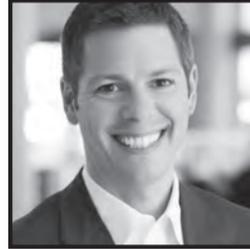
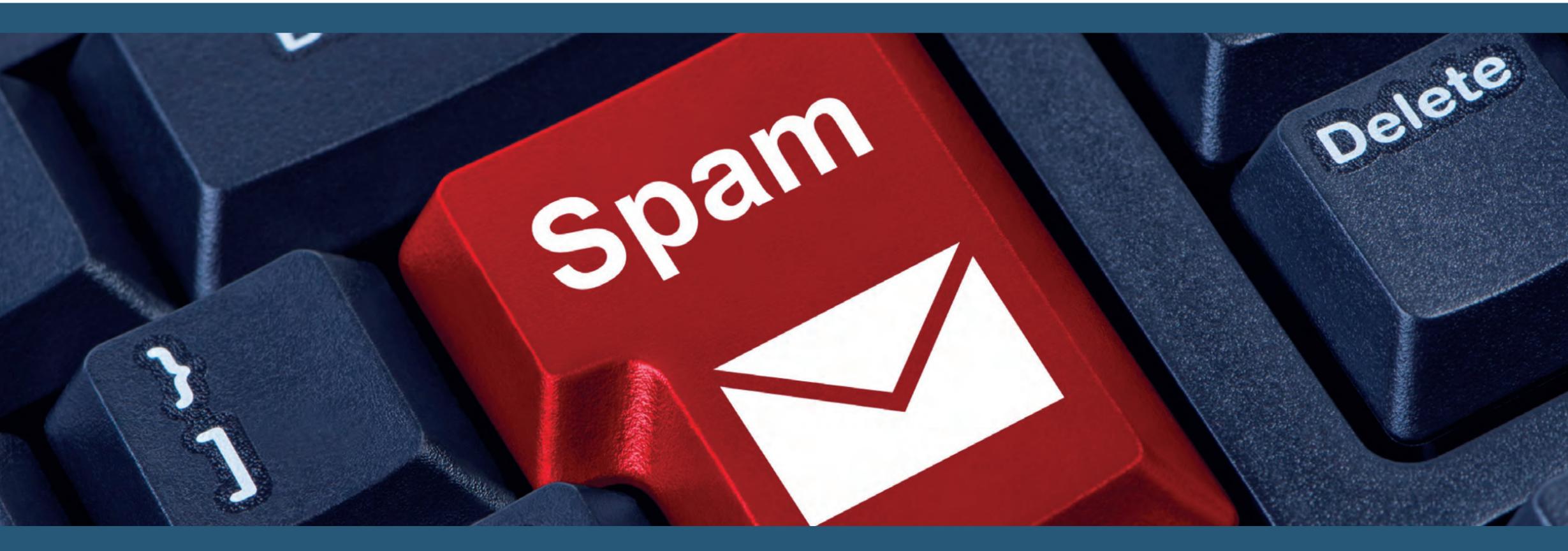


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Disclaimer: The information contained herein is for informational purposes and should not be construed as legal advice.



and the requirement to include certain information in the message (such as an unsubscribe mechanism).

CASL is highly relevant to the Canadian golf industry. In the past five years, many golf courses have succeeded in growing their database of consumers. This can include golfers who come to their facility to play, potential golfers that they meet at consumer golf shows, or online prize promotions sent to consumers by email (either from their website or through other golf marketing channels). It is therefore important to be aware of CASL in relation to these commercial activities.

CASL may apply to any entity involved in the Canadian golf industry, be it a large multi-unit organization or a smaller "mom & pop" 9-hole facility. As a result, anyone who sends electronic messages in Canada should be asking, "Are my electronic messages regulated by CASL, and, if they are, what do I need to do?"

The word "Spam" has been around since Hormel Foods Corporation started packing the luncheon meat into cans some 75 years ago. But it wasn't until Monty Python added Vikings and a chant into the equation that the common phrase "I don't want any Spam!" was popularized.

NEW LEGISLATION

Various statistics now peg the cost of Spam at over \$100 billion worldwide every year. It has come to the point where most G8 countries have reacted by passing Anti-Spam laws. At present, Canada is the only G8 country without specific Anti-Spam legislation in full force. However, that is about to change, with the pending implementation of Canada's new anti-spam law, or "CASL".

CASL will apply to "commercial electronic messages", which are ones whose "purpose is to encourage participation in a commercial activity". An "electronic message" has been defined broadly to include e-mail, text, sound, voice, and image messages. CASL creates two key obligations for senders of commercial electronic messages: the requirement to obtain consent to send a message, before the message is sent,

I Don't Want Any Spam!

Canada's New Anti-Spam Law

THE EXEMPTIONS

CASL contains exemptions for messages sent pursuant to broadcasting, family relationships, and in response to an inquiry sent to a person who is engaged in a commercial activity. If a message is exempt, then CASL's requirements do not apply.

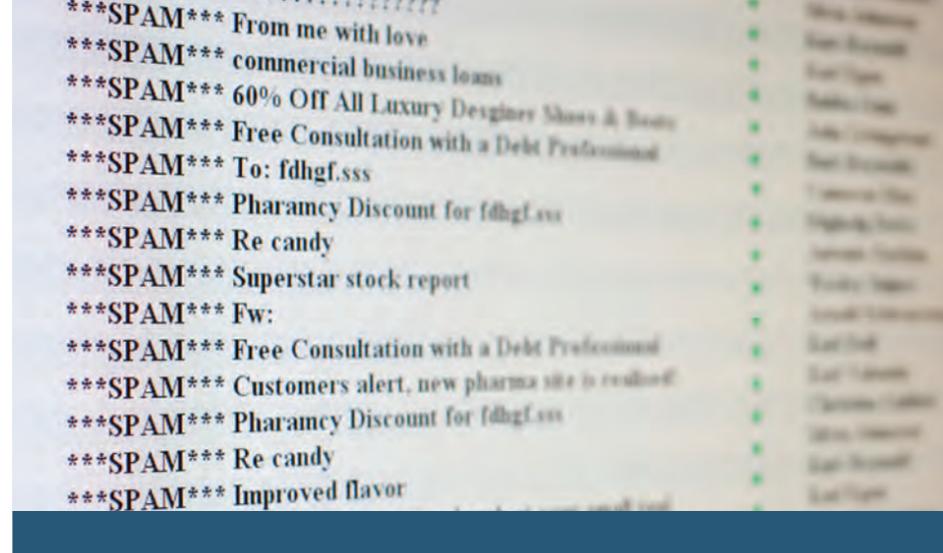
Even if CASL does apply to an electronic message, there are specific consent exemptions that may apply, based on the nature of the message. CASL does not require consent to send messages that:

- Facilitate, complete, or confirm a commercial transaction that has already been agreed to by the recipient.
- Provide warranty, product recall, safety, or security information about a product, good, or service that the recipient has used or purchased.
- Provide notification of factual information.
- Provide information directly related to an employment relationship or benefit plan.
- Deliver a product, good, or service that the recipient is entitled to receive under the terms of a previous transaction.

CONSENT TO RECEIVE

If CASL applies and there are no consent exemptions, the sender needs to determine whether consent to receive a message can be implied, or whether express consent is needed.

To obtain express consent, the sender must explain the purpose for which consent is being sought and provide other information, such as the sender's name and an unsubscribe mechanism. Implied consent, as the name suggests, does not require any positive action



from the sender before a commercial electronic message can be sent. This means it is very important to understand the circumstances under which implied consent is appropriate.

The first set of circumstances, and the more relevant to the Canadian golf industry, falls under the umbrella term of an "existing business relationship" between the sender and the recipient. An existing business relationship arises when the sender has:

- Sold or leased goods or services to the recipient within the two years before the message was sent.
- Provided a business opportunity that was accepted by the recipient within the last two years.
- Entered into a written contract with the recipient, and the contract is either active or has expired within the last two years.
- Received any kind of inquiry from the recipient within the previous six months.

For example, it is almost certain that members of golf courses would be categorized under the "existing business relationship". Additionally, golf tournament organizers who have signed written contracts with respective golf courses would also likely fall under this exemption.

"CASL contains exemptions for messages sent pursuant to broadcasting, family relationships, and in response to an inquiry sent to a person who is engaged in a commercial activity."

The second set of circumstances under which implied consent is appropriate is when a "non-business relationship" exists between the sender and the recipient (for example, because the sender is a not-for-profit organization that has a relationship with the recipient). This arises if the recipient:

- Made a donation or gift to the sender in the two years before the message was sent, and the sender is a registered charity, or a political party, organization, or candidate.
- Performed volunteer work for the sender, or attended a meeting organized by the sender, within the last two years, and the sender is a registered charity, or a political party, organization, or candidate.
- Has been a member of the sender during the two years before the message was sent, and the sender is a club, association, or voluntary organization.

ADDITIONAL PROTECTIONS

Not only does CASL target spamming, it also prohibits surreptitious computer activity, such as spyware, malware and "botnets", all of which can harm your computer. CASL contains an administrative penalty regime for contravention of its consent, hacking, and spyware provisions. The consequences of engaging in prohibited activities may be severe: an individual can be fined up to \$1 million for each violation, while organizations can be fined a maximum of \$10 million per violation. The CRTC has been given expansive power and discretion to oversee this regime. CASL also contains a private right of action. An offender can be pursued through a private right of action or the administrative penalty scheme, but not both.

For more information, please visit:

Canadian Radio-television and Telecommunications Commission

<http://www.crtc.gc.ca>

The Office of the Privacy Commissioner of Canada

<http://www.priv.gc.ca>

CASL is one of the most comprehensive laws of its type in the world. Those involved in the Canadian golf industry should study its application to their activities in advance of the law coming into full force. While CASL has been passed by Parliament it has not yet been fully proclaimed (meaning it is not yet in full force and affect). While Canadians wait for Parliament to indicate when it the law will come into force, there are a number of questions that golf courses can answer in order to prepare for its implementation including:

- Are my messages subject to regulation?
- What type of consent is required?
- If express consent is required, what language should be used in obtaining such consent?
- Does the content of my messages meet the prescribed requirements?

Once these questions have been answered, contact lists (notably email contact lists) should be reviewed with a view toward creating an anti-spam law database. Such a database might indicate:

- Whether the individual is a member of respective golf course;

- if the individual is not a member of the respective golf course, whether the individual used to be a member, and, if so, when the membership lapsed;
- if implied consent is not appropriate because the individual has not been a member of the respective golf course within the last two years, whether express consent has been obtained from the addressee, and, if so, when; and
- whether the individual has sent an unsubscribe request to the respective golf course.

Golf courses might also want to create a recording system or database to ensure the foregoing remains accurate as time progresses.

FINAL CONSIDERATIONS

Finally, if golf courses determine they will have to obtain a significant number of consents in order to send commercial electronic messages, they may wish to establish a structured approach toward obtaining those consents. For example, golf courses could create a template e-mail by which consent is obtained, an opt-in consent program for obtaining those consents and a template unsubscribe mechanism and appropriate internal policies related to compliance with the CASL.

