

Regional Representative Office
300 Beach Road
#25-08 The Concourse
Singapore 199555

T. (65) 6292 2072
F. (65) 6292 6369

12 October 2005

Mr Andrew Haire
Assistant Director-General (Telecoms)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038988

Dear Sir,

PROPOSED SPAM CONTROL BILL

The Business Software Alliance (BSA)¹ commends the Infocomm Development Authority of Singapore (IDA) and the Attorney-General's Chambers (AGC) on their thoughtful draft Spam Control Bill. The proposed legislation, together with the use of technology and education, promises to address the spam problem.

BSA is a strong supporter of efforts to control spammers and end the significant damage they cause to networks, consumers and businesses. BSA member companies are harmed by spammers who use their company names, brands and trade marks to cloak their activities. BSA members also suffer when consumers are reluctant to use the Internet because of the spam they encounter. BSA supports the passage and strong enforcement of targeted anti-spam legislation worldwide.

In relation to the proposed draft Bill for Singapore, we believe that it contains a number of important features. The Bill:

- focuses on the real problem of egregious bulk spammers and prohibits the use of dictionary attacks or address

¹ The Business Software Alliance (www.bsa.org) is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cadence Design Systems, Cisco Systems, CNC Software/Mastercam, Dell, Entrust, HP, IBM, Intel, Internet Security Systems, Macromedia, McAfee, Microsoft, PTC, RSA Security, SAP, SolidWorks, Sybase, Symantec, Synopsys, The MathWorks, and UGS.

harvesting software to indiscriminately send unsolicited email;

- requires bulk spammers to clearly label their unsolicited commercial electronic messages by including <ADV>, subject and header information that is not misleading, and efficient contact information (email, telephone);
- adopts a pragmatic "opt-out" regime through quick and workable unsubscribe requirements; and
- establishes a solid basis for enforcement by providing for a private right of action for either actual or statutory damages.

BSA however believes that certain provisions of the Bill can benefit from further elaboration in line with the stated intention of IDA and AGC. In this regard, BSA suggests the following:

- The Bill should clarify what is an "unsolicited" commercial electronic message.

BSA member companies strongly believe that transactional relationship messages sent in furtherance of pre-existing business relationships should not be considered unsolicited for the purposes of the legislation. This needs to be addressed in Section 5 of the Bill. In addition, further recognition needs to be given to the actual business unit that is sending the commercial electronic message. Often, a single corporate entity owns or controls many subsidiaries or operate with numerous functional units each responsible for different products or services. Consumers should be permitted to respond to commercial email messages depending on their interest in particular goods and services and this decision should not be precluded by an overly broad application of an unsubscribe request.

- The Bill should encourage deployment of anti-spam technologies.

The Bill recognizes the important role of the private sector in developing technical measures to effectively control the transmission of unsolicited commercial electronic messages by permitting approved codes of practice (Section 17). We agree that anti-spam technologies, such as filtering software, are one of the key solutions to spam. Legislation should clarify that there is no liability for developers of spam filters or other technology where the end user

chooses how to setup and configure the filtering. The goal is to ensure that consumers receive the email they want such as solicited emails and legal notices, but not the ones they do not.

- The Bill should have a tougher deterrent effect by allowing for increased enforcement.

Legislation without enforcement will have little effect in reducing the flood of spam. The cases which private parties bring against spammers should have an impact. Therefore, in addition to actual damages suffered by the plaintiff or the statutory damages, there should be provision for punitive damages and aggravated statutory damages where spamming is wilful or in cases of repeated offences. The government also needs to play an important role in enforcing the statute. Consideration should be given for supra-compensatory damages to be retained by the government and used specifically for government enforcement efforts.

We look forward to the Singapore Government considering these comments. We remain available and would welcome an opportunity to discuss any of these issues in greater depth with you, and to engage in a constructive exchange of information and views.

We like to once again congratulate you on this important piece of work. We look forward to informing other governments in the region that we are engaged with to refer to your draft Bill as a well-founded reference that can assist them as they too consider their own spam control measures and legislation.

Yours sincerely

A handwritten signature in grey ink, appearing to be 'Sh' followed by a long horizontal stroke.

GOH Seow Hiong (Mr)
Director of Software Policy, Asia
Business Software Alliance
Email: shgoh@bsa.org