

eBay's Response to the Joint IDA-AGC Consultation Paper entitled "Proposed Spam Control Bill"

Submission prepared by:
eBay Singapore

Contact: Valerie Colbourn
Head of Government Affairs
Asia Pacific
Grand Millenium Plaza
181 Queens Road Central
Hong Kong
Email: vcolbourn@ebay.com

Chong Kia Piao
Director, Legal Affairs and Trust & Safety
South East Asia & Hong Kong
89 Neil Road, #03-01,
Singapore 088849
Email: kichong@ebay.com

Introduction

eBay Singapore welcomes the opportunity to provide comments on the proposed Spam Control Act 2005 ("proposed Bill").

eBay is the world's online marketplace, with more than 157 million internet users registered worldwide. The benefits provided by online trading are extensive individuals can trade alongside large retailers without high overheads or start up costs; persons in rural areas are able to access a wider choice of items to buy at competitive prices; great flexibility in payment and transaction options; and the opportunities to sell to or buy from a global market from the comfort of your home.

Recognising some of the unique circumstances presented by online trading, eBay has invested and continues to invest heavily in safe trading initiatives, including development of state of the art tools and technologies, employing over 1000 people to help make trading on eBay as safe as possible, and creating and promoting the best consumer education possible. eBay has also implemented numerous policies to facilitate its goal of providing a safe, fair, and legal trading environment, and to make its user experience as easy, safe, and rewarding as possible. eBay is deeply committed to the protection of online consumers.

eBay is committed to ensuring that Singaporean users enjoy world-class consumer protection in the online environment and this includes protection from Spam and other unsolicited communications. eBay strives to maintain the status as a leader in community awareness and believes in maintaining itself as an industry leader in these areas.

From its inception, eBay has known that its success is directly linked to the ability of buyers and sellers to have confidence in the safety and integrity of the eBay marketplace. Recognizing the wishes of our community of users has been a key driver of this trust. eBay's registered membership base of more than 157 million people world-wide shows the level of confidence that people have in eBay as a safe and reliable trading environment.

eBay's Views on email communications

One of the chief concerns about internet trading is the issue of personal preferences, something that eBay takes very seriously. eBay does not believe in sending users commercial messages without providing them with an opportunity to opt out or having a pre-existing business relationship with such individual. We view this as a user's consent to further communications from us. In fact, we have a very transparent process that allows our users to opt out of various types of electronic communications. However, there are certain features of our services that require us to communicate with users via email, hence email is a very valuable tool necessary to growth and operation of our business around the world.

Our community members are able to exercise their personal preference for electronic and other communication methods through our user agreement and privacy policy. Users are required to read and consent to eBay's comprehensive privacy policy and user agreement before becoming members of ebay.com.sg (the "**Site**"). The relevant excerpt is reproduced as Appendix A. During this process users are provided the option of designating what type of communications they would like to receive from eBay as well as third parties with whom eBay may have a relationship. Appendix B is an excerpt from the Site where users can designate the types of communications they consent to receive from eBay and our business partners. As you can see there are certain communications which are fundamental to the use of the Site, as such, those can not be "opted out of". However, all other communications permit users to "opt out".

As you can see from the above, eBay is already in compliance with the spirit of the proposed Bill, however we wanted to take this opportunity to comment on certain areas of the proposed Bill that seem slightly ambiguous based upon our reading and for an abundance of clarity respectfully request be modified.

Commercial Electronic Messages

In particular, the definition of “commercial electronic message” seems to be much stricter than the standard applied in the law with which Singapore seeks to draw guidance in an effort to harmonize Singapore’s SPAM laws with those around the world. The definition proposed includes not only messages with the purpose of advertising or promoting goods or services, but also includes messages wherein “one of the purposes” of the message is to promote or advertise goods or services. This standard is much stricter than that adopted under the CAN SPAM Act in the United States where commercial communications are only those with a “primary purpose” of commercial advertisement or promotion of a commercial product or service. The broad language “one of the purposes” seems to capture many more email messages than perhaps you intend. Operating as an online business, our main, and in some instances, only method of communication with our community of users is through email. It is at times very important to combine messages to avoid excessive electronic communications with our users, even if those messages are 100% administrative in nature. We find users would prefer to have fewer messages and be made aware of new features and functionality through those same administrative messages.

Several of our primary functions are dependent upon electronic communications with our users for instance: all notices to our users regarding modifications to the services, the user agreement, the privacy policy, as well as, a user’s status with regards to an ongoing transaction, customer invoices, and all other changes to the Site. Some of these could be interpreted to have “one purpose” of promoting or advertising our services, however, none of these can be opted out of due to the necessity of each in the process of using the site. Our primary purpose is not to promote or advertise services, rather to ensure that users have fundamental information necessary to the use of our site. In addition, our electronic communications may include tag lines or other one line marketing messages adopted as part of a global program related to brand awareness. For instance, “Do it eBay”, “the power of all of us”, or other simple statement could be considered as promoting our goods or services. The message itself has a very incidental commercial component. The “primary purpose” is the furtherance of the existing relationship, not to market or promote goods or services. The currently proposed language in the Bill would call into question these simple industry standard practices. The language utilized in the United States still encompasses the concerns embedded in the language of the proposed Bill, but provides companies which are truly online business the opportunity to communicate with their customers with whom they have a preexisting commercial relationship. We recommend the language be modified to reflect the actual practices in the industry and still embody the spirit of the proposed Bill.

Implementation of a standard in which encapsulated secondary messages may contain *any* offer of goods or services would result in a very broad definition of commercial message, which I do not believe is your intention. It would all serve as a burden on multinational companies seeking to comply with laws around the world from a central headquarters. Companies would be required to create separate notices and messaging to the users in Singapore which could result in a reduced service offering to such community members as they would not be exposed to the same additional features or information as other users of the Site. The inclusion of additional information within a message a user has already consented to receive does not create an additional burden on any systems, nor does it “clog-up” a user’s inbox. The information is merely an incidental inclusion in a message.

In this matter we agree with our industry colleagues at Yahoo and Microsoft. Communications with a very minor or incidental commercial component should not be considered commercial in nature. We propose that a standard similar to that in the United States be applied wherein only those communications with “a primary purpose” of commercial advertisement or promotion be considered “commercial communications.”

Processing of Unsubscribe Requests

In part II regarding unsubscribe facilities, we would like to raise a few issues regarding the processing of unsubscribe requests. In particular, the time for processing requests is currently 10 business days from submission of a request. This timeframe is in all likelihood

insufficient for larger corporate entities which may have legacy systems, multiple subsidiaries, or processes that require manual processing of unsubscribe requests. In addition, some companies pre-schedule and outsource their electronic communications campaigns and many are scheduled thirty days in advance. This short timeframe may result in inadvertent messages being sent as the email addresses in the queue may not be able to reflect the most recent unsubscribe requests. Our recommendation is that the standard be a reasonable time, however, at a minimum, 14 business days from the receipt of the unsubscribe request by the sender of the electronic communication. We feel it is also important to specify that the unsubscribe request must be "received" versus just sent to ensure that misaddressed messages or those that do not actually reach the sender of the electronic communication are not considered valid unsubscribe requests. Finally, we recommend that the law clearly states that an opt out is effective only as to the line of business or affiliate with whom the user has submitted the opt out request rather than for an entire corporation which may have multiple lines of business or subsidiaries. In most instances, a user of a website or a product enters into a direct relationship only with a single affiliate of a company, rather than the entire corporation. As a result a customer's data may be stored separately. A single opt out notice to one affiliate may not be communicated, nor intended for the entire organization. For example, our users enter into separate online contracts with each eBay entity, PayPal, eBay, Kijiji, or Shopping.com. Each of these entities has separate user agreements and privacy policies as well as opt out procedures and addresses. They entities are run separately and run off of different technology with separate customer databases and storage facilities. If, an opt-out received by a customer of eBay Singapore is received they are opted out of eBay communications, but not PayPal and vice-versa. Given the different nature of the businesses and products, a user may be interested in information from one entity, but not the other. We therefore propose the opt outs be limited to the business unit or affiliate with whom the user has sent the opt out notice to.

Tribunal for Civil Action and Damages

The Bill allows an aggrieved party to claim for \$25 for each spam message. However, the Tribunal for such civil actions is not clearly instituted under the Bill. If there is to be no additional cost to the institution of the Tribunal, arguably, the Small Claims Tribunals may be utilized. However, at present, the jurisdiction of the Small Claims Tribunals is only limited to claims for contract for sales of goods and provisions of services or claims in tort with respect to damage to any property (excluding damage to motor vehicles in accidents). The jurisdiction of the Small Claims Tribunals is clearly demarcated in Section 5 of the Small Claims Tribunals Act.

Thus, it seems that if a spam message does not involve a contract for sale of goods or for provision of services, a claim under the Bill may well be outside the jurisdiction of the Small Claims Tribunals. It follows that further elucidation is needed on the exact mechanics of how the claims in respect of spam messages, may be made under a Tribunal in the Bill.

In addition, we recommend that damage thresholds be established based upon the nature of the violation. In particular, willful violations of the Bill would have more severe penalties than negligent or inadvertent violations.

Individual Awareness and Control

eBay supports the IDA's position on effective public education being a good tool to communicate with users regarding the benefits of an opt-out regime. eBay also strives to do this through the Site, in a number of ways.

First, eBay has a comprehensive Privacy Policy that permits users to set their own preferences for receiving electronic communications. To help promote awareness of the Privacy Policy and for ease of reference for individuals, eBay contains a link to the Privacy Policy on nearly every page of the eBay Site.

eBay's approach of providing individuals with as much information as possible regarding privacy also means that individuals have control over personal information as well. Another aspect of individual control, is an individual's ability to opt out of/not consent to receiving certain communications, such as Direct Marketing. eBay maintains a Notification Preferences page for

each member, where that member can view their communication and notification preferences and choose not to receive these.

Summary

eBay hopes that these examples illustrate our commitment to fostering safe and secure e-commerce in the online environment, one that includes a high level of respect for privacy. We appreciate the opportunity to provide this information and look forward to working with the IDA in the future. We would be pleased to provide further information or to participate in any consultation sessions as requested.

Valerie Colbourn eBay Singapore

Chong Kia Piao eBay Singapore
(encl.)

Appendix A

You agree that we may use your information to contact you and deliver information to you that, in some cases, are targeted to your interests, such as targeted banner advertisements, administrative notices, product offerings, and communications relevant to your use of the Site. By accepting Privacy Policy, you expressly agree to receive this information. If you do not wish to receive these communications, we encourage you to opt out of the receipt of certain communications on the notification preferences page. You may make changes to your notification preferences at any time.

Appendix B



[Home](#) > [My eBay](#) > [Change Your Notification Preferences](#)

Change Your Notification Preferences

[Need Help?](#)

Please uncheck the box next to the message you do not wish to receive.

Transaction Emails

Note: You cannot opt out of some notifications because they are necessary to provide our services, or a Notification Provider requires you to unsubscribe via their pages (▼).

Buying Emails

Watched item reminder emails

☒ ☒ ☐ Send my daily list of all items in my watch list that will end within 36 hours.

Listing Emails

Listing Confirmation

☒ Notify me when I create a new listing.

End of Auction Notice (for Buyers)

☒ Notify me when a listing ends and I am the winning buyer.
☒ Notify me when a listing ends and I am not the winning buyer.

End of Auction Notice (for Sellers)

☒ Notify me when each of my listings ends with a winning buyer.
☒ Notify me when each of my listings ends without a winning buyer.

Other Emails

Note: These may take up to 14 days to be updated. Delivery format varies.

☐ eBay Email

Send me email from eBay about my categories of interest, sales or other special events,

coupons, and other special offers. If you are a seller, unchecking this box means you will not receive from Seller or PowerSeller newsletters, including information designed to help you expand your business on eBay. **Note:** This is for eBay branded communications, as eBay does NOT rent or sell your personal information to 3rd parties for their marketing purposes.

eBay Product Surveys

☐ Send me occasional surveys to help eBay evaluate new features and proposed changes to eBay services.

Other Contacts

Note: These may take up to 14 days to be updated.

eBay Telemarketing

☐ Telephone me about eBay programs such as Trade Shows and special events. If you are a seller, unchecking this box means you will not receive by telephone information designed to help you expand your business on eBay. **Note:** This is for eBay branded communications, as eBay does NOT rent or sell your personal information to 3rd parties for their marketing purposes.

eBay Direct Mail

☐ Send me mail from eBay about my categories of interest, sales or other special events, coupons, and other special offers and notices. If you are a seller, unchecking this box means you will not receive information designed to help you expand your business on eBay. **Note:** This is for eBay branded communications, as eBay does NOT rent or sell your personal information to 3rd parties for their marketing purposes.

< Back

Save Changes >

[Announcements](#) | [Register](#) | [Security Centre](#) | [Feedback Forum](#)

Copyright © 1995-2005 eBay Inc. All Rights Reserved.

Designated trademarks and brands are the property of their respective owners. Use of this Web site constitutes acceptance of the eBay [User Agreement](#) and [Privacy Policy](#).

By entering into our User Agreement, you agree that, with respect to other users' personal information that you obtain through the Site or through an eBay-related communication or eBay-facilitated transaction, eBay hereby grants to you a license to use such information **only** for:

- a. eBay-related communications that are not unsolicited commercial messages,
- b. using co-branded services offered through eBay (e.g. escrow, insurance, shipping and fraud complaints), and
- c. any other purpose that such user expressly opts into after adequate disclosure of the purpose(s).

In all cases, you must give users an opportunity to remove themselves from your database and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this Section, can you disclose personal information about another user to any third party without our consent and the consent of such other user after adequate disclosure. Note that law enforcement personnel, Verified Rights Owner Programme participants, and other rights holders are given different rights with respect to information they access.

We and our users do not tolerate spam. Therefore, without limiting the foregoing, you are not licensed to add an eBay user, even a user who has purchased an item from you, to your mail list (email or physical mail) without their express consent after adequate disclosure. To report spam from other eBay users, please send an email to the Trust and Safety team via the web form (at http://pages.ebay.com.au/help/contact_inline/index.html).

-
- [Unsolicited Email \(Spam\)](#)
-

