



CCAB's Rules Help Media Brand Owners Better Comply with CASL Guidelines

Canada's anti-spam legislation ([CASL](#)) has been in effect since July 1, 2014. Fines under CASL have been well publicized, and can reach as high as \$10 million for businesses and may be broadened to include the over-reaching personal vicarious liability of officers and directors. Many small to mid-size organizations, including media owners, find it challenging to adapt to CASL's overly prescriptive rules. In order to be compliant under CASL, media owners need to adopt new technologies and processes. [An overview of what media owners should be aware of can be found here.](#)

BPA Worldwide/CCAB's rules help media owners of magazine brands better comply with CASL

CASL legislation focuses on Commercial Electronic Messaging (CEM), which includes a broad range of electronic messages promoting products and services (CASL, section 1(2)). While some electronic messages are exempt from CASL, it is fair to assume that all media owners are issuing CEMs to recipients served by their respective brands and must comply with CASL. Every message sent to an electronic address – usually email, but may include SMS, social media, instant messaging and others – should be vetted to ensure consent exists. It is best to obtain either oral or written express consent.

Magazine media owners routinely send electronic newsletters and notifications of digital editions based on oral or written consent obtained from each recipient. If a complaint under CASL is pursued, it is the responsibility of the media owner to prove consent exists.

Written Consent

Media owners rely on recipients to subscribe through written or electronic means to receive digital magazine and electronic newsletter products. Written requests are typically qualification and subscription forms that have been completed and mailed to the media owner, while electronic requests often include email communication that brings a recipient to an online form. Independent audits instill the discipline in media owners to retain and produce back-up documentation supporting the qualified nature of each recipient. If challenged under CASL, media owners already undergoing annual audits have the experience and processes in place to produce back-up documentation in the course of an investigation.

Oral Consent

Media owners, notably those owners of business publication brands, are most reliant on requests obtained by telemarketing. Express consent obtained orally is permitted under CASL; however, media owners must be able to prove consent. Oral consent can be verified by an independent third party or by accessing a complete and unedited audio recording of the consent. Media owners relying on internal staff or contractors to call recipients and log information will likely not meet the requirement of an independent, third-party verification. It is ideal to have a complete and unedited



audio recording of the conversation. BPA Worldwide and its Canadian division (CCAB) rules require magazine media owners to record the entire conversation of all outbound telecom campaigns. Auditors listen to entire recordings in which express consent has been obtained for each subscriber in our audit test, and may inspect phone bills and logs to verify calls.

As a measure to fight industry fraud and create greater trust in the marketplace, BPA/CCAB took the position in 2008 requiring subscriptions (print and digital) obtained by telephone be recorded to enhance the viability of telemarketing requests and garner greater recognition amongst media buyers. This resulted in two unintended benefits that concern CASL:

Proving requests

Media owners are in a position to concretely prove recipient requests when challenged. There have been cases of individuals who have challenged media owners to prove that they have opted-in to receive electronic communications. These challenges are quickly resolved once recordings are replayed to prove the recipient had opted in to receive electronic communication. If challenged under CASL, a precedent exists for media owners to quickly and concretely prove express consent was obtained.

Limiting liability

Media owners outsource the majority of their outbound phone campaigns to third-party telemarketing companies. Mandatory telemarketing recordings allow media owners to monitor the quality and efficiency of these campaigns, specifically if the conditions of the contract were met. Media owners are in a much better position to limit their liability under CASL by monitoring the quality of recorded calls. If for example, a media owner were to sample a campaign's calls to discover that a telemarketer did not obtain express consent, liability can be limited by not sending electronic messages to those individuals.

While CASL regulations can be daunting, audited media brands, particularly those audited by BPA/CCAB, are better positioned to provide supporting back-up documentation. Mandatory telemarketing recording is a sound business practice that media owners can employ to limit their liability under CASL. The ability to retain and quickly produce documentation and call recordings to prove written and oral express consent will likely be required as part of any investigation under CASL.

All media brand owners, whether they are based in Canada or elsewhere, should be extremely careful when sending emails. Every media owner should conduct a full assessment of their electronic communication practices to determine the scope of changes to be made with policies, procedures and technologies. [Independent organizations, including BPA/CCAB's CASL - Guard, provide compliance checks to mitigate media owners' liability in the event of a CASL infraction.](#)

To learn more about CASL – Guard, BPA/CCAB's service to assess and reduce risk under CASL, or BPA/CCAB's media audits, please contact [Tim Peel](#). The contents described above are intended to be used as an aide for compliancy under CASL, and should not be construed as formal advice which should solely be relied on.



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About BPA Worldwide/CCAB. BPA Worldwide, and CCAB, its Canadian division, is in the business of providing assurance. For 80+ years as a not-for-profit assurance service provider, BPA was originally created by advertisers, advertising agencies and the media industry to audit audience claims used in the buying and selling of advertising. Today, in addition to auditing audience claims, through its iCompli service, BPA verifies compliance to defined government, industry, and organizational standards as well as adherence to privacy, data protection and sustainability guidelines and best practices. Performing nearly 3,800 audits in over 20 countries, BPA is a trusted resource for compliance and assurance services. Its latest offering, Ad iCompli, measures and scores online ad campaign performance for business and consumer marketers.

For more information on BPA and its services, please visit the [website](#).