



Manager, Online Policy
DCITA
Via email: spam.comments@dcita.gov.au

February 2006

Re: Spam Act 2003 Review Issues Paper

Thank you for the opportunity to comment on the above issues paper.

About CTN

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN advocates policies for better access, quality of service and affordability of telecommunications facilities for all residential consumers.

CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general.

Overview

Firstly, we think it's important to note how successful the Spam Act has been. Australia's decisive legislative action has meant we've led the world and played an important role in minimising the amount of Spam Australian consumers have received.

Despite this, spam remains a problem simply because much of the spam Australians receive originates from overseas. For the end user, the origin of the spam isn't really the problem; rather it's the inconvenience and irritation of receiving it in the first place. So whilst we support the efforts and outcomes achieved by the Spam Act in curbing spam with an Australian link, the fact that most spam is originating overseas should turn appropriate attention addressing the problem to the international level.

The main provisions of the Spam Act appear to be working well, and we support the retention of the Act with adjustments in line with the suggestions set out in this submission. The following comments don't directly correspond to the questions set out in the issues paper, but apply generally to the areas of scope, exclusions and consent.

Scope of the Act

We note that faxes and telemarketing calls are currently outside the scope of the Act and the issues paper calls for comment on this exclusion. CTN strongly supports the inclusion of both in a revised Act. Spam faxes are not only inconvenient for the recipient, but involve a waste of resources for consumers who are usually asked to pay to be unsubscribed, often at high cost and for no gain to the consumer. Whilst email spam wastes resources for the ISP more so than individual consumers, fax spam is a direct cost to individual consumers.

In addition, while we are supportive of the government's proposed introduction of a Do-Not-Call register, in our view telemarketing should also be within the definition of spam. CTN believes the Spam Act is the appropriate legislation to cover unsolicited verbal contacts from businesses with an Australian link.

With the growth of low cost VOIP services, we are concerned that low-cost spam may be more easily distributed verbally, in a similar way to email. Recorded voice messages are another source of unsolicited contact that consumers are receiving without consent, and have the potential to become as notorious as email spam. These forms of contact need to be with the consent of the person receiving the contacts, and should be included within the definition of spam.

CTN also believes that the function of the National Relay Service (NRS) should not be used as an excuse to allow all unsolicited voice calls to continue as unwanted imposts on consumers. As an emergency service provider, the NRS should be exempt from the Act. To reiterate, we would like telemarketing, faxes, VOIP calls and recorded voice announcements explicitly included in the scope of the Spam Act.

Designated Commercial Electronic message exclusions

We think consideration should be given to removing this category of exemptions to the Spam Act. At the very least, organisations exempted from the requirements of the Act must be required to meet the Unsubscribe requirements required of all other commercial messages.

At the core of the Spam Act is a requirement that consent of the recipient be obtained. Allowing these exemptions undermines the entire consent-based approach enshrined in the Act. Under other provisions, messages would still be allowed if they were factual only- and thus not undermine the ability of governments to communicate with citizens. However, allowing unwanted contacts from religious organisations, political parties and educational institutions totally undermines the consumers ability to choose not to receive these approaches, regardless of the frequency or content. Accordingly we believe that these exemptions should be removed, as legitimate contacts will not be precluded under other provisions of the Act.

Similarly, we do not support any exemptions from the use of harvesting software that is currently afforded to those who send designated commercial electronic messages.

Unsubscribe functionality

As mentioned elsewhere in this submission, CTN is of the view that all commercial electronic messages, regardless of whether they are designated as exempt under the Act, must be required to have a functional unsubscribe feature.

We are very concerned about the 5 day unsubscribe period for electronic messages as it applies to spam being sent to mobile phones. Consumers are experiencing problems in that they are being charged to receive spam SMS which they do not believe they have consented to receive. They are then being charged for receiving messages, and have to apply to their service provider for a refund. 5 days is insufficient in cases whereby the consumer is charged for receiving services they have not requested. CTN believes this must be shortened to 1 day to honour an unsubscribe request.

Inferred Consent

There are particular problems which apply to spam that a customer may not have willingly agreed to receive and they have to pay for. Once again we are referring here particularly to SMS spam. If a customer has given "inferred consent" when they leave their details on a website and they begin to receive premium SMS spam, how does the customer know they're going to receive these messages? Quite often they don't, and this is clearly a growing problem, as evidenced in complaint statistics from the TIO.

Phishing

The review asks whether there are any types of spam that should be subject to criminal penalties. There must be more clarity about the penalties which do apply to phishing and who's jurisdiction it is to deal with complaints. It is unclear whether or not phishing spam is already subject to criminal penalties, but in our view it should be. Phishing scams not only prey on vulnerable consumers but they erode consumer trust in the online business. We support stronger sanctions on this type of spam, but believe the current civil penalties that apply to spam to be sufficient at present.

Complaints Handling, Enforcement, and Consumer Protection

In order for the Act to be effective, it is crucial that consumers know how to complain and who to complain to. We'd like a review of spam complaints handling in order to understand how consumers are able to make complaints effectively.

We also note that it appears to have been some time since an active public education campaign has been run and suggest that a new campaign be run when the review and any subsequent legislative amendments are complete.

CTN has been pleased to see several recent high profile cases of the Spam Act being enforced by the regulator. This serves as a strong deterrent to potential and inadvertent spammers, and helps give spam a high profile in the media, reaching greater numbers of consumers. We hope that there are information sharing policies between government departments and agencies which is ensuring complaints are being passed to the correct areas. If not, this may be an area for potential improvement.

We note that the review called for feedback on how effectively Codes of practice pertaining to spam are working. Unfortunately CTN was not able to obtain resourcing assistance to participate in the development of the ADMA E-marketing Code of Practice, and as such was unable to contribute in to the development of that document. Consumer organisations need funding to contribute adequately to issues that require extraordinary attention.

CTN participated in a working committee formed at the Australian Communications Industry Forum (ACIF) to consider developing rules specifically relating to mobile phone spam. However, that project has been on hold since May 2005 due to the development of the TISSC Mobile Premium Services Code, which in it's draft form included additional consumer protections not afforded under the Spam Act regarding how to unsubscribe from subscription services and the appropriate timeframe. Until that Code is finalised though, we are unable to confirm whether we believe this to be sufficient, and we reiterate our earlier statement that mobile spam must be unsubscribed within 1 day under a Spam Act revision.

Conclusion

In all, the Spam Act appears to be quite effective in stopping spam originating in Australia, although again we reiterate that Australians are still receiving enormous amounts of spam that cannot be regulated within this country. We would support efforts made by Australian governments to further regulate for greater effect at the global level through the use of MOU's. If the Act is to continue to be relevant, the exclusions currently permitted need to be removed to ensure consistency and allow consumers to truly revoke their consent as they see fit.

We hope these comments are of use to you. Should you wish to discuss this response in more detail please contact myself or Sarah Wilson at the Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,



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This submission was prepared by Teresa Corbin, CTN Executive Director, and Sarah Wilson, CTN Policy Officer. It has been approved out of session by the CTN Council.