Multi-lateral and Bi-lateral Cooperation: the Australian Approach.

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The Internet is a true wonder of our era. It has provided access to information on a scale that we did not dream of only ten years ago. That access has meant that the world is so much more a smaller and close knit community – a true Global Village. And E-mail has been the "Killer Application" of the Internet. It is a binding agent for people around our globe and a powerful agent toward better understanding and mutual appreciation among the people of this Global Village.

Separately from this social benefit E-mail is also a very powerful enabler of commerce and trade toward the improvement of well being for us all.

We have had the experience of previous decades where we appreciated that the global telecommunications network as measured by number of telephones in any country is correlated to the wealth of that country. Now with the Internet and E-mail we have a communications tool that is much more flexible, capable of more attractive services, lower cost and easier to establish.

How could we not seek to preserve and develop it for its positive features?

But now this goose that lays golden eggs is under threat.

We have heard already about the scope of the threat and the dark side of the Internet and E-mail. A national and insular approach to protecting our goose – which is really a globally owned goose - will not work.

The major spammers of the world are running global businesses. For example, it is common for a spamming operation to be based in one country but be using the resources for operations in many other countries. Some of the more insidious forms of spam are sent through a global network of computers that have been taken over by viruses without their owners even knowing. Closing down such global businesses requires global cooperation.

We have already heard that trans-national nature of the Internet requires transnational approaches to protecting our goose that lays golden eggs.

It seems that the issue at this conference is not whether we will deal with the issue of Spam in a transnational way but rather how will we engage across the globe for our common good.

Australian regulation of spam

The Australian parliament in December 2003 passed laws to regulate spam choosing an 'opt-in' approach. The new laws came into force on 10 April 2004.

Australia's legislation prohibits the sending of commercial electronic messages with an Australian link. This applies to messages sent via email, instant messaging, SMS and MMS,

but not by facsimilie or voice telephony. Commercial electronic messages are also required to include accurate sender information and a functional unsubscribe facility. Under the Australian legislation here is no volume definition of spam, a single commercial electronic message can be spam. The legislation also prohibits the supply, use and acquisition of address- harvesting software for the purpose of sending spam.

Breaches of Australian spam laws attract civil penalties.

[The Australian legislation, the *Spam Act 2003* and the *Spam (Consequential Amendments) Act 2003* are available at http://scaleplus.law.gov.au/html /comact/11/6735/top.htm.]

Australia is an island in a physical sense but not in an Internet sense. In establishing a strategy to combat spam, Australia adopted a five layered strategy of the following elements:

1. Developing and enforcing strong national legislation to curb spam with an Australian link;
2. Educating consumers and businesses on complying with the legislation and reducing the amount of spam they receive;
3. Supporting and fostering the development of technological solutions for reducing spam;
4. Maintaining strong partnerships with industry particularly the e-marketing and internet service provider industries; and
5. International cooperation.

For Australia and I suspect many other like nations that are a smaller part of the world economy, the first and last of this list are key components to our continued fruitful use of the Internet. Working cooperatively with other nations' agencies is a key element of Australia's anti-spam strategy.

However within the five point approach the ACA has developed a number of principles or checks that it has used in its national approach to spam regulation. These are attached and are offered to this meeting as a possible consideration for any organisation considering a response to spam. The ITU may wish to make some development along these lines available. The ACA would be pleased to participate in this if the meeting or ITU wishes.

A flexible approach to international cooperation

It is Australia's view that each spam regulator needs to embrace an international component to its anti-spam strategy. In this I would emphasise that the ACA is not contemplating any kind of international control over national processes but rather an arrangement between nations that might draw on unique capabilities of organisations such as the ITU, OECD or ICPEN. To do this they may:

- Introduce national laws and industry practices (that are reasonably aligned or harmonised) which add costs to spammers and help reduce the profitability of the business case for spam;
- Act subject to local priorities against spammers operating from their jurisdiction in response to local or international information, applying what local remedies are at the disposal of the regulator and industry itself. In this regard, whether an 'opt-in' or 'opt-out' approach have been adopted is less relevant than the need for decisive multi-nation action;

- Close off indirect sources of spam in their jurisdictions in response to local or overseas sourced information, including open relays, open proxies and compromised servers;
- Share educational and publicity strategies and material;
- Establish and maintain working level links with other national regulators around the world, in order to convey information to other regulators about spam arising in the other regulator's jurisdiction and to receive and act possibly jointly on information about spam; and
- Share technical expertise and commercial intelligence about spam and spammers, as well as knowledge about strategies for dealing with spam.

Not all agencies are equally placed to play a strong pro-active role in reducing global spam. Some are just commencing to consider their domestic strategies for combating spam, some are currently developing domestic legislation, and others have developed their local laws and are looking to work with agencies of other nations to undertake cross-border enforcement action. Regardless of the state of readiness to tackle the spam problem, effective cooperation can occur on a number of levels. These levels include:

- Sharing experience and information about workable anti-spam legislation and complementary measures; and, when the first elements are in place,
- Developing agreements on cooperation and enforcement action matched to the circumstances of each cooperating agency.

In this cooperation agencies can borrow from the culture of the Internet. It is a loose affiliation of ISPs and other bodies that cooperate with minimal formality and only to the extent that serves their individual interests. Cooperation arrangements by our agencies should be similarly flexible but similarly effective. We would suggest that the catch-cry for any cooperation arrangement should be "cooperation but not obligation".

Sharing experience, skills and information

There are opportunities for agencies, such as the ACA, that are working with developed legislation and enforcement processes to share knowledge based on their experience.

Likewise, agencies of countries that are yet to develop domestic legislation could inquire of countries with existing legislation for information and experience. Australia is pleased to offer all participants here any advice that we can reasonably provide or such assistance they may wish to seek (New Zealand (which is proposing to develop suitable domestic legislation) have thoroughly researched the advantages and disadvantages of the legislative approaches of other countries in terms of their applicability to its own domestic environment.)

Fora such as the ITU and others here today provide a valuable opportunity for regulators to exchange information and experience relating to spam and to establish ongoing networks. The ITU has already commenced a body of work toward a register of the status of anti spam legislation and responsible agencies that could be the basis of contacts for cooperation or assistance in either direction. Such a register would be a significant aid for agencies in building anti-spam arrangements and then conducting operations that will provide successful enforcement and motivating spammers to abandon or amend their ways.

Bi-lateral and multi-lateral agreements

It is Australia's experience that agreements between two or more countries can provide an effective framework for cooperative international action.

In October 2003, the spam regulatory and policy agencies of Australia and Korea signed a bilateral memorandum of understanding which provides a framework for the agencies of the two nations to work together on spam. This memorandum has enabled the ACA and the Korea Information Security Agency (KISA) to exchange skills, knowledge and information about the sources of spam affecting both countries, and to begin to plan joint anti-spam operations in-line with local legislative provisions.

It should be noted that this memorandum was signed prior to the passing Australia's legislation which demonstrates that such agreements are more dependant on the level of commitment of the participants to curbing spam rather than any formal requirements. The memorandum is attached to this document.

The ACA in Australia, the OFT, Information Commissioner and DTI in the UK and the FTC in theUSA have last week settled an MoU that is geared toward enforcement cooperation. This is an extension of the scope compared to the ACA / KISA Mou and has become relevant since the introduction of anti-spam legislation in Australia.

This now highlights another issue. While bi-lateral arrangements are important, a solution for multi party cooperation based on bi-lateral arrangements will complicate the cooperative landscape very quickly. As Australia is a net importer of spam the ACA sees a needfor many such arrangements and so would welcome the development of a broader multi-lateral agreement between countries interested in joining forces to combat spam.

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Attachment: Memorandum of Understanding between Korean and Australian anti-spam agencies.

Anti Spam Regulatory Principles and Guidelines

The following initial principles checklist and guidelines is offered to assist separate national analysis and efforts toward the reduction in spam. These are broad based and potentially applicable to a variety of electronic message based information and communication technology (ICT) services.

A. An Enabling Legislative and Regulatory Environment

1. The success of any anti spam policy is dependent upon political support at the highest level that recognizes the role of ICT as a tool for development and the threat that spam poses to the benefits of ICT.

2. It is essential that Regulators exist, be nominated or be established where they do not yet exist, and that their key role in implementing anti spam policies for promoting electronic message based ICT be recognized and reinforced.

3. Legislation needs to exist and be sufficiently articulate and precise about the national anti spam objective and level of consumer protection intended.

4. A series of policy and regulatory measures can be taken to achieve workable anti spam measures. These include:

a. Formulating a national policy that identifies appropriate and realistic spam reduction objectives noting the difference between spam as a vehicle for fraud, virus delivery and intrusion and the acts of fraud, virus delivery and intrusion.
b. Including consumers, business, Internet service providers (ISPs), E-messaging service providers (ESPs) and E-marketers in anti spam objectives and measures.
c. Reviewing anti spam policies, regulations and practices periodically to adapt to the evolving nature of services and threats from spammers and those who commission spam campaigns
d. Conducting periodic public consultations to the extent relevant with stakeholders to identify any changes in their circumstances and their needs and modify basic, implementation and enforcement policies, regulation and practices.
e. Designing anti spam policies, regulation and practices to create incentives for the private sector to extend their role especially in regard to national and international cooperative measures.
f. Establishing a balanced and transparent anti spam regulatory framework that equitably shares the burdens of anti spam measures among stakeholders.
g. Adopting technologically neutral requirements on stakeholders enabling ISPs, ESPs, E-Marketers, business and consumers to use the most cost-effective technology toward the national objectives.
h. Recognising that all such measures have costs that must be incorporated into prices.
i. Containing regulatory measures to the least workable consistent with the national objectives for spam and the costs of providing anti spam measures to end users.
j. Developing an effective regulatory body responsible for implementing policies directed towards assuring the best quality reliable services at the most affordable prices that meet the needs of consumers—existing and future.
k. Promoting competition in the anti spam arrangements to improve consumer protections access, affordability, availability and use of E-messaging services that are free of spam.

B. Education Measures for Stakeholders

Education of persons and organisations that could be affected by spam or could contribute to its control can take several forms such as:

a. Providing information to end users about the potential damage from and danger of spam
b. Encouraging the use of technology measures (such as firewalls, spam filtering services, anti virus, and anti spy-ware products)
c. Encouraging responsible behaviour that would limit an end user becoming a target for spam.
d. Urging good administration of an end user's computing system to eliminate weaknesses that could be exploited by spammers

C. Encouragement of Anti Spam Technology and Services

Providers of anti spam technology and filtering services should be encouraged to develop and market useful products and services.

D. Formation of Industry Partnerships

National industry partnerships can assist not only the ant spam circumstances within that country but in other countries as well. The partnerships can take the form of:

a. Early consultation with relevant industries about development of anti spam measures
b. Ensuring industry awareness of policy and expectations of government in respect of industry behaviour
c. Encourage industry participant to develop self management that promotes reasonable and responsible behaviour and actions in relation to:
   - E-marketing practices
   - Measures that an individual ISP or ESP can provide (Acceptable use policy, services and advice to customers etc)
   - Measures that ISPs can take in concert in regard to spam (at national points of entry, as it flows across national infrastructure and as delivered to an ISP serving a customer)

E. Encouragement of International Cooperation

International cooperation can take several forms such as:

a. Anti spam regulators
   - cooperating in intelligence gathering about spam,
   - making use of assistance, tools and information from other cooperating organisations
   - offering skills, tools and assistance that it may have developed for its purposes
   - cooperating in enforcement actions with other organisations to the extent appropriate
b. Encouraging industry stakeholders to cooperate with peer organisations in other countries
c. Encouraging international industry actions such as the Anti Spam Technical Alliance, the Internet Engineering Task Force, Internet Browser and Email program manufacturers in efforts to close opportunities for spammers
d. Build cooperative arrangements for enforcement of legislation (to the extent permitted or workable in the relevant jurisdiction)