

Submission

Government Discussion Document on “Legislating Against Spam”

3/6/2005

Context

Sportswell is a company that has been solely using the internet to market its products for the last 6 years. We have email lists that we use to market product. These are usually double opt-in lists. Email marketing is an important part of our business. Just as Government needs to run promotion campaigns to ensure its new policies are understood, as a commercial company we also need to ensure that people understand our products.

The internet is the current generation of medium for communication, both privately and commercially. Any new media form has its implementation problems which establish rules over time.

At a commercial level, individuals are exposed to all forms of communication, advertising, images, messages through radio, TV, paper print, billboards, telephones. The levels of “unwanted” images and messages individuals are exposed to are in the tens of thousands each day.

Any policy that seeks to limit spam should be consistent across all media and technologies for advertising and mass communication.

Any legislation would raise serious questions of freedom of expression and speech, and Bill of Rights implications.

Of more concern are virus spam attacks. We have received over 6000 emails a day in one such attack. If there is concern, this is where it should be targeted, not at companies marketing products.

Viruses have also harvested our email address and are sending them to other emails addresses. This could be considered as spam, and any legislation could potentially prosecute. We have no control over this. How would this issue be addressed?

Comments

Comment: Para 15 The statement that an average worker receives 13.3 spam messages a day which takes 6.5 minutes to process is grossly misleading and should be seriously questioned. We received 30 spam messages a day and take on average 1

minute to process them. The above statistics suggests that people do look at spam messages and that they do have value otherwise they would be deleted immediately.

This type of research could be used for other forms of media ie how long does each worker read the paper and the associated adverts each day, and what impact does this have on productivity. Comparative statistics should be used to give the full picture. There needs to be greater public debate on the broader range of issues involved and not the emotive comments of a few techies.

Question 1

We do not consider spam to be an issue any more serious than any other forms of unsolicited information or communication. We accept that this is a normal part of living in a democracy and using a computer. We read some material and reject other material. Currently technical solutions offer the best means of addressing spam.

Question 2

We do not believe that New Zealand legislation will have a significant impact on the amount of spam we receive as the majority (99%) of spam comes from overseas.

Question 3

We consider that existing legislation is sufficient to address the areas of major concern. If there are limitations in the current legislation, these should be looked at first and strengthened rather than the introduction of new legislation.

Question 4

Not necessarily.

Question 5

All message media should be addressed if there is to be legislation. There needs to be equity across all media types and for all purposes. The targeting of one media and form is inefficient and will become obsolete as technology changes. The establishment of broad principles of what is acceptable to New Zealand society should be addressed in omnibus legislation if needed.

Question 6

The legislation should not address the sending to individuals. It does raise the question of how many emails. Rather than a specific number, the intent and the process should be considered.

Question 7

There should be no exemptions in any legislation: political, personal, commercial. Just as it could be argued that personal, political messages should be allowed for the public good, it could be argued that commercial messages should be the only

messages allowed as these are the messages that can create wealth and economic growth for the country.

Question 8

If there is to be legislation, this should extend to acts overseas, although enforcement and impinging on the legislation of other sovereign nations needs to be addressed, if it is to be effective. There will always be nations that have different legislation and the internet allows easy movement to these countries.

Question 9

Only those directly involved in the act of spamming should be included in any legislation. This is only natural justice. All other organisations should be excluded.

Question 10

New Zealand should adopt the US system of opt out. This is the policy that is used for all other forms of commercial promotion in New Zealand. There is no basis to establish a new standard. Many people are happy to get information on new products and services. Those that do not can opt out and not receive such information.

There should be no presumption as stated in the discussion document, that somebody who responds to an opt-out message will receive more spam. This could be specifically legislated for in the legislation. There should be a presumption for legal use of opt-out systems. The opt-out should be specific to the product or service being promoted.

Question 11

We do not prefer this option.

Question 12

The consent should be specific to the content of the message that is sent. If it asks if the email could be passed on then this should be allowed unless the addressee opts out. If it asks that they may send other promotional material and the client does not opt out, this should be allowed.

Question 13

There should be a requirement for all promotional emails (not just commercial) to identify the sender. This should take the form of a name, email address and a physical address (post box allowed).

Question 14

There should be a provision for all emails (not just commercial) to send an unsubscribe message back to the sender and to ensure that such an address is functional.

Question 15

There should be a requirement to provide accurate header and subject information for all emails not just commercial.

Question 16

There should be a requirement for labelling of adult messages but not advertising. As long as question 15 is addressed, then there is no need for 16 for advertising.

Question 17

There should not be provisions against email harvesting software. How people get addresses is their own concern. Any legislation should focus on the specific issue of sending spam. We note that currently it is possible to get any address from public sources, and the same should be allowed for emails.

Question 18

It would seem sensible that an ISP should be able to bring action, however there should be a test for real damage set in legislation before any victims have the right to join a class action.

Question 19

Any government agency that is chosen should have responsibility for all media related activities and a consumer protection role. The most appropriate would appear to be the Commerce Commission.

Question 20

Penalties should be no different than those provided for under the Fair Trading Act and the Commerce Act.

Question 21

The penalties should be civil and not criminal.

Question 22

The powers conferred in any act should be no greater than those conferred under the Fair Trading Act and the Commerce Act.

Other comments

There should also be protection for those that send out legitimate emails following the legislation from malicious attempts to close them down or prosecute.