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***Spammers, Phishers and Other Assorted Crooks:
A Spam Litigator's View From the Front Lines***

Jon Praed
Internet Law Group
[jon.praed\(at\)i-lawgroup.com](mailto:jon.praed(at)i-lawgroup.com)

What is “Spam”?

- **Unsolicited**
 - Intent of recipient is the key, but difficult to determine
 - Well-written spam is facially indistinguishable from solicited commercial email & non-commercial email
- **Bulk**
 - Substantially similar messages
- **Commercial**
 - Regulations are subject to fewer free speech objections
- **Electronic messages**
 - Convergence is here

Spam Fighting Tools

- Shield -- Internet Architecture & Filters
 - Absent fraudulent transmission, filters are generally able to block spam
 - ISPs are already highly motivated to deliver email their subscribers want, and to block email they do not want
- Sword -- Legal Enforcement

To Succeed, Spammers Must Engage in Fraud

- False or Anonymous Access
 - Technical header information, WhoIs registrations, obfuscated URLs, encrypted webpages
 - Gift cards, cash in the mail, third party facilitators
 - Phished email accounts, stolen (zombie) IP space, relay raping, trojan machines
- Dispersed & Transient “Fingerprints”
 - Limitless “from” lines, URLs, “1,000 points of spam”
 - Hit and run tactics

Legal Weapons Against Spam

- Discovery & Fact Finding
- Impose Costs of Defense on Spammers
- Injunctions
 - Ban specific conduct or limit access to Internet resources
- Money Judgments
 - Disgorge profits from spammers
 - Fund anti-spam fight
 - Non-dischargeable in bankruptcy
 - Can be satisfied from spammer's general assets
- Imprisonment

A Hierarchy of Anti-Spam Rules

- **Acceptable Use Policies**
 - Owners must set expectations to protect private property
- **Plaintiffs Need One Civil and One Criminal Arrow**
 - United States paradigm (www.spamlaws.com)
 - Common law tort of trespass to chattels
 - 36 State Statutes (& counting)
 - U.S. Computer Fraud & Abuse Act, 18 USC 1030
 - U.S. CAN Spam Act – helpful clarity or enhanced criminal penalties?
- **Arrows Need Only Limited Extra-Jurisdictional “Reach”**
 - Third party discovery
 - Service of process
 - Post-judgment civil enforcement
 - Extradition
- **Is a Comprehensive International Anti-Spam Law Necessary?**

What the Law Needs From Internet Architecture

- Capture IDENTITY
 - Accurate records reflecting status of Internet structure (domain names, IP addresses)
 - details of email transaction
 - intelligent record preservation
- Recognize GEOGRAPHY
 - empower Netizens to avoid “lawless” parts of the Internet
 - discipline rogue jurisdictions; reward responsible ones
 - provide notice to spammers of applicable laws

Profile of a Spammer

- Crooks gone high tech, or geeks gone bad
- Never been so successful in life
- Early 20's to 30's
- Almost always male
- Profits in 6 figures per year (USD)
- Profits spent on fast living
- Surprisingly emotional

How Many Spammers Are There?

- Far fewer than you might expect
- Dispersion inflates perception of numerosity
- “Degrees of Separation”
 - Typical spammer has a large spam rolodex
 - ROKSO Top 200 are separated by no more than one degree

Significant Civil Cases

- AOL v. Cyber Entertainment Network
 - Breaking the webmaster affiliate model
- Verizon Online v. Ralsky
 - Suing spammers where the spam lands
- AOL v. CN Productions
 - Contempt of court has teeth

Why We Will Defeat Spam

- Victory Doesn't Require a Spam-Free InBox
 - Banks survive bank robberies
- Spammers Struggle on Small Margins
- Email is Incredibly Resilient
 - Thrives despite 20%, 40%, 60%, 99% spam rate
- Spam is a Parasite on the Killer App
 - Natural state of equilibrium
- We've Not Yet Begun to Fight
 - Criminal enforcement is just beginning



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