

12 June 2004

Policy and Competition Development Group  
Infocomm Development Authority of Singapore  
8 Temasek Boulevard, #14-00  
Suntec Tower Three  
Singapore 038988

Dear Sir or Madam,

**RE: Anti-spam Law Public Consultation**

Please find my responses to your questions attached below, marked with '[RESPONSE]'. Please feel free to contact me if you need any further information.

Sincerely,

Gerald Giam

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**ANSWERS TO QUESTIONS**

Q1. What are the considerations that should determine whether a communication is solicited or unsolicited?

[RESPONSE]: As long as the recipient did not knowingly provide his email to the sender, and/or indicated that he did not wish to receive emails, the communication, if commercial in nature, should be considered spam.

Q2. What are the considerations that should determine whether a communication is commercial?

[RESPONSE]: As long as the sender stands to benefit financially from any form of response from the recipient, it should be considered commercial.

Q3. Should there be exclusions from the definition of spam?

[RESPONSE]: Spam should not apply to private, non-commercial emails.

Q4. Do you agree that the proposed legislation should apply to all e-mail messages regardless of the technology used to access them?

[RESPONSE]: Yes.

Q5. Do you agree that the proposed legislation should apply only to spam transmitted in bulk?

[RESPONSE]: No. It should apply to all spam, as it is possible for certain spamming software to send out spam emails one-by-one and it will make it hard to determine if the email was sent out in bulk.

Q6. What are the considerations that determine whether e-mail messages have been transmitted in bulk?

[RESPONSE]: N.A. See answer to Q5 above.

Q7. Do you agree that the proposed legislation should apply to spam sent from or received in Singapore?

[RESPONSE]: No. It should apply to even spam sent from overseas. Since 70% of spam is received from overseas, it would be pointless to punish only local spammers. Whether or not it is enforceable is beside the point. Ultimately the spam legislation should serve to tell the world of Singapore's tough position on spam.

Q8. Do you agree that the person commissioning or procuring spam should also be liable under the proposed legislation?

[RESPONSE]: Yes, they should be.

Q9. Would you agree that an opt-out regime for spam control is more beneficial to Singapore as a regional IT and commercial hub?

[RESPONSE]: Yes, it is better to have an opt-out regime (with exceptions), as this would give legitimate business an opportunity to use email as a cost-effective method of marketing. However the following types of unsolicited emails should comply to an **opt-in** regime instead of opt-out:

- sexually explicit emails
- advertisements for pornographic websites
- advertisements for sexual products (eg, dildos, condoms, Viagra, Cialis, etc)
- gambling advertisements
- prostitution advertisements
- any other type of commercial emails that advertise illegal activities or vice

It is important to note that some spammers use **fake opt-out options** to harvest valid emails, and the recipients end up getting even more spam after "opting out". These acts should be severely punished.

Q10. What is a reasonable time period for compliance with opt-out requests?

[RESPONSE]: The recipient should not receive even one more email from the spammer after opting-out.

Q11. Are these minimum standards sufficient?

[RESPONSE]: See response to Q10 above.

Q12. Are the recommended labelling requirements sufficient? Is '[ADV]' an appropriate label? Should there be any other requirement?

[RESPONSE]: '[ADV]' is an appropriate label, as it allows recipients to use their email client to filter unsolicited email.

Q13. Do you agree that ISPs should be empowered to commence legal action for unlawful spam?

[RESPONSE]: Yes.

Q14. What would be an appropriate quantum for the computation of statutory damages? For instance, would \$1 for every unlawful spam e-mail sent be adequate? Should there be a cap on the quantum of statutory damages that can be awarded by the court?

[RESPONSE]: \$1 is fair. There should not be any cap on damages, as long as the ISPs can prove the number of spam emails that were sent out.

Q15. Do you agree that ISPs should be allowed to take legal action against the spammer who uses dictionary attacks or automated spamming tools without having to prove that the e-mails fail to comply with the minimum requirements?

[RESPONSE]: Yes. This should warrant an even harsher sentence. Perhaps \$2 for every email sent out, whether or not it was valid. Harsh legal action should also be taken against spammers who use others' email addresses to "spoof" as the "From" email, as this often results in "returned mail" to that email address and can cause misunderstandings between parties.

Q16. Who do you think should draft the code of practice?

[RESPONSE]: The government (represented by IDA), but with feedback from the industry and citizens. If left to industry alone, the debate will be unending, and we might never see spam legislation in our lifetime.

Q18. Who should enforce the code of practice?

[RESPONSE]: The industry should enforce it, but turn it over to the police if they are unable to exact sufficient punishment on offenders.

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