

## **OPT-IN IS NOT ALWAYS THE ANSWER**

### **Definition**

We take issue with the broad definition of spam ('unsolicited commercial email', UCE) that is chosen in Article 5. Although the application of guideline is further nuanced elsewhere in the proposed framework by saying that 'not all [UCE] would be disallowed', there is an essential difference between spam and commercial email to begin with. Commercial email is – as should be assumed in all commercial matters between citizens and corporations – in principle sent in good faith, a genuine effort to offer a legitimate service in legitimate ways. Spam is not.

Defining spam as any sort of commercial email therefore creates confusion, in that it puts a legitimate activity under a cloud by placing it in the same category as activities that are characterized by bad faith, disregard for fair practices, scamming, and illegal products and services.

### **Extreme 'opt-out' approach not in the interest of consumers**

We wholeheartedly agree with taking issue with recent campaigns by Internet providers, telcos and cable companies to let people pay for services unless they opt out. This practice violates essential principles of fair trading in that lets the pendulum of power in an existing corporate-consumer relationship swing too far in the direction of the already more powerful corporation.

However, extending this 'opt-in only' approach not only to selling services, but also to sending commercial messages, is not in the interest of the consumer. It is an extremist approach in what should be a balanced discussion.

### **Unsolicited messages should remain possible; the balance of proof of good faith should not be on the side of the sender**

Commercial messages play an important role in our lives. They keep us informed about new developments, and enable us to compare products with each other, or to find out which product or services suits our needs best. Although they are always biased to some degree – businesses always try to put their offerings in the best possible light – consumers in general are perfectly capable of reading through this, as long as advertising standards keep misleading content at bay. And they do.

There are exceptions, of course. Spam is notorious for being one of them. Spam is misleading, almost invariably offers fake, inferior or even non-existing merchandise, and creates a disproportionate amount of irritation without offering anything to offset that.

So do scammers. But it would be foolish to let the existence of crooks who extract money from old people in the street, or Nigerian email fraudsters, or mailers of fake lottery prize letters determine the way we regulate legitimate advertising. Yet this is

what the editorial proposes, casting aspersions on marketers who send unsolicited mail by claiming this 'can be a cover for extracting personal data.'

### **Exchanging personal data is essential in commercial relationships**

In this day and age, 'exchanging personal data' with potential buyers is not a guise; it is useful, often even necessary. If I walk into an electronics shop on Orchard Road and ask for a digital camera, a decent salesman's first question is 'what use do you intend to make of it, Sir?' It is the only way for him to guide me through the process of choosing between the hundreds of different models on offer. To call this 'exchanging personal data under the guise of selling a camera' – which it is – would be unfair to a shopkeeper doing a proper job.

This is not to say that everything is right. Some businesses, even very reputable ones, have been abusing opt-out as a cheap sales method. This should be put to a stop. But not at the expense of legitimate marketing methods, such as sending unsolicited information about new products to people who might have a genuine need for them, or exchanging information to provide a better service to your consumers. Opt-in is not always the answer.

It is useful and necessary to issue guidelines that try to distinguish proper behaviour for those who want to send legitimate commercial email from spammers, who do not uphold any standard. But they hinge upon a careful distinction between spam and legitimate unsolicited email. But although this is necessary and useful, it is not sufficient to stem the flow. So opt-out, too, is not always the answer.

As to the spam problem itself, an international approach is even more needed than a legislative or guideline approach within Singapore, as the great majority of illicit mail comes from overseas. Fortunately, this is now coming about as the privacy watchdogs of the United States, Australia, and the European Union are discovering the necessity of international cooperation. Singapore should make an active effort to become part of such international cooperation efforts.

Meanwhile, the Great Debate on Proper Marketing Methods should not be narrowed down to a shouting match between yeah- and naysayers of opt-in or opt-out.

*Jos. Birken*

*Jos. Birken is CEO of Silversum ConsumeMetrix, and an expert on consumer privacy. He publishes regularly on this and other marketing-related subjects in both Asia and Europe. He has been living, working and writing in Singapore for the past three years.*

*Silversum ConsumeMetrix is a company that specializes in consultancy in the fields of Direct Marketing, Database Marketing, and Consumer Privacy.*

*Jos. G.H.M. Birken ( )  
26 Blair Road  
Singapore 089926*