



ISPA

Submissions on the Consumer Protection Bill

3 September 2008



- **About ISPA**
- **Electronic Transactions and the ECT Act**
 - Unsolicited communications (spam spam spam)
- **Industry Representative Bodies**
- **Product liability**



- The Internet Service Providers' Association is a South African Internet industry body, duly constituted not for gain
- ISPA currently has over 150 members, comprised of large, medium and small Internet service and access providers in South Africa
- Formed in 1996, ISPA has historically served as an active industry body, facilitating exchange between the different independent Internet service providers, the Department of Communications, ICASA, operators and other service providers in South Africa
- ISPA currently operates the only Internet Exchange Point (IXP) in South Africa in Johannesburg and is in the process of re-opening the Cape Town IXP and plans to open a Durban IXP shortly
- Various non-profit members, including TENET and SchoolNET



Electronic Transactions and the ECT Act

- **Chapter VII of the ECT Act retained**
- **Various transactions covered by Chapter VII of the ECT Act excluded from the ambit of the Bill**
- **Chapter VII meant as an interim step**
 - Precisely because this Bill was missing in 2002
- **Creates the possibility of lacunae (gaps)**
 - Items falling between two stools
 - Creates possibility for abuse



- **Example of something treated in one way in the ECT Act and another in the Bill**
- **Possibly better in the Bill**
 - Not perfect
 - Some suggestions below
- **Creates possibility of issues not being adequately addressed**
- **Annoyance for most of us**
 - Telephone calls
 - Post
 - Email
- **For our members a multi-million Rand headache**



What is spam

- **Spamming is the abuse of electronic messaging systems to indiscriminately send unsolicited bulk messages. While the most widely recognized form of spam is e-mail spam, the term is applied to similar abuses in other media: instant messaging spam, Usenet newsgroup spam, Web search engine spam, spam in blogs, wiki spam, mobile phone messaging spam, Internet forum spam and junk fax transmissions.**

Wikipedia



The Origin of the Term

- **“SPAM” is a Hormel brand name for tinned meat**
- **Monty Python’s “spam” sketch**
- **SPAM is mentioned 132 times in the sketch**
- **Entered the Internet lexicon due to the repetitive and indiscriminate nature of spam**



- E-mail spam, also known as bulk e-mail or junk e-mail is a subset of spam that involves sending nearly identical messages to numerous recipients by e-mail
- AKA unsolicited bulk e-mail (UBE)
- Most criticism occurs when this is for a commercial purpose
- UCE refers specifically to unsolicited commercial e-mail



- **History**
 - 1978 - An e-mail spam is sent to 600 addresses
 - 1994 - First large-scale spam sent to 6000 newsgroups, reaching millions of people
 - 2005 - (June) 30 billion per day
 - 2006 - (June) 55 billion per day
 - 2006 - (December) 85 billion per day
 - 2007 - (February) 90 billion per day
- **As a percentage of the total volume of e-mail**
 - MAAWG (Messaging Anti-Abuse Working Group) estimates that 80-85% of incoming mail is "abusive email", as of the last quarter of 2005. The sample size for the MAAWG's study was over 100 million mailboxes
- **Highest amount of spam received**
 - According to Steve Ballmer (November 2004) , Microsoft founder Bill Gates receives four million e-mails per year, most of them spam.



Not Just Viagra

- Advance fee fraud spam such as the Nigerian "419" scam and lottery scams
- Have led to victims being defrauded and even assaulted
- Phishing - spam used to scam users into entering personal information on fake Web sites using e-mail forged to look like it is from a bank or similar
- Spammers may engage in deliberate fraud to send out their messages
- Spammers often use false names, addresses, phone numbers, and other contact information to set up "disposable" accounts at various ISPs
- Often use falsified or stolen credit card numbers to pay for these accounts. This allows them to move quickly from one account to the next as the host ISPs discover and shut down each one
- Often use viruses/worms/malware to infect target computers and use these "zombies" to act as mail relays



- **Not just foreign spam**
- **Becoming increasingly used by South Africans**
- **Some figures provided by one of our larger members**
 - Approximately 8 million messages daily on one mail gateway
 - Approximately 5% passed through as legitimate
- **Our members spend millions of Rand on spam**
 - Wasted bandwidth (85 - 95% of email wasted)
 - Extra servers to cope with the volumes
 - Expensive filters and pre-emptive techniques to try prevent spam
 - Person hours dealing with spam
- **Annoying if in your “Inbox” - but a crisis for our members**
- **May be hard to discriminate**
 - 20 customers said an email is spam
 - It raises all the flags on the filtering system
 - But you want to receive ads for Viagra



- **Repeal Section 45 of the ECT Act**
 - Allows one spam message - consequence free
 - Not one single conviction in 6 years
 - Yet amount of spam is increasing
- **Section 11(2) not appropriate for web spam**
 - All experts agree you should not respond - it marks your address as valid
- **Rather a blanket prohibition**
 - An approach or communication, other than in person, meant primarily for the purpose of direct marketing, shall be unlawful if sent -
 - In bulk; and
 - Without the prior specific request or consent of the intended recipient, unless a prior commercial relationship exists between the sender and intended recipient which would reasonably give rise to such communication



- **Fix 11(1)(c)**
 - (c) in the case of an approach other than in person, to pre-emptively block, any approach or communication to that person, if the approach or communication is primarily for the purpose of direct marketing.
- **Seems to imply only the recipient can block**
- **Add 11(1)(d) or 11(6)**
 - Electronic communications service providers may implement such proactive measures as may be reasonable to prevent approaches or communications to their customers if the approach or communication is primarily for the purpose of direct marketing
- **Real consequences**
 - Criminal sanctions
 - Conventional penalties



- Despite the laudable intention of Section 61, it is likely to lead to an increase in the retail pricing of goods to consumers as suppliers pass on the cost of additional liability insurance.
- ISPA notes an apparent drafting error in Section 61(6)(c)
- This drafting error was discussed and confirmed with the Bill's drafters
 - **(6) Harm for which a person may be held liable in terms of this section includes -**
 - (a) the death of, or injury to, any natural person;
 - (b) illness of any natural person;
 - (c) any loss of, or physical damage to, any property, irrespective whether it is movable or immovable; and
 - (d) any economic loss that results from harm contemplated in paragraph (a), (b) or (c).
- The intention is to render a supplier of goods liable for death, injury, physical damage and pure economic loss caused by unsafe goods or a product failure
- supplier could be liable for pure economic loss occasioned by damage to the good itself. This was certainly not the intention of the drafters and goes far beyond what is reasonably necessary in the circumstances



- **Electronic communications drives the economy**
- **We know things can go wrong**
 - Networks go down
 - Equipment stops working
- **We plan for it with**
 - Redundancy / spares
 - Service level commitments in SLAs
- **Nothing should break that badly that is causes physical damage to other things (unsafe)**
- **But failing to work (eg a burnt out fuse) may be physical damage**
 - But to the item itself ONLY
 - Should not incur strict liability
 - Only an obligation to repair or replace



- ISPA currently has a Code of Conduct and a proud tradition of responding to consumer complaints regarding its members and their activities
- ISPA has applied repeatedly since 2003 for recognition as an industry representative body in terms of Chapter XI of the ECT Act, which application is currently being processed by the Department of Communications
- The majority of ISPA's members hold licences in terms of the EC Act and such members will be subject to the Code of Conduct and will be required to finalise their own Consumer Service Charters, as mandated by ICASA in terms of the EC Act
- ISPA recognises that it will be possible for ICASA to apply for exemption in terms of Section 5(3) of the Bill for the industry ICASA regulates, namely Electronic Communications Network Services, Electronic Communications Services, Broadcasting Services and certain licence exempt Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services



- ISPA submits that as an industry representative and self-regulatory body, it should be entitled to make such application for exemption and this should not be restricted to statutory regulatory authorities alone.
- Certain of the services offered by ISPA's members fall outside of these services regulated by ICASA. This also creates the possibility of a lacuna, which would be detrimental to both consumers and ISPA's members
- ISPA notes the process for prescribing an "industry code" in terms of Section 82 of the Consumer Protection Bill
- ISPA is concerned that the procedure is unnecessarily cumbersome, particularly in the electronic communications sphere
- Also the possibility of contradictions between the Bill and the ECT Act



Thank you

Questions?