

14 October 2005

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

RE: Proposed Spam Control Bill

Dear Mr Haire,

Overall Assessment

The proposal to enact anti-spam legislation in Singapore is a welcome development, and the Spam Control Bill appears to be well-aligned with DMAS's position on spam in several key respects. Addressing the key concerns listed below will further align the proposed regime with our Members' objectives. If the Bill is not amended to recognise pre-existing business relationships, our Members may face prohibitive administrative costs in ensuring that emails sent to customers in Singapore or from regional centres in Singapore are identified as advertising, e.g. by the <ADV> label.

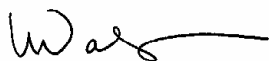
Key Strengths

- **Opt-out regime:** From a commercial perspective, an 'opt-out' regime is preferable to an 'opt-in' one for three reasons:
 - It is better for consumers ... to be exposed to new ideas and opportunities once and then have the option to say 'no more.' The spam problem is not the result of legitimate marketers telling consumers about their products or services the first time.
 - It is better for businesses ... to be able to advertise through a low-cost, convenient channel that reaches a specific segment of consumers. In addition, businesses that understand the dynamics of 'consent' know that it is actually a continuum with 'never contact me ever' at one end and 'I want to know everything always' at the other. Matching marketing communications to the level of consent given is a key element in building long-term, loyal, profitable customer relationships, which, after all, is what business is all about.
 - It is better for Singapore ... to be able to compete in the global e-marketplace without constraints that limit its businesses' opportunities.
- **Identification as Advertising:** The requirement to identify commercial email as advertising permits automated spam filtering in the case of <ADV> labelling. (See Key Concerns below)
- **Bulk requirement:** It is beneficial that sending a single unsolicited commercial electronic message in contravention of the proposed legislation will not attract liability.
- **Private right of action for ISPs:** Equipping ISPs, email service providers and others with a private right of action means that they can recover damages from spammers;
- **Strong anti-fraud measures:** The Bill contains strong anti-fraud measures that are likely to reduce the number of misleading and deceptive spam messages; and
- **Strong anti-harvesting and dictionary attack measures:** The Bill's anti-harvesting and dictionary attack measures are likely to be useful in pursuing spammers that carry out these types of attacks on Hotmail accounts.

Key Concerns

- **'<ADV>' labelling requirement:** The requirement to label commercial email is only one way to identify it as advertising. We recommend allowing other methods including positioning the word 'Advertisement' as the first line in the email body copy. This would be similar to the requirement for advertorial content that appears in a newspaper or magazine.
- **Uncertain application of the definition of "unsolicited":** The Bill is not clear about what amounts to a "request" by a recipient to receive an electronic message, or what types of "consent" are sufficient to render a commercial electronic message solicited pursuant to the Bill.
- **Breadth of definition of "commercial electronic message":** An electronic message should only fall within the definition of "commercial electronic message" if its purpose is commercial, not merely where one of its purposes is commercial.
- **No recognition of pre-existing business relationships:** Transactional or relationship messages sent in furtherance of pre-existing business relationships should not be considered unsolicited for the purposes of the Bill.
- **Enforcement burden is on those affected by spam:** It is undesirable that the burden for enforcing the proposed anti-spam regime lies with ISPs, email providers and others affected by the transmission of spam. The government should play a role in the proposed regime's enforcement.
- **Inadequate statutory damages regime:** The statutory damages regime should make provision for aggravated statutory damages where spamming is wilful, and reduced statutory damages where the spammer has implemented commercially reasonable practices to avoid violating the proposed regime.
- **Opting-out on a business-unit or product-line basis is not accommodated:** The proposed regime only accommodates opting-out on a company-wide basis. This is likely to be impracticable for businesses with multiple business-units that operate on an independent basis.
- **'<ADV>' labelling requirement:** The requirement to label commercial email is only one way to identify it as advertising. We recommend allowing other methods including positioning the word 'Advertisement' as the first line in the email body copy. This would be similar to the requirement for advertorial content that appears in a newspaper or magazine.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Watson'.

Lisa Watson
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