

# Communication from the European Commission on Spam

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The European Commission (the “**Commission**”) published a communication on unsolicited commercial communications outlining additional measures to be taken by Member States, businesses and consumers in the fight against spam (the “**Communication**”).

Spam now amounts to more than 50% of all European emails, which is an increase of 43% since 2001. It has been identified as a problem for the following reasons:

- it is often misleading or deceptive and has the effect of undermining user confidence, which is seen as key to a successful e-commerce and information society;
- cost for users: cleaning up mailboxes to remove spam can be time consuming and costly for the user as they will need to use filtering and other software facilities; and
- cost for business: employees spend time cleaning up inboxes, IT departments spend time and money trying to address the problem and spam is increasingly seen as a vehicle for spreading viruses.

In order to tackle this problem, in July 2002, the EU adopted Directive 2002/58/EC on Privacy and Electronic Communications (the “**Directive**”) that introduced the concept of “opt-in” consent for unsolicited commercial email (including mobile SMS or MMS messages). However, nine Member States have failed to meet the 31 October 2003 deadline for implementing the Directive and infringement proceedings have been implemented against a number of Member States including those who have met the deadline but have taken an inconsistent approach.

The Communication calls for tougher sanctions against spammers and proposes the following actions:

(a) implementation and enforcement action;

(b) self-regulatory and technical actions; and

(c) awareness actions.

## Implementation and enforcement

Member States should:

- implement the Directive, in particular the provisions on unsolicited communications without any further delay;
- equip competent authorities with the required investigation and enforcement powers. They should create possibilities for victims to claim damages and put financial and criminal sanctions in place where appropriate;
- establish adequate complaint mechanisms, for example, dedicated e-mail boxes for users to complain; and
- encourage cooperation between national authorities to deal with crossborder complaints and encourage participation in multilateral forums (e.g. OECD).

## Self-regulatory and technical actions

Market players (e.g. direct marketeers, ISPS, software companies) should:

- turn the opt-in regime into usual practice (e.g. produce codes of practices which are opt-in compliant) in co-operation with consumer/user associations and competent authorities where appropriate;
- use or create self-regulatory complaint mechanisms and alternative dispute resolution mechanism, building on existing initiatives where possible;
- filtering software providers should ensure that their filtering systems are compatible with the opt-in consent regime and give users the opportunity to manage

the way in which incoming spam is handled;

- providers of email services should offer filtering facilities to their customers as well as information on third party filtering services and products available to end users; and
- owners of mail servers should ensure their servers are properly secured.

## Awareness Actions

- Governments and regulatory authorities are encouraged to launch or support campaigns this year.
- All parties from competent authorities to consumers associations should be active in practical information campaigns on prevention, acceptable marketing practices and on technical and legal solutions available to consumers.
- Examples of such practical information for consumers include information on the products and services available to avoid spam and practical steps to take when confronted with spam, e.g. complaints mechanisms.

The Commission will continue to monitor the implementation of these actions during 2004 and will assess by the end of 2004 whether any additional or corrective action is needed.

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