legal right
 - to facilitate or complete a commercial transaction or warranty or safety information
 - following up on a third party referral (this applies to the first message only) and the referring party is appropriately referenced

What Can You Do?

- Communicate with students on matters relating to their academic program, course selection, admission, academic administration and graduation
- Communicate about internal matters
- Collaborate electronically with colleagues inside and outside the institution
- Communicate about events that relate to your core activities (student events, conferences, workshops colloquiums organized by your institution, etc.)

What Can't You Do? (Without Consent)



- Send students any commercial content through class lists of any kind
- Use departmental email distribution lists to sell cookies, coupon books etc.
- Combine core messages with non-core information
- Include links to external commercial websites
- Forward emails about third party activities

What CASL Requires

- 4 keys for CEMs
 - Recipient must provide consent to receive messages
 - Recipient must be provided with an easy way to stop receiving emails (or texts)
 - Sender must be clearly identified, including a mailing address and at least one other way of contacting them
 - From, Subject line and body of message must not be misleading or deceptive
 - e.g. Subject: **FREE TUITION** Body: “An important part of presenting your research is to acknowledge the sources you used. Plagiarism is defined as submitting or using the ideas, words, images, code, music, or other work of others as though it were your own.”

Mixed Purpose Messages

- A mixed purpose message is a message about your core activities that also has messaging about non-core activities
- Messages with mixed purposes are considered to be commercial electronic messages and, therefore, need to be CASL compliant
- e.g. “ The scholarship of teaching & learning colloquium is held the first Monday of each month at 11:30. **Faculty sweatshirts will be available for sale at each meeting for \$39.95**”.

CASL Express Consent

- Best practice is to obtain express consent when an individual first signs-up for a program, service, or activity
- Express consent should be captured electronically or paper
- Must be “opt-in” not “opt-out”

To obtain express consent, must inform the individual of:

- The specific purpose for which consent is sought
- The name of the person or department seeking consent
- The mailing address of the person or dept, together with one of:
 - Telephone number, email address or web address
 - A statement stipulating the individual can withdraw their consent at any time and how
- A privacy statement (which also has rules)

Bonus Quiz Question

- You have a photographer that takes a picture as your graduates cross the stage.
 - You send a list of the graduands to your vendor in preparation for convocation, including email address
- 1) Can the vendor email the students to market the photo packages available?

How to be CASL Compliant

- Identify a central area of responsibility
- Communicate your institutional position
- Reinforce that all non-excluded and commercial messages must be CASL Compliant
- Advise that most core, excluded and exempt messages should still have CASL compliant identification elements as a sound business practice
- Send an annual reminder to members of your community

Summary

- Almost business as usual
- Most of what we send is not a CEM
- Be aware of what constitutes a commercial electronic message
- Be respectful of your audience and include clear identification and contacts as part of all your emails

Resources

- Look for your “Applying CASL to <your school> Activities”
- [Applying-CASL-to-UFV-Activities.pdf](#) (example)
- Federal Government website – fightspam.gc.ca
- Barry Sookman – CASL, the University Sector
<http://www.barrysookman.com/2017/06/05/casl-the-university-sector-and-the-private-right-of-action/>

Questions?



David Johnston

University Registrar

University of the Fraser Valley

david.johnston@ufv.ca