

# SPAM: Response to the discussion document

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## Introduction

The on-going debate about SPAM I find highly reminiscent of that on letter box "junk mail" some years ago. There were many over-the-top emotional reactions concerned with full letterboxes, wasted time and resources.

For the most part the problem was solved by the use of "NO JUNK MAIL" signs on the boxes of those not wanting to receive it. In this respect it is interesting to note that one of the more effective methods to date to reduce SPAM levels has been the use of SPAM-blockers by ISP's as the guardians of our email-boxes – the effective equivalent of the "NO JUNK MAIL" sign. Of course additional measures are available to the individual email recipient by way of filters and blocking software. As the software and associated skills improve, I suspect that these will make the single most important contribution to curbing the scale of the SPAM problem.

During the debate on "junk mail" through our letter boxes, little or nothing was heard from those who were happy to receive it. And indeed, one could be excused for believing that no one actually wanted to receive "junk mail" and that the producers were fools for even bothering. Today it is of some interest to walk down any suburban street and count the number of "junk mail" notices relative to those without. The number of "junk mail" notices are significant but commonly not predominant.

So with the "NO JUNK MAIL" signs working more or less effectively most everyone was left relatively satisfied. I now find the biggest "junk mail" problem is stopping the local freebee newspapers when I go away – an aspect not considered during the debate. The problem arises because the purveyors of these papers resolutely resist the idea of their newspapers being "junk mail" and are thus not deterred by "NO JUNK MAIL" signs, and in that sense bear some resemblance to the indiscriminate mass distributors of world-wide emails who truly deserve the name "SPAMMERS".

It is perhaps worth adding that, as with the "junk mail" problem, we are hearing a lot from a relative few and especially from the most emotionally committed anti-spammers. How concerned are the majority of users remains a somewhat open question. Doubtless one would almost certainly find near uniform agreement on the desirability of eliminating (by blocking, prosecuting, or otherwise) the obvious excesses of the multi-national distributors of email irrelevant to 999 people out of 1000 (quite apart from the matter of offence taken in reaction to some of the email contents).

As for unsolicited emails which are seen by recipients as relevant to their needs, I'm not at all convinced that these are to be regarded as SPAM. I produce specialised survey and polling software. In my targeted but unsolicited emailings to market research firms in several countries, I can recall only one "unsubscribe" request. (I always include an unsubscribe link.)

It is interesting to note that the notions of "solicited" and "unsolicited" are not used in relation to the postal system or telephone calls. In relation to email it seems generally assumed that "solicited" and "unsolicited" have identical meanings to "wanted" and

“unwanted”. They are definitely not the same and the differences are important to this debate.

### Thinking about SPAM?

In considering what to do about SPAM it may be best to start at the beginning. I don't think that I have yet seen a half-way satisfactory specification of what SPAM is. In particular, the word “unsolicited” has been bandied around as a term close to abuse. It has been taken to mean that no one can contact me unless that contact is requested. Taken as a logical imperative it means that no one can contact anyone as any initial contact would be by definition unsolicited!<sup>1</sup> And so we get into the absurd extremes of some versions of netiquette where I ask you if I can talk to you about something when it would have been simpler and more satisfactory for everyone just to present the information directly. Such unnecessarily convoluted processes have the potential to make the internet one of the most restrictive and bureaucratic sources of communication – instead of the opposite it contends to be.

Many definitions, including the one in your discussion paper, “unsolicited commercial email”, tend to pre-empt an analysis of the nature of the problem and lead to presumptive conclusions and advice. Immediate obvious questions include:

1. What is the relevance of “soliciting” in communications when the bulk of the information content we receive each day comes unsolicited via newspapers, TV and the people with whom we associate. We grant these media access but the content we get is nearly wholly determined by the sender. Is the internet to become an especially narrow form of communication compared with these other media when its original objective was to improve the flow of information? The whole notion of “permission-based email” as the foundation for combating SPAM is flawed, overly complex, bureaucratic and unnecessary. In particular, permissions tend to be almost wholly source based and disregard content. What is likely to be the more acceptable: an abusive email from a permitted source or a useful email from an unsolicited source?
2. Why is the interest limited to commercial email? Both political and charitable agencies are capable of generating mass emails of an equivalent irrelevancy. The current biggest source of unwanted telephone calls, I find, is from a couple of medical charities using call centres. Recently there has been criticism of similar efforts from a new political party. Doubtless political and charity email is just around the corner. The selection of “commercial email” may be seen as over-simplistic, arbitrary and likely to create more problems than it solves in the longer run. In particular, it is likely to leave gaps which may be difficult to plug later.

The following table from the ClickZ Network in an article by Robin Greenspan ([http://www.clickz.com/stats/big\\_picture/applications/article.php/3364421](http://www.clickz.com/stats/big_picture/applications/article.php/3364421)) shows the areas of current activity:

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<sup>1</sup> I am referring here to email as an independent system. Of course invitations may be solicited via other avenues.

May 2004 Spam Category Data			
Type of Spam	April Volume	May Volume	Change
Products	23%	22%	- 1
Financial	18%	17%	- 1
Adult	15%	16%	+ 1
Health	9%	10%	+ 1
Scams	7%	9%	+ 2
Other	6%	6%	0
Fraud	5%	5%	0
Internet	7%	5%	-2
Leisure	7%	5%	-2
Political	2%	3%	+ 1
Spiritual	1%	2%	+ 1

Source: Brightmail Logistics and Operations Center (BLOC)

### Identifying and controlling SPAM

Email involves a sender and receiver and any specification of SPAM should include reference to both.

The defining characteristic of SPAM from the view of the receiver seems to be its unwantedness (solicited or otherwise). I have not heard anyone complaining about unsolicited but wanted communications!

The basic problem for the sender (assumed at this stage to be an ethical communicator) is to know which people would want to receive the message i.e. to whom would it be warranted to send the message?<sup>2</sup> A superb definition of a target audience would be one where everyone who wanted to see the communication had an opportunity to see it but no one else did. A poor target audience definition would be one where no one wanted to see the communication. In practice, much of what is labelled "SPAM" occurs where those interested have very low frequencies i.e. the recipients are unwarranted.

What emerges here is a description or definition of SPAM as communications which are both unwanted **and** unwarranted. This incorporates the perspectives of both parties in a way that can be measured and made controllable without raising the difficult issues of approved and unapproved sources, permissions, and, proscribing content areas.<sup>3</sup>

<sup>2</sup> A fully committed permission-based approach would require initial request emails that would in practice be the effective equivalent of SPAM.

<sup>3</sup> I think that content issues such as fraud and obscenity need separate consideration although they are sometimes linked to SPAM as shown in the table on current content areas.

It will be noticed that we are concerned with multiple emails. It would be inappropriate to define a single email addressed to a particular person as SPAM. (The original Monty Python skit on which the concept of SPAM is based suggests as much.) SPAM is a concept which is applicable to multiple emails and is appropriately judged by using statistics.

With this conception of SPAM, testable methods can be created for saying what should and should not be regarded as SPAM. For example, we could state that any communication which is wanted by less than, say, one in a hundred of the target recipients will be regarded as SPAM and treated accordingly. It seems to me unlikely that the current international bulk emailers would be able to provide evidence of interest at this level.

Appropriate measures of "wanted" may be readily applied and produced by the email sender in terms of subscriptions, downloads, registered website hits, sales, etc. as applicable. Automated documentation of responses is part-and-parcel of communication on the internet. In these ways it is possible for the sender to demonstrate, if challenged, that he is not sending unwanted emails by using an appropriate "wanted" criterion in relation to the target recipients. It seems reasonable to put the onus of proof on generators of multiple emails to provide such evidence if required by law and for them to plan for the collection of such evidence in association with the email distribution. In addition to documented responses, email distributors using subscription lists have pre-made evidence of wantedness. Implicit in such an approach is that senders should draw their target audience as tightly as they reasonably can.

### **Government action**

1. The extent to which SPAM is a long-term problem is unclear and methods for preventing or curbing SPAM are under development. Much current effort on the government front (world-wide) seems to be substantially driven by people with extreme views on SPAM. While there may be more or less general agreement that the major generators of indiscriminately distributed bulk email need to be stopped, it is not clear how much beyond that is wanted by users or in the interest of relatively free and unfettered communication. It is recommended that beyond the clear abusers of the email system, it is preferable to err on the side of applying a light hand, at least until stability or a clear long-run trend in practice emerges. (Issues of fraud, porn, etc., may be included in the definition of SPAM, but they also need to be separately addressed.)

2. As the issue of SPAM is concerned with multiple emails, statistical wantedness should be the main criterion for establishing an email distribution as SPAM. Wantedness can be calculated on the basis of positive responses relative to the size of the distribution. It would be the legal responsibility of the distributor to collect the necessary response data which would provide the evidence of wantedness. Collecting such data is a routine website operation. Evidence might consist of identifiable site hits, subscriptions, downloads, sales, survey data on email recipients, and so on. Existing subscription lists may be regarded as presumptive evidence.

3. While potentially a matter of some debate, an appropriate statistical criterion for wantedness might be set at, say, one in a hundred or one in twenty evidenced positive responses. A criterion set at either of these levels would almost certainly remove all the major sources of what is currently regarded as SPAM. The one in a hundred standard is probably preferable. It seems reasonable to assume that evidenced wantedness is a reflection of an underlying interest amongst the wider target audience.

4. All emails in an email distribution should include an opt out/unsubscribe link.
5. All emails should show a clearly identified "true" source i.e. the address of the original distributor.
6. The adoption of opt-in requirements represents the antithesis of the internet ethos of free information flows. It would make internet communication more bureaucratic and cumbersome than any alternative communication medium. Furthermore, the process of subscription covers only one aspect of wantedness i.e. the part the subscriber knows about. The practical effect of opt-in requirements is to favour status quo relationships and impede the adoption of innovations, new products, services and ideas communicated through email distributions from new sources to target audiences highly likely to have an interest in such communications despite their prior unawareness.
7. Because of the international character of the problem, national legislation is expected to make a useful back-stop contribution for dealing with the most excessive abusers of the low-cost mailings that email provides. However, it is necessary to consider the prospect of such national legislation, while having little or no effect on indiscriminate distributors, impeding the reasonable and free flow of information amongst New Zealand internet users. The prospect of being accused of "SPAMMING" in the course of attempting mutually productive communication is likely to be an intimidating deterrent.
8. SPAM should not be proscribed by content area (commercial, political, charitable, etc.) but rather by its wantedness, defined statistically, evidenced by the distributor, and verified, when necessary (e.g. responding to complaints), by a government agency.
9. There may be merit in setting some numerical limits beyond which SPAM may be automatically assumed unless evidenced to the contrary as suggested above. The US legislative guide would seem reasonable. As your discussion document states in the section on "The issue of bulk":

"In the United States legislation the offence provisions apply to the transmission of "multiple commercial electronic messages", where the term "multiple" means "more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period"."