



CASL Consent: The Risks Increase July 1st

Posted by [Derek A. Lackey, Editor](#) / March 26, 2017

The Canadian Anti Spam Legislation (CASL) is more about what you can prove than what's so.

The CRTC requires tangible proof of consent, be it express or implied (see more information on the [5 Types of Consent](#)). If you cannot prove it they do not believe it exists. The email list owner must be able to prove every individual on their list meets the measures set for whatever type of consent they are claiming for that individual. The same applies for SMS text lists. Just having a person's address in your files is merely proof that they are in your files - not proof of their consent to be there. It seems many organizations are missing this distinction.

We have clients who absolutely know how someone came to be on their list, but cannot prove it. Fact is, on July 1, 2017, they must eliminate them from their mailing list.

"If an organization can not prove HOW and WHEN an individual was added to their email list, and what their current CONSENT RELATIONSHIP is, they should not be on the list."

Yet for some reason we seem to think that as long as "most of our list has consent", we are OK. Once again the changes on July 1st may make those kinds of decisions far more risky.



The 'grace period' is over on July 1st. In the normal course of business over the past 3 years we were granted many opportunities to 're-source' the individuals we were not sure of. The ones we couldn't prove. Some organizations took full advantage of that period and are now in good shape. Others did not, and stand to lose a significant part of their current email list on July 1st.

Indeed, there may be some you can save between now and July 1 -but the right message must be created. First you need to identify the ones that are most likely to react and provide express consent. Then you must ask for it in a compliant manner, using the right language. When seeking express consent the prescribed language includes:

1. Legal Company name and mailing address,
2. A brief description of what kind of messages they can expect,
3. A contact name and 2 ways to contact that person,
4. State that "You can unsubscribe at any time".

And don't forget - the check box cannot be pre-checked. The individual must "take a positive action" such as checking the check box. If your express opt-in does not include these prescribed elements, do not be surprised if CRTC does not accept

them as express consent.

But CRTC is only the beginning of your concerns when it comes to proving consent. The Private Right to Action you have been hearing so much about may actually be more punishing than a CRTC fine or undertaking. Bottom line: every message you send to an individual without their consent (or proving that you meet the measures of implied consent) could cost you \$200, to a limit of a million dollars a day.

These will most likely come in the form of a class action lawsuit and the law has clearly stated how it works - for both sides. The law firms for many of the leading brands are gearing up to defend their clients while many smaller firms will likely be advertising, looking for additional clients for their class action suits. It will likely be quite chaotic as the consumer learns what constitutes implied consent. While they will probably know if they gave you express consent (albeit not all consumers will remember), they may not realize that you have implied consent, or how long you have it for.

So how easily can you prove your consent?

How is your data organized to be easily accessed for each individual?

If you are going to use email or SMS text marketing this is the new price of admission. Those who are taking CASL seriously and have their act together will be rewarded.