



PROPOSED SPAM CONTROL BILL

(Joint IDA-AGC Consultation Paper)

PROPOSED SPAM CONTROL BILL

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CONSULTATION PAPER

PROPOSED SPAM CONTROL BILL

PART 1

INTRODUCTION

- 1.1 On 25 May 2004, the Infocomm Development Authority (IDA) and the Attorney-General's Chambers of Singapore (AGC) held a joint public consultation on "Proposed Legislative Framework for the Control of E-mail Spam". The consultation exercise concluded on 26 July 2004. The public feedback indicated a consensus to implement legislation as part of a multi-pronged approach to control e-mail spam.
- 1.2 IDA and AGC would like to take this opportunity to thank all 60 respondents for their views, which have been most useful. With the completion of the public consultation, IDA and AGC proceeded to draft the necessary legislation. This consultation paper invites comments on the proposed Spam Control Bill ("proposed Bill"), appended to this paper as the Annex. The proposed Bill is a new piece of legislation which provides for the control of unsolicited commercial electronic communications. The proposed Bill incorporates the major policy proposals discussed at Part 3 of this paper.
- 1.3 Apart from the control of e-mail spam, the proposed Bill also seeks to control mobile spam. With the prevalent use of mobile messaging, IDA proposes to incorporate mobile telephone text and multi-media communications within the scope of the Bill to provide greater clarity on the use of such means as a form of commercial communications.
- 1.4 This consultation will not re-open issues that were considered in and consulted on in the earlier consultation exercise. Its focus will instead be on the provisions of the proposed Bill and the precision in which they reflect the proposed policy recommendations. The nascent development of spam control legislation worldwide is an indication that legislation will have to be reviewed regularly to address the changing needs of the public and businesses as well as technological developments. Whilst we will not re-open issues that were discussed

in the earlier consultation, we welcome suggestions that will aid in refining the legislative regime.

- 1.5 Part 2 of this paper highlights the public consensus for the implementation of legislation as part of the multi-pronged approach to curb spam. Part 3 discusses the key features of the proposed Bill.
- 1.6 We invite comments from interested parties on the proposed Bill. Please identify clearly the specific provisions of the proposed Bill that you are commenting on. Where appropriate, you are encouraged to suggest changes to the proposed provisions. The proposals should be accompanied by reasons for the changes.
- 1.7 All comments should be submitted in writing, in both hard and soft copies (preferably in Microsoft Word format). The submissions must reach IDA by **12 noon, 14 October 2005**. Please include your personal/company particulars as well as the correspondence address in your submissions. Submissions should be addressed to:

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- 1.8 IDA reserves the right to make public all or parts of any written submissions made in response to this consultation paper and to disclose the identity of the source. Any part of the submission, which is considered commercially confidential, should be clearly marked and placed as a separate annex. IDA and AGC will take this into consideration when disclosing the information submitted.

PART 2
LEGISLATION AS PART OF A MULTI-PRONGED
APPROACH

2.1 In response to the consultation paper issued on 25 May 2004, a total of 60 responses were received from both individuals and organisations. The respondents agree with the multi-pronged approach set out in the proposed framework and are generally in favour of legislation as part of the multi-pronged approach to control spam. The multi-pronged approach comprises:

- (a) Public education;
- (b) Industry self-regulation;
- (c) International co-operation; and
- (d) Legislation.

2.2 The earlier Consultation Paper (25 May 2004) as well as the comments from the 60 respondents can be found at IDA's website at <http://www.ida.gov.sg>. Following the close of the public consultation, IDA began an intensive review process. In the course of this process, IDA gave due consideration to every view and proposal submitted. The proposed Bill is drafted taking into consideration IDA's policy objectives and the public feedback.

PART 3

KEY FEATURES OF PROPOSED SPAM CONTROL BILL

Definition of spam

3.1 In the proposed Bill, spam is referred as unsolicited commercial communications transmitted by electronic mail or transmitted by text or multi-media messages to mobile telephones.¹ Spam therefore consists of 4 distinctive features, as follows:

- (a) Spam is unsolicited;
- (b) the content of spam is commercial in nature;
- (c) Spam consists of e-mails and mobile messages, e.g., text or multi-media messages; and
- (d) these messages are transmitted in bulk.

Unsolicited communications

3.2 The meaning of “unsolicited” is set out in clause 5 of the proposed Bill. An electronic message is unsolicited if the recipient did not request to receive the message or did not consent to the receipt of the message.

3.3 Clause 5(2) provides that a recipient will not be treated as having requested to receive the message or consented to the receipt of the message merely because his e-mail address or mobile telephone number was given or published by him or on his behalf. This is intended to address the situation where a person gives out his business cards at a conference or where a person publishes his details on his own website. In such situations, the person concerned will not be treated as having requested to receive or consented to the receipt of the electronic message.

¹ See long title, which states “An Act to provide for the control of spam, which is unsolicited commercial communications transmitted by electronic mail or by text or multi-media messages to mobile telephones, and to provide for matters connected therewith.”

- 3.4 Clause 5(3) provides that where a recipient of a solicited electronic message submits an unsubscribe request², any subsequent electronic message sent by the same sender after the compliance period of 10 business days will be treated as an unsolicited electronic message and the sending of that subsequent electronic message will be subject to the requirements set out in various provisions of the proposed Bill. This addresses the concern that as the proposed Bill regulates the sending of unsolicited commercial electronic messages only, recipients may be unable to unsubscribe from solicited commercial electronic messages.

Commercial communications

- 3.5 “Commercial electronic message” is defined in clause 3 of the proposed Bill. The definition is premised on the purpose of the electronic message, and sets out what constitutes a commercial purpose.

E-mail or mobile telephone text or multi-media messages

- 3.6 The proposed Bill focuses on e-mail messages and text or multi-media messages sent to mobile telephones. These messages are classified in the Bill as “electronic messages”. “Electronic message” is defined in clause 4.
- 3.7 It should be noted that the proposed Bill does not cover other forms of communications like voice call. Further, Instant Messenger, such as ICQ³ and Microsoft’s MSN Messenger, will not be covered under the proposed Bill as this form of communication is quite different from e-mail or mobile telephone messaging.
- 3.8 With regard to the issue of mobile spam, IDA has consulted the mobile telephone industry including both the mobile telephone operators and mobile telephone marketers. IDA has also examined the economics involved in mobile spamming and recognises that currently the cost of sending mobile spam may be sufficient to deter indiscriminate mobile spamming. However, IDA recognises the intrusive nature of mobile

² Unsubscribe request is defined in clause 2 of the proposed Bill to mean “a request by a recipient of an electronic message, requesting the sender or the person who authorised the sending of the message, to cease sending any further electronic messages to his electronic address”.

³ The name ICQ is a play on the phrase “I seek you” (Source: Wikipedia, 17 March 2005).

spam, and the intrinsic difficulty for any mobile telephone user to change his mobile telephone number for the purpose of avoiding mobile spam. The physical closeness and personal attachment of the mobile telephone to the mobile telephone user further amplifies any negativity caused by indiscriminate mobile spam activities. The experiences from other countries, like Japan and South Korea, have shown that mobile spam can become a problem if left unchecked. Thus, IDA proposes an additional layer of protection against indiscriminate mobile spamming by incorporating mobile spam in the proposed Bill.

- 3.9 In accordance with public feedback that the proposed Bill should be technology neutral, all forms of unsolicited commercial electronic messages are covered, regardless of the technology used to access them. These would include e-mail messages received using a portable mobile device such as a mobile phone (GPRS) or mobile telephone messages received using a Personal Digital Assistant (PDA) telephone.

Application of the proposed Bill

Spam transmitted in bulk

- 3.10 Pursuant to the earlier consultation exercise, the majority of the respondents agree that the proposed legislation should apply only to spam transmitted in bulk. The requirement of transmission in bulk, defined in clause 6 of the proposed Bill, would exclude certain categories of unsolicited commercial electronic communications which do not cause any problem. An example would be unsolicited commercial electronic messages that are circulated within small groups of friends⁴ or business acquaintances. The policy intent is to exclude the application of the “mass mailing” rules, such as <ADV> labelling and unsubscribe facility requirements, to “one-on-one” scenarios.
- 3.11 Clause 6(1) provides that electronic messages are regarded as transmitted in bulk if the same sender transmits:

⁴ For example, e-mail messages along the lines of “I’ve got 2 extra movie tickets. Do you want them at a discounted price?” are commonly sent to groups of friends. It would be unreasonable to require such messages to include an <ADV> label and an unsubscribe facility.

- (a) more than 100 electronic messages containing the same or similar subject-matter during a 24-hour period;
- (b) more than 1,000 electronic messages containing the same or similar subject-matter during a 30-day period; or
- (c) more than 10,000 electronic messages containing the same or similar subject-matter during a one-year period.

3.12 Whilst there is a possibility that specifying quantities for the bulk requirement may lead spammers to circumvent the proposed Bill by sending unsolicited commercial electronic messages of a volume that just falls short of the specified quantities, the quantities that are proposed in clause 6(1) would limit the activity of a spammer to a level that is no longer commercially viable. The proposed quantities are adopted from the US CAN-SPAM Act of 2003⁵. In our view, these quantities are appropriate for the purposes of the proposed Bill, bearing in mind that the intent of the Bill is to deter spammers who typically send millions of spam per week.

3.13 Clause 6(2) of the proposed Bill empowers the Minister to vary the quantities in paragraph (1) by order published in the Government Gazette. This would allow the Government to react swiftly whenever the quantities are found to be inappropriate.

Spam sent from or received in Singapore

3.14 The majority of respondents agree that the proposed legislation should apply to spam sent from or received in Singapore. These are activities which have a direct nexus or connection with Singapore. Accordingly, clause 7(1) provides that the Bill will not apply unless an electronic message has a Singapore link. Clause 7(2) defines what is meant by having a Singapore link. The proposed provisions in clause 7(1) and (2) follow the Australian position⁶ closely.

⁵ Section 4 inserting new section 1037 to Chapter 47 of title 18 of the United States Code.

⁶ Australia Spam Act 2003, section 7.

Person or business commissioning or procuring spam

- 3.15 To prevent businesses from hiding behind individual spammers and to allow legal action to be taken against the beneficiaries of spam, it was proposed in the earlier consultation that in addition to the spammer, the person commissioning or procuring spam should also be liable. This proposal is supported by almost all the respondents. Further, IDA acknowledges that the person commissioning or procuring spam is also directly contributing to the loss of productivity due to spamming.
- 3.16 Accordingly, under the proposed Bill, it is not only the person who sent the unsolicited commercial electronic messages who will be liable. The person who commissioned or procured the sending of these messages will also be liable. Clause 14 of the proposed Bill enables court action to be instituted against the sender, the person who authorised the sending of the messages or the person referred to in clause 13(1). The person referred to in clause 13(1) is one who aids, abets, counsels, procures, induces or is knowingly concerned in or a party to, or conspires with others to effect a contravention of clause 9, 10 or 12. Clauses 9 and 10 set out the requirements that must be complied with in the sending of unsolicited commercial electronic messages. Clause 12 prohibits the sending of electronic messages to e-mail addresses or mobile telephone numbers through the use of a dictionary attack or address harvesting software.
- 3.17 Such an approach is consistent with the international trend. In Australia, the Spam Act 2003 applies not only to the sender of the message, but also to those who cause the message to be sent, those who aid, abet, counsel or procure a contravention of the requirements and those who are in any way a party to such a contravention.⁷ In the United States, the CAN-SPAM Act of 2003⁸ provides that it is unlawful for a person to promote or allow the promotion of his trade or business, goods, products or services, in a commercial e-mail message in violation of section 5(a)(1)⁹ if he knows or ought to have known that the goods, products or services were being promoted in such a message, he received or expected to receive an economic benefit from

⁷ See, for example, sections 16(9), 17(5), 18(6) and 20(5).

⁸ Section 6.

⁹ Section 5(a)(1) makes it unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading.

the promotion, and he took no reasonable action to prevent the transmission or to detect the transmission and report it to the Federal Trade Commission.

Excluded electronic messages

- 3.18 IDA pragmatically acknowledges that the spam control regimes worldwide are in a nascent stage and there may be situations where a legitimate communication may be hampered by a spam control regime. Clause 7(3) of the proposed Bill, therefore, provides that the Bill shall not apply to any electronic message specified in the Schedule.
- 3.19 Many respondents urge the adoption of a conservative approach in the formulation of exclusions. The Schedule of the proposed Bill therefore only excludes electronic messages which are sent with the authority of the Government or a statutory body for a public purpose or statutory function. It is recognised that Government electronic messages are more in the nature of public service announcements rather than spam. There are many occasions when Government agencies need to communicate to members of the public on matters of public interest, for example, a warning of impending natural disaster. This is in line with the position in Australia, where electronic messages the sending of which is authorised by a government body are excluded from the purview of the Spam Act 2003.
- 3.20 IDA would like to clarify that electronic messages sent by charities and religious organisations will not be specifically excluded from application of the proposed Bill. Therefore, the sending of unsolicited electronic messages by charities and religious organisations soliciting for donations through the sale of goods and services will have to comply with the requirements set out in the proposed Bill. However, the sending of unsolicited electronic messages merely asking for donations but do not advertise or promote the sale of goods and services will not be subject to the application of the proposed Bill. This would not affect other laws regulating the soliciting of donations from the public.

Requirements for the transmission of unsolicited commercial electronic messages

- 3.21 Under the proposed Bill, not all unsolicited commercial electronic messages are disallowed. The Bill imposes requirements for the sending of unsolicited commercial electronic messages, and electronic messages which are sent in compliance with these requirements will be regarded as legitimate communications. They will not be subject to any legal action under the proposed Bill so long as all unsubscribe requests are honoured.
- 3.22 The requirements for the sending of unsolicited commercial electronic messages are set out in clauses 9 and 10 of the proposed Bill. In brief, they are as follows:
- (a) Every unsolicited commercial electronic message must contain an unsubscribe facility, enabling the recipient to unsubscribe from further electronic messages. The unsubscribe facility must comply with the standards set out in clause 9(1) and (2).
 - (b) Every unsolicited commercial electronic message must comply with the labelling requirements provided in clause 10(1)(a) to (c).
 - (c) Every unsolicited commercial electronic message must contain an accurate and functional e-mail address or a telephone number, by which the sender can be readily contacted. This is provided in clause 10(1)(d).
 - (d) Every unsolicited commercial electronic message must contain such other matters as may be prescribed in regulations. This is provided in clause 10(1)(e).
- 3.23 If the sending of unsolicited commercial electronic messages in bulk is in breach of any of the requirements set out in clauses 9 and 10, the sender or any other person concerned as discussed at paragraphs 3.15 to 3.17 above will be liable.
- 3.24 In addition, there are further requirements that must be complied with in respect of unsubscribe requests. Clause 9(3) requires the sender and the person who authorised the sending of the unsolicited commercial

electronic message to honour any unsubscribe request within 10 business days from the day on which the unsubscribe request is submitted. In the earlier consultation exercise, we had sought views on the reasonable time period for compliance with unsubscribe requests. The feedback is diverse. Suggestions range from “a few hours” to 24 hours to 2 weeks. Some respondents propose that the time frame should not be longer than 10 business days, in line with the United States CAN-SPAM Act 2003¹⁰. In order to take into account the interests of a range of businesses and the affected individuals, we agree that a figure of 10 business days is a reasonable period.

- 3.25 Clause 9(4) prohibits any person who receives an unsubscribe request from disclosing any information contained in the unsubscribe request to any other person, except where the person whose particulars are contained in the unsubscribe request has consented to the disclosure.

Opt-out regime

- 3.26 The requirement for the provision of an unsubscribe facility in every unsolicited commercial electronic message in clause 9 of the proposed Bill is in accordance with an opt-out regime, which was proposed in the earlier consultation and which has attracted much public feedback.
- 3.27 The feedback received on this issue is divided. Whilst businesses and corporate entities support an opt-out regime, the majority of individual respondents have voiced concerns with such a regime. The main concerns are as follows:
- (a) An opt-out regime will confirm the validity of e-mail addresses. This would lead to more spamming and at the end of the day, it would be the spammers who benefit.
 - (b) An opt-out regime will not reduce the initial time and productivity loss in deleting unsolicited e-mail messages.
 - (c) An opt-out regime will restrict consumers’ freedom of choice.
 - (d) With an opt-out regime, the onus falls on consumers to unsubscribe from further e-mail messages and not all consumers

¹⁰ Section 5(4)(A).

are able to discern whether the header information in an e-mail message is false or misleading.

- (e) An opt-out regime legitimises spam. The first e-mail message containing the unsubscribe facility is already spam as it is an unsolicited commercial e-mail message and poses a nuisance.
- (f) By rendering the first unsolicited commercial e-mail message legitimate, an opt-out regime will boost the market for the sale of e-mail address lists.

- 3.28 Many of the concerns discussed at paragraph 3.27 above can be addressed through public education. Public education will guide users as to when and how to make use of unsubscribe facilities. With effective public education, users will be able to decide not to opt out of spam with obviously false headers, misleading subject titles, or which peddle illegitimate material such as pornography or prescription drugs; and ignore and delete the message.
- 3.29 Further, the requirement in clause 9(2) that the e-mail address, Internet location address or telephone number provided for the purpose of enabling a recipient to submit an unsubscribe request must be functional (that is, by complying with the standards set out in clause 9(2)(a), (b) and (c)) would address the concern that opt-out mechanisms are used as a means to detect whether an e-mail address or telephone number is in fact a valid “live” account.
- 3.30 The objective of the proposed Bill is not to eradicate all unsolicited commercial electronic messages. Unsolicited commercial electronic messages which comply with the legislative requirements will be allowed. Many respondents argued strongly that e-mail offers legitimate direct marketers an important and cost-effective means of reaching out to targeted potential customers. It is an important avenue for costs-conscious small and medium enterprises which cannot afford more costly means of marketing. Adopting an opt-out regime is more business friendly as it enables local businesses to responsibly make use of e-mail or mobile messages as a means of conducting legitimate business. Similar arguments would apply in the case of direct marketers who need to reach out to mobile telephone users.

- 3.31 As highlighted in the earlier consultation, an opt-in regime will not be effective to control spam originating from overseas, and the legal uncertainty surrounding the definition of opt-in assent would continue to create doubts about the effectiveness of an opt-in regime.
- 3.32 On balance, an opt-out regime in tandem with the labelling and other prescribed requirements for the sending of unsolicited commercial electronic messages, together with public education, will be effective in controlling spam. Whilst we are aware that the United States' adoption of an opt-out regime has attracted criticism, there is evidence that a combination of technical measures and legal action is working in the United States.¹¹

Labelling and other requirements

- 3.33 Most of the respondents are in favour of having the labelling and other requirements. Clause 10(1)(a), (b) and (c) of the proposed Bill requires every unsolicited commercial electronic message that is sent to comply with the following labelling requirements:
- (a) the message contains a subject title that does not mislead the recipient as to the content of the message;
 - (b) the message must contain the letters "<ADV>" with a space before the subject title to clearly identify that the message is an advertisement; and
 - (c) the message must contain header information that is not false or misleading.
- 3.34 In addition to labelling, clause 10(1)(d) requires every unsolicited commercial electronic message to contain an accurate and functional e-mail address or telephone number, by which the sender can be readily contacted. Clause 10(1)(e) further provides for the electronic message to contain such other matters as may be prescribed in regulations.

¹¹ The United States' largest ISP, American On-Line (AOL) reportedly saw a 27% decline in the amount of spam entering its network in the period between mid-February and mid-March 2004. See Andy Sullivan, *AOL Says It Sees Sharp Decline in 'Spam' Email*, 19 March 2004.

- 3.35 The inclusion of an e-mail address or a telephone number instead of a physical postal address in clause 10(1)(d) is intended to give greater flexibility and take into account the privacy needs of SOHO (small office, home office). Unlike a physical postal address where a contact through post will take one or two days, an e-mail message or a telephone contact is an immediate means of communication and the recipient is able to contact the sender of the electronic message almost immediately.
- 3.36 The labelling and other requirements contained in clause 10(1) of the proposed Bill will provide sufficient information to the recipient for him to decide whether he wishes to access the content of the electronic message. For e-mails, he will also be able to configure his e-mail filter to reject e-mail messages with the label “<ADV>”.

Dictionary attack and address harvesting software

- 3.37 Clause 12 of the proposed Bill prohibits the sending of electronic messages to e-mail addresses or mobile telephone numbers through the use of a dictionary attack or address harvesting software. “Dictionary attack” and “address harvesting software” are defined in clause 2.
- 3.38 The respondents are overwhelmingly in favour of prohibiting the use of a dictionary attack or address harvesting software in the sending of messages. The use of such tools to send electronic messages is an indiscriminate form of advertising that imposes substantial costs on organisations which receive or process electronic messages, including Internet Access Service Providers (ISPs), providers or operators of e-mail servers, and mobile telephone service providers. Similar prohibition is found in Australia¹² and the United States¹³.

Legal action

Statutory right to sue

- 3.39 Clause 14 of the proposed Bill gives persons who have suffered loss or damage as a result of any transmission of electronic messages in breach of the requirements in clause 9 or 10, or through the use of a

¹² Part 3 of the Spam Act 2003.

¹³ Section 5(b)(1) and (2) of the CAN-SPAM Act 2003.

dictionary attack or address harvesting software, a right to institute legal action.

- 3.40 In the earlier consultation exercise, it was proposed that ISPs be given a statutory right to institute an action in court to sue the person sending the spam or the person commissioning or procuring the spam. However, many respondents are of the view that more parties should be given the statutory right to institute legal action. Some respondents have commented that the proposed Bill should confer a statutory right of civil action on individuals as well.
- 3.41 We recognise that it would not be cost-effective and economical for individuals to institute legal action. Further, an individual may not have sufficient resources to gather evidence in order to institute legal action. However, the regime should not deny anyone of the right to seek legal redress. If an individual feels sufficiently aggrieved or has suffered substantial loss or damage as a result of electronic messages that are sent in contravention of the legislative requirements, the individual should have a right to seek legal redress. Thus, the proposed Bill provides a statutory right of action to all persons, so long as loss or damage can be proven.

Types of court relief including statutory damages

- 3.42 Clause 15(1) and (3) of the proposed Bill sets out the types of relief that the court may grant. They include:
- (a) an injunction;
 - (b) damages; and
 - (c) statutory damages.

In addition, clause 16 empowers the court to order the defendant to pay to the plaintiff the costs and expenses of the legal action, and the legal costs incurred in respect of the proceedings.

- 3.43 The amount of damages that the court can award is limited to the amount of the loss¹⁴ or damage suffered by the plaintiff as a result of the transmission of electronic messages, as provided in clause 15(3)(a). Damages and statutory damages are mutually exclusive, as provided in clause 15(2), and the plaintiff is entitled to elect the type of relief under clause 15(3).
- 3.44 In the earlier consultation exercise, we had sought feedback on the quantum of statutory damages that would be appropriate. Some respondents feel that S\$1 for every spam e-mail message sent is too low and one respondent has suggested a quantum of S\$50 per e-mail message sent. If the quantum is perceived to be too low, it may raise doubts about Singapore's intention to control spam. It would also not be sufficient to deter potential spammers. From the public feedback received, it is clear that the issue of quantum of statutory damages is a subjective one.
- 3.45 Clause 15(3) of the proposed Bill provides for statutory damages not exceeding S\$25 for each electronic message sent, and not exceeding in the aggregate S\$1 million, unless the plaintiff proves that his actual loss exceeds S\$1 million. In deciding on this issue, we have drawn reference from foreign jurisdictions such as the United States¹⁵.
- 3.46 Clause 15(4) sets out the matters that the court must have with regard to determining the amount of statutory damages to award. Clause 15(5) makes it clear that the loss suffered by a plaintiff includes any pecuniary loss arising from the transmission of electronic messages.

Code of Practice

- 3.47 To encourage co-regulation, clause 17 of the proposed Bill provides for the voluntary issuance of a code of practice by ISPs and telecommunications service providers with the approval of IDA. The code of practice will set out the minimum standards of technical measures to effectively control the transmission of spam and such other matters as IDA may require.

¹⁴ Clause 15(5) of the proposed Bill provides that the loss includes any pecuniary loss suffered as a result of the transmission of electronic messages.

¹⁵ Section 7(3) of the CAN-SPAM Act 2003.

- 3.48 From the experiences of other countries, a co-regulatory model involving industry participation and codes of practice together with the relevant legislation would work well. Most of the respondents support the promulgation and adoption of a code of practice.

Spam Control Bill

Bill No. 00/2005.

Read the first time on 200x.

THE SPAM CONTROL ACT 2005

(No. of 2005)

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

Section

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2. Interpretation
3. Meaning of “commercial electronic message”
4. Meaning of “electronic message”
5. Meaning of “unsolicited”
6. Meaning of “transmission in bulk”
7. Application of Act

PART II REQUIREMENTS FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

8. Application of Part II
9. Unsubscribe facility
10. Labelling and other requirements

PART III DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

11. Application of Part III
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PART IV
CIVIL ACTION

13. Aiding, abetting, etc.
14. Civil action
15. Injunction and damages for civil action
16. Costs and expenses

PART V
MISCELLANEOUS

17. Code of practice
 18. Regulations
The Schedule - Excluded Electronic Messages
-

A BILL

intituled

An Act to provide for the control of spam, which is unsolicited commercial communications transmitted by electronic mail or by text or multi-media messages to mobile telephones, and to provide for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Spam Control Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“address harvesting software” means software that is specifically designed or marketed for use for —

- (a) searching the Internet for electronic addresses; and
- (b) collecting, compiling, capturing or otherwise harvesting those electronic addresses;

[*A'lia Act s 4*]¹⁶

“Authority” means the Info-communications Development Authority of Singapore established under section 3 of the Info-communications Development Authority of Singapore Act (Cap. 137A);

“business day” means any day other than a Saturday, Sunday or public holiday;

[*Companies Act s 4(1)*]

“dictionary attack” means the method by which the electronic address of a recipient is obtained using an automated means that generates possible electronic addresses by combining names, letters or numbers into numerous permutations;

[*US Act s 5(b)(1)(A)(ii)*]

“electronic address” means an electronic mail address or a mobile telephone number to which an electronic message can be sent;

[*A'lia Act s 4 (modified)*]

¹⁶ This is a reference to the source of the provision. The sources of the provisions in this Bill include:
A'lia Act – The Spam Act 2003, Australia
Canada Bill – The Spam Control Act (Bill S-23), Canada
Companies Act, Singapore
Copyright Act, Singapore
Trade Marks Act, Singapore
US Act – The CAN-SPAM Act of 2003, US

“header information” means the source, destination and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person sending, or authorising the sending of, the message;

[US Act s 3(8) modified]

“Internet access service provider” means a person who provides a service to give the public access to the Internet;

[Canada Bill cl 2]

“recipient”, in relation to an electronic message, means an authorised user of the electronic address to whom the message is sent, and where a recipient of an electronic message has one or more electronic addresses in addition to the address to which the message was sent, the recipient shall be treated as a separate recipient with respect to each such address;

[US Act s 3(14) (modified)]

“sender”, in relation to an electronic message, means a person who sends the message or causes the message to be sent;

“unsubscribe request” means a request by a recipient of an electronic message, requesting the sender or the person who authorised the sending of the message, to cease sending any further electronic messages to his electronic address.

Meaning of “commercial electronic message”

3.—(1) In this Act, a commercial electronic message is an electronic message, where, having regard to —

- (a) the content of the message;
- (b) the way in which the message is presented; and
- (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message,

it is concluded that the purpose, or one of the purposes, of the message is —

- (i) to offer to supply goods or services;
- (ii) to advertise or promote goods or services;

- (iii) to advertise or promote a supplier, or prospective supplier, of goods or services;
- (iv) to offer to supply land or an interest in land;
- (v) to advertise or promote land or an interest in land;
- (vi) to advertise or promote a supplier, or prospective supplier, of land or an interest in land;
- (vii) to offer to provide a business opportunity or investment opportunity;
- (viii) to advertise or promote a business opportunity or investment opportunity;
- (ix) to advertise or promote a provider, or a prospective provider, of a business opportunity or investment opportunity;
- (x) to assist or enable a person, by deception, to dishonestly obtain property belonging to another person;
- (xi) to assist or enable a person, by deception, to dishonestly obtain a financial advantage from another person; or
- (xii) to assist or enable a person to dishonestly obtain a gain from another person.

(2) For the purposes of paragraphs (i) to (ix) of subsection (1), it is immaterial —

- (a) whether the goods, services, land, interest or opportunity exists; or
- (b) whether it is lawful to acquire the goods, services, land or interest, or take up the opportunity.

(3) Any of the following persons may be the individual or organisation who sent the message or authorised the sending of the message:

- (a) the supplier or prospective supplier mentioned in paragraph (iii) or (vi) of subsection (1);
- (b) the provider or prospective provider mentioned in paragraph (ix) of subsection (1); and
- (c) the person first mentioned in paragraph (x), (xi) or (xii) of subsection (1).

[A'lia Act s 6]

(4) In this Act, a person who knowingly allows his product or service to be promoted or advertised by a sender shall be deemed to have authorised the

sending by the sender of any electronic message that promotes or advertises that person's product or service.

[new]

Meaning of “electronic message”

4.—(1) In this Act, subject to subsection (3), an electronic message is a message sent through electronic mail or to a mobile telephone.

(2) For the purposes of subsection (1), it is immaterial —

(a) whether or not an electronic address exists; or

(b) whether or not the message reaches its intended destination.

(3) For the purposes of this Act, a message is not an electronic message if it is sent by way of a voice call made using a telephone service.

[A'lias 5 (modified)]

Meaning of “unsolicited”

5.—(1) In this Act, an electronic message is unsolicited if the recipient did not —

(a) request to receive the message; or

(b) consent to the receipt of the message.

(2) For the purposes of subsection (1), a recipient shall not be treated as having requested to receive the message or consented to the receipt of the message merely because the electronic address was given or published by or on behalf of the recipient.

(3) For the purposes of subsection (1), where a recipient of an electronic message, other than an unsolicited electronic message, submits an unsubscribe request, any subsequent electronic message sent by the same sender after 10 business days shall be deemed to be an unsolicited electronic message, and Parts II and IV of this Act relating to unsolicited electronic messages shall apply to the sending of that subsequent electronic message.

Meaning of “transmission in bulk”

6.—(1) For the purposes of this Act, electronic messages shall be deemed to be transmitted in bulk if —

(a) more than 100 electronic messages containing the same or similar subject-matter during a 24-hour period;

- (b) more than 1,000 electronic messages containing the same or similar subject-matter during a 30-day period; or
- (c) more than 10,000 electronic messages containing the same or similar subject-matter during a one-year period,

are transmitted by the same sender.

(2) The Minister may by order published in the *Gazette* vary the number of electronic messages specified in subsection (1)(a), (b) or (c).

[US Act s 4 inserting new s 1037 to Chapter 47 of title 18 of United States Code]

Application of Act

7.—(1) This Act shall not apply unless an electronic message has a Singapore link.

(2) For the purposes of subsection (1), an electronic message has a Singapore link in the following circumstances:

- (a) the message originates in Singapore;
- (b) the person who sent the message, or authorised the sending of the message, is —
 - (i) an individual who is physically present in Singapore when the message is sent; or
 - (ii) an entity whose central management and control is in Singapore when the message is sent;
- (c) the computer, mobile telephone, server or device that is used to access the message is located in Singapore;
- (d) the recipient of the message is —
 - (i) an individual who is physically present in Singapore when the message is accessed; or
 - (ii) an entity that carries on business or activities in Singapore when the message is accessed; or
- (e) if the message cannot be delivered because the relevant electronic address has ceased to exist, (assuming that the electronic address existed) it is reasonably likely that the message would have been accessed using a computer, mobile telephone, server or device located in Singapore.

(3) Notwithstanding subsection (1), this Act shall not apply to any electronic message specified in the Schedule.

(4) For the purposes of subsection (3), the Minister may by order published in the *Gazette* amend the Schedule.

[A'lia Act s 7 (modified)]

PART II

REQUIREMENTS FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

Application of Part II

8. This Part shall apply only to the transmission of unsolicited commercial electronic messages (referred to in this Part as unsolicited messages).

Unsubscribe facility

9.—(1) No person shall send, cause to be sent, or authorise the sending of, unsolicited messages in bulk unless —

- (a) each unsolicited message contains an electronic mail address, an Internet location address or a telephone number that a recipient may use to submit an unsubscribe request;
- (b) each unsolicited message contains a statement to the effect that a recipient may use the electronic mail address, Internet location address or telephone number provided in the unsolicited message to submit an unsubscribe request, or a statement to similar effect; and
- (c) the statement is presented —
 - (i) in a clear and conspicuous manner; and
 - (ii) in the English language and where the statement is presented in two or more languages, the English language shall be one of the languages.

(2) Where an electronic mail address, an Internet location address or a telephone number is provided in an unsolicited message for the purpose of enabling a recipient to submit an unsubscribe request, the sender of the unsolicited message shall ensure that the electronic mail address, Internet location address or telephone number —

- (a) is valid and capable of receiving —

- (i) the recipient's unsubscribe request (if any); and
- (ii) a reasonable number of similar unsubscribe requests sent by other recipients (if any),
at all times during a period of at least 30 days after the unsolicited message is sent;
- (b) is legitimately obtained; and
- (c) complies with such requirements as may be prescribed.

[A'lia Act s 18(1)(e), (f) and (g) (modified)]

(3) Where a recipient submits an unsubscribe request using the facility provided pursuant to subsections (1) and (2), the sender and the person who authorised the sending of the unsolicited message shall cease the sending of any further unsolicited messages within 10 business days from the day on which the unsubscribe request is submitted.

(4) Any person who receives an unsubscribe request under this section shall not disclose any information contained in the unsubscribe request to any other person, except with the consent of the person whose particulars are contained in the unsubscribe request.

(5) Subsections (1) and (2) shall not apply if the person sent the message, or caused the message to be sent, by mistake.

[A'lia Act s 18 (modified)]

Labelling and other requirements

10.—(1) No person shall send, cause to be sent, or authorise the sending of, unsolicited messages in bulk unless each unsolicited message contains —

- (a) a subject title that does not mislead the recipient as to the content of the message;
- (b) the letters “<ADV>“ with a space before the subject title to clearly identify that the message is an advertisement;
- (c) header information that is not false or misleading;
- (d) an accurate and functional electronic mail address or telephone number by which the sender can be readily contacted; and
- (e) such other matters as may be prescribed.

(2) Subsection (1) shall not apply if the person sent the message, or caused the message to be sent, by mistake.

[A'lia Act s 17(3)]

PART III

DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

Application of Part III

11. This Part shall apply to all electronic messages, whether or not they are unsolicited commercial electronic messages.

Use of dictionary attacks and address harvesting software

12. No person shall send, cause to be sent, or authorise the sending of, an electronic message to electronic addresses through the use of—

- (a) a dictionary attack; or
- (b) address harvesting software.

[new]

PART IV

CIVIL ACTION

Aiding, abetting, etc.

13.—(1) No person shall —

- (a) aid, abet, counsel or procure a contravention of section 9, 10 or 12;
- (b) induce, whether by threats, promises or otherwise, a contravention of section 9, 10 or 12;
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of section 9, 10 or 12; or
- (d) conspire with others to effect a contravention of section 9, 10 or 12.

[A'lia Act s 16(9)]

(2) A person does not contravene section 9, 10 or 12 merely because he provides, or operates facilities for, online services or network access, or provides services relating to, or provides connections for, the transmission or routing of data.

[Copyright Act s 193A(1)]

Civil action

14. Where electronic messages are transmitted to electronic addresses —

- (a) in contravention of any requirement in section 9 or 10; or
- (b) through the use of a dictionary attack or address harvesting software,

any recipient of the electronic messages or any person, who has suffered loss or damage as a result of any transmission of electronic messages, may commence an action in a court against —

- (i) the sender;
- (ii) the person who authorised the sending of the electronic messages; or
- (iii) the person referred to in section 13(1).

Injunction and damages for civil action

15.—(1) Subject to the provisions of this Act, in an action under section 14, the types of relief that the court may grant include the following:

- (a) an injunction (subject to such terms, if any, as the court thinks fit);
- (b) damages;
- (c) statutory damages under subsection (3).

[Trade Marks Act s 31(2)]

(2) The types of relief referred to in paragraphs (b) and (c) of subsection (1) are mutually exclusive.

[Trade Marks Act s 31(4)]

(3) In any action under section 14, the plaintiff shall be entitled, at his election, to —

- (a) damages in the amount of the loss or damage suffered by the plaintiff as a result of the transmission of electronic messages; or
- (b) statutory damages —
 - (i) not exceeding \$25 for each electronic message transmitted; and
 - (ii) not exceeding in the aggregate \$1 million, unless the plaintiff proves that his actual loss from such transmission exceeds \$1 million.

[Trade Marks Act s 31(5)]

(4) In awarding statutory damages under subsection (3)(b), the court shall have regard to —

- (a) any loss that the plaintiff has suffered or is likely to suffer by reason of the transmission of electronic messages;
- (b) any benefit shown to have accrued to the defendant by reason of the transmission of electronic messages;
- (c) the need to deter other similar instances of transmission of electronic messages; and
- (d) all other relevant matters.

[Trade Marks Act s 31(6)]

(5) The loss referred to in this section includes any pecuniary loss suffered as a result of the transmission of electronic messages.

Costs and expenses

16. In any proceedings under this Act, the court may, in addition to exercising the powers conferred by section 15, order the defendant to pay to the plaintiff the costs and expenses of and incidental to the proceedings, and any legal costs incurred in respect of the proceedings.

PART V

MISCELLANEOUS

Code of practice

17.—(1) Internet access service providers and telecommunications service providers may, with the approval of the Authority, issue a code of practice in connection with —

- (a) minimum standards of technical measures to effectively control the transmission of unsolicited commercial electronic messages; and
- (b) such other matters as the Authority may require.

(2) Every Internet access service provider and telecommunications service provider shall comply with any code of practice approved by the Authority under subsection (1), except that if any provision in any such code of practice is inconsistent with this Act, that provision shall not have effect to the extent of the inconsistency.

Regulations

18. The Minister may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

THE SCHEDULE

Section 7(3)

EXCLUDED ELECTRONIC MESSAGES

This Act does not apply to any electronic message where the sending of the message is authorised by the Government or a statutory body for a public purpose or statutory function.

EXPLANATORY STATEMENT

The object of this Bill is to control spam or unsolicited commercial communications transmitted by electronic mail or by text or multi-media messages to mobile telephones, and to provide for matters connected therewith.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 defines the term “commercial electronic message”.

Clause 4 defines the term “electronic message”.

Clause 5 defines the term “unsolicited”.

Clause 6 defines the term “transmission in bulk”.

Clause 7 sets out the scope of application of the Bill. Generally, the Bill applies to electronic messages with a Singapore link but does not apply to electronic messages specified in the Schedule.

PART II

REQUIREMENTS FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

Clause 8 provides that Part II of the Bill applies only to the transmission of unsolicited commercial electronic messages.

Clause 9 provides that unsolicited commercial electronic messages in bulk must not be sent unless certain requirements relating to the provision of an unsubscribe facility are satisfied. Each unsolicited commercial electronic message (“unsolicited message”) must contain an electronic mail address, an Internet location address or a telephone number that a recipient may use to submit an unsubscribe request. Each unsolicited message must also contain a statement informing a recipient that he may use the electronic mail address, Internet location address or telephone number provided in the message to submit an unsubscribe request, and the statement must be presented in a clear and conspicuous manner, and in the English language. If the statement is presented in more than one language, one of the languages must be the English language. Further, the sender must ensure that the electronic mail address, Internet location address or telephone number that is provided in an unsolicited message satisfies certain requirements. The clause also provides that paragraphs (1) and (2) of the clause do not apply to any unsolicited message sent by mistake. The clause further provides that where an unsubscribe request is submitted, the sending of any further unsolicited messages must cease within 10 business days from the day on which the unsubscribe request is submitted. In addition, the clause provides that any person who receives an unsubscribe request must not disclose any information contained in the unsubscribe request to any other person, unless the person whose particulars are contained in the unsubscribe request has consented to such disclosure.

Clause 10 provides that unsolicited commercial electronic messages must not be sent in bulk unless certain labelling and other requirements are satisfied. Each unsolicited commercial electronic message must contain a subject title that is not misleading, the letters “<ADV>” with a space before the subject title, header information that is not false or misleading, an accurate and functional electronic mail address or telephone number by which the sender can be readily contacted, and any prescribed matters. The clause does not apply to any unsolicited message sent by mistake.

PART III

DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

Clause 11 states that Part III of the Bill applies to all electronic messages, whether or not they are unsolicited commercial electronic messages.

Clause 12 prohibits the sending of electronic messages to electronic addresses through the use of a dictionary attack or address harvesting software.

PART IV

CIVIL ACTION

Clause 13 provides that no person shall aid, abet, counsel, procure, induce, be knowingly concerned in or a party to, or conspire with others to effect, a contravention of clause 9, 10 or 12. The clause also provides that a person does not contravene clause 9, 10 or 12 merely because he provides, or operates facilities for, online services or network access, or provides services relating to, or provides connections for, the transmission or routing of data.

Clause 14 confers a right on any recipient of electronic messages or any other person, who has suffered loss or damage from the transmission of electronic messages, to take civil action in a court against specified persons where the electronic messages are transmitted to electronic addresses in contravention of any requirement in clause 9 or 10 or through the use of a dictionary attack or address harvesting software.

Clause 15 provides for the types of relief that the court may grant in a civil action. These include an injunction, damages and statutory damages.

Clause 16 provides that the court may, in addition to exercising the powers conferred by clause 15, order the defendant to pay to the plaintiff the costs and expenses of and incidental to the proceedings, as well as any legal costs incurred in respect of the proceedings.

PART V

MISCELLANEOUS

Clause 17 provides that Internet access service providers and telecommunications service providers may issue a code of practice in connection with minimum standards of technical measures to effectively control the transmission of unsolicited commercial electronic messages and such other matters as the Info-communications Development Authority of Singapore (the Authority) may require. The clause also requires the code of practice to be issued with the approval of the Authority.

Clause 18 empowers the Minister to make regulations which are necessary or expedient for carrying out the purposes and provisions of the Bill and for prescribing anything that may be required or authorised to be prescribed by the Bill.

The Schedule provides that electronic messages, where the sending of the messages is authorised by the Government or a statutory body for a public purpose or statutory function, are excluded from the application of the Bill.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
