



# COUNCIL 2005

GENEVA, 12-22 JULY 2005

Document C05/EP/10-E  
9 May 2005  
English only

## Note by the Secretary-General

### REPORT ON SPAM

#### Summary

WTSA Resolution 51 instructs the TSB Director, in cooperation with the Directors of the other Bureaux and the Secretary-General to prepare urgently a report to the Council on relevant ITU and other international initiatives for countering spam, and to propose possible follow-up actions for consideration by the Council.

This document contains the report. The proposed possible follow-up actions for consideration by the Council are contained in 13.4 of C05/32.

#### Action required

The Council is invited to **note** this report.

#### References

*WTSA Resolution 51; 13 of C05/32*

## 1. Overall Background

During the Geneva phase of the World Summit on the Information Society (WSIS), spam was identified as a potential threat to the full utilization of the Internet and e-mail. Accordingly, WSIS participants recognized that spam is a “significant and growing problem for users, networks and the Internet as a whole” (WSIS Declaration, paragraph 37) and that, in order to build confidence and security in the use of ICTs, there is a need to “take appropriate action at both national and international levels” (WSIS Plan of Action, paragraph C5, d).

The acknowledgement that spam is a problem at the global level, contributed to the fostering of various activities in the field. Countries became aware of the need to take action on this issue, and recognized the fundamental importance of international cooperation and coordination.

The World Telecommunication Standardization Assembly (WTSA), adopted Resolution 51 at its 5-14 October 2004 meeting in Florianopolis. Combating spam. This Resolution instructs the TSB Director, in cooperation with the Directors of the other Bureaux and the Secretary-General to prepare urgently a report to the Council on relevant ITU and other international initiatives for countering spam, and to propose possible follow-up actions for consideration by the Council.

The remainder of this document contains the report. The proposed follow-up actions for consideration by Council are contained in section 13.4 of C05/32.

• <http://www.itu.int/council> •

Regularly updated information, including on relevant ITU initiatives, other international initiatives, and national laws, can be found at:

- <http://www.itu.int/osg/spu/spam/>
- Additional information on anti-spam legislation and contact details for anti-spam authorities is included in the Regulatory Profiles link of the TREG website at <http://www.itu.int/ITU-D/treg/>.
- Information on virtual conferences hosted by ITU concerning anti-spam initiatives may also be found on TREG at:
  - <http://www.itu.int/ITU-D/treg/Events/Seminars/Virtual-events/SpamMOU/index.html>
  - <http://www.itu.int/ITU-D/treg/Events/Seminars/Virtual-events/Spam/index.html>

## 2. Relevant ITU Initiatives

### 2.1 Initial activities on countering spam

The involvement of the International Telecommunication Union in issues relating to spam was firstly supported during the [ITU Global Symposium for Regulators](#)<sup>1</sup> held in Geneva in December 2003. The Symposium was chaired by Ms Muna Nijem, Chairman of the Board and CEO of the Telecommunications Regulatory Commission of Jordan. The [chairmans' report](#)<sup>2</sup> for the conference recommended that the ITU Development Sector launch a discussion on frameworks for international cooperation on countering spam.

Following the recommendations of the GSR, an [ITU Global Regulators Exchange \(G-REX\) virtual conference on the regulatory cooperation on spam](#) took place on 30 March 2004, and gathered representatives from regulators responsible for countering spam from Australia, Brazil, Japan, Jordan, Republic of Korea, New Zealand, Norway, Thailand, the United Kingdom, the United States, as well as the European Commission. The conference was chaired by Mr Robert Horton, acting Chairman of the Australian Communications Authority. During the conference, it was proposed that a group of working-level officials would try to pursue closer co-operative action, which may involve the drafting of a multilateral framework for cooperation. A summary of discussions and outcomes of the conference and all the presentations are available on the conference website<sup>3</sup>.

Following the conclusion of the meeting, ITU is continuing its work on countering spam, elaborating a database gathering laws, information and contact details of enforcement authorities dealing with spam worldwide,<sup>4</sup> cooperating with other international organizations in areas of common interest<sup>5</sup> and promoting the creation of a suitable framework for international cooperation, which could lead to the adoption of a global agreement on the subject.<sup>6</sup>

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<sup>1</sup> <http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/index.html>

<sup>2</sup> [http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/Documents/GSR\\_chair\\_report.pdf](http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/Documents/GSR_chair_report.pdf)

<sup>3</sup> <http://www.itu.int/ITU-D/treg/Events/Seminars/2003/GSR/index.html>

<sup>4</sup> Available at <http://www.itu.int/osg/spu/spam/law.html>.

<sup>5</sup> See Telecommunication Standardization Advisory Group (TSAG) online at: <http://www.itu.int/ITU-T/tsag/index.asp>.

<sup>6</sup> ITU WSIS thematic meeting on countering spam, Chairman's report, online at <http://www.itu.int/spam>.

In the framework of its activities to implement the WSIS Action Plan, ITU held an [ITU WSIS Thematic Meeting on Countering Spam](#)<sup>7</sup>, which took place from 7 to 9 July 2004 in Geneva, Switzerland. Participants representing more than 60 countries, as well as civil society and private sector, recognized once more that spam has become a major concern, in particular considering recent developments such as phishing and other fraudulent activities, which are threatening public confidence in e-mails and in the Internet as a whole. A [contribution from developing countries](#)<sup>8</sup> underlined that spam can have even more dramatic consequences in countries that have a limited available bandwidth, as large quantities of bulk e-mail essentially equates to a denial-of-service attack.

The [Chairman's report](#)<sup>9</sup>, stressing the need for improved international cooperation in the field, underlined the role of the International Telecommunication Union, which was called upon to continue its activities in this field, improving the exchange of best practices between developed and developing countries, creating harmonized legal frameworks and cooperating with other international organizations working in the area.

Recognizing the importance of technical measures to counter spam, the Telecommunication Standardization Advisory Group (TSAG), at its 12-16 July 2004 meeting, agreed a [liaison statement to the Internet Engineering Task Force \(IETF\)](#)<sup>10</sup>, in which it “invited IETF to consider what, if any, activities could or should be undertaken jointly”. No formal response has yet been received from IETF but informal discussions are ongoing.

With a view to follow-up its initiatives in the field of countering spam, ITU organized a second [G-REX virtual conference on the status of regulatory efforts to counter Spam](#)<sup>11</sup> on 19 November 2004. This meeting – organized on a regional basis – should be the first of a series of working-level conferences, which will constitute a platform for regulators, policy makers, experts and representatives of the private sector to share experiences and information on anti-spam strategies, therefore contributing to the harmonization of national legislations and policies, and fostering international cooperation. Participants in the meeting included representatives from Australia, Japan, Republic of Korea, Malaysia, Singapore, Thailand, China, India and the International Telecommunications Users Group (INTUG). Presentations are available on the conference website.

Following the GSR discussion, which took place in 2003, a break-out session on spam was organized during the [ITU Global Symposium for Regulators held in December 2004](#)<sup>12</sup>. This session, chaired by Dr R. Horton, of the Australian Communication Authority, served to continue the discussion on spam with telecom regulators from all over the world, and gave the representatives from developing and developed countries the opportunity to present strategies and activities to counter spam; to expose their problems in the field; and to present new projects and cooperative initiatives. In its report to the plenary, the Chairman summarized the discussion, highlighting that:

- Some level of legislation is relevant for all countries, but its form and extent would depend on the circumstances and degree of enforcement necessary;

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<sup>7</sup> <http://www.itu.int/spam>

<sup>8</sup> [http://www.itu.int/osg/spu/spam/contributions/Developing\\_countries\\_contribution.pdf](http://www.itu.int/osg/spu/spam/contributions/Developing_countries_contribution.pdf)

<sup>9</sup> <http://www.itu.int/osg/spu/spam/chairman-report.pdf>

<sup>10</sup> <http://www.itu.int/md/meetingdoc.asp?type=mitems&lang=e&parent=T01-TSAG-040712-TD-GEN-0444>

<sup>11</sup> <http://www.itu.int/osg/spu/spam/www.itu.int/ITU-D/treg/Events/Seminars/Virtual-events/SpamMOU/index.html>

<sup>12</sup> <http://www.itu.int/ITU-D/treg/Events/Seminars/2004/GSR04/index.html>

- Cooperation between different authorities should imply exchange of information and joint action;
- Cooperation should also involve industry;
- International cooperation arrangements are key to tackling the problem appropriately.

An analysis of potential structures for wider international cooperation based on the recent [Seoul-Melbourne Multilateral Memorandum of Understanding on Cooperation in Countering Spam](#)<sup>13</sup> was made during the meeting. It led to the observation that legislation does not need to be in place in advance of an agreement, and that there is not necessarily a need for extensive and comprehensive arrangements, but that a simpler instrument can be a good starting point.

The interest of ITU Member States in issues relating to spam was also highlighted during the recent [ITU World Telecommunication Standardization Assembly \(WTSA\)](#)<sup>14</sup>, held in Brazil in October 2004. During the Assembly, ITU Members approved two resolutions relating to future ITU activities in the field of spam. The first one, [Resolution 51 on Combating Spam](#)<sup>15</sup>, instructs Directors of ITU's three Sectors and the Secretary-General urgently to prepare a report to the Council on relevant ITU and other international initiatives for countering spam, and to propose—with the contribution of Member States and Sector Members—possible follow-up actions for consideration by the Council. The Resolution further invites Member States to take the appropriate steps within their national legal frameworks to ensure that appropriate and effective measures are taken to combat spam.

The second Resolution, [Resolution 52 on Countering spam by technical means](#)<sup>16</sup>, affirms that “spam creates telecommunication network security problems, including by being a vehicle for spreading viruses, worms, etc.” The Resolution also recognized the availability of relevant ITU-T Recommendations, which could provide guidance for future development in this area, and therefore instructs the relevant ITU-T study groups—in cooperation with the Internet Engineering Task Force (IETF) and other relevant groups—to develop, as a matter of urgency, technical Recommendations on countering spam, as appropriate, and to report regularly to the Telecommunication Standardization Advisory Group on their progress. This effort should be supported by all the necessary assistance from the Director of the Telecommunication Standardization Bureau, which will report on the subject to the ITU Council.

## 2.2 Ongoing and planned activities

Considering its large membership, ITU is well positioned to create a platform to collect anti-spam laws world-wide, and to provide a list of competent enforcement authorities and their contact details. In May 2004 the [“Spam Laws and Authorities”](#)<sup>17</sup> website was created. It is now gathering data from around 30 countries, and it is updated continuously with information received directly from Member States. The country pages also collect other information and links to relevant papers and news regarding anti-spam activities in the country. Questions related to spam have also been added to the annual Telecommunication Regulatory Survey which is sent to all 189 member administrations. The 2005 survey results are expected by end July 2005.

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<sup>13</sup> [http://www.aca.gov.au/consumer\\_info/frequently\\_asked\\_questions/spam.htm#seoul-melbourne](http://www.aca.gov.au/consumer_info/frequently_asked_questions/spam.htm#seoul-melbourne)

<sup>14</sup> <http://www.itu.int/ITU-T/wtsa-04/index.asp>

<sup>15</sup> <http://www.itu.int/ITU-T/wtsa/resolutions.html>

<sup>16</sup> <http://www.itu.int/ITU-T/wtsa/resolutions.html>

<sup>17</sup> <http://www.itu.int/osg/spu/spam/law.html>

In addition, considering the large number of international projects currently being developed or implemented to fight spam, ITU is maintaining a web page dedicated to all [international cooperation](#),<sup>18</sup> providing information on content and scope of new projects, making reference to and linking with the organizing/responsible entity, and trying to keep an updated list of interesting meetings and conferences on the topic.

Through these initiatives, in particular the organization of virtual and physical conferences and the maintenance of the countering spam website, ITU aims to create an informal network of regulators and policy makers operating in the field of anti-spam activities, provide reliable information and data, and offer a platform to facilitate discussion and exchange of experiences.

An ITU WSIS thematic meeting on Cybersecurity is planned to take place from 28 June 2005 to 1 July 2005. As spam has developed into a real threat to the security of e-mails and of the internet as a whole, the first day of the cybersecurity meeting will be dedicated to progresses in the anti-spam battle, under both technical and policy points of view and the results of an ITU survey done on countering spam initiatives and spam legislation worldwide will also be presented.

The 6<sup>th</sup> annual Global Symposium for Regulators will take place in Tunisia from 14-15 November, just prior to the WSIS. At the 2004 meeting, it was agreed to continue further study, assessment and work on ways that the ITU and member nations can cooperate in combating or limiting spam. This will be one of the four topics treated by the GSR.

### **3. International Initiatives**

#### **3.1 Background**

The jurisdictional problems created by the proliferation of trans-border, unsolicited, commercial communications represent what may prove to be an insurmountable hurdle. As spam touches on so many aspects of the law – such as commerce, advertising, criminal law, freedom of speech, and intellectual property – the differences associated with the laws of the jurisdictions of the world may prove greater than their similarities.

While it is important to act at the local level—by creating, for example, an appropriate legal anti-spam framework, building awareness, educating consumers and establishing dialogue and partnership with the private sector—any anti-spam measure should be considered at the international level.

In the case of spam, international cooperation has two objectives: to promote the adoption of effective legislation and common standards in countries that do not yet have them, and to encourage countries to cooperate with one another to ensure the effective enforcement of the applicable rules. While several initiatives have been undertaken in the past few years to fight spam, a multilateral coordinated international framework is still lacking.

This section aims to identify and highlight the most important international initiatives.

#### **3.2 International Consumer Protection and Enforcement Network (ICPEN)**

The International Consumer Protection and Enforcement Network (ICPEN)<sup>19</sup> is a network of governmental authorities involved in the enforcement of fair trade practice laws and other consumer

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<sup>18</sup> <http://www.itu.int/osg/spu/spam/intcoop.html>

<sup>19</sup> <http://www.icpen.org/>.

protection activities. Membership in the Network includes organizations from 29 countries, most of which are members of the Organisation for Economic Cooperation and Development (OECD). The mandate of the Network is to share information about cross-border commercial activities that may affect consumer interests, and to encourage international cooperation among law enforcement agencies.

In 2001, the ICPEN announced an Internet-based project to gather and share cross-border e-commerce complaints. National agencies from 17 countries are currently participating in this initiative, which provides consumers with an online form, through which they can lodge complaints with a Consumer Sentinel, a database maintained by the US FTC. The information will be accessible to certified government law enforcement and regulatory agencies in ICPEN-member countries, and may be used to investigate suspect companies and individuals, uncover new scams, and spot trends in fraud.<sup>20</sup>

### **3.3 Bilateral Cooperation: The Australia-Republic of Korea Memorandum of Understanding (MoU) concerning the regulation of spam**

In October 2003, a MoU on the regulation of spam was signed by the Korea Information Security Agency (KISA) and the Australian Communication Authority and National Office for Information and Economy of Australia.

The agreement was concluded to encourage cooperation between the agencies in minimizing spam that originates and is sent to end-users in Australia and Korea. Within the terms of the MoU, the agencies of the two countries will work closely together, exchange information relating to spam and try to develop cooperative mechanisms to combat the rapidly growing spam problem. This collaboration could be extended in the future to include joint enforcement actions.

With this MoU, Australia and Korea are leading the international effort to address spam, also encouraging other national communications regulators to work to develop a multilateral MoU in this field. A standard MoU could be used for a multilateral approach to agreements, simplifying the establishment of international cooperation principles for locating and dealing with spammers.<sup>21</sup>

### **3.4 Seoul-Melbourne Multilateral Memorandum of Understanding on Cooperation in Countering Spam**

On 27 April 2005, the Australian Communication Authority (ACA) and the Korea Information Security Agency (KISA) completed the signing of a broader anti-spam agreement, which brings together 12 relevant government and industry organizations in Asia-Pacific countries and regions. The MoU builds on the pre-existing bilateral agreement between the two agencies, signed on 20 October 2003. The text of the Memorandum is available online on the ACA website, and interested agencies may contact the Secretary nominated in Annex A of the MoU<sup>22</sup>.

### **3.5 European Union**

The European Union, by Directive 2002/58, was one of the first players to try to create harmonized international regulations dealing with spam at the European level. The Directive is, however,

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<sup>20</sup> <http://www.econsumer.gov/>.

<sup>21</sup> Online at: [http://www.aca.gov.au/consumer\\_info/frequently\\_asked\\_questions/spam\\_MOU.rtf](http://www.aca.gov.au/consumer_info/frequently_asked_questions/spam_MOU.rtf).

<sup>22</sup> The text of the Memorandum, and its Annex are available online on the Australian Communication Authority website at: [http://internet.aca.gov.au/ACAINTER.1180178:STANDARD:1255928210:pp=DIR2\\_12,pc=PC\\_1793.#overseas\\_spam](http://internet.aca.gov.au/ACAINTER.1180178:STANDARD:1255928210:pp=DIR2_12,pc=PC_1793.#overseas_spam)

considered just a small step in the general EU e-strategy, and only a first step in the fight against spam.

The implementation of the Directive in the different EU countries has been a lengthy process. The differences in implementation and the confusion that is still present at the national level regarding the identification of the responsible authority, adds even more difficulties.

In its communication on unsolicited commercial communications,<sup>22</sup> the European Commission recognized effective law enforcement as one of the most important elements in the fight against spam, and still one of its weakest points. The Commission then decided to continue its investigations, in order to understand which would be the best mechanisms to put in place to ensure the efficient enforcement of anti-spam legislation. Furthermore, it is encouraging improved collaboration among members and has proposed the creation of national liaison offices under the national regulators, in order to establish a network to support cooperation.

The Commission realized that actual enforcement could be particularly difficult in relation to third countries, notwithstanding the opt-in rule for all unsolicited commercial communications, which are sent from and received on networks in the Union. Nevertheless, the Commission still deemed it essential, considering that most of the spam received in European countries comes from outside EU borders.

The lack of appropriate international cooperation mechanisms is, therefore, evident and is also seen by European authorities as one of the major obstacles to enforcement. For this reason, the EU is promoting the development of international initiatives in this field and is inviting its members to engage in bilateral cooperation with third countries, not only for the promotion of effective legislation, but also for cooperation on enforcement, including police and judicial cooperation, where appropriate.<sup>23</sup>

The fight against spam has a place in the larger EU e-strategy framework, as one of the elements which could hamper the diffusion of broadband in the European territories. In a recently held roundtable comprising European telecommunication ministries and industry CEOs from the telecommunication media and technology sector, a list of six strategic actions to stimulate the growth of broadband was presented by the industry to governments. The first point on this list indicated the need for the “timely implementation of effective anti-spam, privacy and security regulatory frameworks”.<sup>24</sup> Two specific initiatives were suggested: one regarding the effective enforcement mechanisms, the other stressing the necessity to develop a joint EU-US action plan to address spam originating in both territories.<sup>25</sup>

In 2004, the European Commission launched a public consultation<sup>26</sup>, in the form of a questionnaire,<sup>27</sup> to assess progress on combating spam following the Communication on this issue of January 2004, which identified relevant action for all interested parties. More information on EU activities is available on the Information Society page on fighting spam.<sup>28</sup>

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<sup>22</sup> Communication from the Commission on unsolicited commercial communications or “spam”, COM (2004) 28 final.

<sup>23</sup> EC COM(2004)28 final p.18-19.

<sup>24</sup> Held on 22 April 2004. See EU Presidency News Summary online at [http://www.eu2004.ie/templates/news.asp?sNavlocator=66&list\\_id=607](http://www.eu2004.ie/templates/news.asp?sNavlocator=66&list_id=607)

<sup>25</sup> See: “Transactions conducted online are expected to be worth EUR 2.2 trillion in the EU by 2006”, 22 April 2004, [http://www.eu2004.ie/templates/news.asp?sNavlocator=66&version=printerfriendly&list\\_id=593](http://www.eu2004.ie/templates/news.asp?sNavlocator=66&version=printerfriendly&list_id=593).

<sup>26</sup> [http://europa.eu.int/information\\_society/topics/ecommerce/useful\\_information/library/public\\_consult/index\\_en.htm#combating\\_spam](http://europa.eu.int/information_society/topics/ecommerce/useful_information/library/public_consult/index_en.htm#combating_spam)

<sup>27</sup> [http://europa.eu.int/information\\_society/topics/ecommerce/doc/useful\\_information/library/public\\_consult/spam/documents/410\\_05\\_spam\\_quest\\_final.doc](http://europa.eu.int/information_society/topics/ecommerce/doc/useful_information/library/public_consult/spam/documents/410_05_spam_quest_final.doc)

<sup>28</sup> [http://europa.eu.int/information\\_society/topics/ecommerce/highlights/current\\_spotlights/spam/index\\_en.htm](http://europa.eu.int/information_society/topics/ecommerce/highlights/current_spotlights/spam/index_en.htm)



### **3.9 Multilateral cooperation: The Australia, United Kingdom, United States Memorandum of Understanding (MoU) on mutual enforcement assistance in commercial e-mail matters**

On 2 July 2004, a Memorandum of Understanding (MoU) was concluded between the US Federal Trade Commission, the UK Office of Fair Trading, the UK Information Commissioner, Her Majesty's Secretary of State for Trade and Industry in the United Kingdom, the Australian Competition and Consumer Commission, and the Australian Communications Authority. The MoU provides for the agencies to share information, cooperate in detecting and investigating spam violations, cooperate in tracking spammers, exchange evidence, facilitate law enforcement against spam violators, and coordinate enforcement against cross-border spam violations.

This MoU constitutes an important step to help law enforcers on three continents leverage resources to combat illegal spam, and provides a framework for cooperation in fighting cross-border spam affecting all three countries.<sup>34</sup> Although it does not include types of spam other than e-mail spam, this MoU should constitute a good start towards more extensive cooperation on the subject.

The agreement is in line with the policy towards improved international cooperation in the field of spam promoted by Australia in recent months. The role of collaboration between agencies in different countries, and exchange of information is stressed in this instrument, which, being concluded by players already very active in the field of the anti-spam battle, could go further, establishing cooperation between national agencies in enforcement actions. This is part of two-layered international approach: a first layer focusing on the sharing of information on workable anti-spam legislation and complementary measures, and a second one more oriented towards cooperation and joint enforcement.<sup>35</sup>

To follow up to this Memorandum, a meeting is planned in London in October, gathering all national agencies members of the ICPEN (International Consumer Protection and Enforcement) Network. This could be the first step towards an enlargement of the cooperation on enforcement for these countries already having implemented an anti-spam legislation.

### **3.10 Joint Statement between the Department of Communications, Information Technology and the Arts of Australia and the Ministry of Information and Communication Technology of the Kingdom of Thailand concerning cooperation in the fields of telecommunications and information technology.**

On 5 July 2004, a Joint Statement on telecommunications and information technology was signed by Australia and Thailand. This Joint Statement aims at promoting cooperation and sharing information about anti-spam strategies and policies. The text of the Memorandum is available online on the ACA website<sup>36</sup>.

### **3.11 London Action Plan (LAP)**

Following the ICPEN meetings held in 2004, the UK's Office of Fair Trading (OFT) and the US Federal Trade Commission (FTC) organized a Spam Enforcement workshop, which took place in London on 11 October 2004. This meeting gathered enforcement authorities from about 30

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<sup>34</sup> The text is available online at <http://www.ftc.gov/os/2004/07/040630spammoutext.pdf>.

<sup>35</sup> See contribution from the ACA to the ITU WSIS meeting on countering spam, "Multi-lateral and bi-lateral cooperation: the Australian approach", by J. Haydon, online at:  
[http://www.itu.int/osg/spu/spam/contributions/John%20Haydon\\_ACA\\_Multilateral%20and%20Bilateral%20Cooperation.pdf](http://www.itu.int/osg/spu/spam/contributions/John%20Haydon_ACA_Multilateral%20and%20Bilateral%20Cooperation.pdf).

<sup>36</sup> [http://internet.aca.gov.au/acainterwr/consumer\\_info/spam/aust\\_thailand\\_joint\\_statement.rtf](http://internet.aca.gov.au/acainterwr/consumer_info/spam/aust_thailand_joint_statement.rtf) -  
[http://www.itu.int/osg/spu/spam/legislation/legislation\\_australia.html](http://www.itu.int/osg/spu/spam/legislation/legislation_australia.html)

countries, with the aim of sharing experiences and techniques of enforcing anti-spam laws, and to discuss how to enhance working-level collaboration among regulators in different countries in the fight against spam.

In order to achieve this goal, the London Action Plan (LAP) against spam was proposed for signature. The LAP intends to improve communication and coordination between agencies to achieve efficient cross-border enforcement of anti-spam laws, increase collaboration on effective ways to bring spam cases against bulk mailers, and to exchange information and best practices through regular conference calls. The LAP, sponsored by the UK's Office of Fair Trading (OFT)<sup>37</sup> and the US Federal Trade Commission (FTC),<sup>38</sup> is now gathering signatories from about 15 countries<sup>39</sup>.

The Action Plan is open for participation by interested government and public agencies, and private sector representatives. Among the LAP signatories<sup>40</sup> from the private sector are companies as Microsoft or the German ISP Association etc.

In parallel to an e-commerce conference of the Asia-Europe Meeting (ASEM9 <sup>41</sup> in London (21 - 22 February 2005), participants of ICPEN and LAP conducted a so-called "spam Sweep"<sup>42</sup> on, focusing on scams communicated in spam mails. Among others, it aimed at collecting international data on spam, including information on the harvesting of addresses and broadening consumer awareness by releasing information through the media. The results of the "spam Sweep" are to be publicized at an ICPEN meeting in fall 2005.

### **3.12 Memorandum of Understanding On Mutual Assistance In Consumer Protection Matters Between the Federal Trade Commission of the United States of America and the Procuraduria Federal Del Consumidor (Office of the Federal Attorney for Consumer Protection) of the United Mexican States.**

The Federal Trade Commission and Mexico's consumer protection agency, the Procuraduría Federal del Consumidor (Profeco), was signed on 27 January 2005 a bilateral Memorandum of Understanding (MOU) to promote enhanced cooperation in the fight against cross-border fraud. This memorandum marks the first time the FTC has signed a consumer protection MOU with a non-English-speaking nation. The signing took place in Washington, DC. The MOU strengthens the close relationship between the United States and Mexico and will facilitate greater law enforcement coordination in consumer protection matters affecting both nations. This memorandum is a "best efforts" agreement – it is not legally binding and does not alter either country's existing consumer protection laws. The text of the Memorandum is available online on the FTC web site.<sup>43</sup>

### **3.13 European countries launch joint drive to combat "spam"**

'Anti-spam' enforcement authorities in 13 European countries have agreed to share information and pursue complaints across borders in a pan-European drive to combat "spam" electronic mail. They

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<sup>37</sup> <http://www.oft.gov.uk/>

<sup>38</sup> <http://www.ftc.gov/>

<sup>39</sup> <http://www.itu.int/osg/spu/spam/materials/London%20Action%20Plan-Signatories.doc>

<sup>40</sup> <http://www.itu.int/osg/spu/spam/materials/London%20Action%20Plan-Signatories.doc>

<sup>41</sup> [http://europa.eu.int/comm/external\\_relations/asem/intro/](http://europa.eu.int/comm/external_relations/asem/intro/)

<sup>42</sup> <http://www.oft.gov.uk/News/Press+releases/2005/34-05.htm>

<sup>43</sup> <http://www.ftc.gov/os/2005/01/050127memounderstanding.pdf>

will cooperate in investigating complaints about cross-border spam from anywhere within the EU, so as to make it easier to identify and prosecute spammers anywhere in Europe.

The voluntary agreement was signed on 27 January 2005. It establishes a common procedure for handling cross-border complaints on spam, has been drawn up by the contact network of spam enforcement authorities (CNSA), set up at the initiative of the Commission following its Communication of January 2004. The CNSA facilitates the sharing of information and best practices in enforcing anti-spam laws between the national authorities of EU Member States and of the EEA. The Cooperation procedure text is available online on the EU website.<sup>44</sup>

### **3.14 EU and Asia unite against ‘spam’**

A joint drive to combat ‘spam’ e-mail from Europe and Asia was agreed by Government participants attending an Asia-Europe (ASEM) conference on eCommerce, held in London on 21-22 February 2005. In a joint statement on international anti-spam cooperation was signed on 24 February 2005, ASEM’s 25 European and 13 Asian member countries agreed to take action to fight spam nationally and to promote anti-spam efforts in international organizations and by industry.

### **3.15 Memorandum of Understanding On Mutual Enforcement Assistance In Commercial Email Matters Between the Federal Trade Commission of the United States of America and the Agencia Espanola de Proteccion de Datos.**

The Federal Trade Commission and Spain’s Agencia Española de Protección de Datos (AEPD) was signed on 24 February 2005 a bilateral Memorandum of Understanding (MOU) to promote enhanced cooperation and information-sharing on spam enforcement activities. The text of the Memorandum is available online on the FTC web site<sup>45</sup>.

### **3.16 Nineteen French speaking African countries adopted a Declaration in the fight against spam**

On 30 March 2005 a declaration<sup>46</sup> was adopted by the CAPTEF (Conférence des administrations des postes et des télécommunications d’expression française ) Member States, recognizing the importance of the fight against spam. The final declaration emphasizes the collection of national contacts responsible for different areas in the fight against spam, which is to be disseminated to international organizations (OECD, ITU, etc.), and the reinforcement of cooperation and international coordination for sharing information on legislation, specific country needs, and anti-spam technologies.

### **3.17 Seoul-Melbourne Anti-Spam Agreement Enlarged**

On 27 April 2005 twelve Asia-Pacific communications and Internet agencies have joined the Australian Communications Authority (ACA) and the Korean Information Security Agency (KISA) in signing the Seoul-Melbourne Anti-Spam Agreement, a multilateral memorandum of

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<sup>44</sup> [http://europa.eu.int/information\\_society/topics/ecomm/doc/highlights/current\\_spotlights/spam/cooperation\\_procedure\\_cnsa\\_final\\_version\\_200412\\_01.pdf](http://europa.eu.int/information_society/topics/ecomm/doc/highlights/current_spotlights/spam/cooperation_procedure_cnsa_final_version_200412_01.pdf)

<sup>45</sup> The text is available online at: <http://www.ftc.gov/os/2005/02/050224memounderstanding.pdf>

<sup>46</sup> [http://www.ddm.gouv.fr/IMG/pdf/captef\\_decla.pdf](http://www.ddm.gouv.fr/IMG/pdf/captef_decla.pdf)

understanding (MoU) on cooperation in countering spam. It said that the MoU<sup>47</sup> is focused on sharing knowledge, information and intelligence about known sources of spam, network vulnerabilities, methods of spam propagation, and technical, education and policy solutions to the spam problem.

## **4. Consumer protection**

### **4.1 Introduction**

Consumer protection authorities and private interest groups worldwide have started numerous initiatives to advocate the consumers' interests in the fight against spam. A non-comprehensive list of examples on the multi- or international level can be found in the following chapter.

International initiatives in the field of Consumer protection against spam include networks that are mainly driven by enforcement agencies such as the "London Action Plan," whose key driver is the International Consumer Protection and Enforcement Network (ICPEN). The Contact Network of spam Enforcing Bodies (CNSA) is also working on cross-border enforcement issues.

To empower agencies with suitable tools, various international initiatives like the International Coalition Against Unsolicited Commercial Email (iCAUCE) seek to further advocate legislative solutions to spam. These consumer driven organizations call upon governments to enact national Anti-spam laws and to cooperate in the cross-border enforcement of such laws.

Additionally, many national consumer protection organizations have also set up initiatives to raise consumer awareness on the problem of spam, often in conjunction with other e-security initiatives. That includes informing consumers about spamming tactics as well as suggestions on how to prevent being spammed. Informed customers have the power to reduce their vulnerability to spam, phishing attacks and other cyber-security threats. These initiatives are not taken into account in this paper as they are focused on the national level only.

The following non-comprehensive list is in alphabetical order.

### **4.2 European Consumers' Organisation (BEUC)**

The European Consumers' Organisation (BEUC)<sup>48</sup>, representing 37 national consumer organisations from European countries, has been working on Anti-spam initiatives for several years. It has been lobbying for European Anti-spam laws<sup>49</sup> and favoured the opt-in approach that was finally incorporated in the EU directive on data protection in electronic communications (2002/58/EC).

In a recent paper<sup>50</sup>, BEUC urged the European Commission to deliberate on a specialized (central) office with technical competence and legal power to track and persecute spammers. Furthermore, the organization seeks for more cooperation in the cross-border enforcement of laws restricting the use of e-mail for commercial solicitation. It also emphasizes that countries not willing to cooperate should be put under stronger political pressure to do so.

### **4.3 Contact Network of spam Enforcing Bodies (CNSA)**

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<sup>47</sup> The text is available online at: [https://www.aca.gov.au/consumer\\_info/frequently\\_asked\\_questions/Spam-Multilateral\\_MoU-Seoul-Melbourne\\_agreement-draft.pdf](https://www.aca.gov.au/consumer_info/frequently_asked_questions/Spam-Multilateral_MoU-Seoul-Melbourne_agreement-draft.pdf)

<sup>48</sup> <http://www.beuc.org>

<sup>49</sup> see e.g. <http://www.beuc.org/2/NMGFNPPCDFKHGLOJGJPOCJCLPDBY9DB6P19DW3571KM/BEUC/docs/DLS/2002-00325-01-E.pdf>

<sup>50</sup> <http://docshare.beuc.org/9/ELNHNILDPKLIADOBGBOOOKPDB19DBD2G9DW3571KM/BEUC/docs/DLS/2005-00059-01-E.pdf>

With currently more than a dozen member states from the European Union, the Contact Network of spam enforcing bodies (CNSA) brings together national authorities for consumer and data protection as well as authorities dealing with information technology (IT) and telecommunication (such as National Regulatory Authorities). The informal network originates from a joint initiative by the French and Dutch NRA's (CNIL and OPTA). The basis of the CNSA is a legally non-binding cooperation protocol<sup>51</sup> that came into force in December 2004.

The protocol provides procedures to facilitate the transmission of complaint information and intelligence between National Authorities in case of cross-border spam violations. Parties to the protocol undertake to make their "best efforts" to address complaints forwarded to them from other parties. The complaints shall be treated according to the same criteria that they would apply in their national context. Additionally, the network aims at a harmonization of the member-states' national Anti-spam laws. Therefore the protocol establishes a consultation procedure in the event of a significant modification of the applicable legislation.

#### **4.4 iCAUCE/EuroCAUCE/APCAUCE**

The International Coalition Against Unsolicited Commercial Email (iCAUCE) acts as an umbrella for several lobbying organizations that seek to advocate legislative solutions to spam. Founded by Netizens, there are national CAUCE affiliates in the U.S.<sup>52</sup>, Canada<sup>53</sup>, Australia<sup>54</sup> and India<sup>55</sup>. In Europe, the multi-national branch EuroCAUCE<sup>56</sup> exists. The work in the Asia Pacific is being carried out by the Asia Pacific Coalition Against Unsolicited Commercial Email<sup>57</sup> (APCAUCE) with several national member groups (e.g. in Australia, India, Korea<sup>58</sup> and Malaysia<sup>59</sup>). Other regional chapters (e.g. in Korea or Taiwan) are still in formation stage and will gradually get integrated into iCAUCE. iCAUCE is chartered to found and sponsor new national or transnational CAUCE affiliates. A pan-Arab branch of CAUCE organizations is expected to be launched in the near future, including chapters in the UAE and Syria.

The CAUCE organizations work to lobby national (or, in the case of EuroCAUCE, transnational) government bodies to pass laws against spam. In countries where Anti-spam legislation exists (U.S., EU-countries), the CAUCE organizations lobby for an enhancement of these laws in order to make them more effective. The organizations try to promote the establishment of "opt-in" as a standard requirement for the delivery of commercial bulk Email.

APCAUCE holds biannual meetings where members share best practices and updated information on spam. So far the coalition has been focusing on awareness building in the Asia Pacific region, and on attracting new national members. The latest APCAUCE meeting took place during APRICOT 2005 in Kyoto (Japan) (16 – 25 February 2005).

#### **4.6 Trans Atlantic Consumer Dialogue (TACD)**

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<sup>51</sup> <http://www.opta.nl/download/Cooperation%20protocol%20-%20CNSA%20final%20version%20-%2020041201.pdf>

<sup>52</sup> <http://www.cauce.org/>

<sup>53</sup> <http://cauce.ca/>

<sup>54</sup> <http://www.caube.org.au/>

<sup>55</sup> <http://www.india.cauce.org/>

<sup>56</sup> <http://www.euro.cauce.org/>

<sup>57</sup> <http://apcauce.mail.daum.net/>

<sup>58</sup> <http://www.cauce.or.kr/>

<sup>59</sup> <http://www.icauce.org/malaysia>

The Transatlantic Consumer Dialogue is a forum of 65 consumer organizations from the U.S. and European Union countries, which develops and agrees joint consumer policy recommendations to the US government and European Union. The group launched in September 1998 and coordinated by Consumers International<sup>60</sup> aims to promote consumer interest in EU and US policymaking. In 2003 TACD carried out an online survey<sup>61</sup> on spam with 21.000 participants. The results were presented last year. The overwhelming majority of the users pointed out they either “hate” or “are annoyed” by spam. TACD states that the percentages of people from different countries giving the same answers were remarkably similar throughout the study. That shows, the coalition of consumer group argues, a global agreement that spam is unacceptable.

A resolution<sup>62</sup> on spam that was adopted by TACD in January 2004 notes the problem of different legal approaches to the issue. The group urges namely the U.S. and EU to work cooperatively on a harmonization of Anti-spam laws. The TACD favors an “opt-in” approach, which would only allow such Emails to be sent if the recipient has agreed in advance to receive them. TACD's Internet Working Group was to hold a session on spam during this year's TACD meeting in Washington (16 – 19 April 2005).

## **5. Industry self-regulation**

### **5.1 Introduction**

In discussions about the spam problem, there is usually agreement that the industry plays a key role in finding solutions. A multi-pronged approach in the fight against spam, suggested *inter alia* by last year's session on spam at the Global Symposium for Regulators in Geneva (8 - 10 December 2004) clearly involves industry initiatives for self-regulation.

However, some believe that market solutions alone are not able fully to address the problem of spam. Some believe that private sector initiatives have limitations. Most of the spammers will not be member of industry associations (e.g. direct marketing associations) that impose self-regulation mechanisms on their members. That means that non-binding “Best Current Practice” (BCP) documents or even binding Codes of Conduct (CoC) can only provide limited protection against spammers.

Nevertheless, the private sector plays a decisive role. Not only does the private sector work on technical solutions to reduce the amount of spam, it also holds the key to enforce practical solutions. A key mechanism is industry self-regulation, adhering to the legislative framework provided by the respective governments or on an international level.

The following sections feature in alphabetical order a non-comprehensive list of examples for international initiatives on industry self-regulation.

### **5.2 Anti-spam Technical Alliance (ASTA)**

The Anti-spam Technical Alliance (ASTA)<sup>63</sup> is a collaborative effort between six leading Mailbox Providers and the Internet community to establish technical and non-technical solutions for

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<sup>60</sup> <http://www.consumersinternational.org/>

<sup>61</sup> [http://www.tacd.org/db\\_files/files/files-296-filetag.doc](http://www.tacd.org/db_files/files/files-296-filetag.doc)

<sup>62</sup> [http://www.tacd.org/db\\_files/files/files-293-filetag.doc](http://www.tacd.org/db_files/files/files-293-filetag.doc)

<sup>63</sup> <http://postmaster.info.aol.com/asta/>

handling spam. In a proposal<sup>64</sup> that was presented last summer, ASTA provides recommended actions and policies for Internet service providers (ISPs) and e-mail service providers (ESPs) as well as large senders of Email including governments, private corporations and online marketing organizations. These recommendations primarily focus on two key issues: eliminating domain spoofing through IP-based and signature-based solutions and best practices to help prevent ISPs and their customers from being sources of spam. In a Statement of Intent (SOI), ASTA members declare their will to implement measures in order to secure their e-mail infrastructure.

### **5.3 European Telecommunications Network Operators' Association (ETNO)**

The European Telecommunications Network Operators' Association (ETNO) has been a main policy group for electronic communications network operators for over 12 years. The roughly 40 members come European countries within and outside the EU. Last year ETNO published a Position Paper<sup>65</sup> on spam. This paper stresses the necessity of Telecom operators' efforts on awareness raising, technical measures like filtering and the use of various kinds of lists. ETNO encourages the creation of blacklists. Public authorities such as the European Commission, the OECD and others are encouraged to play an important role in coordinating and harmonizing the implementation and use of these blacklists.

### **5.4 International Chamber of Commerce (ICC)/ Business and Industry Advisory Committee (BIAC)**

The International Chamber of Commerce<sup>66</sup> has thousands of member companies and associations in around 130 countries. It aims to promote world business by lobbying for trade and investment, open markets for goods and services, and the free flow of capital. With regard to spam, ICC supports a self-regulatory framework of all parties in marketing and advertising. It advocates industry codes that set standards of ethical conduct, such as the ICC Guidelines on Marketing and Advertising Using Electronic Media<sup>67</sup>, revised and updated in 2004. ICC's Commission on E-Business, IT and Telecoms issued a policy statement<sup>68</sup> on spam in December 2004. The paper aims inter alia to differentiate unacceptable electronic messages from acceptable electronic commercial marketing messages that follow accepted codes of industry practice. In April 2005 the International Chamber of Commerce (ICC) published updated Guidelines on Marketing and Advertising using Electronic Media<sup>69</sup> that address recent developments in the field of digital media and other technologies. The guidelines, which were prepared by the ICC Commission on Marketing and Advertising, cover the use of telephone, SMS/MMS, digital radio and television as new marketing vehicles for selling products worldwide.

The Business and Industry Advisory Committee (BIAC) is representing industry and employers' organizations in the OECD member countries. Together with ICC, BIAC seeks to lobby the interest of the industry. BIAC's Information, Computer and Communication (ICCP) Committee has elaborated a paper<sup>70</sup> on industry's view of the spam problem, that was presented to the OECD

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<sup>64</sup> <http://download.microsoft.com/download/2/3/7/23779c05-d409-46ce-b9d6-c24908789d8b/ASTA%20Statement%20of%20Intent.pdf>

<sup>65</sup> <http://www.etno.be/pp/RD189%20-%20DP%20SPAM.pdf>

<sup>66</sup> <http://www.iccwbo.org/>

<sup>67</sup> [http://www.iccwbo.org/home/statements\\_rules/rules/2004/Guidelines-on-Marketing-and-Advertising-using-Electronic-Media.asp](http://www.iccwbo.org/home/statements_rules/rules/2004/Guidelines-on-Marketing-and-Advertising-using-Electronic-Media.asp)

<sup>68</sup> [http://www.iccwbo.org/home/e\\_business/policy/373-22\\_114\\_spam.pdf](http://www.iccwbo.org/home/e_business/policy/373-22_114_spam.pdf)

<sup>69</sup> [http://www.iccwbo.org/home/news\\_archives/2005/m&a\\_guidelines.asp](http://www.iccwbo.org/home/news_archives/2005/m&a_guidelines.asp)

<sup>70</sup> <http://www.itu.int/osg/spu/spam/contributions/ITU%20workshop%20on%20spam%20BIAC%20ICCP%20Spam%20Discussion%20Paper.pdf>

Workshop on spam in Brussels (2-3 February 2004) and the ITU WSIS Thematic Meeting on Countering spam in Geneva (7 - 9 July 2004). BIAC is also an active member of the OECD spam Task-Force, elaborating the "Anti spam Toolkit".

### **5.5. ISP best practices/Codes of conduct**

Many ISPs on the national level have established codes of conduct; several recommendations exist also on the international level. The London Internet Exchange (LINX), for example, has published a document entitled "Best Current Practice on Unsolicited Bulk E-mail"<sup>71</sup>. It contains nine general provisions that ISPs should adhere to. These provisions state inter alia that ISPs must ensure that their systems will not relay Email for unauthorised third parties and that all email generated within their network can be traced to its source. In the case of proven abuse, the ISP shall take effective action to prevent the Spammer from continuing his work. As it is a statement of "Best Current Practice", not a code of conduct, the document is not legally binding for members. Nevertheless it could act as a support for member-ISPs when making a business case for setting internal policy and committing resources to enforce that policy. The LINX document was republished a slightly modified form by RIPE bearing the title „Good Practice for Combating Unsolicited Bulk Email“<sup>72</sup>.

### **5.6 Memorandum of Understanding between Internet Society of China and eBay, Microsoft, America Online and Yahoo.**

On 2 September 2004, the Internet Society of China which represents the various Internet service providers, telecom and related research and educational organizations in China, held the China Internet Conference International Anti-Spam Summit in partnership with four leading multinationals including eBay, Microsoft, America Online and Yahoo.

The Summit adopted a holistic approach to overcome spam by exploring areas of cooperation and coordination supporting networks-related international organizations and enforcement bodies. The text of the Memorandum is available online on the ITU website<sup>73</sup>.

### **5.7 Messaging Anti-Abuse Working Group (MAAWG)**

The Messaging Anti-Abuse Working Group (MAAWG)<sup>74</sup> is a global coalition of more than 20 communications and technology companies. It was founded in December 2003. The group addresses "messaging" as a field that has to be dealt with holistically. Therefore not only emails but also other forms of messaging (e.g.: SMS, MMS, PAP) are included in the group's work. MAAWG is open to interested Service providers, vendors and others companies. The group is dedicated to solving messaging abuse by working along three initiatives – collaboration across operators, best practices technology, and by advocating industry's interests in public policy. Four subcommittees work e.g. on the development of best current practices and code of conduct for service providers. MAAWG also works on standardization issues.<sup>75</sup> The technical subcommittee seeks to adopt common standards for the deployment of sender authentication technologies.

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<sup>71</sup> <http://www.linx.net/noncore/bcp/ube-bcp.html>

<sup>72</sup> <http://www.ripe.net/ripe/docs/spam.html>

<sup>73</sup> [http://www.itu.int/osg/spu/spam/legislation/legislation\\_china.html](http://www.itu.int/osg/spu/spam/legislation/legislation_china.html)

<sup>74</sup> <http://www.maawg.org/home/>

<sup>75</sup> <http://www.maawg.org/news/maawg041104>

## 5.8 Mobile Marketing Association (MAA)

The Mobile Marketing Association (MMA) is a global association that comprises more than 30 companies from the mobile marketing as well as from the IT-sector. In late 2003, its board of directors ratified a Code of Conduct for Mobile Marketing<sup>76</sup>. The Code of Conduct is divided into six categories: choice, control, customization, consideration, constraint and confidentiality. One of its basic provisions is an opt-in model for mobile advertisement. Furthermore, it refers to the TRUSTe provisions on not renting, selling or sharing consumer data.

## 5.9 Spotsam

Spotsam is a European project proposed for funding under the EU's Safer Internet Action Plan. The Commission is currently evaluating the project. Spotsam aims to provide a centralized information and evidential resource to public and private organizations taking legal action against spammers. During a first phase of the project, the practical and legal framework of three European countries will be taken into account for intensive research (contributions from all EU Member States will be welcomed during the consultations). Additionally, the cross-border exchange of user complaints is to be facilitated by the creation of one unified database. Details of the database are still to be defined. Current participants in the project are the German industry group eco and the Polish Internet organization NASK. Other entities such as EuroISPA and LINX consider joining Spotsam.

# 6. Common points in anti-spam legislation

## 6.1 Introduction

This section aims to identify common points in certain existing anti-spam legislation. Selected national or transnational anti-spam laws (see beyond) are compared in some selected key provisions. The comparison is non-inclusive. It aims to provide information that may be of use for agencies considering new anti-spam legislation – and not to be a model law.

## 6.2 Anti-Spam laws considered:

- Australia:** Spam Act 2003<sup>77</sup>  
Spam (Consequential Amendments) Act 2003<sup>78</sup>
- European Union:** Dir. 2002/58/EC (“Directive on privacy and electronic communication”)<sup>79</sup>,  
Dir. 2000/31/EC (“Directive on electronic commerce”)<sup>80</sup>
- USA:** CAN-SPAM Act of 2003<sup>81</sup>

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<sup>76</sup> <http://mmaglobal.com/modules/content/index.php?id=5&submenu=conduct>

<sup>77</sup> Full text: <http://scaleplus.law.gov.au/html/pasteact/3/3628/top.htm> (cited as: Spam Act 2003)

<sup>78</sup> Full text: <http://scaleplus.law.gov.au/html/comact/11/6736/top.htm> (cited as: Spam (Consequential Amendments) Act 2003)

<sup>79</sup> Full text: [http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_201/l\\_20120020731en00370047.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_201/l_20120020731en00370047.pdf) (cited as: Dir. 2002/58/EC)

<sup>80</sup> Full text: [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_178/l\\_17820000717en00010016.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_178/l_17820000717en00010016.pdf) (cited as: Dir. 2000/31/EC)

<sup>81</sup> Full text: <http://www.spamlaws.com/federal/108s877enrolled.pdf> (cited as: CAN-SPAM Act of 2003), Summary and Status: <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:s.00877>:

*Remark: The Anti-Spam laws considered in this paper have been picked randomly from existing legislation. A database<sup>82</sup> that is maintained and updated by the International Telecommunication Union provides additional information on national Anti-Spam legislation worldwide.*

### 6.3 Definition of Spam

- **Australia:** defined as “unsolicited commercial electronic messages” (though the word “Spam” is not specifically mentioned), judicial provisions are technologically neutral: legislation includes Email, SMS, MMS and instant messaging are included, faxes and voice-to-voice telemarketing are excluded<sup>83</sup>, no reference to bulk messaging - a single unsolicited commercial electronic message could be Spam.
- **EU:** term Spam is neither defined nor used, the term “electronic mail for the purposes of direct marketing” is used<sup>84</sup>, judicial provisions are technically neutral: legislation includes Email, calling machines, faxes and SMS messages<sup>85</sup>
- **USA:** term Spam is neither defined nor used, a FTC-definition of a “Commercial Electronic Mail Message” exists<sup>86</sup>, judicial provisions not limited on Email: inclusion of mobile Spam subject to implementation<sup>87</sup> (Action by the Federal Communications Commission on mobile Spam<sup>88</sup>)

*General remark: Although there is no agreed definition of Spam in the national/transnational provisions compared in this paper, a definition on the international level exists. The US-UK-Australia Memorandum of Understanding on mutual enforcement assistance in commercial e-mail matters<sup>89</sup> defines a Spamming Violation as “conduct prohibited by a country’s Commercial Email Laws that is substantially similar to conduct prohibited by the Commercial Email Laws of the other countries, including, but not necessarily limited to: 1. sending commercial email containing **deceptive content**; 2. sending commercial email without providing the recipient with a means [...] to request that such communications cease; 3. sending commercial email that contains **misleading information** about the message initiator [...] or 4. sending commercial email, when the **recipient has specifically requested the sender not to do so.**”<sup>90</sup>*

*Nevertheless, this definition is far from being accepted by all stakeholders. As the Working Group on Internet Governance (WGIG notes in draft working paper<sup>91</sup>, “there is not at present an international consensus on the definition of spam, the specific governance issues it raises, or the most appropriate methods of resolving these issues”.*

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<sup>82</sup> <http://www.itu.int/osg/spu/spam/law.html>

<sup>83</sup> Spam Act 2003, Sect. 5.

<sup>84</sup> Dir. 2002/58/EC Art 12 (1).

<sup>85</sup> Dir. 2002/58/EC Art 13 (1).

<sup>86</sup> <http://www.ftc.gov/opa/2005/01/primarypurp.htm>

<sup>87</sup> CAN-SPAM Act of 2003, Section 14(b).

<sup>88</sup> [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-194A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-194A1.pdf)

<sup>89</sup> Full text: <http://www.ftc.gov/os/2004/07/040630spammoutext.pdf> (cited as: US-UK-AUS MoU)

<sup>90</sup> US-UK-AUS MoU Sec. I (H)

<sup>91</sup> <http://www.wgig.org/docs/WP-Spam.pdf>

## 6.4 Opt-in vs. Opt-out

- **Australia:** Opt-in (consent)<sup>92</sup> **and** Opt-out (unsubscribe)<sup>93</sup> condition on all commercial messages
- **EU:** Opt-in (consent)<sup>94</sup>, except in the case of an existing business-relationship (here: opt out only)<sup>95</sup> for **natural persons**, Opt-out for **legal persons**<sup>96</sup> (member states are called to enact national legislation for the protection of legal persons)
- **US:** Opt-out<sup>97</sup>, except mobile messages: opt-in (consent)<sup>98</sup> **and** opt-out (unsubscribe)<sup>99</sup> condition, except in the case of an existing business-relationship (here: opt out only)<sup>100</sup>

## 6.5 Labelling/Tagging of advertisement

- **Australia:** no provisions
- **EU:** commercial communication shall be identifiable clearly and unambiguously as soon as it is received by the recipient (member states are called to enact national legislation)<sup>101</sup>
- **US:** no labelling provisions yet. The FTC is requested to prepare a report on the possibility of the introduction of a labelling scheme though.<sup>102</sup>

*General remark: A labelling provision appears to be more coherent with an Opt-out system. In an Opt-in system the receiver must solicit commercial mail. Unsolicited commercial mail would be still be illegal; even when bearing a label.*

## 6.6 Header information

- **Australia:** Sender must disclose identity, valid sender-address<sup>103</sup>, information needs to be valid at least 30 days after the message has been sent
- **EU:** Sender must disclose identity, valid sender-address<sup>104</sup>
- **USA:** Sender must not falsify header-information

*General remark: The obligation to provide valid identity/header information seems to be more coherent with an opt-out system. There, a disguised sender-identity would render a commercial*

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<sup>92</sup> Spam Act 2003, Part 16 (2)

<sup>93</sup> Spam Act 2003, Part 18 (1)

<sup>94</sup> Dir. 2002/58/EC Art 13 (1).

<sup>95</sup> Dir. 2002/58/EC Art 13 (2).

<sup>96</sup> Dir. 2002/58/EC Art 13 (5).

<sup>97</sup> CAN-SPAM Act of 2003, Sec. 5 Subsec. (a) (5) (ii)

<sup>98</sup> CAN-SPAM Act of 2003, Sec. 14 Subsec. (b) (1)

<sup>99</sup> CAN-SPAM Act of 2003, Sec. 14 Subsec. (b) (2)

<sup>100</sup> CAN-SPAM Act of 2003, Sec. 14 Subsec. (b) (3)

<sup>101</sup> Dir. 2000/31/EC Art. 7.

<sup>102</sup> CAN-SPAM Act of 2003, Sec. 11 (2)

<sup>103</sup> Spam Act 2003, Sect. 17.

<sup>104</sup> Dir. 2002/58/EC Art 13 (4).

*communication illegal. In an opt-in system, it would only reinforce the illegality. (As it seems unlikely that a sender of explicitly solicited commercial communication would disguise his identity.)*

## 6.7 Enforcement

- **Australia:** Enforced by the Australian Communications Authority (ACA), which has a number of options, including formal warnings<sup>105</sup>, infringement notices and court actions.
- **EU:** Enforcement by the member-states. The commission evaluates whether the differences in the national laws implementing the EU directives are an obstacle to effective cross-border enforcement.<sup>106</sup>
- **USA:** The Act is enforced primarily by the Federal Trade Commission (FTC)<sup>107</sup>, certain other federal and state regulators<sup>108</sup>, and State Attorneys General<sup>109</sup>. Internet Service Providers (ISPs) may also bring violations to court.<sup>110</sup> Individuals do not have a cause of action<sup>111</sup>. Though the FTC has to set up a system<sup>112</sup> to reward individuals who provide information about violations of the Act.<sup>113</sup>

## 6.8 Penalties

- **Australia:** Civil penalties<sup>114</sup>, in case of contravention to civil penalty provisions, possibility of pecuniary penalties<sup>115</sup>, a ceiling for natural and legal persons exists (highest possible fines for legal persons equal to Australian\$ 1.1 million<sup>116</sup>), harvesting (use<sup>117</sup>, acquisition<sup>118</sup> and supply<sup>119</sup> of harvested address lists) not permitted.
- **EU:** subject to national measures taken under EU-Directive<sup>120</sup>. The penalties foreseen by national Anti-Spam laws in EU countries vary dramatically. In November 2004, the Dutch EU presidency called for a harmonization of the legal Anti-Spam framework in the member-

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<sup>105</sup> Spam Act 2003, Sect. 41

<sup>106</sup> [http://www.eu2004.nl/default.asp?CMS\\_TCP=tcpAsset&id=B44C0E30C17A46DA81E62332EA6C2B7AX1X51359X3](http://www.eu2004.nl/default.asp?CMS_TCP=tcpAsset&id=B44C0E30C17A46DA81E62332EA6C2B7AX1X51359X3)

<sup>107</sup> CAN-SPAM Act of 2003, Sec. 7 (a)

<sup>108</sup> CAN-SPAM Act of 2003, Sec. 7 (b)

<sup>109</sup> CAN-SPAM Act of 2003, Sec. 7 (f)

<sup>110</sup> CAN-SPAM Act of 2003, Sec. 7 (g)

<sup>111</sup> CAN-SPAM Act of 2003, Sec. 7

<sup>112</sup> CAN-SPAM Act of 2003, Sec. 11 (1)

<sup>113</sup> According to CAN-SPAM Act of 2003, Sec. 11 (1), the reward can be 20 percent of the total civil penalty obtained or more.

<sup>114</sup> Spam Act 2003, Part 4

<sup>115</sup> Spam Act 2003, Sect. 24.

<sup>116</sup> Under certain condition the Spam Act 2003 foresees a maximum penalty of 10.000 penalty units. The Crimes Act 1914 Sec 4 AA ([http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca191482/s4aa.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s4aa.html)) states that 1 penalty unit equals Australian\$ 110. This may change in the future.

<sup>117</sup> Spam Act 2003, Sect. 22.

<sup>118</sup> Spam Act 2003, Sect. 21.

<sup>119</sup> Spam Act 2003, Sect. 20.

<sup>120</sup> Recital 47, Dir. 2002/58/EC

states. According to a position paper of the presidency<sup>121</sup>, the fiscal penalties range from € 145 per Spam message to an administrative fine of €450.000. Other sanctions range from warning to offenders, the ability to terminate a business, enforce cessation of Spam activities, confiscation or erasure of the offender's data and records to imprisonment.

- **USA:** Civil penalties (from \$25<sup>122</sup> to \$250<sup>123</sup> per violation, ceiling at \$2 million<sup>124</sup>), in case of certain aggravated offenses involving dictionary attacks, use<sup>125</sup> and supply<sup>126</sup> of harvested email addresses and similar activities, penalties may be tripled. Possibility of criminal prosecution with prison terms of up to five years.

## 6.9 Extraterritorial application

- **Australia:** Sender and/or receiver are based in Australia<sup>127</sup>. Individuals and organizations are included alike, technical equipment based in Australia is included, in general: Extraterritorial application possible unless the contrary appears.<sup>128</sup>
- **EU:** All communications **sent from** or **received on** a public network within the EU is covered by Anti-Spam legislation<sup>129</sup>
- **USA:**

## 6.10 Exceptions:

- **Australia:** Communication of political parties is excluded<sup>130</sup>

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<sup>121</sup> <http://register.consilium.eu.int/pdf/en/04/st15/st15148.en04.pdf>

<sup>122</sup> CAN-SPAM Act of 2003, Sec. 7 Subsec. (g) (3) (A) (ii)

<sup>123</sup> CAN-SPAM Act of 2003, Sec. 7 Subsec. (f) (3) (A)

<sup>124</sup> CAN-SPAM Act of 2003, Sec. 7 Subsec. (f) (3) (B)

<sup>125</sup> CAN-SPAM Act of 2003, Sec. 5 Subsec. (b) (1) (A)

<sup>126</sup> CAN-SPAM Act of 2003, Sec. 5 Subsec. (b) (1) (A)

<sup>127</sup> Spam Act 2003, Sect. 7.

<sup>128</sup> Spam Act 2003, Sect. 14.

<sup>129</sup> Dir. 2002/58/EC Art 3 (1).

<sup>130</sup> Spam Act 2003, Sect. 44.