

SPAM I AM

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***Canadian Anti-Spam Legislation (CASL)/Privacy  
Update Continuing Legal Education BC, Charities  
and Non Profit Conference November 27, 2014***

## What We'll Cover

- Key components of CASL
- Best Email Practices
- Privacy update

## Canadian Anti-SPAM Legislation

CASL regulates many online activities including:

- Commercial Electronic Messages (CEM)
- Misleading advertising and marketing practices
- Collecting email addresses without consent
- Installation of computer programs without your knowledge

## Consequences of Non Compliance

- Fines (aka administrative penalties), yikes!
  - Individuals: up to \$1 million
  - Organizations: up to \$10 M
- Liability for Directors & Officers
- Liability for organizations due to actions of employees
- Sweeping investigative powers

## Reasons for Bad Practices

- **List Growth:** Many charities and non profits want big lists
- **Best Intentions:** Volunteers/Supporters want to share their communities
- **Panic:** Need to raise funds/sell tickets/accomplish a goal, who can we solicit?

## Why It Matters

### Avoid Worst Case Scenarios:

- Being flagged as a spammer (low delivery rate)
- CASL fine (up to \$10 million)
- Disengage community by sending wrong messages to wrong people
- Complaint to CRTC or Privacy Commissioner

What is a CEM?

A CEM is:

A message sent by any electronic means (ie email, text, instant message, tweet) that has as its purpose or one of its purposes, to encourage participation in a commercial activity

## What is a Commercial Activity?

Any particular transaction, act or conduct that is of **a commercial character** whether or not the person who carries it out does so in the expectation of profit.



## Examples of CEMs

Might include:

- Email newsletters
- Fundraising asks
- Season subscription/ticket sales emails
- Messages sent via SMS (texts)

## Important Dates

### Dates to Know:

- **July 1, 2014:** Requirements for respecting CEMs
- **July 1, 2017:** End of transition for implied consent

# Charity Exemption

- There is an exemption for registered charities. It does not apply to non profit organizations
- Message sent by or on behalf of a charity with “*primary purpose* raising funds for the charity”
- Under section 3(g) of the Governor-in-Council Regulations for CEMs sent by or on behalf of a registered charity, as defined under the Income Tax Act, where the primary purpose of the CEMs is to raise funds for the charity.
- Given that legitimate messages sent by registered charities raising funds are exempt under the Act, the CRTC will focus on messages sent by those attempting to circumvent the rules under the guise of a registered charity.

# Charity Exemption – Primary Purpose

The “primary purpose” of a CEM means the main reason or main purpose of the CEM. There could be a secondary or additional purpose to the message, but the principal purpose of the CEM must be to raise funds for the charity.

Where the primary purpose is raising funds:

**Example 1:** A CEM, sent by or on behalf of a charity, which promotes an event and/or the sale of tickets for an event – such as a dinner, golf tournament, theatrical production or concert or other fundraising event – where the proceeds from ticket sales flow to the registered charity.

**Example 2:** A registered charity sends, by e-mail, a newsletter which provides information about the charity’s activities or an upcoming campaign, and does not contain any material that seeks to encourage the recipient to participate in a commercial activity, then the message would not be a CEM for the purpose of CASL.

**Example 3:** A registered charity sends, by e-mail, a newsletter which provides information about the charity’s activities or an upcoming campaign, but which also contains a section which solicits donations and may also mention corporate sponsors who supported the charity (but does not encourage the recipient to participate in a commercial activity with that sponsor). While this message may be considered a CEM under CASL, the primary purpose of the message may be viewed as raising funds; therefore, the exemption in the GiC Regulations would apply.

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Where the primary purpose is not raising funds:

**Example:** A registered charity sends, by e-mail, a newsletter which provides information about the charity’s activities or about a particular social issue. If this e-mail also advertises the corporate sponsors of a charity’s event and encourages the recipient to participate in a commercial activity with that sponsor, then section 6 of the CASL may apply without any exemption. The primary purpose of the message may not be to raise funds for the charity.

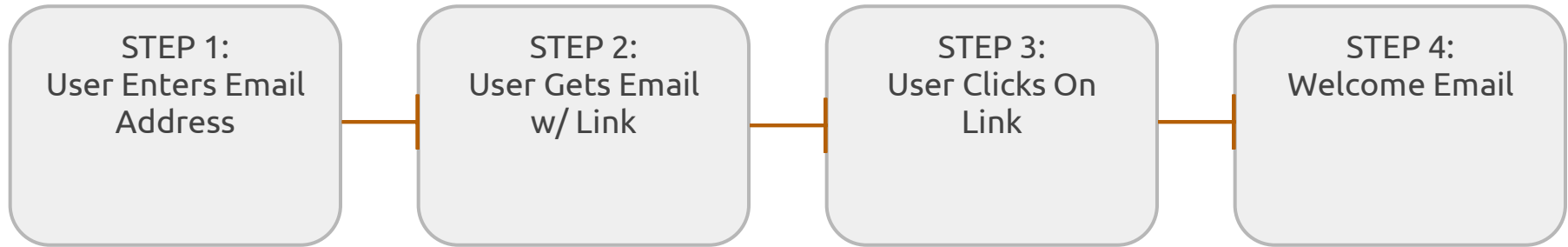
## The Key to CASL Compliance: Defining Consent

Consent can come in **writing** or **electronically**

- **Electronic:** Double Opt-in
- **Writing:** Keep Records

Must explain *exactly* what the user is consenting to.

# What is Double Opt-In?



## Key to Compliance: Defining Consent

### Request for Consent Must Include:

- **Purpose:** Exactly how you're going to use their address
- **Your Contact:** Org name, address & contact
- **Opt-Out:** How to unsubscribe



## Implied Consent Applies to Charities & Non Profits

Under section 66 of the transitional provision, consent to send CEMs is implied for a period of 36 months beginning July 1, 2014, where there is an existing business or non-business relationship that includes the communication of CEMs. During the transitional period, the definition of existing non-business relationship is not subject to the limitation period of 2 years mentioned above. Note however, that this three-year period of implied consent will end if the recipient indicates that they no longer consent to receiving CEMs.

An existing non-business relationship, as defined under CASL, is created when :

**Charity:** Has donated in the last two years, or performs volunteer work, or attends a meeting

**Non Profit:** Has been a member in last two years

## What has happened now that CASL is in force?

By this point, November 2014, most organizations should have cleaned up their email lists, and adopted the double opt-in for consent.

Since July 2014, the CRTC has apparently received thousands of complaints. Statistics on how many of those are related to charities or non profits are unknown. No administrative penalties have been levied. The CRTC repeated to me in November that the approach that will be taken is towards compliance, not penalty enforcement.

## What has happened now that CASL is in force?

When considering administrative penalties CRTC Compliance & Enforcement will apply factors set out in the enforcement of Do Not Call. In Telecom Decision 2007-48, the Commission stated that appropriate factors to be considered . . . include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violations.

## CASL and your Privacy Policy

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Is the organization you are working with/for been PIPA compliant? If it has a clear privacy policy setting out how it gathers personal information and obtains consent from those with whom they communicate then compliance with CASL should be easy. Given the importance of email and online communications to many non profits, it's a good time to review privacy.

## Time to Revisit Your Privacy Policy

- Your Privacy Policy should let people know how you are using the personal information
- Name Privacy Officer - consider if a communications person should fill this role rather than the executive director given CASL and importance of email/online to charities and non profits
- Review the policy internally & then consider a legal review
- Make sure links to the policy are easy to find on the website

# Revisit Your Privacy Policy – Understanding the Online Environment

New Guidance from Office of Information and Privacy Commissioner about on-line consent:

<https://www.oipc.bc.ca/tools-guidance/guidance-documents.aspx>

A range of data that is specific to the online environment can be considered personal data under specific circumstances,<sup>2</sup> for example:

- location information, including GPS data;
- device identifiers such as IP and MAC address;
- click stream data<sup>3</sup>, browser history, bookmarks; and,
- user generated social network data such as comments, ratings, likes and dislikes, Twitter stream, customer service interactions.

## Engage Staff & Volunteers

- Make sure that everyone in the organization (including volunteers, board, etc.) knows their role in compliance
- Make sure your staff, volunteers and Board know that privacy policy applies to your social media channels – DO NOT POST to Facebook, Twitter etc. material that would not be permissible in analog world
- Include this documentation as a part of training

## Best Practices Checklist

- Ensure your list(s) have given consent
- Segregate your lists as you are able (potentially offer options before you ask for consent)
- Review your Privacy Policy



# Best Practices Checklist

- Email Template contains:
  - Address & Contact Information
  - Clear Unsubscribe Link
  - Clear link to Privacy Policy
- Create Clear Opt-in Process
  - Double Opt-in for electronic
  - Paper trail and clear consent for paper sign-ups

# Best Practices Checklist

- Create List Management Policy
- Educate:
  - Staff
  - Leadership
  - Volunteers
  - Board

# Who I Am



Martha Rans

Lawyer [www.martharans.ca](http://www.martharans.ca)

[www.lawfornonprofits.ca](http://www.lawfornonprofits.ca)

[Privacy 101 December 9, 2014](#)

Contact me for copy of email list policy.

With thanks to Emira Mears (web strategist to non profits),  
Raised Eyebrow.com

Questions?