

LAW SOCIETY'S RESPONSE TO THE PUBLIC CONSULTATION ON PROPOSED SPAM CONTROL BILL (THE "BILL")

I refer to the Law Society's letter of 22 September 2005 to Mr Charles Lim of the Attorney-General's Chambers.

An ad-hoc Committee (the "Committee") of the Law Society comprising of the following members reviewed the Bill:

1. Jim Lim
2. Andrew Chan
3. Bryan Tan
4. Edmund Kronenburg
5. Lim Seng Siew
6. Rajesh Sreenivasan

The views of the Committee are described below:

Application of Act

Section 7 makes a Singapore link a requirement under the proposal. The Law Society agrees with the rationale expressed but would recommend that the Bill should have "extra territorial" application of the Bill given that the large bulk of spam currently originate overseas.

Extra jurisdictional application of the Bill would serve as a deterrent and this should be the primary intent, rather than enforcement. Without a legislative bar, Singapore would be a "free target" for overseas spam.

Section 7 of the Bill already provides for legal action to be taken against the beneficiaries of spam by including persons who commission or procure spam, the possibility of jurisdictional limitation built into the Bill may limit the effectiveness of such provisions.

Unsubscribe facility

Given the likely use of technology, the means of establishing the origin of spam and thereby identifying the sender is in the Committee's view a heavy if not an onerous burden on the recipients.

The Committee would therefore recommend placing the evidential burden on senders under section 9(2), (3) and (4) of the Bill.

The Committee would also recommend enhanced penalties for wilful default of unsubscribe requests and wrongful dealing (use, sale) of information obtained from an unsubscribed request. Consequently, any remedies arising should also correspondingly be enhanced.

Finally for this part, the Committee would recommend the inclusion of telephone and telefax as alternatives to an email opt-out.

Aiding, Abetting, Counsel etc

The Committee is concerned with the word "counsel" appearing in Section 13(1)(a) of the Bill.

The Law Society feels that this would have a "chilling effect" of discouraging legal counsel or result in bona fide marketers being denied legal counsel. This would therefore be an unintended effect of the Bill where the civil remedies against the actual perpetrators of the spam have been provided for. The Committee would therefore recommend deleting reference or re-defining the term to exclude legal counsel.

Excluded Electronic Messages

The Committee also points out that there are bodies such as the Law Society of Singapore which are enacted by statute but are not statutory bodies. We note that the Law Society has, as its legislated purpose, "to facilitate the acquisition of legal knowledge by members of the legal profession and others". Such information may be disseminated by way of electronic messages, sometimes on an urgent basis. The Committee recommends that an exception be included in the Schedule of the Bill for such professional regulatory bodies.

The Law Society would be willing to respond to any request for clarifications.