

Emond Harnden Breakfast Seminar Series **Canada's Anti-Spam Legislation (CASL)**

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May 27, 2014

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Agenda

- 1. General Overview of CASL**
- 2. Case Studies – Review of Emails**
- 3. Compliance Strategies**
- 4. Questions**

Overview - CASL

- **Scope and Application**
 - Three Areas of Regulation:
 - Commercial Electronic Messages
 - Installation of Computer Programs
 - False Representations/Transmission Alteration

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Overview - CASL

- **Commercial Electronic Messages (CEMs)**
 - Basic: CEMs only permitted if:
 - A. Express or Implied Consent (**CONSENT** Req't)
 - B. Includes contact info, unsubscribe (**FORM** Req't)
 - Some exemptions from A or A+B

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What is a CEM?

- **Any electronic message whose content encourages participation in commercial activity**
 - Not just email!
 - Includes text, sound, voice, image
 - Need not be exclusively commercial
 - Need not be expectation of profit
 - **Includes Employees, Contractors, Suppliers, Sponsors, Public, etc..**

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When Do I Not Need Consent?

- 1) **Exceptions to consent and form requirements:**
 - Fundraising messages by registered charity
 - Response to request, inquiry, complaint, etc. by person engaged in commercial activity
 - Emails to specific countries
 - Some messages within and between businesses

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When Do I Not Need Consent?

2) Exceptions to consent requirements only:

- Delivery of product, service as per transaction
- Confirmation of commercial transaction
- Factual information re: subscription/membership
- 1st CEM following referral (specific class of individual)

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Express Consent

- The “**Gold Standard**”: Permanent (until unsubscribe)
- **Request needs to state (clearly and simply):**
 - Purpose(s) for which consent sought
 - Name and contact info
 - Statement indicating consent can be withdrawn
- **UNBUNDLED/OPT-IN**

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When is Consent Implied?

- **4 Situations:**
 - Existing Business Relationship
 - Existing Non-Business Relationship
 - Conspicuous Publication of Email
 - Disclosure of Email to Sender
- CEMs must still comply with form requirements

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Third Party Lists – Special Consent

- **Where seeking consent on behalf of 3rd party**
 - For example, sharing contact lists
 - You must set out purpose and your contact info
 - 3rd party must:
 - Identify original business that sought consent
 - Permit unsubscribe from all 3rd party CEMs

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Form Requirements

- **Must set out:**
 - Name of person/business sending CEMs;
 - Mailing address of sender;
 - One of phone #, email, website of seeker;
 - AND...

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Form Requirements

- **Unsubscribe Mechanism**
 - Must be:
 - No cost
 - Easy
 - Take effect within 10 days
 - Consider: Unsubscribe from some/all?

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Other Restrictions

- **Computer Program Installation**
 - **Comes into Force Jan. 15, 2015**
 - Need express, active, informed, opt-in consent to install program on any computing device
- False Statements, Altering Transmission Data
 - Targeted at malicious actors
 - False statement in CEMs is offence - *Competition Act*
 - No adding, altering destination except with consent

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Enforcement

- By: CRTC, Privacy Commissioner, Competition Bureau
- Liability:
 - Individual/Corporate (\$1M/\$10M)
 - Organization liable for acts of employees
 - Directors and Officers personally liable
- Personal Right of Action, effective July 1, 2017
 - **\$200 per message (max \$1M per day)**
 - Class action lawsuits coming!

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Taking the Lead

- CASL has teeth – it must be taken seriously
 - Best Comparison: Not PIPEDA, but OHS/A
- Leadership must come from the top
 - Engage your Board of Directors
- Defence of due diligence:
 - All reasonable steps to comply?
 - Policies in place?
 - Training for staff?

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Case Studies

- Many types of emails sent out by organizations
- Go through some common examples
- Consider how the Act will apply to these messages
- Objective is to better understand scope, exemptions

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Links and Footers

From: Adam Gamwell [agamwell@widgets.www]
Sent: May-26-14 1:26PM
To: Jane Doe
Subject: New Blog Post

Hi Jane,

A new blog post is available for you to read! Click [here](#) to visit it now!

Sincerely,

Adam Gamwell
Social Media Director
Widgets Company X
613-555-5555

Looking to improve your productivity? Our widgets can help! Contact us now to discuss our complete range of widgets. We have something for every business.

www.widgets.www
sales@widgets.www

Exempted Emails

From: Adam Gamwell [agamwell@widgets.www]
Sent: May-26-14 1:26PM
To: Jane Doe
Subject: Request for quote

Hi Jane,

Thank you for your email. Give me a few days and I will respond with a complete breakdown of our services and the estimated cost.

Sincerely,

Adam Gamwell
Sales Director
Widgets Company X
613-555-5555

Fundraising Emails

From: Adam Gamwell [agamwell@cawm.www]
Sent: May-26-14 1:26PM
To: Jane Doe
Subject: Request for Donation

Hi Jane,

It's that time of year again! The Canadian Association of Widget Manufacturers is in the midst of its annual fundraising campaign. We appreciate the financial support you have provided us in the past, and hope that you will be donating again this year. You can donate by clicking [here](#) and filling in the form, or by sending a cheque to 1234 Fundraising Avenue, Ottawa, ON, K1K 1K1.

Sincerely,

Adam Gamwell
Fundraising Coordinator
Canadian Association of Widget Manufacturers
613-555-5555

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CEMs

From: OnlineWidgets [OnlineWidgets@OnlineWidgets.www]
Sent: May-26-14 1:26PM
To: Jane Doe
Subject: Extra 20% off clearance items!

Hi Jane,

This weekend only, take an additional 20% off over 800+ already-reduced items! [Click here](#) now, and use the code SAVINGS20 at the checkout.

This email comes to you from OnlineWidgets.www. If you no longer wish to receive product offer emails from us please [click here](#).

This is a product offering from OnlineWidgets.www, 1234 Widget St, Ottawa, ON K1K 1K1. If you have any questions, email CustomerCare@OnlineWidgets.www or call 1.800.555.5555.

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Steps to Compliance

1. Categorize your electronic messages
2. Review your contact lists for valid consent
3. Pursue express consents
4. Develop standard methods for documenting consent
5. Develop method/system to track consent & unsubscribes
6. Update CEM signature block
7. Review contracts with mailing list providers for CASL compliance

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Steps to Compliance

- Handouts – Roadmap to Compliance and Questionnaire
- Both valuable tools to your compliance efforts
- Consider also:
 - CASL compliance policy to guide employees
 - CASL compliance training for some/all employees
 - Obtaining advice regarding high-risk messages

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Questions?