

Turning up the heat on spam

By ALAN S. WERNICK, ESQ.

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T: 847.786.1005 – E: ALAN@WERNICK.COM

In 1993 "Saturday Night Live" did a skit titled "Ruining It for Everyone" in which the actors depict an "interview" of various individuals whose dastardly deeds created problems not only for themselves and their families, but also for many others. Think of the individuals whose acts were the catalyst for tamperproof seals, prepay machines at gas stations, and parents not allowing kids to eat the unwrapped candy at Halloween. Some may want to add the person who started spam.

In the U.S. District Court, Southern District of Ohio, in *CompuServe Incorporated vs. Cyber Promotions, Inc., et al* (1997), Judge James L. Graham states, "In the vernacular of the Internet, unsolicited e-mail advertising is sometimes referred to pejoratively as 'spam.'" A footnote to that sentence states, "This term is derived from a skit performed on the British television show 'Monty Python's Flying Circus,' in which the word 'spam' is repeated to the point of absurdity in a restaurant menu."

Unless you have unlimited storage space on your computer, and unlimited free bandwidth delivering or sending e-mail into or from your e-mail client inbox, there's a cost to unsolicited e-mails beyond the amount of time and money one spends on removing them. Each spam message takes up space on your computer hard drive or RAM, denying those limited resources to other valid software or data used by the computer user. Remember the tort trespass to chattel (a close cousin to the tort of conversion)? In essence, it concerns the unauthorized use of personal property for which the law recognizes a remedy. There are additional costs to the spam recipient caused when someone clicks on a link or opens an attachment, in the spam e-mail, which then unleashes a computer virus or malware causing further harm and economic loss.

There are state and federal laws that provide both civil and criminal remedies for spam violations. For example, the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act) was enacted in response to the rise of unsolicited commercial e-mail. 15 U.S.C. § 7707(b)(1). The act does not provide a cause of action for private citizens. Instead, only the FTC, various other federal agencies, a state attorney general on behalf of residents or providers of Internet access services may bring lawsuits enforcing the CAN-SPAM Act. 15 U.S.C. § 7706. See, *Nicholas Martin vs. CCH, Incorporated*. (U.S. District Court, Northern District of Illinois, 2011).

Since spam is an issue affecting others in our global village, many other countries are collaborating on developing and enforcing a legal infrastructure to deal with the problems caused by spam. For example, the London Action Plan was created several years ago and includes government and public agencies from 27 countries responsible for enforcing laws concerning spam in addition to various industry participants from around the world.

One of the federal agencies at the forefront of fighting spam is the Federal Trade Commission (FTC). In 2010, the FTC persuaded a judge in the U.S. District Court, Northern District of California, to permanently shut down an Internet service provider that purportedly recruited, hosted and actively participated in the distribution of spam, spyware, child pornography and other types of malicious and illegal content. In addition to the permanent injunction, the provider's computer servers and other assets were seized and sold by a court-appointed receiver and the operation ordered to turn over \$1.08 million in ill-gotten gains to the FTC. See, *FTC v. Pricewert LLC d/b/a 3FN.net, Triple Fiber Network, APS Telecom AND APX Telecom, APS Communications and APS Communication* (2010).

The FTC and other federal agencies provide useful and informative websites for consumers and businesses confronting the problems of dealing with spam. For example, www.ftc.gov/bcp/edu/microsites/spam provides a portal for businesses and consumers on various rules, resources, hot topics and other materials. If you get spam e-mail that you think is deceptive, this website recommends that you forward it to spam@uce.gov, and states that, "The FTC uses the spam stored in this database to pursue law enforcement actions against people who send deceptive e-mail." According to Steve Wernickoff, an attorney with the FTC Chicago office, this database (referred to as the "fridge") of spam e-mails has been upgraded to enable better searches. He suggests that when forwarding spam e-mails to spam@uce.gov, the sender attach a copy of the spam e-mail to the forwarded e-mail since the copy can provide valuable metadata.

Another useful website is OnGuard Online available at www.onguardonline.gov. This website, maintained by the FTC, includes information provided by several government agencies. In addition, several private sector organizations are involved in contributing to this website.

While not all unsolicited e-mails may be considered spam, when the content of the unsolicited e-mail is deceptive, or the sender does not provide a reliable method to stop the unwanted e-mail, then the sender may be violating state or federal laws. Businesses and consumers need to be mindful and proactive in protecting themselves against spam and other potential Internet fraud and computer security risks.