

**ITU WSIS THEMATIC MEETING ON  
COUNTERING SPAM:  
LEGISLATION AND ENFORCEMENT**



**International Telecommunication Union**

This paper has been prepared for the ITU World Summit on the Information Society (WSIS) thematic meeting on Countering Spam, organized under the ITU New Initiatives Programme by the Strategy and Policy Unit (SPU). The paper was written by Sophie Nerbonne, Chef de la division des affaires économiques, Commission Nationale de l'Informatique et des Libertés (CNIL), France.

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# 1 Introduction

The fight against spam evokes the legend in which Hercules battles against the Hydra of Lerna. This monster had the body of a dog and nine heads of a snake. As soon as Hercules had cut off one of its heads, they began growing back again immediately.

In the same way, once you have removed spam, it “grows back” almost at once: web surfers are overwhelmed by the avalanche of undesirable messages, and access providers have lost count of the number of accounts closed as a result of those unscrupulous customers who misuse their bandwidth by emitting thousands of messages, while condemned spammers reappear with new company names and new products.

The Hydra of Lerna lived in a cave in the meadows of Lake Lerna, and it was there that Hercules achieved the second of his 12 famous works. Similarly, the work of this meeting organized by the International Telecommunication Union is also taking place by a lakeside, and all of us hope to be able to slice off the heads of spam without seeing them grow back again.

To fight spam effectively requires the implementation of a series of actions on several levels: the effective application of anti-spam law, awareness-raising among surfers, the development of technical solutions, and strong international cooperation.

This paper attempts to present as clearly as possible how to enforce anti-spam legislation. It is quite clear that legislation alone is certainly not sufficient to eradicate spam, but it has the benefit of establishing basic legal rules, making it possible to determine the rights and the obligations of each person, and so to ensure a legal safety framework and to clarify where responsibilities lie.

## 2 What are the tools for a good enforcement?

### 2.1 Initiatives to be taken at the national level:

#### 2.1.1 Prevention and information

To ensure that law is respected, the first task is to ensure that it is known about. The French proverb “no one is supposed not to be aware of the law” is very far from representing a reality. Hence, good communication to ensure that rules are respected by all must be the first priority of the relevant public authorities, whose role it is to ensure their dissemination. It is also a question of finding relays near the professionals. The work undertaken by the public authorities and in France by the *Commission Nationale de l'Informatique et des Libertés* (CNIL) with the national trade associations for the development of codes of conduct makes it possible to give a clear policy to the economic actors.

From a pedagogical point of view, in the eyes of the CNIL it is indispensable to get all parties involved. This means:

a) Carrying out working group proceeding by hearings with the main actors concerned by the problem of spamming, and more generally by direct e-mail, that is, Internet access providers, marketing professionals, e-business and electronic publishing, consumer and institutional associations. A working group, composed of the French Association of Access Providers (*AFA - Association française des fournisseurs d'accès*), the National Consumer Institute (*INC - Institut National de la Consommation*) and the magazine “60 million consumers” and the On-line Service Publishers Group (*GESTE - Groupement des éditeurs de services en ligne*), was established in 2002. The National Union of Direct Communication (*SNCD - Syndicat National de la Communication Directe*), the Federation of Distance Selling Enterprises (*FEVAD - Fédération des Entreprises de Vente à Distance*) as well as the Association for On-line Business and Services (*ACSEL - Association pour le Commerce et les Services En Ligne*) were also associated to this consultation. Finally, the Interministerial Family Committee were included in this working group (*DIF - Délégation Interministérielle à la Famille*).

This working method is not without precedent, as similar consultations are carried out on a regular basis (summary report on e-mailing and the protection of personal data, presented by the CNIL in 1999, children and collection of data in 2000).

These hearings are essentially aimed at enhancing CNIL's activities and enabling their adoption by the groups as part of their joint campaign against spamming, namely by providing a new "module" called "Stop spam!" published on the CNIL site.

b) Creating an educational module is important to inform those involved with electronic communications (companies and individuals) of the impact of this new legal framework on their activities: a module called "Stop spam" was created online on the CNIL website following the same model used by the Commission as to inform Internet users of the possibility that individuals are traced on the Internet (see the module "Your traces") or to inform them on the specific protection that must attach to minors (see the module "Junior Space"). This module is only accessible in French.

In brief, the module consists of the following elements: action by the Commission following the opening of the address spam@cnil.fr (deliberations on the cases referred to the Prosecution Department and corresponding press release), information on the characteristics of spamming (definition, statistical analyses and state of the law) and practical advice for the attention of Internet users and professionals (technical and legal assistance, "anti-spam" reflexes).

The CNIL is currently working on the update of the "Stop Spam!" module and the creation of a practical guide, in dialogue with professionals, on the application of the law for confidence in the digital economy, namely the French national anti-spam law that has been in vigour since 21 June 2004. The Commission therefore welcomes this legislation, which unifies the rules applicable to electronic solicitation and will allow an efficient campaign against the senders of unsolicited electronic messages, without the need to rely on alternative legal provisions. In any event, it is obvious that this legislation will only have full weight once it is transposed into national law and criminal sanctions are established.

c) Regular contacts with the magistrates and the specialized services of the police force were developed at the time of a number denunciations of spammers in 2002. In addition, thanks to the complaints and with the assistance from the professionals the CNIL attempted to identify French companies that were perpetrators of spam to denounce them in court. It also supported legal action brought by Internet access providers.

d) Last but not least, make the fight against spam a government priority:

This is now the case in France. In July 2003, the French Government announced the creation of a dialogue and action against spam group whose objective is to support the dialogue between the public and private actors in the fight against spam and the coordination of their actions, both in France and in the international sphere. A number of working groups are currently working on regulation, technical measures, how to deal with complaints, cooperation at international level and other topics.

### **2.1.2 Creation of a spam box**

The spam box campaign was conducted by the French data protection authority, the CNIL, during 2002, enabling internauts to transfer their spam to a special box. This resulted in a number of useful lessons being learned as to the characteristics of the complainants on the one hand and, on the other, of the spammers.

This one-off operation, aimed at taking full stock of spamming in France, has achieved remarkable success, with nearly 3'000 messages received per day and more than 300'000 over a three-month period.

Nevertheless, this success, which has been difficult to manage from an administrative point of view, has required the deployment of powerful servers, the introduction of major security measures to ward off attack attempts and the classification (on a part-automatic, part-manual basis) of messages according to their origin and content.

Identification of the spam sources deemed most contentious by web surfers has prompted the CNIL to report five spammers to the legal authorities. While a decision has already been taken not to follow up two cases (impossible to identify the spammer), investigations into the others are still under way.

A full report on this spam box has been drawn up by the Commission and is available on its Internet website in French and English, as well as being to this document. The CNIL also felt that it was important to make available to web users and professionals an educational module entitled "Stop spam".

This initiative, based on actions by the Federal Trade Commission in the United States, demonstrated the desire of CNIL to deal with the phenomenon of spam. It should be specified here that this action never aimed at resolving the problem of spamming as a whole. Since this initiative has been under way, several countries in Europe have opened or intend to open spam boxes.

It appears that the fact of lodging a complaint with the agency heading the battle against spam is not in itself a guarantee of the reality of the spam. What frequently happens is that the complainants themselves get it wrong and forget that they had registered with, or subscribed to, an Internet website. For this reason, therefore, it is important to make them aware of their own responsibilities. So, in numerous cases, the Commission established, on examining the complaints, that the company implicated had not in fact committed any offence against the e-mail marketing regulations.

On the side of the spammers, some small companies that specialise in spamming are prepared to acknowledge the illegality of their methods. This is where the pedagogical aspect is useful because in such cases it is not difficult to identify the spammer and to convince them to stop.

Once the spammer has been identified, three possible scenarios emerge:

1. Sometimes, the Commission has identified various small companies that use the Internet and its special features as a main channel of communication, in blatant disregard of the rules. These companies stopped sending out spam following the intervention of CNIL.
2. The CNIL may be in a position to have numerous assumptions to work on, but not, despite on-the-spot control procedures, to prove that spam really exists.
3. The latter case refers to the lack of enforcement powers (imposition of a fine or liquidated damages) or power to issue instructions, it has no option but to take the matter to court.

### **2.1.3 Initiatives to be taken at world level**

As a further part of its actions, the CNIL is considering a cooperation project outside of Europe, where the principal source of *spam* resides. However, the main goal for CNIL is first to "clean up" the French market before continuing its efforts on a world level.

The broad outline of cooperation on a world level is, however, being defined, particularly in the United States, which introduced federal anti-spam legislation with the "can spam" act of 2003. The CNIL thus plans to contact the Attorney Generals of the United States on the one hand and the *Federal Trade Commission* on the other hand.

Contacts with transport and access providers could also be made in order to obtain information for the identification of American spammers that prevail in Europe, in order to make it possible for the CNIL to bring court cases against such spammers. American operators will also be able to start new judicial actions in the United States by integrating data elements provided by CNIL. Three large-scale providers are concerned: Yahoo!, AOL and Microsoft, all members of the French Association of Internet access providers (AFA) in France.

The establishment of cooperation mechanisms could provide opportunities to exchange information concerning methods of instruction, "best practices", technologies used to identify spammers, educational modules for web surfers and professionals, "unsolved cases" (for example, how national law deals with spam originating in a foreign country), and so on.

### 3 The panoply of legal answers: a broad spectrum of applicable sanctions

The aim of CNIL, and one which was clearly announced in its last annual report, is to accentuate the repressive shutter while launching new legal initiatives and supporting European and international cooperation.

#### 3.1 Repressive actions

It is more necessary than ever for data protection authorities or other relevant authorities on *spam* to apply the legislative texts and take spammers to court. By bringing a few exemplary cases before the public eye, the sense of impunity of the companies and individuals resorting to these practices can be diminished.

In such cases it is essential to raise awareness and understanding among magistrates of the problems of spamming and, in particular, its specifically trans-national nature. Then, more especially, there is the problem of the jurisdiction of the national courts in cases where the spam comes from a foreign country, including instances where the beneficiary is a national company.

**Table 1: Spam lawsuits in the United States (non-exhaustive table)**

Lawsuit	Facts	Legal basis	Sanctions	To find out more
Earthlink (Internet access provider) vs private individual  <u>May 2004 – Court of New York</u>	Sending of 825 million electronic mails for the promotion of sexual stimulants based on grass or mailing lists of electronic mails	In particular demonstrated use of forgery, counterfeit, fraud, usurpation of identity	Judgment in May 2003: 16,4 million damages to pay by Earthlink  Seven years of prison	<a href="http://www.earthlink.net/about/press/pr_spammerarrest/">http://www.earthlink.net/about/press/pr_spammerarrest/</a>  <a href="http://www.onlinesecurity.com/links/links1010.php">http://www.onlinesecurity.com/links/links1010.php</a>
State of California vs. PW Marketing company  <u>October 2003 – California</u>	Tools for collection of e-mail addresses	Anti-spam law of 1998: absence of possibility to request cessation, no indication of advertising character of the message (absence of mention "advertisement" in subject line of the message).  <u>N.B:</u> concept of direct assent and not of preliminary assent.  <b>Legislation:</b> Since the 23/09/03, adoption of a new legislation which with an "opt-in" clause, unsolicited	Two million dollars fine for sending unsolicited commercial e-mails.  The persons in charge for this company are also prohibited from all activity related to the Internet for 10 years.	<a href="http://caag.state.ca.us/newsalerts/2003/03-130.htm">http://caag.state.ca.us/newsalerts/2003/03-130.htm</a>  <a href="http://caag.state.ca.us/newsalerts/2003/03-130.pdf">http://caag.state.ca.us/newsalerts/2003/03-130.pdf</a>

		<p>mails are illegal when sent from California or addressed at a Californian address. Applicable to transporters and advertisers.</p>		
<p>AOL Inc. (Internet access provider) vs. the direct marketing company CN Productions</p> <p><b><u>December 2002</u></b> <b><u>- Virginia</u></b></p>	<p>Promotion of pornography sites</p>	<p>Application of "anti-Spam" law of March 1999.</p> <p>This law, amended in July 2003, prohibits mass sending of unsolicited e-mails with false headings and which would violate the CGU of the FAI (USD 25'000 for each day of spam).</p>	<p>Seven million USD in damages to AOL for sending nearly a billion electronic mails to AOL subscribers.</p>	<p><a href="http://legal.web.aol.com/decisions/dljunk/aolarchive.html">http://legal.web.aol.com/decisions/dljunk/aolarchive.html</a></p>

**Table 2: Spam lawsuit in Europe (non-exhaustive table)**

Lawsuit	Facts	Legal basis	Sanctions	To know some more
<p>Microsoft Corp. and AOL France vs. Mr K (individual contractor)</p> <p><b>3.1.1 France – May 5, 2004</b></p> <p>Commercial court of Paris</p>	<p>Sending of a million unsolicited e-mails</p>	<p>Violation of the contractual conditions of free transport through the Microsoft "Hotmail" service and of the Internet access service of AOL</p>	<p>EUR 22'000 in damages</p> <p>Permanent prohibition from sending unsolicited e-mails using the Hotmail service and from contracting a new subscription at AOL.</p>	<p><a href="http://www.aol.fr/presse/spammeur.htm">http://www.aol.fr/presse/spammeur.htm</a></p> <p><a href="http://www.microsoft.com/france/cp/default.asp">http://www.microsoft.com/france/cp/default.asp</a></p> <p><a href="http://www.juriscom.net/jpt/visu.php?ID=510">http://www.juriscom.net/jpt/visu.php?ID=510</a></p> <p><a href="http://www.juriscom.net/jpt/visu.php?ID=529">http://www.juriscom.net/jpt/visu.php?ID=529</a></p>
<p>Microsoft Corp. vs. E Nov. Company Development</p> <p><b>3.1.2 France - April 6, 2004</b></p> <p>Ordinance of summary procedure of the TGI of Paris</p>	<p>Sending of electronic mails originating from false Hotmail addresses (free transport service)</p>	<p>Infringement of the trademark law (infringement proceeding envisaged to art. L.716-6 of the intellectual property code</p>	<p>Obligation of EUR 100 per noted infringement (for any electronic mail sent by the E Nov. company originating from a Hotmail account).</p>	<p><a href="http://www.juriscom.net/pro/visu.php?ID=505">http://www.juriscom.net/pro/visu.php?ID=505</a></p>
<p>Vs. Company of equipment</p> <p><b>Denmark - January 21,</b></p>	<p>Sending of more than 15'000 spams</p>	<p>The law transposing the Directive from 2002</p>	<p>Fine of EUR 54'000</p>	

<b>2004</b>				
The Council of Consumption <i>vs.</i> Fonndanmark company  <b>Denmark May 2003</b>	Company specialized in the software of staff management	"The Danish Marketing Practices" of June 2000 applicable to physical and moral persons	Fine of 2'000 euros for the sending of 156 unsolicited e-mails	
Co. Smith and Nephew <i>vs.</i> L  <b>France - November 7, 2003</b>  Correctional court of Mans	Mass mailing of electronic messages in order to saturate the information processing system with its former employer  ("mail bombing")	Offence of obstacle to the operation of a system of automated processing of data envisaged in article 323-2 of the Penal Code  (Fraudulent means of access to a system of treatment automated of data (STAD), for the falsification of the addresses e-mail of forwarding, and blocks fraudulent with the operation of a STAD, for the saturation of the transport)	Ten months of prison with two year probationary bail and EUR 34.413 in damages	
Interactive Wanadoo company (Internet access provider) <i>vs</i> private individual  <b>France - September 18, 2003</b>  Correctional court of Draguignan (Call in progress)	Attacks on the Wanadoo mail server allowing the recovery of 23 million e-mail addresses (use of "Direct e-mail Collector" software)	Personal data acquisition by a fraudulent, unfair, illicit means (art.226-18 CP – art.25 law 78)  Block with the operation of a system of automated treatment (art.art323-2 CP)	EUR 15'000 fine and two months of imprisonment with probationary bail period	
Public ministry (civil part: Thomas Quinot) against a private individual	Promotion of a pornographic site <a href="http://www.livendirect.com">www.livendirect.com</a> published by company SPPI <small>Diam Campus</small>	Law of 6/01/78: unfair collection and absence of declaration	No sanction on the base of unfair collection.  Sanction for failure to make a return: fine of EUR 3'000.	<a href="http://thomas.quinot.org/spam/jug20030606.html">http://thomas.quinot.org/spam/jug20030606.html</a>

	Diem Carpus			
<b><u>France - June 6, 2003</u></b> – correctional Court of Paris				
Denunciation CNIL the 124/10/02 vs. Company Sun Islands  <b><u>France - August 11, 2003</u></b> Parquet floor of the Court of Bankruptcy of Paris	Promotion of a site related to tourism	Law of the 6/01/78: Unfair collection and absence of declaration.	No judgment Classification without continuation	<a href="http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-07a.pdf">http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-07a.pdf</a>
Denunciation CNIL of the 24/10/02 vs. the organization editor of the letter "signal 50 of X"  <b><u>France - May 19, 2003</u></b> Parquet floor of the Court of Bankruptcy of Paris	Promotion of pornographic sites	Law of 6/01/78: unfair collection and absence of declaration.	No judgment Classification without continuation No identification of the spammer	<a href="http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-079a.pdf">http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-079a.pdf</a>
Api-PL (national Observatory of the liberal professions) vs. Company All Systems  <b><u>France - June 4, 2003</u></b> Schedules commercial court of Grenoble	Sending of an unsolicited advertisement to four e-mail addresses of association, which was clearly prohibited on the Apione site.	Injunction to pay	Apione drew up an invoice against the company at the origin of this electronic mail (EUR 9,11). Without news of All Systems, the national Observatory of liberal professions passes to the second stage. Last January, the Api-PL addressed a request to the commercial court of Grenoble in order to obtain an injunction for payment.	
Denunciation CNIL of the 24/10/02 vs. Company editor of the site <a href="http://www.great-meds.com">www.great-meds.com</a>  <b><u>France - May 5, 2003</u></b> Parquet floor of the Court of Bankruptcy of Paris	Online sale of pharmaceutical products	Law of the 6/01/78: Unfair collection and absence of declaration.	No judgment Classification without continuation No identification of the spammer	<a href="http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-077a.pdf">http://www.cnil.fr/fileadmin/documents/approfondir/deliberations/d02-077a.pdf</a>

<p>Company Noos (Internet access provider) vs private individual (data processing specialist)</p> <p><b><u>France - May 24, 2002</u></b> correctional Court of Paris</p>	<p>Massive sending of electronic mails paralysing the transport of the supplier of access.</p> <p>("mail bombing")</p>	<p>Offence of obstacle to the operation of a system of automated processing of data envisaged in article 323-2 of the penal code.</p>	<p>Four months of imprisonment with bail and EUR 200'000 in damages.</p>	
<p>Private individual (subscribed Liberty Surfing and Free) vs. Companies Liberty Surfing and Free (Internet access provider)</p> <p><b><u>France January 15, 2002</u></b> Ordinance of summary procedure of the Court of Bankruptcy of Paris</p>	<p>Dispute of cancellation of its subscription by Liberty Surfing and Free.</p> <p>The plaintiff had used his subscription to practise Spamming.</p>	<p>Failure with the contractual obligations</p> <p>Failure with the charter of good control on Internet (unfair practice and seriously disturbing)</p> <p>Disturbance detrimental to networks.</p> <p>N.B: this decision uses the terms "Spam" and "Spamming".</p>	<p>The plaintiff was rejected because cancellation of contract was justified.</p> <p>Judgment of the applicant for abusive procedure</p>	

<p>Private individual (subscribed France Telecom Interactive) against France Telecom Interactive (Internet access provider become Wanadoo Interactive)</p> <p><b><u>France - February 28, 2001</u></b> Court of Bankruptcy of Rochefort-on-sea</p>	<p>Dispute of the cancellation of its subscription by its access provider.</p> <p>The plaintiff had used his subscription to send spams on various forums of discussion.</p>	<p>“Netiquette” – a set of moral rules of good practice on the Internet prohibiting the practice of spamming.</p> <p>Judge recognized the legal authenticity of this use on the basis of article 1135 of the Civil code.</p> <p><u>N.B:</u> the judgement refers to the report/ratio of the CNIL of 1999.</p>	<p>Plaintiff rejective because cancellation of contract justified.</p> <p>The access provider did not obtain damages for abusive procedure bus absence of elements proving the intention to harm his opposition.</p>	
<p>Claranet Company vs. C.</p> <p><b><u>France - February 20, 2001</u></b> Court of Bankruptcy of Lyon</p>	<p>Mass mailing of electronic messages in order to saturate the information processing system with its former employer ("mail bombing")</p>	<p>Offence of obstacle to the operation of a system of automated processing of data envisaged in article 323-2 of the Penal code</p>	<p>Eight months of prison with bail and FRF 20'000 fine on the penal level, as well as EUR 300'000 in damages on the civil level.</p>	

Civil sanctions appear easier to apply. The latest to date dates from 5 May 2004, and was given by the Commercial court of Paris against a French company which had been at the origin of massive spam sending. This decision follows a complaint deposited jointly by the Microsoft company, editor of the Hotmail service and the Internet access provider, AOL France. The company was accused of having used their services to send a million unsolicited advertising e-mails promoting various football articles on various of the company's sites. According to the applicants, the company ignored the general conditions of use of their services which explicitly prohibits the practice of the spamming. The judge granted the case, with a penalty of EUR 10'000 in damages and EUR 12'000 paid for costs of proceedings on the basis of the violation of the contractual conditions of Microsoft's free transport service and AOL's provision of access. It also ordered permanent prohibition for the company to address e-mails that are not requested through the services.

Within the framework of the legal action undertaken by the applicant companies, CNIL had sent, in anonymous form, all of the information relating to complaints about unsolicited messages received. This is the first case of cooperation between the private sector and the data protection authority in France, but such joint actions are also starting to develop throughout Europe.

In this case, the company argued that it had ceased any sending of advertisements after the reception of a warning from CNIL, that the address file bought had been constituted with the consent of those concerned and that it was not responsible for those persons who had used its AOL accounts to send spam. These arguments were not accepted by the judge, who held that spamming had taken place and that, according to contractual stipulations, any user is responsible for their account. The judgement illustrates a serious failure with the obligations and validates the facility contained in AOL's to cancel an agreement unilaterally.

CNIL hopes that this decision will have a dissuasive effect on French companies which might otherwise continue to ignore the applicable rules as regards mass marketing by electronic mail.

## **3.2 A common determination throughout Europe**

### **3.2.1 The action of the European Commission**

Within the framework of the EC Directive of 12 July 2002 "Private life and electronic communications", the European Commission presented in January 2004 a communication relating to unsolicited commercial communications which announced the reinforcement of the international cooperation, technical measures (filters, codes of conduct, etc.) and the necessary increase in awareness of consumers and companies.

Finally, the Commission encourages broad cooperation at the national, European and world level. Thus, to facilitate and coordinate exchanges of information and best practices as regards treatment of the complaints, the European Commission created an online informal group on the unsolicited commercial communications linking the representatives of the competent national authorities, including data protection authorities, telecommunication regulators or consumer protection agencies.

## **3.3 Concrete examples of European cooperation**

CNIL aims to take coordinated action with the relevant European authorities to deal with customer complaints. It even plans concomitantly to denounce spammers in each State concerned and to apply sanctions. Ever since the European Commission has taken initiatives to strengthen this cooperation and certain protection bodies with autonomous sanction capacities have already initiated actions against spammers, more and more cases have been dealt with. Thus, in Italy, each week the "*Garantore*" (the Italian data protection authority) publicly announces sanctions against spammers based in Italy (injunction of discontinuance of business, damages with the plaintiffs, administrative fines).

Moreover, during the year 2003 the CNIL dealt with several cases requiring European cooperation. In the spring of 2003 for instance, the Belgian data protection authority which had installed a "spam box", based on that of CNIL, identified among e-mails sent by web surfers, messages sent by thirteen different French entities of various branches of industry (data processing, finance, trade, leisure, etc.). These messages were transmitted to CNIL which, after having identified the shippers, addressed a mail to each one of them to erase the electronic addresses of the files but also to point out to them the regulation in force.

In the summer of 2003, the Commission also received a complaint from another European authority. The spammer identified in the complaint indicated to the Commission that it used software to harvest e-mail addresses. In the end, CNIL finally convinced the authority to cease the practice and deleted all e-mail addresses obtained by these unfair means from its files.

CNIL has also transmitted to one of its European counterparts several complaints by French web surfers who received financial spams sent by an establishment located on the territory of this counterpart. Once the establishment had indicated to the Commission that it had decided to stop any e-mail marketing, the Commission nevertheless followed up by asking the European counterpart verify that the files were indeed deleted from the company's records.

More details:

- **Case No 1:** In spring 2003, a European body which had set up a spam box along CNIL lines successfully identified, among the e-mail transmitted by web users, messages sent out by thirteen French organisations operating in various sectors of activity (IT, finance, commerce, leisure, etc).

E-mail messages received by web users were forwarded to the CNIL by post.

Having identified the senders, the CNIL then sent each of these bodies a message not only requesting them to delete the e-mail addresses from their files but also reminding them of the rules and regulations in force.

In the majority of cases it transpired that the web users had subscribed either directly to the websites they were now reporting, or to other sites which had then passed on their addresses to the bodies called into question.

However, this case is still under investigation, given that certain addresses were sold by a number of companies, and it will be some time before the original data-gathering source can be established.

- **Case No 2:** In summer 2003 a formal complaint was submitted to the National Commission by another European authority, one of whose executives had received French spam mail.

These unsolicited e-mails invited the recipient of the message to sign an investment contract by opening an account with a company – a company, moreover, which had been struck off the register of companies.

Having identified the senders of these messages, the CNIL then sent them an e-mail asking how, on the one hand, they had acquired the applicant's e-mail address and, on the other, requesting them to remove the address from their files.

At the same time, the CNIL also brought the matter to the attention of the French Consumer Protection Authority.

The spammer in question notified the National Commission that they were using e-mail sweep-up software, and the CNIL eventually got them to desist from these practices and remove from their files all e-mail addresses collected by this unfair method.

- **Case No 3:** the CNIL recently received a complaint from a third European authority following the dissemination of spam of a pornographic nature stored on the personal pages of a French Internet service provider.

The spammer could not be identified directly, either from the headers on the messages sent or from the pages which can only be accessed after entering a code obtained by phoning a premium rate *audiotel* number.

The National Commission then asked the site hosting these pages (easily identifiable from the message headers) to pass on the identity of its client.

This case is still being examined.

- **Case No 4:** In another connection, the CNIL recently sent out, for the first time, to one of its European counterparts six complaints by French web users who were receiving spam of a financial nature.

Preliminary investigations of these complaints by the competent CNIL departments revealed that the company had an office in France.

Questioned further on the matter, the establishment let it be known that the messages came from the company's headquarters, located outside France. At the same time, however, it made it clear that the parent company had now decided to stop all forms of e-mail marketing.

The National Commission called on its counterpart based on the territory of this company to check whether this promise had been kept and whether the complainants' e-mail addresses had indeed been removed from the company's records.