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ITU SURVEY ON ANTI-SPAM LEGISLATION WORLDWIDE

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2005

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All materials relating to this survey can be found at <http://www.itu.int/spam/> and will be updated regularly. Information related to the Cybersecurity WSIS Thematic Meeting in general can be found at <http://www.itu.int/cybersecurity/>.

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If you have any comments, or would like to provide any additional information, please contact the ITU Strategy and Policy Unit (SPU) at cristina.bueti@itu.int.

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1 INTRODUCTION

“Spam, spam, spam, spam”. The words of the Monty Python skit still give the impression that spam, or unsolicited commercial email, is simply a nuisance: junk emails sent to infiltrate user inboxes with messages aimed to promote products and services in order to turn a profit.

But today, spam is increasingly being viewed as a more serious messaging threat, as it is coming to be used to deliver worms, viruses, and Trojans as well as scams of more directly financial nature. Spammers often trick even the savviest of e-mail users into opening these messages.

For this reason, spam has been considered as an issue that affects every email user, and by extension, every computer user. The use of email as a ubiquitous tool that lies at the heart of the Information Society, and any threat to the use of email will undermine user trust and confidence in the Information Society.

From 28 June to 1 July 2005, a WSIS Thematic Meeting on Cybersecurity¹ will be held in Geneva, Switzerland. The meeting will specifically consider six broad themes in promoting international cooperative measures among governments, the private sector and other stakeholders, including information sharing of national approaches, good practices and guidelines; developing watch, warning and incident response capabilities; harmonizing national legal approaches and international legal coordination; technical standards; privacy, data and consumer protection; and providing assistance to developing economies.

The first day of the meeting will focus on countering spam as a follow-up to the ITU WSIS Thematic Meeting on Countering Spam, held in July 2004.

In preparation for the Meeting, the International Telecommunication Union has conducted a survey², which was sent to all 189 Member States.

The aim of the survey was to gather information on anti-spam legislation around the world, including details of the authorities responsible for anti-spam measures in each country.

This report represents a snapshot synthesis of responses received from ITU Member States.

2 ITU ACTIVITIES ON COUNTERING SPAM

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 to build confidence and security in the use of ICTs, there is a need to “take appropriate action at national and international levels” (WSIS Plan of Action, paragraph C5, d)³.

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 interest of ITU Member States in issues relating to spam was also highlighted during the recent ITU World Telecommunication Standardization Assembly (WTSA)⁴, 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

¹ See <http://www.itu.int/cybersecurity/>

² Questions related to spam have been added to the annual Telecommunication Regulatory Survey, which is sent to all 189 Member States by the Regulatory Reform Unit (RRU) of the ITU’s Development Sector (ITU-D). Initial 2005 survey results are expected by end July 2005.

³ See http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1161|1160.

⁴ See <http://www.itu.int/ITU-T/wtsa-04/index.asp>

first one, Resolution 51⁵ on Combating Spam, instructs the Directors of ITU's three Sectors and the Secretary-General urgently to prepare a report to the 2005 Council on relevant ITU and other international initiatives for countering spam⁶, 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 52⁷ on Countering spam by technical means, 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 necessary assistance from the Director of the Telecommunication Standardization Bureau, which will report on the subject to the ITU Council.

Considering its large membership, ITU is well positioned to create a platform to gather anti-spam laws worldwide, and to provide a list of competent enforcement authorities and their contact details.

In May 2004 the “Spam Laws and Authorities” website was created. It now contains data from more than 40 countries that have taken anti-spam measures, 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 each country.

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 international cooperation⁸ initiatives, providing information on the content and scope of new projects, making reference to and linking with the organizing/responsible entity, and maintaining 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, providing reliable information and data, and offering a platform to facilitate discussion and exchange of experiences.

In addition, in the framework of the “Countering Spam” initiative, ITU will hold the 6th annual Global Symposium for Regulators (GSR), which 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 its membership can cooperate in combating or limiting spam. This will be one of the four topics addressed by the GSR.

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

- The website 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>

⁵ See <http://www.itu.int/ITU-T/wtsa/resolutions.html>

⁶ The report is available to ITU Members at www.itu.int/Council.

⁷ See <http://www.itu.int/ITU-T/wtsa/resolutions.html>

⁸ See <http://www.itu.int/osg/spu/spam/intcoop.html>

3 WHAT IS ‘SPAM’?

Developing an accurate and useful definition of spam is more complicated than it might appear. In fact, the Working Group on Internet Governance (WGIG) notes in draft working paper⁹, “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”. (See Box 3.1)

Despite the confusion and disagreement on a precise definition there is a fairly widespread agreement that spam exhibits certain general characteristics.

Firstly, spam is an electronic message. (For most purposes, this may be restricted to e-mail, but other methods of delivering spam do exist, including the Short Messaging Service, or SMS, Voice over IP, mobile phone multimedia messaging services, instant messaging services).

Secondly, spam is unsolicited. If the recipient has agreed to accept a message, it is not spam. However, how and when such consent is given may not be clear, especially when a pre-existing relationship exists between the sender and recipient.

Thirdly, spam is sent in bulk. This implies that the sender distributes a large number of essentially identical messages and that recipients are chosen indiscriminately.

These three traits define Unsolicited Bulk E-mail (UBE). If a fourth is added - that spam must be of a commercial nature - the resulting class of messages is referred to as Unsolicited Commercial E-mail (UCE).

Box 3.1: What is ‘Spam’?

There is no international agreed definition of what is and what constitutes illegal spam. These are the definitions provided by Australia, European Union and United States.

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; while faxes and voice-to-voice telemarketing are excluded, no reference to bulk messaging - a single unsolicited commercial electronic message could be Spam.

European Union: term Spam is neither defined nor used, the term “electronic mail for the purposes of direct marketing” is used, judicial provisions are technically neutral: legislation includes Email, calling machines, faxes and SMS messages

United States: term Spam is neither defined nor used, a FTC-definition of a “Commercial Electronic Mail Message” exists, judicial provisions not limited to Email: inclusion of mobile Spam subject to implementation (Action by the Federal Communications Commission on mobile Spam)

Note: Australia: Spam Act 2003, Sect. 5, EU:Dir. 2002/58/EC Art 12 (1), USA:

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

4 THE COST OF ‘SPAM’

It is not the listing of the problems that spam creates which is important but the reasons behind its existence. Spam has become a serious problem because it is profitable and can be almost completely anonymous. Spammers are polluting a common resource (e-mail) for their own short-term profit and are protected from being held accountable for their behavior because of the difficulty of identifying them with the consequence that the concern about spam is growing and is well founded.

Spam has negative impacts for consumers, businesses, Internet Service Providers (ISPs), legitimate e-mail marketers and virtually anyone else who uses e-mail for any reason. Consumers are deluged daily with

⁹ <http://www.wgig.org/docs/WP-Spam.pdf>

mailboxes full of messages for online prescriptions, low interest loans, or the latest weight loss product, some email messages are just simply annoying, while others border on the offensive or illegal.

Another consumer concern is the growing practice of phishing. (See Fig. 4.1) Phishing refers to a type of spam that uses e-mails and websites designed to resemble those of legitimate organizations (such as banks, ISPs, or government agency) to trick recipients into disclosing sensitive information like Social Security numbers, credit card numbers and bank account information.

Businesses face reduced worker productivity and increased information technology costs as users delete spam from their mailboxes and system administrators struggle to limit its effects on corporate servers.

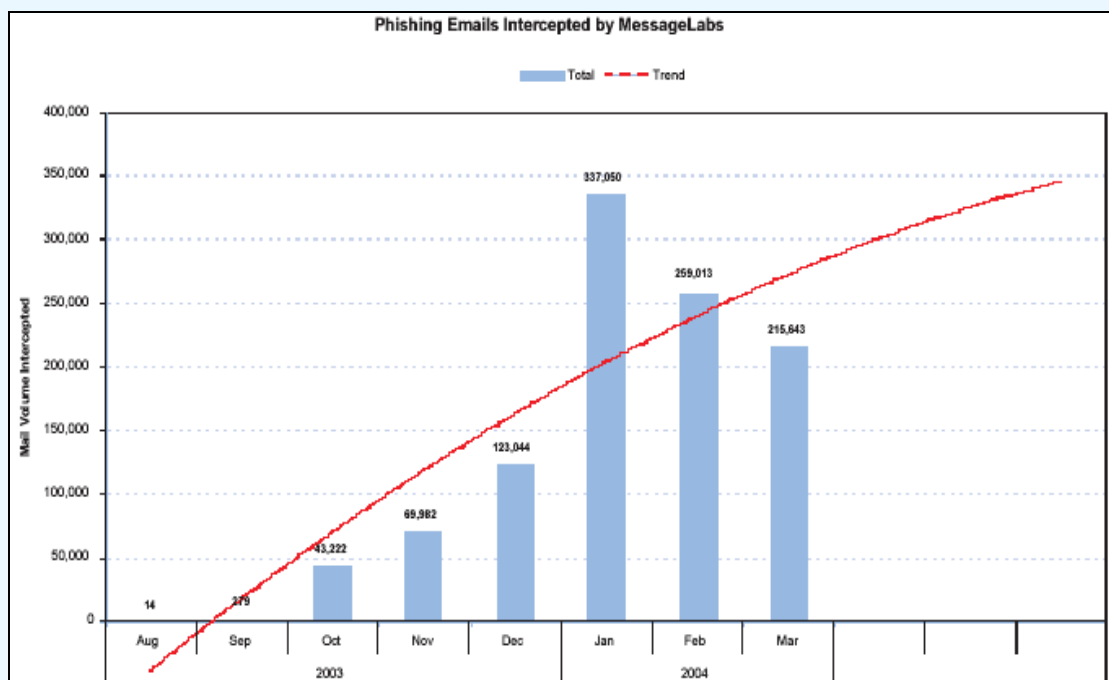
Spam results in higher costs for Internet Service Providers with reduced bandwidth, increased storage and personnel costs as well as complaints and possible loss of reputation from clients.

Legitimate email marketers are burdened with adjusting and readjusting their business practices to comply with changing regulations, as well as being associated with spammers. As this analysis demonstrates, spam poses a wide range of problems. It is a productivity problem, costing businesses and ISPs billions of dollars. It is a fraud and identity theft problem to the tune of billions of dollars.

For this reason, most governments have taken steps of enacting anti-spam legislations.

Figure 4.1: Phishing Emails intercepted

The Chart shows the number of phishing emails intercepted between 2003 and 2004.



Source: MessageLabs

5 THE NEED FOR ANTI-SPAM LEGISLATION

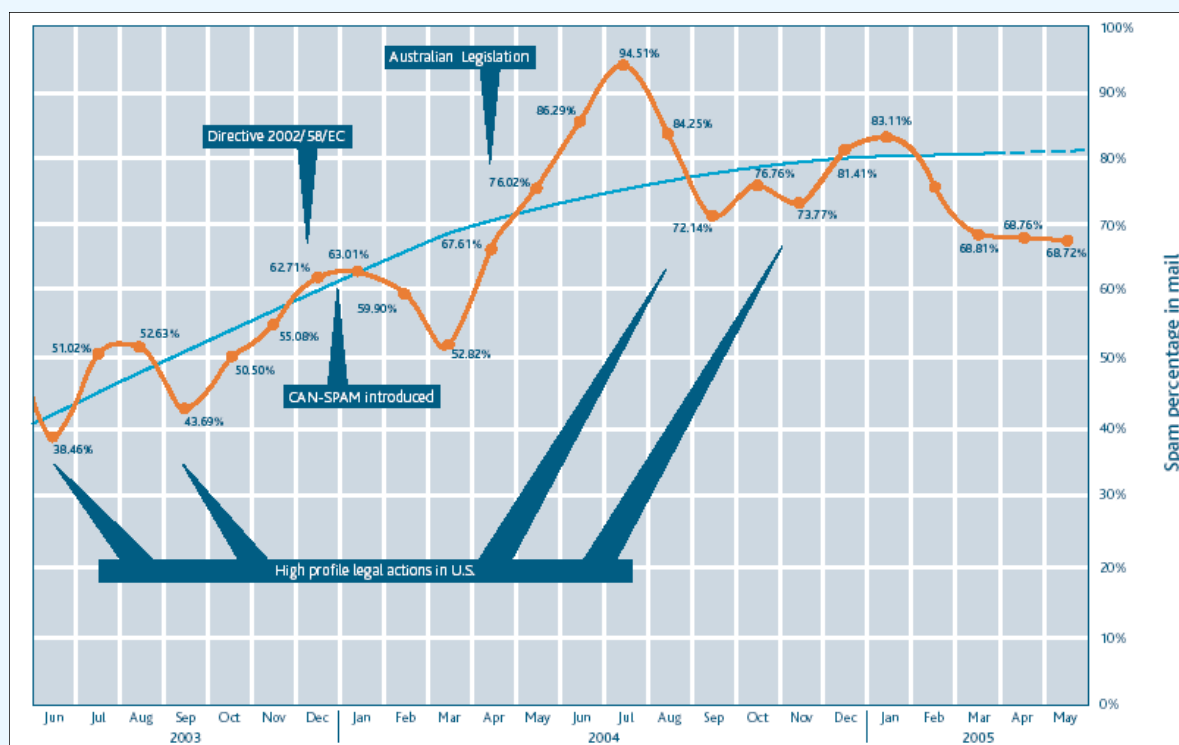
Spammers clearly cannot be stopped easily; consequently, governments across the world started to realize this, and have begun to intervene in the spam war.

Since the enactment of the first anti-spam law in 1997, spam has grown from a mere nuisance into a global plague. The intention of such all laws has been to empower action against spammers in order to stop the problem at its source and, thereby, to substantially reduce the amount of spam clogging networks and irritating corporate users and consumers.

As the volume of spam increased in recent years, so did the number of spam laws across the world. However, while the laws proposed to combat spam were put forth with good intentions they are not actually addressing the problem in a substantive way.

In 1997, the average e-mail user received was approximately one unsolicited commercial e-mail message per week, today according to MessageLabs accounts for a large portion of all electronic mail traffic.

Figure 5.1: Percentage of worldwide internet email identified as spam



Source: MessageLabs

6 ITU SURVEY OF ANTI-SPAM LEGISLATION AND AUTHORITIES WORLDWIDE

6.1 Survey Results

The following section provides the responses to the survey recently conducted on anti-spam laws worldwide.

The survey constitutes a brief introduction explaining the national anti-spam legislation of each country, their participation in international anti-spam activities, the relevant laws and the authority responsible for dealing with complaints. The embedded web links in the electronic version of this document, together with the contact information, provide a portal to obtain a much more complete set of information.

The Survey was sent to 189 Member States and fifty eight responses have been received from the following countries:

Argentina

In 2001, anti-spam legislation (“[Anteproyecto de Ley de Regulación de las Comunicaciones Publicitarias por Correo Electrónico](#)”) was proposed and in November 2003, the Federal Court heard its first spam case. The judge issued an injunction relying on the [2000 Personal Data Protection Act](#), in particular its Article No. 25, under which the accused spammer was ordered to stop sending e-mails after an opt-out was requested. Under other sections of the Act, the spammer was also ordered not to give the addresses to a third party. When spammers are convicted, the final sentence must be communicated to the [National Direction for Personal Data Protection \(DNPDP\)](#). The DNPDP is the authority in charge of Data Protection within the Ministry of Justice; the National Directorate for the Protection of Personal Data. In 2004, the national legislator introduced a new Bill in Congress, allowing the government to block IP and cancel domain names of spammers. The Bill proposes an opt-out system (“Proyecto de ley para regular el Spam en Argentina” of 11 May 2004).

Laws:

- [Argentine Constitution, Section 43](#)
- [Decree 995/2000](#).
- [Decree 1558/2001](#)
- [Data Protection infringements and penalties. 1/2003](#)
- [Data Protection Law N. 25.326](#). Section 27 gives people s right to opt-out from receiving unsolicited commercial messages (including e-mails).

International Cooperation:

- The European Commission: Article 29 Data Protection Working Part [Opinion 4/2002](#) on the adequate level of protection of personal data in Argentina.
- The European Commission [Decision C\(2003\) 1731](#) on adequate protection of personal data in Argentina.
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: National Directorate for Personal Data Protection (Dirección Nacional de Protección de Datos Personales, DNPDP)

Website: <http://www.jus.gov.ar/>

Email: infodnppd@jus.gov.ar

Postal address: Sarmiento 329 4º piso (anexo), (C1041AAG) Ciudad Autónoma de Buenos Aires.

Telephone number: +54 11 4394-2786

Armenia

There is no specific anti-spam legislation in Armenia, however the Law on Personal Data deals with some aspects of spam.

Laws:

- Law on Personal Data

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Ministry of Transportation and Communication

Website: <http://mtc.am>

E-mail: it@mtc.am

Telephone number: + 347 1052 6630

Australia

Australia's anti-spam legislation came into effect on 10 April 2004. The Australian Communications Authority (ACA) is responsible for implementing and enforcing the Spam Act 2003 and the Spam (Consequential Amendments) Act 2003 and has the authority to pursue a number of enforcement options, from issuing warnings and infringement notices, to pursuing court action. A court finding that a contravention of the Act has taken place can order offenders to surrender financial gains, compensate victims and pay penalties of up to A\$1.1 million per day. Two separate industry codes of practice - one for the e-marketing industry and one for the ISP industry - are also being developed to complement the Spam Act. The operation of the Act will be reviewed within two years of its commencement.

As of 1 July 2005, the Australian Communications Authority (ACA) will merge with the Australian Broadcasting Authority (ABA) to form the Australian Communications and Media Authority (ACMA).

Regime: Opt-in

Laws:

- [Spam Act 2003](#)
- [Spam \(consequential amendments\) Act 2003 No. 130, 2003](#)
- [Spam Regulations 2004 No. 56 - List of Regulations](#)

International Cooperation:

- [Bilateral Cooperation: The Australia-Republic of Korea Memorandum of Understanding \(MoU\) concerning the regulation of spam](#)
- [Seoul-Melbourne Multilateral Memorandum of Understanding on Cooperation in Countering Spam](#)
- [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.](#)
- [Multilateral cooperation: The Australia, United Kingdom, United States Memorandum of Understanding \(MoU\) on mutual enforcement assistance in commercial e-mail matters](#)
- [Operation secure your server](#)
- [London Action Plan](#)
- [Operation Spam Zombie](#)
- [Seoul-Melbourne Anti-Spam Agreement Enlarged](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Australia Communication Authority](#)

Website: <http://www.aca.gov.au/> - www.acma.gov.au also www.spam.acma.gov.au

E-mail: https://www.aca.gov.au/secure/complaint_form.htm - anthony.wing@aca.gov.au

Postal address: PO Box 13112, Law Courts, Melbourne VIC 8010, Australia

Telephone number: +61 3 9963 6953

Austria

Austria has already implemented the European Directive 2002/58/EC.

The Federal Ministry for Transport, Innovation and Technology, Division III, Supreme Telecommunications Authority, is the authority responsible for the legal basis in the field of telecommunications, which also covers the anti-spam rules incorporated in the TKG 2003 (Telecommunications Act) (especially §107). The Act, implementing Directive 2002/58/EC, adopts the soft opt-in regime.

Enforcement agencies are the four regional telecommunications offices (according to § 113 TKG). They have to handle and investigate every complaint they receive in accordance with the Austrian administrative criminal law and the Telecommunications act. (Administrative penalties up to 37'000 EUR according to § 109 TKG). Besides the Telecommunications act 2003 there is the general data protection act dealing with general issues of data protection as well as the Austrian e-commerce Act which also contains provisions concerning commercial communication (Section 6 -information on commercial communications, Section 7 -unsolicited commercial communications, "do not spam list", Section 8 -commercial communications for regulated professions).

Laws:

- TKG 2003 ([Telecommunications Act](#)) (especially §107) – Under the following link you can find a non binding English translation of the Austrian Telecommunications Act.
- Besides the Telecommunications act 2003 there is the general data protection act dealing with general issues of data protection as well as the Austrian e-commerce Act which also contains provisions concerning commercial communication (Section 6 -information on commercial communications, Section 7 -unsolicited commercial communications, "do not spam list", Section 8 -commercial communications for regulated professions).

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Federal Ministry for Transport, Innovation and Technology

Website www.bmvit.gv.at

Email opfb@bmvit.gv.at

Postal address: A-1030 Vienna, Ghegastraße 1

Telephone number: + 43 179 731 / 4111:

Name of the Authority: Supreme Telecommunications Authority, Division III/PT2 (Regarding Spam policy and cross-border enforcement)- 4 Regional Telecommunications Offices, but primarily the office for Vienna, Lower Austria and Burgenland.

E-mail: fb.wien@bmvit.gv.at

Telephone number: +43 1 331 81 / 100

Belgium

At the end of 2002, Belgium opened a spam mailbox (*boîte à spam*) in which the unsolicited commercial e-mails spontaneously forwarded by Belgian Internet users were stored; the project ran for three months. In July 2003, the Privacy Protection Commission released a study on "spam," which makes a detailed assessment of the phenomenon of spam in Belgium. Amongst the more interesting findings was the fact that the majority of the e-mails were being sent from outside Belgium – in particular the United States. The report details the measures taken to combat illegal spam and outlines spammers' obligations under the Data Protection Act of 1998, as well as providing legal and practical advice for data subjects receiving unsolicited commercial e-mails. Since 2003, the use of e-mails for marketing purposes is prohibited unless the prior, free, specific and informed consent of the recipients is given; this is in compliance with the EU Directive on Electronic Commerce, transposed by the Law of 11 March 2003 and also with the EU Electronic Communications and Privacy Directive.

Laws:

- Commission de la protection de la vie privée, Le spam en Belgique - Etat des lieux en juillet 2003, July 4, 2003, available at http://www.privacy.fgov.be/publications/spam_4-7-03_fr.pdf.

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Privacy Protection Commission

Website: www.privacy.fgov.be

Concerning e-mails violating privacy:

Commission de la Protection de la Vie Privée

139 Rue Haute 1000 Bruxelles

Tel: + 32 2 213 85 40

Fax: +32 2 542 72.01

E-mail : commission@privacy.fgov.be

Name of the Authority: Direction Générale du Contrôle et de la Médiation

www.mineco.fgov.be/redir_new.asp?loc=/protection_consumer/complaints/complaints_fr_001.htm

Concerning unsolicited commercial e-mail:

Service Public Fédéral Economie, PME, Classes Moyennes et Energie

Direction générale du Contrôle et de la Médiation

Blvd Simon Bolivar, 30

1000 Brussels

Tel: +32 2 208 36 11

Fax: +32 2 208 39 15

E-mail: eco.inspec@mineco.fgov.be

Brazil

In order to propose a national strategy to fight spam and articulate a set of actions capable of involving the diverse relevant actors in the solution of this problem, the Brazilian Internet Steering Committee (*) created the Task Force on Spam (CT-SPAM).

The specific goals of the CT-SPAM are:

- To recommend technical procedures to fight spam;
- To provide the different actors with information about spam;
- To recommend codes of conduct for businesses, users and network administrators;
- To recommend bills to the congress;
- To participate in an international discussion about the issue.

The Brazilian Internet Steering Committee was established by the Interministerial Ordinance 147 of 31 May 1995, with the purpose to promote the society's involvement in decisions about Internet implementation, management and use in Brazil. The goals of the entity are to promote technical quality, innovation and dissemination of the offered services, to assure fair and free competition and to guarantee the maintenance of appropriate conduct standards by users and providers.

Laws:

- There is no specific law in Brasil to deal with spam. There are criminal , civil , anti competition and pro consumer laws which could be used also against spam.

International Cooperation:

- Representatives from Brazilian Internet Steering Committee and Anatel (Agencia Nacional de Telecomunicações) participate in ITU, OECD and WSIS activities related to spam.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Comitê Gestor da Internet no Brasil

Website: www.cgi.br

Email: mail-abuse@cert.br

Postal address: Av Nações Unidas, 11541 , 7 andar, CEP 04578-000 , São Paulo, SP , Brasil

Telephone number: + 55 1135093511

Bulgaria

No explicit regulation for unsolicited e-mail exists, although some provisions of the Personal Data Protection Act deal with certain aspects of spam. Unsolicited e-mail is not subject to legal regulation in Bulgaria. Relatively recently, a set of computer crimes were recognized in the Criminal Code but the spam was left outside of these felonies. With regard to the EU Directives dealing with spam and the obligations assumed under the European Association Agreement between the EU and Bulgaria, it is most likely that the opt-in approach will be introduced. Spammers can be pursued only through civil litigation. Up to now, no case of successful proof of sustained damages as a result of spam had been reported. In some instances, the employer can punish the employee if acting inappropriately when sending spam. The body responsible for spam issue is the Ministry of Transport and Communications. Bulgaria has an opt-in data protection law (Personal Data Protection Act).

Laws:

- Personal Data Protection Act

International Cooperation:

- [Operation secure your server](#)
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Ministry of Transport and Communications

Website: <http://www.mtc.government.bg/indexe.htm>

E-mail: kzld@government.bg

Postal address: ICT Development Agency, MTC Sofia 1000, 6 Gourko Str.

Telephone number: +359 2 9492151

Fax: +359 2 9492277

Burkina Faso

There have been several draft laws proposed, but at present there is no anti-spam legislation in Burkina Faso.

Nonetheless, Burkina Faso is involved in several international activities in the fight against spam.

- None

International Cooperation:

- ICANN
- AFRINIC
- CAPTEF

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority

Website: www.delgi.gov.bf, www.onatel.bf

Email: badiel@onatel

Telephone number: + 226 50 33 40 01

Canada

Canada has not enacted any spam-specific legislation, but is currently examining the need for it, based on the effectiveness of existing measures available in various statutes, including the Competition Act, the Personal Information Protection and Electronic Documents Act (PIPEDA) and the Criminal Code of Canada. Those statutes include some, although not all, of the measures that are generally available in spam-specific legislation

The Competition Bureau can take action on spam that includes information that is false or misleading in a material respect, and both civil and criminal processes are available under the Competition Act.

The Office of the Privacy Commissioner of Canada can address the use or collection of personal information without consent, as well as failure to respect opt-out requests. An application can also be made to the Federal Court of Canada, either by the Office of the Privacy Commissioner of Canada or by complainants, for damages arising from a breach of PIPEDA.

The Criminal Code of Canada can address spam involving fraud or other illegal activities, and also includes provisions prohibiting the unauthorized use or abuse of computers.

Canada, arguably, has an opt-in regime, pursuant to the requirements of PIPEDA, which requires commercial bulk emailers who establish or acquire lists of email addresses to ensure that their recipients have given some form of consent to receive commercial solicitation. Email addresses can only be used for the purpose for which they are collected, and can only be put to secondary uses if the owners of these email addresses consent. While PIPEDA was not designed to address spam, it has, in this way, effectively established an opt-in regime in Canada. Furthermore, PIPEDA requires that unsubscribe functions be operative and respected in such emails.

In May 2004, the Economic Development Agency of Canada for the Regions of Quebec launched an [Anti-Spam Action Plan](#) and announced the creation of a ministerial task with the [Electronic Commerce Branch of Industry Canada](#) to combat spam.

In May 2005 the Task Force released the [final report](#).

Laws:

- [Privacy Act 1980-81-82-83, c. 111, Sch. II "1"](#)
- [Personal Information Protection and Electronic Documents Act \(PIPEDA\)](#)
- [Competition Act, R.S. 1985, c. C-34, s. 74.01](#)
- Criminal Code of Canada

International Cooperation:

- [Operation secure your server](#)
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [The Privacy Commissioner of Canada](#)

Website: www.privcom.gc.ca

E-mail: info@privcom.gc.ca

Postal address: 112 Kent Street, Place de Ville, Tower B, 3rd Floor, Ottawa, Ontario, K1A 1H3.

Telephone number: + 613 995 8210

Fax: +613 947 6850

Chile

There is no anti-spam enforcement authority in Chile. However, on 29 June 2004, a new consumer protection law (19.955) was enacted. This law addresses the issues of spam and unsolicited commercial communications and established an opt-out system. Regime: opt-out

Laws:

- [Ley 19.496](#)
- [Ley 19.628](#)

International Cooperation:

- [International Consumer Protection and Enforcement Network \(ICPEN\)](#)
- [Operation secure your server](#)
- [London Action Plan](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Servicio Nacional del Consumidor

Website: <http://www.sernac.cl/index.asp>

Postal address: Teatinos 50 - Santiago - Chile

Telephone number: + 600 500 4000

China

China has implemented anti-spam legislation recently. The law is currently being discussed by the Ministry of Information Industry (MII). It prohibits sending e-mail with false or materially misleading information, relaying e-mail without authorization, gathering e-mail addresses illegally.

The [Internet Society of China](#), a quasi-governmental organization, whose members include the largest ISPs in the country, established a list of standards to which its members must adhere, if they are to provide public e-mail services. Furthermore, the ISC held an anti-spam forum in September 2004 to discuss future anti-spam strategies in China; the Forum included participants from governments, private sector and international organizations. A [Memorandum of Understanding between the ISC, America Online \(AOL\), eBay, Microsoft and Yahoo](#) was signed at the end of the meeting. This instrument should facilitate cooperation between China and the US providers, and help to reduce the amount of spam sent out by Chinese servers to both Chinese and foreign Internet users.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Ministry of Information Industry

Website: <http://www.mii.gov.cn/>

Colombia

In Colombia there are no specific anti-spam regulations; instead, Colombia uses the constitutional right of *Habeas Data*, which protects privacy and data. *Habeas Data* was codified in the Colombian constitution in 1997, giving users the right to control data about themselves. In 2003, a court ruled that Colombians have a constitutional right to opt out of spamming lists and to have their data protected. In 2004, the national legislator introduced a new bill in Congress, which proposes an opt-out system. (Proyecto de ley 142/04S para regular el spam en Colombia of 20 October 2004)

Laws:

- Proyecto de Ley N.142/04S por medio de la cual se regula el uso del correo electronico comercial no solicitado (spam) y se dictan otras disposiciones

International Cooperation

- [Operation secure your server](#)
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Superintendencia de Industria Y Comercio

Website: <http://www.sic.gov.co/>

E-mail: [SIC Complaint Form](#)

Costa Rica

Currently there is no anti-spam enforcement authority in Costa Rica. However, on 14 May 2002, the government-owned ISP, RACSA, has issued a specific ruling on spam that regulates messages generated within its domain, racsaco.cr. This applies to all its customers, who comprise around 80 per cent of Costa Rica's Internet users. The ruling addresses the issues of spam and unsolicited commercial communications, and establishes an opt-in/opt-out system. It includes penalties that range from the spammer signing a formal commitment to stop all spam, all the way up to the permanent closure of the Internet account. The actions taken under this ruling have reduced the amount of spam generated in Costa Rica to a negligible level.

RACSA has been taken to court (the Constitutional Court) for the application of the anti-spam ruling; with the charge that they hindered free trade commercial activities, and twice the Court has ruled in favour of RACSA's actions.

Laws:

- Anti-spam ruling: *Reglamento Autónomo De Servicio Para La Regulación Del Correo Electrónico Masivo O No Deseado*
- See: http://www.racsaco.cr/consejos_navegacion/consejos/peligros/reglamentospam/index.html

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: (ISP) Radiográfica Costarricense, S. A. (RACSA)

Website: <http://www.racsaco.cr>

E-mail: abuse@racsaco.cr

Postal address: Apartado Postal 54, 1000 San José, Costa Rica

Telephone number: + 506 287 0402

Cyprus

The ISPs in Cyprus agreed to cooperate with the Personal Data Protection Commissioner, which is the national authority for spam enforcement in Cyprus, in order to fight spam by reporting to the Commissioner about spammers that repeatedly send spam.

Laws:

- Section 06 of the Regulation of Electronic Communications and Postal Services Law of 2004 (Law 12 (I) / 2004 deals with unsolicited communications (spam)
www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/index_en/index_en?opendocument
- Legislation on the Protection of Personal Data
- Processing of Personal Data (Protection of the Individual) Law of 2001, and its amendment (Law No. 37(I)/2003)

International cooperation:

- [Operation Spam Zombie](#)
- EU's Contact Network of Spam Enforcement Authorities (CNSA) Authorities (CNSA) - Cyprus agreed to take part in the *cooperation procedure concerning the transmission of complaint information and intelligence relevant to the enforcement of article 13 of the privacy and electronic communication directive 2002/58/EC, or any other applicable national law pertaining to the use of unsolicited electronic communications* that was prepared by the Contact Network of Spam Authorities (CNSA).

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Office of the Commissioner for Personal Data Protection

Website: www.dataprotection.gov.cy

E-mail: commissioner@dataprotection.gov.cy

Postal address: 40, Themistokli Dervi str., Natassa Court, 3rd floor, 1066 Nicosia, P.O. Box 23378, 1682 Nicosia

Telephone number: + 357 22818456

Fax: + 357 22304565

Czech Republic

The Czech Republic has enacted a law aimed at ending unsolicited commercial e-mail and mobile phone text message marketing (Spam). The new law “Act N. 480/2004 on Certain Information Society Services” came into effect on September 2004 and transposes most of the rules of the Directive 2000/31/EEC on Certain Legal Aspects of electronic commerce in the Internal Market and partly also the Directive 2002/58/Eec, i.e. The Data protection Directive for Electronic Communication.

The law allows the Office for Personal Data Protection to impose fines of up to 10 million crowns (approx. US 394,000) for sending spam. The law applies only to Czech spammers, not to international spam distributors.

The law mandates an opt-in system, so commercial e-mail may only be sent to Czech residents after giving their express consent. The new law does not limit communication between businesses. The only requirement is that the recipients have to agree-either by e-mail or in writing (for example at the time of a purchase of some goods)-to receive messages and that they have a chance to opt out any time they wish, without cost. The law does not limit the forwarding of e-mail messages between consenting parties, so long as the message has specific content directed at a specific recipient to whom the sender has chosen to add another message. Regime: opt-in

Laws:

- Act No. 480/2004 Coll., on Certain Information Society Services
- Act No. 127/2005 Coll., on Electronic Communications (with indirect relevance to spam)

International cooperation:

- EU’s Contact Network of Spam Enforcement Authorities (CNSA)
- International Working Group on Data Protection in Telecommunications (“Berlin group”)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: The Office for Personal Data Protection

Website: www.uoou.cz

E-mail: info@uoou.cz

Postal address: Pplk. Sochora 27, 170 00, Praha 7, Czech Republic

Telephone number: + 420 234 665 111

Fax: + 420 234 665 444

Denmark

The [Danish Consumer Ombudsman](#) is the authority responsible for the enforcement of anti-spam rules incorporated into the [Danish Marketing Practices Act](#). The Act, implementing Directive 2002/58/EC, adopts the soft opt-in regime (see page on [European Union anti-spam legislation](#)).

Laws:

- [Danish Marketing Practices Act](#)

International cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- [Operation Spam Zombie](#)
- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Danish Consumer Ombudsman

Website: www.consumerombudsman.dk

E-mail: forbrugerombudsmanden@fs.dk

Postal address: Amagerfælledvej 56, 2300 Copenhagen S

Telephone number: + 45 32 66 90 00

Name of the Authority: Ministry of Science, Technology and Innovation

Website: www.vtu.dk

E-mail: tpk-post@vtu.dk

Postal address: Bredgade 43, 2100 Copenhagen Oe

Telephone number: + 45 33 92 97 00

Estonia

Anti-spam rules in Estonia are incorporated in the Information Society Service Act, which entered into force on 1 May 2004. Its provisions have been harmonized with the Directive on electronic commerce 2000/31/EC and it complies with Directive 2002/58/EC.

The supervision of compliance with the requirements provided for in this Act regarding the information that must be provided concerning service providers, for commercial communications and transmission, shall be exercised by the Communications Board and the Data Protection Inspectorate, within the limits of their competence.

The Estonian National Communications Board (ENCB) is a government agency established by law, which operates within the governmental area of the Ministry of Economic Affairs; it has a directing function, exercises state supervision and applies the enforcement powers of the state on the basis of, and to the extent prescribed by, the law. The main tasks of the ENCB include the promotion of business competition in the fields of telecommunication and postal services; ensuring the quality of telecommunications and postal services through regulation; planning and ensuring the rational use of the limited resources (radio frequencies and numbering); and performing surveillance of the companies operating in the fields of telecommunications and postal services. The main activities of ENCB proceed from different legislative acts: Telecommunications Act, Postal Act, Cable Distribution Act, Digital Signatures Act and Broadcasting Act.

Estonian Data Protection Inspectorate (EDPI) is a government agency established by law, which operates within the governmental area of the Ministry of the Interior. The data protection supervision authority shall monitor observance of the requirements of Personal Data Protection Act and legislation established on the basis thereof. The Court has the final decision in conviction.

Laws:

- [Unsolicited commercial communication is regulated by the *Information Society Service Act*](#)
- [Personal Data protection Act](#)
- [Law of Obligations Act](#)
- [Consumer Protection Act](#)
- [Penal Code](#)
- [Telecommunications Act](#)

International Cooperation:

- [A report on the current status of data protection legislation in the enlarged European Union](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Estonian National Communications Board (ENCB)

Website: <http://www.sa.ee/atp/eng/index.html?id=481>

E-mail: postbox@sa.ee

Telephone number: + 372 693 1154

Fax: +372 693 1155

Name of the Authority: Estonian Data Protection Inspectorate (EDPI)

Website: <http://www.dp.gov.ee/?lang=en>

European Union

The European Commission (EC) has identified a number of directives that are relevant in regulating spam. The Directorate General Information Society is responsible for the implementation of the following legislation, whilst enforcement is the responsibility of each Member State.

Laws:

- [E-Privacy Directive: Directive 2002/58/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector, 2002 O.J. \(L 201\) 37](#)
- [E-Commerce Directive: Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market, 2000 O.J. \(L 178\) 1](#)
- [Telecommunications Privacy Directive: Directive 97/66/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector, 1998 O.J. \(L 024\) 1](#) (repealed and replaced by Directive 2002/58/EC)
- [Distance Contracts Directive: Directive 97/7/EC on the Protection of Consumers in Respect of Distance Contracts, 1997 O.J. \(L 144\) 19](#)
- [Data Protection Directive: Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. \(L 281\) 31](#)

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- [Commissioner Liikanen's "Opening remarks at the OECD workshop on spam" OECD Workshop on Spam.](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Directorate General Information Society: Privacy and Spam](#)

Website: http://europa.eu.int/information_society/index_en.htm

Finland

The Act on the Protection of Privacy in Electronic Communications (PPEC 516/2004), which implements Directive (2002/58/EC) of the European Parliament and of the Council concerning the processing of personal data and on the protection of privacy in the electronic communications sector, regulates direct marketing and service providers actions to control the spam problem in Finland.

According to the Act on Data Protection in Electronic Communications, there are two different enforcement agencies responsible for its enforcement in their own fields: the Data Protection Ombudsman and the Finnish Communications Regulatory Authority.

The Data Protection Ombudsman is the enforcement agency for the direct marketing regulations, which requires prior consent for the use of electronic communication in direct marketing and in general personal data processing needed in this kind of communications.

The Finnish Communications Regulatory Authority supervises the telecommunications operators and corporate and association subscribers related to technical measures concerning the information security and protection of privacy of the communications networks and services.

According to Consumer Protection Act (38/1978), the Finnish Consumer Agency (www.kuluttajavirasto.fi) and the Ombudsman supervise illegal marketing to consumers. The Finnish Communications Regulatory Authority has issued a [regulation on the information security and functioning of electronic mail services](#) and a [recommendation](#) of its implementation based on the Act on the Protection of Privacy in Electronic Communications. This regulation specifies the measures required from Internet- and e-mail service providers to ensure the availability and information security of their services.

Laws:

- [Communications Market Act](#) (393/2003)
- [The Act on the Protection of Privacy on Electronic Communications](#) (516/2004)

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- [London Action Plan](#)
- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: The Data Protection Ombudsman

Website: www.tietosuoja.fi

Name of the Authority: The Finnish Communications Regulatory Authority

Website: www.ficora.fi

France

The [Direction du Développement des Médias](#) (DDM) - under the authority of the Office of the French Prime Minister - is in charge of regulatory reform in the field of communication and online services. The DDM provides several [documents, as well as information regarding anti-spam legislation and activities](#): and in July 2003, it established a [Contact Group](#) to fight spam.

The competent enforcement agency is the [Commission Nationale de l'Informatique et des Libertés](#) (CNIL), an independent administrative agency, which enforces the Data Protection Act enacted in 1978 and other related laws. In July 2002, the Commission created the [Spam Mailbox](#), a reporting mechanism for spam e-mails, to help combat this scourge.

Another body involved in the fight against spam is the [Générale de la Concurrence, de la Consommation et de la Répression des Fraudes \(DGCCRF\)](#), which deals with fraud and scams perpetrated through spam messages. However, to date, the DGCCRF has not taken any concrete action in this area. Regime: Opt-in.

Laws:

- [Loi 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.](#)
- [Loi pour la confiance dans l'économie numérique, Décision n° 2004-496 DC du 10 juin 2004](#)
- [Convention 108](#)
- [Directive européenne 2002/58/CE du 12 juillet 2002](#)
- [Deliberation n. 02- 075 du 24 Octobre 2002 portant dénonciation au parquet d' infractions a la loi du 6 Janvier 1978.](#)

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- CAPTEF (Conférence des administrations des postes et des télécommunications d'expression française) - http://www.ddm.gouv.fr/IMG/pdf/captef_decla.pdf

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Commission Nationale de l'informatique et des Libertés (CNIL) –

Website: <http://www.cnil.fr/index.php?id=1024>

Postal address: 21 rue Saint-Guillaume, 7, 5007 Paris.

Telephone number: + 33 1 53 73 22 70

Name of the Authority: Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF)

Website: www.finances.gouv.fr/DGCCRF

Postal address: DGCCRF, Bureau C1, Droit de la consommation, télédéc 05159 Boulevard Vincent Auriol, F-75703 Paris Cedex 13

Germany

Germany has implemented the “opt-in” principle stipulated by the EC Directive on Privacy and Electronic Communication (2002/58/EC) in the German Law against Unfair Competition (UWG). However, this only allows for civil rights complaints of competitors; ISPs have no independent right to file complaints; and users must file their spam complaints through consumer protection associations. A draft law was proposed in February 2005 and is still pending in Parliament. The proposed law, which will have its first reading in the lower house in July 2005, is an extension of the [Tele-services Act](#) <http://bundesrecht.juris.de/bundesrecht/tdg/inhalt.html> (*Gesetz über die Nutzung von Telediensten*). The new Section 7 paragraph 3 of the TDG requires e-mail marketers to use a valid sender’s address and headers that indicate that the e-mail is intended for commercial purposes. Cases of concealment and falsification of IP addresses will be considered illegal in Germany. Spammers that use a re-mailer to make the e-mail anonymous can also expect heavy fines.

Laws:

- Art. 7 German Unfair Competition Law (Gesetz gegen Unlauteren Wettbewerb) (UWG) http://bundesrecht.juris.de/bundesrecht/uwg_2004/index.html
Art. 202a, 263, 303a, 303b of the German Criminal Code
- Art. 6 of the German Law regarding Information Society Services
- Art. 28 Par. 4 of the German Data Protection Act

International Cooperation:

- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

No public agency is responsible for the enforcement of Article 7 of the Unfair Competition Law (Art. 8 par. 3 UWG specifies the parties that can bring suit under the law). Organisations who can sue spammers are:

- Association of the German Internet Economy (eco) - www.eco.de
- Federation of German Consumer Associations (vzbv) - www.vzbv.de/go/english.index.html
- Agency to Combat Unfair Competition (Wettbewerbszentrale) - www.wettbewerbszentrale.de

Name of the Authority: Association of the German Internet Economy

Eco (the most active private association entitled to act under Art. 8)

Postal address: Arenzhofstraße 10, 50769 Köln.

Telephone number: + 49 21 / 70 00 48 – 0

Fax: + 49 221 / 70 00 48 – 11

E-mail: info@eco.de

Complaints: hotline@eco.de

Name of the Authority: Bundesministerium für Wirtschaft und Arbeit
(Federal Ministry of Economics and Labour)

Postal address: Referat VI B 2 – Medienrecht, Villemombler Straße 76, 53123 Bonn

Telephone number: + 49 1888 615 4309

E-mail: buero-vib2@bmwa.bund.de

Hong Kong, China

At present there is no law to prohibit the sending of spam. The use of personal data for sending out e-mail spam for direct marketing purposes might be regulated by section 34 of the Personal Data (Privacy) Ordinance, which requires the sender to provide the recipient with an "opt-out" choice receiving no further marketing e-mails.

Drawing on the views expressed to the earlier consultation issued by the Office of the Telecommunications Authority (OFTA), as well as seeking public opinion on the issue and studying the trends and recent developments, the Government has launched the "STEPS" campaign to contain the problem of spamming. STEPS stands for: "Strengthening existing regulatory measures, Technical solutions, Education, Partnerships, Statutory measures". The government is conducting intensive consultations on the technical details of legislative measures to tackle spam.

The Government encourages the Internet industry to exercise self-regulation in tackling spamming activities. Almost all ISPs in Hong Kong have included terms in their contracts of service to prohibit subscribers from using the ISPs' services for spamming activities. Depending on the policy of individual ISPs, a spammer will be warned or will have the service suspended or terminated immediately without warning.

Laws:

- Section 34 of the Personal Data (Privacy) Ordinance ("the Ordinance") stipulates: "A data user who uses the data for direct marketing purposes, including the advertising of the availability of goods, facilities or services by means of information sent by electronic mail, shall:
 - the first time s/he so uses those data, inform the data subject that the data user is required, without charge to the data subject, to cease to so use those data if the data subject so requests;
 - if the data subject so requests, cease to so use those data without charge to the data subject."

Nevertheless, according to the Office of the Privacy Commissioner for Personal Data (PCO), the above provision can only be used against junk e-mail messages directed at a particular person. It cannot apply to the most common situation where the junk e-mail message is not targeted at a specific person.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Office of Telecommunications Authority

Websites: www.ofta.gov.hk - <http://www.ofta.gov.hk/en/junk-email/main.html>

E-mail: consumer@ofta.gov.hk

Postal address 29/F Wu Chung House, 213 Queen's Road, Wanchai, Hong Kong

Telephone number: + 852 2961 6333

Fax: + 852 2803 5110

Name of the Authority: Enquiries on compliance issues in relation to the Personal Data (Privacy) Ordinance may be made to the Office of the Privacy Commissioner for Personal Data.

Website <http://www.pco.org.hk/english/about/role.html>

Email pco@pco.org.hk

Postal address Unit 2001, 20/F, Office Tower, Convention Plaza, 1 Harbour Road, Wanchai, Hong Kong

Telephone number: + 852 2827 2827

Fax: + 852 2877 7026

Hungary

Art. 14, Act CVIII of 2001 on Electronic Commerce of the Hungarian law provides for restrictions regarding unsolicited commercial communication.

Laws:

- [Art. 14, Act CVIII of 2001 on Electronic Commerce and as amended in 2003](#)
- [Act C of 2003 on Electronic Communications \(Article 162\)](#)
- Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest
- [Act CLV of 1997 on Consumer Protection](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: General Inspectorate for Consumer Protection of Hungary

Websites: <http://www.fvf.hu>

E-mail: Mr. Sándor Kolozsi (Department of Advertisement and e-Business Inspectorate)- fvf@fvf.hu

Telephone number: + 36 1 459 4800

Ireland

The [Irish Government](#) has formally signed a law outlawing spam. The law gives effect to new EU regulations banning the sending of unsolicited e-mails or text messages to the general public. Ireland passed the self-titled [European Communities \(Electronic Communications Networks and Services\) \(Data Protection and Privacy\) Regulations 2003](#). Regulation 13 is about spam, and it starts with mandatory opt-in for unsolicited spamming. The Data Protection Commissioner receives and investigates complaints on breaches of regulation 13 of Statutory Instrument 535 of 2003, which makes it an offence to send unsolicited marketing messages. In 2004, 131 complaints were received. Regulation 19 grants enforcement powers to the [Commission for Communications Regulation](#) (abbreviated as "Regulator" in the regulations). The Regulator, in consultation with the [Data Protection Commissioner](#), may also specify the form and any other requirements regarding the obtaining, recording and rescinding of the consent of subscribers for the purposes of these Regulations. The punishment granted to the Commission is a warning.

Laws:

- [Data Protection Act, 1988](#)
- [EC Directive on Privacy and Electronic Communications, Directive 2002/58/EC](#)
- [Statutory Instrument, S.I. No. 535 of 2003, European Communities \(Electronic Communications Networks and Services\) \(Data Protection and Privacy\) Regulations 2003](#)

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)
- [London Action Plan](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [The Data Protection Commissioner](#)

Website: www.dataprotection.ie

E-mail: info@dataprivacy.ie and [More about making a complaint to the Data Protection Commissioner Complaint form](#)

Postal address: Block 4, Irish Life Centre, Talbot Street, Dublin 1

Telephone number: + 01 874 8544

Fax: + 01 874 5405

Italy

Italy has enacted a tough anti-spam law that makes spamming a criminal offence and is punishable by up to three years' imprisonment. The fight against spam, with respect to the protection of personal data, falls within the competence of [The Italian Data Protection Authority](#) ("the Authority") under the terms laid down in the Personal Data Protection Code (legislative decree no. 196/2003 - Sections 121-132, in particular 130). The Authority, which is an independent agency specifically created to ensure the protection of personal data and to deal with spam problems, may receive complaints and/or reports from alleged spam victims and impose administrative fines on offenders. It has the power to carry out on-the-spot inspections, search premises and to seize records and any other items considered to be relevant; it may block unlawful processing operations and will refer information to the judicial authorities. The Authority cooperates with national and international authorities in the fight against spam; in particular, it is a member of the Contact Network of Spam Authorities set up at EU level, and cooperates with Italy's Ministry of Communications in implementing the relevant laws and regulations. The DP Authority also participates in the OECD's Task Force on Spam. Regime: Opt-in.

Laws:

- Personal Data Protection Code (legislative decree no. 196/2003), available at <http://www.garanteprivacy.it/garante/document?ID=311066>. The Code transposed EC Directive 95/46 on the protection of personal data and EC Directive 2002/58 on privacy in electronic communications; it consolidated all Italian pre-existing laws and regulations in this sector.
- DL 196/2003 [Personal Data Protection Code](#)
- DL 675/1996 on privacy protection states, inter alia, that a company must have authorization from each user whose personal data (such as e-mail) they want to use.
- DL 171/1998 (deriving from the European Community directive 97/66/CE) on telecommunications privacy protection: this put outlaws all automatic systems to call a user and says that all the expenses of an advertising must be paid by the company and not the user (faxes and e-mails are instead paid also by the user).
- DL 185/1999 (deriving from the European Community directive 97/7/CE) on customer protection with respect to long-distance contracts: this obliges companies to seek the permission of the user for virtual or telephone sales.

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Il garante per la protezione dei dati personali

Website: www.garanteprivacy.it / www.dataprotection.org

E-mail: garante@garanteprivacy.it

Postal address: Piazza di Monte Citorio n. 121 00186 Roma.

Telephone number: + 39 06.69677.1

Fax: + 39 06.69677.785

Japan

In April 2002, the Japanese Government passed the “Law on Regulation of Transmission of Specified Electronic Mail”. This law addresses “Specified Electronic Mail,” which is defined as e-mail sent for advertisement purposes of sender’s business to individual users. The law controls spam disseminated by senders in Japan. In July 2002, [Ministry of Internal Affairs and Communications \(MIC\)](#) designated an entity “[Japan Data Communications Association](#)” to conduct duties for the appropriateness of sending specified e-mail messages. MIC set up a ‘Study Group on a Framework to Handle Spam’ on October 7th, 2004, in order to consider the anti-spam measures in various aspects.

A final [report](#) is expected to be compiled in July 2005.

Furthermore, based on the discussion during the study group and the interim report published in December 2004, the anti-spam law was amended in May 2005. The new law includes the introduction of direct penalties against malicious spammers.

In February 2005 MIC and METI (Ministry of Economy, Trade and Industry) launched ‘the Spam Blocking Support Project’.

This [project](#) aims to promote voluntary efforts by ISPs.

Regime: Opt-out.

Laws:

- [Law on Regulation of Transmission of Specified Electronic Mail.](#)
- Specified Commercial Transactions Law

International Cooperation

- Signing the multi-national MOU ‘Seoul-Melbourne Multilateral Memorandum of Understanding on Cooperation in Countering Spam’ in April 2005.
- [London Action Plan](#)
- Participating in the ‘International Internet Sweep’ project.
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Ministry of Internal Affairs and Communications \(MIC\)](#)

Website: http://www.soumu.go.jp/joho_tsusin/eng/index.html

E-mail: t-shibuya@soumu.go.jp

Postal address: 2-1-2 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-8926

Telephone number: + 81 352 535847

Fax: + 81 3 5253 5924

Name of the Authority: Ministry of Economy, Trade and Industry (METI)

Website: <http://www.meti.go.jp/english/index.html>

Email: totoki-kenji@meti.go.jp

Postal address: 1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-8901

Telephone number + 81-3-3501-1905

Republic of Korea

[Korea Spam Response Center](#) was constituted within the [KISA \(Korea Information Security Agency\)](#), which is an agency of the Ministry of Information and Communication, to deal with problems related to spam.

In the legal arena, the Korean government tried to regulate transmission of advertisements and prescribed provisions for anti-spam in Article 50 of the "Act on Promotion of Information and Communication and Communications Network Utilization and Information Protection of 2001 (hereafter: the Act)."The Act provides that (1) no person shall transmit advertising for the purpose of soliciting business against the addresses explicit rejection of such information. (2) Any person who intends to transmit via E-mail any advertisement for the purpose of soliciting business under paragraph (1) shall expressly indicate in the E-mail the matters stipulated in each of the following subparagraphs, as prescribed by the Ordinance of the Ministry of Information and Communication, the objective of the mail and major contents thereof, the name and contact means of the addressor, and instructions to reject receipt of future advertisement information. “

Because the methods or skills of the transmission of spam are increasingly becoming diversified technically, and since spammers typically disregard the seriousness of spam, the amount of spam did not decrease. For this reason, the National Assembly promulgated a revised Act (hereinafter: new Act), on 18 December 2002, to tighten control over spam. Except for several provisions, it was entered into force on 19 January 2003 and carries severe penalties. For example, it newly establishes criminal charges and raises fines to ₩10'000'000 (approx: US 8'000) from the previous limit of ₩5'000'000 (approx: US 4,000). However, it still maintains the opt-out method to regulate the transmission of advertisement information.

Laws:

- [Act on Promotion of Information and Communication and Communications Network Utilization and Information Protection of 2001](#)
- [Revised Act, 18/12/2002](#)
- [Anti-Spam Regulations in Korea](#)

International Cooperation:

- [Memorandum of Understanding between the Korea Information Security Agency and the Australian Communications Authority and the National Office for the Information economy of Australia concerning cooperation in the regulation of Spam.](#)
- [Operation Spam Zombie](#)
- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Ministry of Information and Communication

Website: <http://www.mic.go.kr/eng/index.jsp>

E-mail: [How to report Korean Spam](#)

Lithuania

The Law on Electronic Communications entered into force on 1 May 2004, implementing Directive 2002/58/EC of the European Parliament and of the council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

Users receiving spam can complain to the competent authority - the [State Data Protection Inspectorate](#) - in accordance with the Law on Electronic Communications and also to the National Consumer Rights Protection Board - in accordance with the Law on Advertising. The State Data Protection Inspectorate and National Consumer Rights Protection Board investigate cases of spam. Communications Regulatory Authority of the Republic of Lithuania works in consultation with State Data Protection Inspectorate and National Consumer Rights Protection Board and coordinates spam enforcement activities in Lithuania. Regime: Opt-in

Laws:

- [Law on Electronic Communications](#)
- [Law on Advertising](#)
- [Law on Legal Protections of Personal Data](#)

International Cooperation

- [Operation Spam Zombie](#)
- [Operation secure your server](#)
- [London Action Plan](#)
- EU' Contact Network of Spam Enforcement Authorities (CNSA)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Communications Regulatory Authority of the Republic of Lithuania

Website: <http://www.rrt.lt/>

E-mail: yvaitkus@rrt.lt

Postal address: Mr. Vygantas Vaitkus, Chief officer of the Law Application Division of the Legal Department, Algirdo str. 27, LT - 03219 Vilnius

Telephone number: + 370 5 210 56 31

Fax: + 370 5 216 15 64

Name of the Authority: State Data Protection Inspectorate

Website: <http://www.ada.lt/>

Name of the Authority: National Consumer Rights Protection Board

Website: <http://www.nvtat.lt/>

Name of the Authority: Ministry of Transport and Communications of the Republic of Lithuania.

Website: <http://www.transp.lt/>

Luxembourg

There are currently no rules on unsolicited e-mail, faxes or calls. The government is trying to introduce new regulation for transposing the Communications Data Protection Directive 2002/58/EC, which requires opt-in for unsolicited calls, faxes and e-mails.

Laws:

- None until pending legislation is enacted.
- Draft of Law: ([projet de loi N°5181 <http://www.cnpd.lu/projet_de_loi_5181.pdf>](http://www.cnpd.lu/projet_de_loi_5181.pdf)).

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: There is no designed authority responsible for spam in Luxemburg. The directive 2002/58/CE has not been transposed yet into the national law.

Website: <http://cnpd.lu/>

E-mail: info@cnpd.lu

Postal address: Commission nationale pour la protection des données 68,
route de Luxembourg L-4221 Esch-sur-Alzette

Telephone number: + 26 10 60-1

Fax: + 26 10 60-29

Malaysia

There is no specific anti-spam legislation in Malaysia. However, Section 233 of the Communications and Multimedia Act 1998 (Act 588) provides that a person who initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, thereby commits an offence.

Laws:

- Section 233 of the [Communications and Multimedia Act 1998 \(Act 588\)](#) provides for offences related to “improper use of network facilities or network services, etc”.

International Cooperation:

- Anti-Spam Multilateral MOU between the Malaysian Communications and Multimedia Commission with the Australian Communications Authority and the Korean Information Security Agency
- The London Action Plan
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: The Malaysian Communications and Multimedia Commission

Website: www.mcmc.gov.my

Email: antispam-ins@cmc.gov.my

Postal address: Malaysian Communications and Multimedia Commission, 63000 Cyberjaya, Selangor Darul Ehsan

Telephone number: + 603 8688 8000

Malta

Article 13, of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector on unsolicited communication has been transposed in Maltese law by LN 16 of 2003 under the Data Protection Act (CAP. 440 of the Law of Malta). The law empowers the Data Protection Commissioner to handle any complaints concerning unsolicited communications and to take the remedial actions as he deems necessary.

On a local level, in 2004 Government has launched a Green Paper on Spam which outlines the issues related to the problem of Spam and proposes a number of actions which can be implemented to combat Spam. A National Information Society Advisory Council (NISCO) was also set up chaired by the Minister of Investment, Industry and Information Technology to ensure a structured consultative mechanism of key information society policy areas. A sub-committee of NISCO and the general public were invited to submit their views on the Green Paper to the Ministry. Based on the Communication on unsolicited commercial communications or 'spam' (COM (2004) 28), the list of recommendations consisting of legislative, technical and awareness measures have now been completed and all stakeholders have been informed of their responsibility to act upon the recommended initiatives.

Laws:

- Directive 2002/58/EC of the European Parliament
- Maltese law by LN 16 of 2003 (<http://www.dataprotection.gov.mt/filebank/LN16-2003.pdf>) under the Data Protection Act (CAP. 440 of the Law of Malta). The law empowers the Data Protection Commissioner to handle any complaints concerning unsolicited communications and to take the remedial actions as he deems necessary.

International Cooperation:

- On the European level, Malta is already participating by attending meetings in the Contact Network of anti-spam enforcement authorities (CNSA). Malta has agreed on the co-operation procedure concerning the transmission of complaint information and intelligence relevant to the enforcement of article 13 of Directive 2002/58/EC and other national law regulating the use of unsolicited electronic communications.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Office of the Data Protection Commissioner

Website: www.dataprotection.gov.mt

Email: commissioner.dataprotection@gov.mt

Postal address: 2, Airways House, High Street, Sliema SLM 16, Malta

Telephone number: + 356 2328 7100

Mexico

Mexico has no specific law to combat spam; neither is there a law on data privacy. Nonetheless, discussions are being held currently in the Mexican Congress to analyze the draft of a data privacy law that may include a specific chapter regarding spam issues. It is important to clarify that Profeco is not the Mexican authority in charge of combating spam. Nowadays, several Mexican federal governmental agencies, including the Federal Telecommunications Commission, the Economy Ministry and Foreigner Affairs Ministry are analyzing the need to create an inter-governmental working group, in order to be prepared to carry out the works done within the OECD.

Mexico is aware of the need to establish principles to protect consumers in the context of electronic commerce. In 2000, the Procuraduría Federal del Consumidor, Profeco (Office of the Federal Attorney for Consumer Protection) of Mexico reformed the Federal Law for Consumer Protection (FLCP) to add one chapter related, in general, to consumer protection in the context of electronic commerce. The amendments provide that "suppliers shall respect consumer's choice not to receive commercial advertising". These provisions could be interpreted in such a way to include spam under those articles. Further amendments to the FLCP completed on 11 December 2003, and in place since May 2004, were introduced in order to protect aspects related to privacy data.

Laws:

- [Ley Federal de Protección al Consumidor](#)
 - **Article 17** - Commercial messages or advertising sent to consumers, should indicate the name, address, telephone and, where applicable, the e-mail address of the provider, and of the business that sends the ads on behalf of providers. The consumer will demand directly from specific providers and businesses using its information for marketing or advertising purposes, that he does not wish to be molested at home, or at work, e-mail address or any other mean, in order to offer goods, products or services, and not to receive advertising. Likewise, the consumer will be entitled to inform providers or businesses using its information for marketing or advertising purposes, that his/her personal data must not be transmitted or shared with third parties, unless that transmission is determined by a judicial authority.
 - **Article 18** - The Procuraduría could develop, where applicable, a consumers' public registry which could list those not wishing their personal data to be used for marketing or advertising purposes. Consumers could notify the Procuraduría by letter or email of its inscription request to the said registry, which will be at no cost.
 - **Article 18 bis** - It is forbidden for providers and businesses as well as its customers that use consumers' information for marketing or advertising purposes, to use the information related to consumers for purposes other than those of marketing or advertising, as well as sending advertising to consumers that have expressly requested not to receive it or that are subscribed to the registry referred to in the aforementioned article. Providers that are the object of advertising are solidary responsible for the management of consumers' information when such advertising is sent through third parties.

If there is any breach against the dispositions foreseen in these articles, Profeco is able to impose a sanction that may start from US 30 up to almost US 100'000.

International Cooperation:

- [International Consumer Protection and Enforcement Network \(ICPEN\)](#)
- [Operation secure your server](#)
- [London Action Plan](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Procuraduría Federal del Consumidor (Office of the Federal Attorney for Consumer Protection) Profeco

Website: www.profeco.gob.mx

E-mail: pruizv@profeco.gob.mx

Postal address: Av. José Vasconcelos 208. Piso 7. Col Condesa. C.P. 06140 México, D.F.

Telephone number: +52-55 56 25 67 00 ext 1334 and 6792

Netherlands

OPTA is the authority responsible for the enforcement of anti-spam rules incorporated in the Telecommunications Act. The Act implementing Directive 2002/58/EC adopts the soft “opt-in” regime. The Dutch Personal Data Protection Act also provides some protection against spam.

Both OPTA and the Dutch Data Protection Authority have administrative powers. The Economic Inspection Service of the Fiscal Intelligence and Investigation Service (FIOD-ECD, the Dutch tax/financial fraud enforcement agency; <http://www.belastingdienst.nl/>) is responsible for enforcing the sender-identification requirements. The FIOD-ECD has a combination of administrative and criminal enforcement powers. Finally, the Ministry of Justice, which has criminal-enforcement powers only, is the responsible enforcement authority when spam contains illegal content.

OPTA has a special [website](#) where complaints can be submitted against violators of this spam prohibition. Here you will also find general information about combating spam. (The website is available only in Dutch.)

Laws:

- Article 11.7 of the [Dutch Telecommunications Act](#)
- [Dutch Data Protection Act](#).

International cooperation:

- [Operation Spam Zombie](#)
- [Operation secure your server](#)
- EU’s Contact Network of Spam Enforcement Authorities (CNSA)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: OPTA

Website: www.opta.nl -

E-mail: frontoffice@opta.nl

Postal address: Attn. Front Office, P.O. Box 90420, 2509 LK The Hague

Telephone number: + 70 315 35 00

Name of the Authority: Dutch Data Protection authority

Website: <http://www.dutchdpa.nl/>

New Zealand

[The Office of the Privacy Commissioner](#) is an independent Crown entity established by the Privacy Act. The Privacy Commissioner's principal powers and functions include promoting the objects of the Privacy Act 1993, monitoring proposed legislation and government policies, dealing with complaints at first instance, approving and issuing codes of practice and authorizing special exemptions from the information privacy principles, as well as reviewing public sector information matching programmes. In May 2004, the government has issued a discussion paper to outlaw unwanted spam and in February 2005 the [Minister for Information Technology](#) unveiled the shape of forthcoming legislation to combat spam.

Laws:

- [Legislating against Spam: discussion document](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Office of the Privacy Commissioner

Website: <http://www.privacy.org.nz/top.html>

E-mail: spamsubmissions@med.govt.nz

Postal address: IT and Telecommunications Policy Group, Resources and Network Branch, Ministry of Economic Development, PO Box 1473, Wellington

Peru

Peru has approved in May 2004 a specific law "LEY N° 28493" dealing with spam e-mails. The law will be applicable as soon its regulation is approved by the Ministry of Transport and Communication (probably by August 2005). The enforcement authority is the " Instituto Nacional de Defensa de la Competencia y de Protección de la Propiedad Intelectual". In the text of the LEY N° 28493 as it is written that " sending unsolicited messages for commercial purposes without the authorization of the recipient will be illegal, and any violation criminally sanctioned".

The fraudulent aspects of unsolicited messages are currently covered by specific provisions of the Criminal Code dealing with Delitos informáticos (cyber crimes), which include manipulation of personal banking data, utilization of false identity for sending e-mails, and others. In 2002, to better face the new challenges posed by cyber crimes a Multisectorial Commission was created to implement the UNGA Resolution 55/63 on "Combating the Criminal Misuse of Information Technologies".

Laws:

- [LEY N. 28493](#)
- The Criminal Code sanctions misleading and fraudulent behaviors linked to spam and its content.
 - for manipulation of personal banking data, misuse of credit cards and Automatic Teller Machines: Criminal Code Article 186
 - for E-mail false identity: Criminal Code Article 161
 - data manipulation and/or falsification: Criminal Code Article 427
 - unauthorized access to telematic and computer systems and services. Criminal Code Article 207 – A

International Cooperation:

- APEC: Principles for Action against Spam and the Implementation Guide Lines for Action Against Spam, adopted by the 6th Ministerial Meeting on Telecommunication and Information Industry (TELMIN6), Lima Peru, 1- 3 June 2005.
- [Operation Spam Zombie](#)
- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Viceministerio de Comunicaciones (MTC) - Peruvian Multisectorial Commission to Implement the UNGA Resolution 55/63 on "Combating the Criminal Misuse of Information Technologies.

Fax: +511 433 1807

Name of the Authority: Instituto Nacional de Defensa de la Competencia y de Protección de la Propiedad Intelectual

Website: www.indecopi.gob.pe

Postal address: Calle de la Prosa 138 San Borja

Telephone number: + 511 224 7800 / + 511 224-7777

Fax: + 511 224 0348

Poland

According to the Law of 18 July 2002, which implements Directive 2000/31/EC on Electronic Commerce, an opt-in model has been adopted in Poland. The sending of unsolicited commercial material by means of electronic communications is punishable by a fine.

Laws:

- As of 10 March 2003, the Polish [Law Concerning the Provision of Electronic Services](#) introduces some items from Directives 2000/31/EC and 2002/58/EC, and it permits only the opt-in form of marketing through electronic media (it includes e-mail and SMS -- fax will be included in regulations still being prepared). The regulation also states strict protection of customers' e-mail addresses, which are treated as "personal data". The punishment for sending spam (i.e. unsolicited commercial material) is set out in art. 24 of the above Act.
- NB: None of the above regulations actually states that the e-mail address is to be treated as personal data. However, where the e-mail address itself identifies its owner (i.e. the owner's name forms part of the address), the semi-official ("semi-" because of the lack of such a statement in any regulation) position of the Inspector General for the Protection of Personal Data is that it is to be treated as personal data.
- Personal data protection act, 1997.
- Title VII of Telecommunication law (2004) – "telecommunications confidentiality and personal data protection" based on the [EC Directive on Privacy and Electronic Communications, Directive 2002/58/EC](#)
- Act on providing services by electronic means, 2002.
- Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product, 2000.
- Competition and consumer protection act, 2000.

International Cooperation:

- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority:

- Inspector General for the Protection of Personal Data
- Office for Competition and Consumer Protection
- Ministry of Infrastructure

Website: <http://www.giodo.gov.pl/> - <http://www.uokik.gov.pl/> - www.mi.gov.pl

E-mail: info.lt@mi.gov.pl

Postal address: Chałubińskiego 4/6 street, 00-928 Warsaw

Telephone number: + 482 252 250 00

Portugal

The Portuguese legislation against spam was implemented within the wider framework of the national discipline to regulate electronic commerce. The recently approved [Decree-Law 7/2004](#) aims mainly to transpose Directive 200/31/EC and includes a chapter ("Network Advertising Communications") incorporating the main dispositions of Directive 2002/58/EC relating to unsolicited communications.

Unsolicited communications sent in violation of the law shall be deemed as an offence punishable with a fine that may range from € 2'500 to € 50'000, in case of natural persons, or from € 3'333.34 to € 66'666.67, in the case of legal persons, along with additional sanctions.

Regime: opt-in for natural persons, except in existing customer relationships; opt-out for legal persons.

Laws:

- Decree-Law 7/2004 of 7 January 2004: [Portuguese version](#); [English version](#)

International Cooperation:

- EU's Contact Network of Spam Enforcement Authorities (CNSA)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: for complaints to natural persons - [Comissão Nacional de Protecção de Dados \(CNPD\)](#) and for complaints sent to legal persons - [ICP – Autoridade Nacional de Comunicações \(ICP-ANACOM\)](#)

Contact details (natural persons): CNPD – Comissão Nacional de Protecção de Dados

Postal address: Rua de São Bento, 148, 3.º, 1200-821 Lisboa, PORTUGAL

Telephone number: + 351 21 392 84 00

Fax: +351 21 397 68 32

E-mail: geral@cnpd.pt

Website: www.cnpd.pt

Name of the Authority: Compact details (legal persons): ICP – Autoridade Nacional de Comunicações (ICP-ANACOM)

Postal address: Avenida José Malhoa, 12, 1099-017 Lisboa, PORTUGAL

Telephone number: + 351 21 721 10 00

Fax: + 351 21 721 10 01

E-mail: info@anacom.pt

Website: www.anacom.pt

Romania

In Romania the Law no. 365/2002 on electronic commerce provides that commercial communications by electronic mail is forbidden, except where the recipient has previously given his/her express consent for receiving this kind of communications.

The competent authorities for implementing this law are the authority for regulations in communications and information technology (whose attributions are presently carried out by the Ministry of Communications and Information Technology) and the supervisory authority in the field of personal data processing. The latter attributions shall be taken over from the People's Advocate by a new established authority – National Authority for the Supervision of Personal Data Processing.

Laws:

- Law no.365/2002 on the electronic commerce

International Cooperation:

- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: The body responsible for spam issue is the Ministry of Communications and Information Technology

Website: <http://www.mcti.ro/>

Postal address: 14 Libertatii Blvd., 5th District, 050706, Bucharest, Romania

Telephone number: + 21 30 75 400

Fax: + 21 30 75 402

Russia

There is no explicit regulation on unsolicited e-mail in the Russian Federation; formally spam issues come under competency of the [Ministry for Information Technologies and Communication of the Russian Federation](#). According to the Russian Civil Code (art. 309) some solutions are offered, in order to address spam issues in the form of contracts between ISP and the user, as well as to develop codes of 'good practice' for ISP. There is a project "Antispam," started in May 2003 and initiated by UNESCO IFAP (Information for All Programme) National Committee of Russia, which is aimed at dealing with spam by legal, ethical and technical means. The main task is to draft an anti spam legislation with an opt-in approach.

Laws:

- Art. 309 of the Russian Civil Code.

International Cooperation:

- [Anti-spam project](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Ministry for Information Technologies and Communication of the Russian Federation](#)

Website: <http://english.minsvyaz.ru/enter.shtml>

E-mail: as@ifap.ru

Telephone number: + 7 095 263 2661

Singapore

[The Infocomm Development Authority of Singapore \(IDA\)](#) is a statutory board of the Singapore Government. It operates under the [Ministry of Information, Communications and The Arts \(MICA\)](#). IDA has proposed a multi-pronged approach towards the control of spam. This approach would involve all stakeholders and consist of Public Education, Industry Self-regulation, International Co-operation and Legislation. IDA has received broad consensus from the public consultation to adopt this approach. Currently, IDA is working with the Attorney General's Chambers to finalise the details of the legislation for Spam control.

[Spamming](#) per se is currently legal, but IDA is drafting the [spam control legislation](#) together with the help of Attorney-General Chambers and input from public consultation on this matter.

Laws: Currently under formulation.

- [Singapore Anti-Spam Resource Center](#) to provide a central anti-spam repository for the public and industry.
- [Multi-pronged measures developed to curb e-mail spam in Singapore](#)
- [Proposed legislative framework for the control of e-mail spam](#)

International Cooperation:

- [Operation secure your server](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Infocomm Development Authority of Singapore

Website: www.ida.gov.sg or www.antispam.org.sg

Email: info@ida.gov.sg

Postal address: 8 Temasek Boulevard #14-00 Suntec Tower Three Singapore 038988

Telephone number: + 65 6211 0888

Spain

The [Agencia Española de Protección de Datos \(AEPD\)](#) is the independent Spanish Data Protection Authority that was set up in 1992 by the first Spanish Data Protection Act. After the implementation into Spanish Law of the Directive on privacy and electronic communications (2002/58/EC) through the General Telecommunications Act and Services of the Information Society and Electronic Signature Act, the AEPD is the competent body to supervise compliance and enforce the anti-spam legislation in Spain. Regime: Opt-in.

For further information, please see "[The Guide for the Fight against spam](#)".

Laws:

- Royal Decree 424/2005, of 15 of April, by which the Regulation is approved on the conditions for the benefit of electronic communication services, the universal service and the protection of the user.
- [Law 32/2003 revising law 34.](#)
- [Law 34/2002, Title III, art. 19 to 22 on commercial e-mails](#)
- [Directive 2002/58/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector, 2002 O.J. \(L 201\) 37.](#)
- [Organic law 15/1999 on personal data protection.](#)

International Cooperation:

- [Operation Spam Zombie](#)
- [Operation secure your server](#)
- [London Action Plan](#)
- EU's CNSA (Contact Network of Spam Authorities)
- [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.](#)
- [Declaración de Cartagena de Indias](#) (Third Ibero-American Meeting on Data Protection- where it was agreed to adopt harmonised legislative measures to collaborate internationally to fight spam).

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Spanish Data Protection Agency](#)

Website: <https://www.agpd.es/>

E-mail: ciudadano@agpd.es

Postal address: c/ Sagasta, 22, 28004 - Madrid

Telephone number: + 34 91 399 62 58

Fax: + 34 91 447 10 92

Sweden

The Swedish Marketing Act (Swedish Code of Statutes, SFS 1995:450) implements the provisions of the EU-directive on privacy and electronic communications (2002/58/EC) and provides an opt-in regime for unsolicited e-mail marketing to natural persons. The law also makes the provision for the messages to always contain a valid address to which the recipient can send a request to cease marketing. The law also applies to legal persons.

Laws:

- Swedish Marketing Act (Swedish Code of Statutes, SFS 1995:450).
- Personal Data Act (Swedish Code of Statutes, SFS 1998:204), in so far as spam activities involve processing of personal data.
- Criminal law, e.g. in cases of fraud, computer crime and child pornography.

International Cooperation:

- Participation in the work conducted by OECD Task Force on spam.
- The Swedish Consumer Agency/Consumer Ombudsman has signed the London Action Plan (LAP) on spam.
- The Swedish Consumer Agency/Consumer Ombudsman has joined its partners in the International Consumer Protection and Enforcement Network (ICPEN) to conduct an Internet sweep for spam scams.
- The Swedish Consumer Agency/Consumer Ombudsman participates in the Contact Network of Spam Authorities (CNSA).
- The Consumer Ombudsmen in the Nordic countries have an agreement to co-operate in enforcing the various Nordic Marketing Acts, where regulations on spam are included.
- ASEM Joint Statement on International Anti-Spam Cooperation.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: The Swedish Consumer Agency/Consumer Ombudsman

Website: <http://www.konsumentverket.se>

Email: Konsumentverket@Konsumentverket.se

Postal address: SE-118 87 Stockholm, SWEDEN

Telephone number: + 46 8 429 05 00

Switzerland

At the moment Switzerland does not have a specific anti-spam law. However, it does have a general disposition in Art. 2 of the Federal Act against Unfair Competition. A victim could file an action for an injunction against a Swiss spammer in Switzerland under that law. As in other countries, various authorities are dealing with spam issues from different angles. The [Federal Office of Communications](#) (OFCOM, the telecommunication regulator) deals with general policy issues. The [Federal Data Protection Representative \(EDSB\)](#) covers the data protection aspects. The [State Secretariat for Economic Affairs \(SECO\)](#) ensures consumer protection. Individual complaints against spammers must be filed in court. Specific anti-spam legislation will most probably enter into force at the beginning of 2006 and will be similar to EU law (Article 13 of Directive 2002/58/EU). It will be an amendment to the Federal Act against Unfair Competition and the State Secretariat for Economic Affairs will be responsible for cross-border enforcement for individuals as well as for companies. Switzerland will also oblige Telecom Service Providers to fight spam.

Laws:

- Not yet enacted amendments to the Telecommunications Law and Law on Unfair Competition www.admin.ch/ch/f/ff/2003/index0_49.html (see pages 7245 and 7303)
- [Data Protection Law](#)
- Federal Act against Unfair Competition <http://www.admin.ch/ch/fr/rs/2/241.fr.pdf>

International Cooperation:

- EU's CNSA (Contact Network of Spam Authorities)
- [International Consumer Protection and Enforcement Network \(ICPEN\)](#)
- [Operation secure your server](#)
- [London Action Plan](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority:

- State Secretariat for Economic Affairs (SECO) - <http://www.seco.admin.ch/index.html?lang=fr>
- Federal Data Protection Representative (EDSB) - <http://www.edsb.ch/e/aktuell/index.htm>
- Federal Office of Communications (OFCOM) - <http://www.bakom.ch/en/index.html>

Contact Details:

Federal Office of Communications

Postal address: Zukunftstrasse 44, PO Box, CH-2501 Biel-Bienne, Switzerland

Telephone number: + 41 32 327 55 94;

E-mail: Jens.Kaessner@bakom.admin.ch

State Secretariat for Economic Affairs (Seco)

Postal address: Fair Trade Practices, Effingerstrasse 1, 3003 Berne

Telephone number: + 41 31 324 39 09

E-mail: philippe.barman@seco.admin.ch

Turkey

The Turkish Ministry of Justice has been working on data protection legislation for several years without success. Promisingly, in mid-2003, the draft Law on the Protection of Personal Data (Kisisel Verilerin Korunmasi Kanunu Taslagi) was completed. It is based on the 1981 Council of Europe Convention and the European Data Protection Directive (1995/46/EC). The draft law provides, among other things, that subjects should be informed and consent to data collection; that data should be processed in line with the declared collection purpose, and that a supervisory authority termed, Institution of Protection of Personal Data (Kisisel Verileri Koruma Yksek Kurulu) be established.

New Data Protection legislation is expected to be enacted in 2005; it will be enforced by the Personnel Data Protection Institution. This legislation will contain provisions against spam.

Laws:

- The Regulation of Personal Data Protection and Processing on Telecommunication Sector

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: no designated authority.

United Kingdom

The [UK Department for Trade and Industry \(DTI\) implemented the new anti-spam regulation](#), based on the [EU Directive 58/2002](#) with the Privacy and Electronic Communications (EC Directive) Regulation, which came into force on 11 December 2003. The enforcement of this new instrument is under the responsibility of the [Information Commissioner](#); however considering that several issues relating to spam also concern consumer protection and trade, the [Office of Fair Trading](#) is also active in this field, in particular on the subject of online scams.

Laws:

- [Statutory Instrument 2003 No. 2426 The Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#)

International Cooperation:

- [Memorandum of Understanding on Mutual Enforcement Assistance in Commercial Email matters among the United States Federal Trade Commission, the United Kingdom's Office of Fair Trading, the United Kingdom's 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.](#)
- [Operation secure your server](#)
- [London Action Plan](#)
- [Operation Spam Zombie](#)

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: [Information Commissioner's Office](#)

Website: <http://www.informationcommissioner.gov.uk>

E-mail: mail@ico.gsi.gov.uk

Postal address: Wycliffe House, Water Lane
Wilmslow Cheshire, SK9 5AF

Telephone number: + 44 16 25 545700

Fax: + 44 1625 524510

Name of the Authority: Office of Fair Trading

Website: www.oft.gov.uk/default.htm

E-mail: esther.val@oft.gsi.gov.uk

Telephone number: + 44 20 7211 8805

United States

On 1 January 2004, the [Can-Spam Act](#), which stands for “Controlling the Assault of Non-Solicited Pornography and Marketing Act” came into effect in the United States. This law puts specific requirements on senders of commercial e-mail and places enforcement in the hands of the [Federal Trade Commission](#) and [State Attorney's General](#). Regime: Opt-out.

While many U.S. states have also passed laws addressing spam, they are pre-empted by CAN-SPAM except to the extent to which they address falsity or deception in commercial email messages. CAN-SPAM applies to commercial electronic messages, but not to messages relating to transactions and existing business relationships. It requires all commercial electronic messages to include an indication that the message is a solicitation, opt-out instructions and the physical address of the sender. False or misleading information in commercial email is forbidden, including in headers, subject lines and the message text.

ISPs are exempt from liability under the CAN-SPAM Act. Further, the Act provides a private right of action for ISPs. Violators of the Act can be fined up to US 250 per violation, to a cap of US 2 million, for non-wilful noncompliance; and up to US 6 million for intentional violations, plus unlimited punitive damages for fraud and abuse. In the most severe cases, prison sentences of up to five years are available as penalties.

Laws:

- [“Controlling the Assault of Non-Solicited Pornography and Marketing Act”- 117 Stat. 2699 Public Law 108- 187- Dec. 16, 2003. \(PDF\)](#)

International Cooperation:

The United States works with a multitude of international and regional entities on spam, including APEC, the OECD, ITU, TransAtlantic Consumer Dialogue, and the European Commission. The United States has taken a leading role in three areas of the OECD Spam Task Force’s anti-spam toolkit: global enforcement, technical solutions, and outreach efforts, in close collaboration among multiple US agencies and US private sector partners. In addition, the FTC is a member of the London Action Plan on international spam enforcement cooperation, and has also entered into memoranda of understanding on spam enforcement cooperation with agencies in the U.K., Australia and Spain. It has cooperated on individual spam enforcement actions with agencies in Canada, the U.K., Australia, New Zealand, and the Netherlands. The FTC, U.S. Department of Commerce, and U.S. Department of Homeland Security also participated in the recently-announced Operation Spam Zombies to educate ISPs and others about the problem of “zombie” computers being used to disguise the origin of spam.

In addition, the United States has undertaken an extensive program in the APEC-TEL on cybercrime and cybercrime legislation, assisting a number of APEC economies in strengthening laws against all threats to networks and critical infrastructure, including spam. The United States has also organized three multilateral meetings on cybercrime in the Asia Pacific region for law enforcement officials, experts, legislators and others involved in the protection of the Internet.

The United States Department of Justice promotes the adoption of the Convention on Cybercrime (2001) which provides a legislative framework for computer crime generally of which spam is one aspect. The mechanisms in the Convention on Cybercrime for international cooperation are applicable to cross-jurisdiction spam investigations. In addition, additional avenues for information cooperation on criminal investigations exist such as direct police-to-police assistance and the G-8 hi-tech 24/7 network.

Contact details of the anti-spam authority or the authority dealing with complaints:

Name of the Authority: Federal Trade Commission

Website: <http://www.ftc.gov/bcp/online/pubs/buspubs/canspam.htm>

E-mail: [FTC Complaint Form](#)

For consumer complaints:

Consumer Response Center

U.S. Federal Trade Commission

+1 877 FTC-HELP

For information about CAN-SPAM:

Jonathan Kraden, U.S. Federal Trade Commission

E-mail: jkraden@ftc.gov

Telephone number: +1 202 326-3257

To discuss international enforcement cooperation on spam:

Maneesha Mithal, U.S. Federal Trade Commission

E-mail: mmithal@ftc.gov

Telephone number: +1 202 326-2771

For information on assistance in criminal investigations:

Name of the Authority: [Department of Justice](#)

Christopher M.E. Painter - christopher.painter@usdoj.gov

John Lynch - john.lynch2@usdoj.gov

Anthony V. Teelucksingh - anthony.teelucksingh@usdoj.gov

U.S. Department of Justice

Computer Crime and Intellectual Property Section

Website: www.cybercrime.gov

Telephone number: +1 202 514-1026

For information regarding U.S. rules prohibiting spam sent over mobile networks:

Julie Saulnier, [Federal Communications Commission](#)

Consumer and Governmental Affairs Bureau

E-mail: julie.saulnier@fcc.gov

Telephone number: +1 202 418-1598

It emerged from the Survey results that there are a number of countries that have already implemented anti-spam legislations, such as Australia, Austria, Belgium, China, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Lithuania, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, United Kingdom and the United States.

It was also found that several other countries use alternative laws, such as Data Protection laws or Consumer Protection laws to cope with spam issues; these are, for example, Argentina, Armenia, Brazil, Bulgaria,

Canada, Chile, Colombia, Costa Rica, South Korea, Hong Kong, Luxemburg, Malaysia, Mexico, New Zealand, Peru, Russia, Switzerland, Turkey.

In other countries the enforcement of laws applicable to spam falls, however, under the jurisdiction of communication regulators and other related bodies.

The following countries are currently discussing the implementation of a specific anti-spam legislation: Argentina, Brazil, Canada, Colombia, Hong Kong, New Zealand, Russia, Singapore and Turkey.

Further results of the survey revealed that several countries have not developed any anti-spam legislation yet. These are: Bangladesh, Burkina Faso, El Salvador, Haiti, Ecuador, Kuwait, Lebanon, Madagascar, Moldova, Morocco, Qatar, Singapore, Syria and Turkey.

7 THE CONSENT ISSUE: AN ETERNAL DEBATE OPT-IN OR OPT-OUT?

The fight against spam is made even more difficult by the fact that as there is no agreed definition of spam commonly accepted by all stakeholders, and of what constitutes illegal spam activities, this means that it varies depending on national jurisdiction.

In this regard, the focus of most discussions over anti-spam law to this point has revolved around “opt-in” versus “opt-out” approaches.

The difference between these two philosophies of anti-spam law is easy to understand; Governments that adopt an “opt-in” approach announce to the world their sentiment that marketers should not send messages to a recipient unless the recipient has affirmatively asked to receive them. Under most opt-in laws, affirmative requests for messages may be delivered directly by a recipient in the form of an actual request or they can be constructively construed if the sender has an existing business relationship with the recipient. For example, if you purchase a product from a merchant, under most opt-in laws that merchant may send you offers in the future until you ask to no longer receive them. The European Union has chosen to adopt an opt-in requirement for e-mail, which became effective October 31, 2003. The EU directive sets the broad policy, but each member nation must pass its own law as to how to implement it.

On the other hand, an “opt-out” approach declares that a sender may send a message to a recipient even if there is no existing business relationship and the recipient has not specifically opted in to receiving the messages. Opt-out laws typically require senders to honor the requests of recipients to remove them from a sender’s mailing list. In other words, completely unsolicited messages may be sent; however, senders must stop their messages once they have been asked to do so. This is, for example, the approach followed by the United States, South Korea, Japan and some others.

Another approach to restraining spam is requiring that senders of commercial e-mail use a label, such as “ADV,” in the subject line of the message, so the recipient will know before opening an e-mail message that it is an advertisement. That would also make it easier for spam filtering software to identify commercial e-mail and eliminate it. Some propose that adult-oriented spam have a special label, such as ADV-ADLT, to highlight that the e-mail may contain material or links that are inappropriate for children, such as pornography. On 19 May 2004, an FTC rule regarding labeling of sexually oriented commercial e-mail went into effect.

Hence, the tools that lawmakers are using to regulate spam are varied: some anti spam laws require labels or other markings to identify certain messages as unsolicited or pornographic. Others punish senders who use fraudulent or deceptive techniques. Still others require the sender to provide his or her identity and a mechanism to remove the recipient from future mailings. (See Box 7.1)

Box 7.1: The ten worst spam countries as at 21 June 2005

Top 10 Worst Spam Countries	Number of Current Listed Spam Issues
1 United States	2470
2 China	399
3 South Korea	288
4 Russia	191
5 Taiwan	171
6 Japan	136
7 Canada	135
8 Brazil	117
9 Argentina	95
10 Hong Kong	93

Many critics have been raised to the opt-in approach and one year after the passage of a national anti-spam law in the United States, known as the CAN-SPAM Act, only a low percentage of spam messages complied with its requirements in fact according to Spamhouse the United States continues to be the world's worst spam country, accounting for 2470 number of current listed spam issues.

Source: Spamhouse

8 PROTECTING THE USER IN THE CYBER WORLD: RAISING AWARENESS AND RESPONSIBILITY

The profits associated with spamming are based on the same principles that make so-called legitimate e-mail marketing profitable; that is, because some people respond to spam by buying the products advertised.

From the survey results, consumer education has been seen as a key element particularly important for the success of anti-spam legislation. In fact, as soon as companies upgrade their anti-spam defense, spammers find new ways to circumvent these, and as soon as users adapt to one threat, such as “not opening attachments”, another method emerges.

While spam may be more properly characterized as a resource impediment to state business processes, its privacy impact has been exacerbated by citizens who perceive the massive aMoUnts of unsolicited and often offensive emails as infringing on their “right to be left alone.”

The citizen privacy impact may be likened to the legal tort of “trespass”, since copious aMoUnts of unsolicited email may serve as an invasion of privacy for those conducting business and personal correspondence via email.

A particularly worrisome aspect of spam is that it may serve as the messenger for delivering potentially serious privacy breaches. In fact the merging in 2004 of spam, virus, Trojan horses coincided with a rampant increase in phishing, money laundering and key-logging (now commonly referred to as spyware) attacks.

Consequently spam has become a societal problem, which requires that further attention should be paid to consumer education and awareness as an important step to decrease spam.

It was highlighted that increasing awareness of users of the risk of leaving e-mail addresses on numerous websites is a first step to prevent address harvesting. At the same time, that would make it harder and more costly for spammers to obtain those addresses. Plus, the effects of consumer’s awareness are not limited to

spam coming from a particular country. If people are more careful about their email addresses that would also give them a certain protection against spammers from third countries.

Governments make sure that consumers are aware of where they can complain, what will be investigated, what action may be taken, and what information they need for authorities to launch an investigation.

In this regard, it is worth mentioning the Australian initiative. The ACA (Australian Communications Authority) is committed to enforcing the Spam Act, promoting education, awareness and industry liaison, developing technological solutions and spam monitoring processes.

An awareness raising campaign was launched in early 2004 and continued in 2005. The campaign included giving seminars and media interviews around the country, distributing official governments guides for business and providing comprehensive information through the ACA website¹⁰. Another good example of such an effort is the UK Information Commissioner's website¹¹, which includes guidance documents explaining its country's new regulations implementing the European Community Directive.

9 RELEVANT NATIONAL AND INTERNATIONAL INITIATIVES TO COMBAT SPAM

Countries seem to be increasingly recognizing the need for cooperation and coalition-building both within nations and across borders, as a survey of the following efforts shows.

9.1 National Initiatives

Several countries and organizations are already acting on a local level, implementing anti-spam activities at the technical or regulatory level, fostering the exchange of information and best practices and promoting a cooperative approach to the problem of unsolicited commercial messages. Here are some examples:

- In May 2004, the Canadian Minister of Industry announced the creation of a Spam Task Force composed of experts, ISPs, consumer advocates, and marketing representatives. The Task Force developed a "six-point action plan", which includes among its goals the enhancement of consumer education and awareness, and the promotion of an international framework to fight spam. The Task Force has released a report in May 2005.
- The Hong Kong Government has launched the "STEPS" campaign to contain the problem of spamming in February 2005. STEPS stands for: " Strengthening existing regulatory measures, Technical solutions, Education, Partnerships, Statutory measures". The government is conducting intensive consultations on the technical details of legislative measures to tackle spam.
- The Australian response, dated April 2004, is built around a five-way strategy for combating spam: strong legislation and enforcement; technological measures; industry partnerships; consumer and business end-user education; and international cooperation.

9.2 International Initiatives

The acknowledgement that spam is a problem with global implications has given rise to many activities in the fight against this menace. This section aims to highlight the most recent international initiatives undertaken.

- On 24 May 2005 the FTC and 35 government partners from more than 20 countries announced "**Operation Spam Zombies,**" an international campaign to educate Internet Service Providers and other Internet connectivity providers about hijacked, or "zombie" computers that spammers use to flood in-boxes here and abroad. Twenty members of the London Action Plan, an international

¹⁰ http://internet.aca.gov.au/ACAINTER.65636:STANDARD:1528566209:pc=PC_2932

¹¹ <http://www.dti.gov.uk/industries/ecomunications/>

network combating spam, and 16 additional government agencies who will participate in Operation Spam Zombies will send letters to more than 3,000 ISPs around the world, urging them to employ protective measures to prevent their customers' computers from being hijacked by spammers.

- **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 Agreement¹², a multilateral memorandum of understanding (MoU) on cooperation in countering Spam. It said that the MoU 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.
- **Nineteen French speaking African countries adopted a Declaration in the fight against spam:** On 30 March 2005, a declaration¹³ 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.
- **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. 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.
- **European countries launch joint drive to combat "spam"**¹⁴: '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 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), and it has been 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.
- **Memorandum of Understanding On Mutual Assistance In Consumer Protection Matters Between the Federal Trade Commission of the United States of America and the Procuraduría 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), signed on 27 January 2005 a bilateral Memorandum of Understanding (MoU)¹⁵ 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

¹² https://www.aca.gov.au/consumer_info/frequently_asked_questions/Spam-Multilateral_MoU-Seoul-Melbourne_agreement-draft.pdf

¹³ http://www.ddm.gouv.fr/IMG/pdf/captef_decla.pdf

¹⁴ http://europa.eu.int/information_society/topics/ecomm/doc/highlights/current_spotlights/spam/cooperation_procedure_cnsa_final_version_20041201.pdf

¹⁵ <http://www.ftc.gov/os/2005/01/050127memunderstanding.pdf>

memorandum is a “best efforts” agreement – it is not legally binding and does not alter either country’s existing consumer protection laws.

- **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) signed on 24 February 2005 a bilateral Memorandum of Understanding (MoU)¹⁶ to promote enhanced cooperation and information-sharing on spam enforcement activities.

10 CONCLUSION

A year after the WSIS Thematic Meeting on Countering spam was held, the ITU continues its efforts in the fight against spam convening all stakeholders in the “WSIS Thematic Meeting on Cybersecurity¹⁷”.

Unfortunately spam is still a serious, international, cross-sectoral problem that is not only growing in volume, but also changing in nature and must be tackled urgently by the coordinated efforts of all interested stakeholders in the information society.

Spam is detrimental to consumers and business, as both are users of information and communication technologies; for this reason dialogue and exchange of expertise between the public and private sectors is vital to address the challenge of spam successfully, and ensure that the networked economy continues to benefit users worldwide.

There are many parameters utilized to define spam¹⁸ that are used in various ways across national or sectoral borders, with the result being that no universal definition of spam exists.

We are at an important cybersecurity crossroads and a key lesson that emerges from reviewing the experience of other countries is that since the first anti-spam law was introduced in 1997 in the US state of Nevada, a multi-pronged approach to solving the problem, involving all stakeholders, is more necessary than ever. The combination of technical solutions, user awareness, appropriate and balanced legislation followed up with measured enforcement, industry initiatives including those by the marketing community, and international cooperation, are seen as indispensable.

¹⁶ <http://www.ftc.gov/os/2005/02/050224memounderstanding.pdf>

¹⁷ <http://www.itu.int/cybersecurity>

¹⁸ Recipient’s expectations, content of communication, sender details, form of communication, etc.