BIAC ICC Discussion Paper on SPAM

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Introduction

Spam is a serious, international, cross-sectoral problem that must urgently be tackled by the coordinated efforts of all interested stakeholders in the information society. Spam is detrimental to consumers and business, as both are users of information and communication technologies. Dialogue and exchange of expertise between the public and private sectors is vital to successfully address the challenge of spam, and to ensure that the networked economy continues to benefit users worldwide.

The private sector brings unique and valuable insights to this dialogue. As business owns and manages many of the networks and systems that are most burdened with spam, the business community has significant and up to date expertise in fighting spam. Most importantly, business plays a fundamental role in developing the innovative technological solutions that address spam. We look forward to continued and constructive dialogue, at all levels and with all affected stakeholders, to foster workable and effective solutions to spam.

International business urges governments to adopt balanced legislative approaches as part of a toolkit of possible ways to combat spam. Governments should review existing laws and regulations to see if they sufficiently address spam. If amendments or new legislation are required, they should target spam transgressors without penalizing legitimate marketers whose activities benefit consumers. Effective enforcement by governments of relevant legislation is essential in the fight against spam.

There are many parameters used to define spam[1] that are used in various ways across national or sectoral borders, with the result being that no universal definition of spam exists. One pitfall to be avoided is the grouping of all marketing-based communication under the general heading of spam. Therefore, we urge governments to be cautious when devoting significant resources to measuring spam, or when adopting a single approach to combating spam. While some objective measurement is needed, resources can be more usefully employed in working with consumers and business on practical methods to deal with spam.

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[1] Recipient's expectations, content of communication, sender details, form of communication, etc.

Against this background, business endorses a multi-faceted approach to fighting spam:

- Education and cooperation: Business and government must work together in public-private partnership to educate users in the fight against spam.

- Technology: Industry should continue to develop technological solutions to spam, working with governments and consumers to promote awareness of technological approaches.

- Industry's role in fighting spam: Business can best manage legitimate unsolicited commercial e-mail with industry codes of conduct and other self regulatory tools.

- Government regulation/enforcement: Governments should ensure that relevant existing legislation covers spam and is effectively enforced.

A coordinated effort in each of these areas is the best way to effectively deal with spam.

Education and co-operation: Business and government must work together in public-private partnership to educate users in the fight against spam.

Governments should support and complement industry efforts to educate users (including SMEs) about their role in fighting spam. It is important to stress that most companies are also users and therefore victims of spam. Effective awareness and education is the primary tool in combating spam as it provides users with important tools they need to manage their e-mail. As users learn to reduce and deal effectively with spam, it will become a less attractive activity for spammers. Users need to learn how to reduce the dissemination of their e-mail addresses and how to use software to deal with spam addressed to them.

Awareness and education are the joint responsibility of all stakeholders. Industry continues to inform users about how to protect the privacy of their information when registering with a website or purchasing a product. Industry also exchanges information on best practices for effective spam-handling procedures, and develops tools that empower users to choose which e-mail they will receive. As industry is at the cutting edge of dealing with spammers' latest techniques, it is best positioned to understand the problem and to introduce solutions. Industry will work with relevant stakeholders to promote awareness among users and to disseminate new and more effective methods to avoid or reduce spam.

➢ Governments should work with industry to educate users on avoiding and reducing spam.

➢ Governments should work with industry to increase awareness and use of workable solutions and mechanisms to report and deal with e-mail, instant messaging or SMS abuse. One way to do this is to input reporting and opt-out web addresses to the ICC Global Online Resource on Spam[2] an online resource for users with details of 'opt-out' lists and addresses to report spam and make privacy complaints, with links to reporting and opt-out resources in over thirty countries around the world.

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[2] http://www.iccwbo.org/home/menu_electronic_business.asp

Technology: Industry should continue to develop technological solutions to spam, working with governments and consumers to promote awareness of technological approaches.

Business actions to combat spam include the continuing drive to develop and improve filtering and other technologies.[3] As spammers can change their tactics as quickly as industry develops new defensive techniques, technological responses to spam must continuously and rapidly adapt. Business is constantly improving the ability of these technologies to distinguish between spam and other communications, and developing products that are easier to use.

Business recognizes the significant challenge to information security presented by spam and has responded with innovations such as enterprise level network monitoring, traffic analysis and virus checking in order to protect information systems and networks. A new approach to spam is the use of "smart" systems that not only can adjust automatically to spammers' changing tactics, but can be customized to suit the preferences of individual users.

Governments should avoid mandating specific anti-spam technologies, and focus on creating and sustaining an economic climate in which business continues to develop and improve technological solutions to the ever-changing problem of spam.

➢ Governments should ensure that anti-spam measures are technology-neutral and, where relevant, based on standards agreed to by business. Governments should not mandate specific technological anti-spam measures, nor try to force companies to adopt measures that cannot be supported in the marketplace.

➢ Governments should continue to allow internet service providers (ISPs) and other companies to block spam on their respective networks and systems, keeping in consideration the benefits of legitimate commercial e-mail.

Industry's role in fighting spam: Business can best manage legitimate unsolicited commercial e-mail with industry codes of conduct and other self regulatory tools.

Governments should work with business to distinguish between spam and the legitimate needs and benefits of commercial e-mail, and avoid impeding legitimate commercial e-mail. Industry uses guidelines, codes of conduct, opt-out and reporting procedures to ensure best practice among legitimate marketers.

It is clearly in the interest of business to ensure that using legitimate commercial e-mail is not associated with spam. Business can help free government resources to address spam by developing oversight and compliance procedures to manage legitimate unsolicited commercial e-mail using industry codes of conduct and other tools. Industry codes, guidelines, and private sector best practice initiatives, such as the ICC Guidelines on Advertising and Marketing on the Internet[4], the FEDMA European Code of Practice for the Use of Personal Data in Directing Marketing,[5] Antispam – A Guideline from The

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[3] Attention must also be paid to addressing the problem of false positives, i.e. of genuine messages being blocked by filters.

[4] http://www.iccwbo.org/home/statements_rules/rules/1998/internet_guidelines.asp. The ICC Guidelines are currently under revision to be finalized in June 2004.

[5] http://www.europa.eu.int/comm/internal_market/privacy/docs/wpdocs/2003/wp77-annex_en.pdf

Confederation of Danish Industries and ITEK[6], the GBDe voluntary practices in its Recommendation on Unsolicited Electronic Communications[7], and Truste.org[8] are an effective way to spread best practices.

> ➢ Governments should respect and encourage industry codes of conduct and best practices that establish guidelines for the responsible business use of unsolicited commercial e-mails.

Government regulation/enforcement: Governments should ensure that relevant existing legislation covers spam and is effectively enforced.

New legislation or amendments, where needed, should focus on preventing illegitimate, fraudulent, or harmful messages. Anti spam measures should be drafted with care to avoid negative impacts on legitimate commercial e-mail.

Anti-spam measures should reduce the volume of spam while preserving legitimate business use of the Internet as a communications and marketing medium. Any anti-spam laws should distinguish between unsolicited, harmful, fraudulent or untargeted electronic communications sent by unknown parties from communications sent by responsible companies to individuals to create or sustain a customer relationship. Companies value customer trust and have a strong business incentive not to inundate customers or potential customers with unwanted solicitations. The distinction between legitimate business communications and spam must be maintained so that anti-spam rules reinforce the interests of consumers and responsible marketers.

Relevant legislation (for example, laws and regulations on fraud, consumer protection, unfair competition) should include definitions that prohibit activities such as the use of false or misleading header information, false or misleading subject lines, fraudulent or claims or offers, the misuse of third-party domain names and IP addresses, and harvesting e-mail addresses through dictionary attacks or anonymous/automated collection procedures.

Private enforcement measures and private rights of action through the judicial system are an essential part of the fight against spam and should be upheld in law. Some countries have introduced rapid injunction procedures for both private and public enforcement actions.

> ➢ Governments should favour regimes that respect customer privacy and choice while enabling legitimate companies—including small and medium-sized enterprises—to market their goods and services.

> ➢ Governments should ensure they are able in law to impose effective fines or other penalties on spammers.

> ➢ Governments should focus on fraud and allocate sufficient resources to effectively enforce existing fraud laws with regard to spam.

> ➢ Governments should have formal and efficient procedures for dealing with cross-border complaints.

> ➢ Governments should ensure that private enforcement measures are legally permissible but not over broad.

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[6] http://billed.di.dk/wimpfiles/lores/image.asp?objno=/298860.pdf
[7] http://www.gbde.org/spam03.pdf
[8] http://www.truste.org

Business Actions

BIAC and ICC fully endorse joint government and industry action to fight spam. These business activities complement the actions already proposed for governments.

➢ Business will work co-operatively with governments to increase awareness and use of workable opt-out solutions and mechanisms to report and deal with e-mail, instant messaging or SMS abuse.

➢ Business will continue to raise user awareness of how to reduce and deal with spam at the individual and enterprise level, particularly through initiatives such as the ICC Global Online Resource on Spam.

➢ Business will continue to develop technological solutions to spam.

➢ Business will use private enforcement actions against spammers where those actions are appropriate and likely to be effective.

➢ Business will consider other ways to reduce the appeal of spam, as appropriate, for example, payment mechanisms for spam-like mail or registration systems that could assist in identifying potential spammers.

➢ Business will continue to advocate effective and workable approaches to spam. To this end, we draw attention to the statements and marketing codes of the following business organisations International Chamber of Commerce (ICC), Federation of European Direct Marketing Association (FEDMA), Internet Law and Policy Forum (ILPF), Global Business Dialogue on Electronic Commerce (GBDe), and the Direct Marketing Association (DMA) and Antispam – A Guideline from The Confederation of Danish Industries and ITEK.[9]

➢ Business will continue to co-operate amongst industry associations to share and advocate policy and best practices globally.

➢ Business will continue to support and participate in international multi-stakeholder dialogue to develop practical approaches to combat spam.

BIAC and ICC look forward to continued dialogue and coordinated action with governments to fight spam. This will reinforce the privacy and security of all users and ensure that the Internet remains a viable and attractive place to do business.

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Founded in 1962, the Business and Industry Advisory Committee (BIAC) represents the major industry and employers' organisations in the 30 OECD member countries.

ICC, the world business organization, represents member companies from all sectors in over 140 countries.

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[9] For further information on these documents, please contact the secretariats of BIAC or ICC; Nicole Primmer, primmer@biac.org, Maria Farrell, mfm@iccwbo.org.