

11 October 2005

Mr Andrew Haire  
Assistant Director-General (Telecoms)

Infocomm Development Authority of Singapore  
8 Temasek Boulevard #14-00  
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Singapore 038988

Dear Mr Haire,

### **PUBLIC COMMENTS ON THE PROPOSED SPAM CONTROL ACT 2005**

Symantec would like to congratulate the Infocomm Development Authority of Singapore and the Attorney-General's Chambers in the drafting of what we felt is an effective piece of legislation in controlling the proliferation of spam in Singapore.

2. We are most pleased that the Singapore government is taking a multi-pronged approach, with the recognition that legislation can, at the most, be a component of a larger solution that would involve public awareness and education, greater use of technology, augmenting of enforcement resources, as well as cross-border/international cooperation in tackling the problem posed by spam.

### **3. Overall Spirit of the Legislation**

We at Symantec Corporation<sup>1</sup>, however, are concerned that the spirit of this legislation may have fell just short of recognizing the fact that spam poses a problem well beyond being simply an annoyance and a drag on resources in electronic communications. Spam has, and will continue to, represent risks to the security of users and their systems, potentially acting as a medium for threats ranging from spyware to phishing attacks to traditional viruses and worms.

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<sup>1</sup> Symantec is the world leader in providing solutions to help individuals and enterprises assure the security, availability, and integrity of their information. Headquartered in Cupertino, Calif., Symantec has operations in more than 40 countries.

With innovative technology solutions and services, Symantec helps individuals and enterprises protect and manage their digital assets. Symantec provides a wide range of solutions including enterprise and consumer security, data management, application and infrastructure management, security management, storage and service management, and response and managed security services.

Symantec offers the Brightmail solution worldwide to help individuals and enterprises combat spam, as part of an overall solution towards protecting and ensuring the accessibility of e-mail information and systems.

#### 4. Existing Provisions in the Proposed Spam Control Act 2005

Having studied in detail the provisions within the proposed Spam Control Act 2005, we would like to point out the following specific areas; that we would either like to bring your attention upon, or hope that the Infocomm Development Authority of Singapore (IDA) and the Attorney-General's Chambers (AGC) would give serious and due consideration to:

- (a) *Not defining solicitation for charity as spam has potential to be a loophole*

Whilst it may be practical to have this legislation cover only commercial spam, it is important to bear in mind that, by not defining mass solicitation for charitable purposes as spam (whereby such the solicitation does not involve a sale of goods or services), the legislation runs the risk of providing a legal loophole for malicious or fraudulent mass communication that would, eventually, lead to greater security risks for all.

- (b) *Exclusion of Instant Messaging raises security risks and is not in-line with technology neutrality principle*

We are disappointed that communications via Instant Messaging technology (IM) is not covered under this legislation, as IM represents another communication technology that has already experienced spam/spim.

According to the Pew Internet & American Life Project survey, one-third of the 52 million Americans who used IM have already received spam/spim; at the same time, Brodia and Kelvir worms have been known to attack MSN Messenger users; while "Osama Found" adware worm has been found circulating amongst users of AOL Instant Messenger.

Another recent example found through Yahoo! Messenger, received in Singapore, is as follows:

*"desire\_more\_7j:*

*Hi, <xxxxxxx - account name edited> Hi again. This is my other ID. I made \$38 in the last hour by investing \$2 in the following site. Tomorrow I will have made about \$800 dollars. It only costs \$2 total. You can make good money also. Just go read this site and sign up. If you dont have \$2 to spend, please ignore this."*<sup>2</sup>

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<sup>2</sup> This spam was received over an IM account on 10 October 2005.

Since this legislation is intended, in principle, to be technology-neutral – a principle that we fully support and are in complete agreement with - we are surprised that spam/spim transmitted via IM technology, and we would expect this to represent further security risks going forward.

(c) Definition of Bulk Transmission is high suitable for Singapore

We are felt that this is a very enlightened definition of bulk transmission, when compared to that found in the US's CAN-SPAM Act 2003, and is highly suitable for a relatively smaller country like Singapore.

(d) Definition of Singapore Link needs to maintain flexibility going forward

Whilst we understand that there are limitations of territorial jurisdiction of this legislation, we would look forward to regular reviews of this legislation "to address changing needs", as we can anticipate that, with the rapid changes in technology, there will come a time when the scenario involving the transmission and receipt of spam may well be extra-territorial in part.

Enforcement resources and capabilities, as well as cross-border collaboration, would have to be augmented and enhanced; and would then play a key role in determining the successful implementation of this legislation.

(e) Unsubscribe Facility increases security and privacy risks

We would strongly urge against the adoption of an opt-out regime, as this poses the risk of recipients "confirming" their e-mail addresses to spammers, and may result in their "verified" addresses (which are more valuable after verification) being sold to others, and thus ensuring that the same recipients being sent even more spam messages.

This situation is vastly dissimilar to other cases wherein opt-out regimes have been adopted (for example the opt-out regime regularly applied by the Singapore Central Provident Fund Board), since there can be no certainty of the identity, intention nor integrity of the transmitting entity.

Instead, we would encourage the greater use of technology to block such spam, and involving a **trusted** third-party, for example, where requests are submitted instead to the Internet Service Provider (ISP)

or Spam Filter Provider so they can block out such spam. Such a method would very much better address the dual concern of allowing compliant unsolicited commercial electronics messages, whilst ensuring that the security and privacy of end-users are not compromised. A dispute resolution process could then be put in place to handle any non-spam messages blocked, in good faith, by mistake.

- (f) 10 business days period to honour unsubscribe requests results in unproductive costs for businesses

For legitimate/compliant unsolicited commercial electronics messages, we feel that it is onerous on legitimate commercial entities to have to honour any unsubscribe request within the proposed 10 business days, as this would require businesses to update their mailing lists more than once a month, resulting in unproductive costs for businesses. A more reasonable duration would be 20 business days, which would allow businesses to do a monthly update of their entire mailing lists, the usual current practice amongst business entities.

- (g) Limited civil damages may overwhelm statutory enforcement resources

We are supportive of the introduction of "statutory damages", in which case, the burden of the investigation and enforcement actions would have to fall squarely on the shoulders of the IDA.

However, due to the limitations placed on the extent of civil damages, as defined by the sum of pecuniary loss, cost of legal action and cost of legal proceedings, we could anticipate that the occurrence and impact of civil action would also be limited, since the deterrence of punitive damages is explicitly excluded. This, coupled with the explicit fact that civil and statutory damages are mutually exclusive, would mean that the main burden of initiating complaints, investigation and enforcement would fall mainly on the Infocomm Development Authority of Singapore.

We are therefore of the view that, in order to enable this legislation to achieve its intended effect, it would require the Singapore government to significantly boost enforcement resources, both internally in Singapore, as well as being part of an international cooperation with other national governments, as part of its multi-pronged approach towards this spam problem.

(h) Introduction of a Code of Practice

We applaud and are fully supportive of the co-regulation approach, as manifested by the introduction of an endorsed Code of Practice, and we are certain it would significantly enhance the impact of this legislation.

**5. Additional Issues that the Spam Control Act 2005 should address**

Finally, there are two other issues that we felt had not been adequately addressed by the proposed Spam Control Act 2005. In our experience with legislation in other countries, including the US CAN-SPAM Act 2003, as well as some state legislation in the US. These issues are easily overlooked in the legislative process, and would only surfaces in the implementation phase of the legislation and through tests in Courts:

(a) Relief from Liability for Spam Filter and Anti-Spam Technology Providers

Security companies such as Symantec work closely with ISPs to guard end-users from the threats of cyber crime, and spam has increasingly proven itself to be a potential medium for the proliferation of cyber crime. As such, security companies, such as ourselves, and ISPs has an obligation to end-users to adopt a conservative stance in the calibration of its filters or other anti-spam technological measures, and in some cases, this may lead to the blocking and filtering out of legitimate (as defined by the draft of the Spam Control Act 2005) messages, solicited or otherwise.

It is therefore important that the legislation include specific relief from liability for providers of spam filters and anti-spam technologies, otherwise, it would significantly discourage the future deployment and development of such effective anti-spam filters/technologies.

We would strongly urge that the legislation include an specific relief from liability for security companies/ISPs that provides spam filter and anti-spam technologies. In conjunction with such relief, a dispute resolution process/mechanism could be put into place, to address any concern over the occurrence of legitimate messages being unintentionally filtered/blocked in good faith.

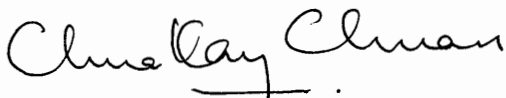
(b) Relief from Liability for Brand/Product Owners for spam sent without due/express consent

Actual owners of brands and products - whose brands, products and services are being sold through spam without their intent nor express consent - have often fallen victim to civil/statutory actions taken against them. Such spam often include false advertisements and even pirated products of the brand/product owners.

We are therefore of the opinion that this legislation should provide for explicit relief from liability for real brand and product owners, with the onus of proving due/express consent being placed on the people/entities transmitting the spam. Previous experiences in the US has shown that it is very costly for legitimate businesses, especially when they own brands and products that are the popular with spammers, to continually go the Courts to defend themselves and prove that they had not given the necessary due/express consent to the spammer - even though such truth may already be common sense. Without such relief, the cost impact (of doing business in Singapore) to legitimate commercial concerns and brand/product owners would be significantly raised.

6. I trust that both Infocomm Development Authority of Singapore and the Attorney-General's Chambers would give due consideration to these issues that we have articulated above, and I shall be most happy to make any clarifications that you may require over these and other related issues.

Yours faithfully,



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