

CASL Podcast Episode 11 - 'How Does CASL Apply to Social Media?'

A lawyer was consulted in the preparation of this material but it is only provided for educational purposes and not to be taken as legal advice. To be certain about your situation, consult a lawyer.

Hello, and welcome to the CASL Series™, this is episode number 11. And I'm your host Andrew Schiestel from tbk Creative.

The CASL Series is a series of video episodes, just like the one you're watching right now, where in each episode I take the Canadian Anti-Spam Law, short for CASL and I break them down into little digestible and more actionable subparts so that companies like your's can better understand and most importantly comply with the legislation.

Today we're going to cover how CASL applies to social media.

And I want to start by getting this piece out of the way, there are many aspects of social media that regulators have not yet clearly defined their stance on. So, based on the Act itself, it's two Regulations, and FAQ and bulletins to date, here's what we do know.

First off, when I mention social media, I'm speaking about social networking websites like Facebook, Twitter, LinkedIn, etc.

If you publish a post on a social networking website (ie. Such as Facebook or Twitter), and the post is commercial in nature, CASL doesn't apply in these scenarios. The reason is you aren't sending this message to an electronic address.

However, If you send a private message that's commercial in nature to someone on a social networking website, then CASL will apply.

This is better articulated in a FAQ previously released by CRTC where they write, "A Facebook wall post would not be captured. However, messages sent to users using a social media message system (e.g., Facebook messaging), would qualify as sending messages to "electronic addresses."

Without making things too murky, at the time this video was published, it's yet to be seen what regulators stance is on a social networking website such as LinkedIn where the environment and context is largely for commercial purposes. In specific, section S.3.D. of the Industry Canada Electronic Commerce Protection Regulations raises some very interesting questions that are worth opening a dialogue around.

In this section, it basically describes that you may send CEMs if the appropriate sender information is available somewhere within the social network (ie. So this could happen on your About Us page if you flush that out more and provide appropriate sender information). Number 2 there's an unsubscribe mechanism (So this could be for instance a blocking feature, many social networking sites have them, if someone were to block you, you don't have an ability to send them a CEM any longer). And the last thing that's required is you must have received from the recipient consent. Either expressly or by implication.

Now this is where it gets murky. Because 'expressly' and by 'implication' are different words than express and implied consent, it's questionable within certain legal circles as to if these two words (expressly and by implication) have different meaning than the words express and implied which are used throughout the rest of the Act and its regulations.

Here's why this matters, if they do have different meanings it may point to allowing people to lean on this section when sending CEMs on a social networking website that's geared more towards commerce such as LinkedIn because the thinking and rationale goes if someone registers for LinkedIn, LinkedIn is for commercial purposes they are there for providing other people like yourself consent by implication.

With all that said, again, be forewarned, because this item has not been confirmed either way by regulators but does raise some very valid questions that I believe would be great to get clarification on at some point.

Okay, so moving along, in that same FAQ as noted above at the start of this episode, CRTC said having a friend status on Facebook doesn't alone mean you have a personal relationship. As a reminder personal relationships are very valuable in CASL because if you have one you may send out CEMs to that recipient without needing any other form of consent. In that FAQ They wrote, quote unquote, "The mere use of buttons available on social networking websites, such as clicking 'like', voting for or against a link or post, accepting someone as a "Friend", or clicking "Follow" - will generally be insufficient to constitute a personal relationship.

In situations that you have consent now and you want to send that person a CEM, you must still follow the sender requirements which as a side note, episode 7, we dedicated entirely to speaking about this very topic. So go take a look at that episode if you want more information.

In summary, in providing appropriate sender information when sending out a CEM here they are, there's four items:

- You need to list your Company Name
- You have to have listed your Mailing Address,
- Either Web address, email or phone, one of those three
- And an ability to unsubscribe.

Now, you may be thinking, what if I can't get all that information into my CEM. Very appropriate concern and consideration because as you know certain social networking sites such as Twitter very much limit the number of characters you can have in your direct message to someone. If you're in this boat, you may lean on Section 2(2) of CRTC's Electronic Commerce Protection Regulation allows in circumstances when it's not practical to get all the required information in, you may provide a hyperlink in your CEM that leads to a subpage on the world wide web that provides this necessary info.

Alright, so that concludes our episode today and answers the question, 'How does CASL apply to social media?'

If you wish to deep dive this topic further and expedite your knowledge on CASL we've produced an e-guide that you may be interested in its titled The 33-Point Checklist to help Marketers & CEOs Comply with the Canadian Anti-Spam Law (CASL). If you wish to download this free e-guide, you may visit www.tbkCreative.com/eguide/CASL. Enjoy the read.

I'm Andrew Schiestel from tbk Creative. Good luck with your CASL compliance and in growing your company.