



Marketing and the Art of Spam

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It's Legal!

Whether we love it or hate it, let's be clear, spam (unsolicited email) is *legal*, if done in compliance with the rules of the CAN-Spam Act (i.e., the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003"). A quick look at the economics will make it clear why spam proliferates. For traditional direct mail campaigns, a response rate of 1 out of 100 would be good, given the cost of direct mail. For spam, which costs almost nothing, even a response rate of 1 out of 100,000 would be worthwhile.

Just when you thought it couldn't get any worse. A recent study reported that since last June, the volume of spam has tripled. Put in more graphic terms, currently spam accounts for 9 out of every 10 email messages sent worldwide. 7 billion spam email messages were sent worldwide in November alone!

Where does it all come from? The top locations for spam origination are the U.S., China and Poland. Studies have indicated that there are about 200 gangs responsible for 80% of the spam. The prime method used is hijacking home computers, which can be linked into a super network of 100,000 computers without the owners' knowledge. This is free massive computing power. If you think spam is bad now with email, experts predict that the next frontier for spam is going to be mobile phones, instant messaging and community websites.

The Law

The primary law regulating spam is the CAN-Spam Act. The CAN-Spam Act establishes requirements for companies sending commercial email, sets penalties for illegal spammers as well as companies whose products are promoted by the illegal spam, and gives consumers the right to require emailers to remove them from their spam lists. The Federal Trade Commission (FTC) is authorized to enforce the CAN-Spam Act. The Act also gives the Department of Justice the authority to impose criminal sanctions.

Here are the main provisions of the CAN-Spam Act:

- Prohibits false or misleading header information, which is the email's "From" and routing information.

- Prohibits deceptive subject heading, which is intended to mislead the recipient about the content or subject matter of the message.
- Requires inclusion in the email of a functioning “reply to” email address.
- Requires that the spam contain clear and conspicuous notice that the email is an advertisement or solicitation and include a valid physical postal address of the sender.
- Requires that the spam contain clear and conspicuous notice that the recipient can request to “opt out” of receiving more commercial email, which requests must be honored within 10 business days.

The CAN-Spam Act also authorizes the Department of Justice to seek criminal penalties, including imprisonment, for commercial emailers who do or conspire to (1) access another computer without authorization and transmit multiple commercial emails from or through such computer; (2) use a computer to relay or retransmit multiple commercial email messages to deceive or mislead recipients or an Internet access service as to the origin of the message; (3) falsify header information in multiple commercial email messages and initiate the transmission of such messages; (4) register five or more email accounts or online user accounts or two or more domain names using information that falsifies the identity of the actual registrant; or (5) falsely represent themselves as owners of five or more Internet Protocol addresses and use such addresses to send commercial email messages.

Enforcement

The Act’s scope is broader than one might think. One popular spam category is the promotion of “bargain” mortgages. Several mortgage companies, including Quicken Mortgage, are currently defendants in a case alleging violation of the CAN-Spam Act. These mortgage companies hired a lead generating company. Lead generators are Internet marketing companies in the business of generating sales leads by hiring and managing individuals and groups to send emails to prospective purchasers. The lead generating company hired a spamming company to send out unsolicited emails. The emails sent out did not mention the names of the mortgage companies, but simply offered quotes from five interested lenders.

Quicken Loans argued that its contract with the lead generator prohibited the lead generator from using junk mail for generating leads. Therefore, Quicken Loans had no intent to induce illegal spam. However, the court held that Quicken Loans could be liable if it knew or consciously avoided knowing that the lead generators would hire illegal spammers to direct traffic to the lead generators regardless of what the contract terms said.

The Future of Spam

The FTC is primed to fight illegal spam. It maintains a consumer complaint database of violations of the laws that the FTC enforces. Consumers can submit complaints online at www.ftc.gov and forward unwanted commercial email to the FTC at spam@uce.gov.

In October, six international organizations announced the formation of the Stop Spam Alliance in order to encourage international cooperation in this battle.

However, many believe that no laws or technology will ever eradicate spam. The only thing that will work is when no one responds to the solicitations for diet pills, cheap stocks ready to explode, various fake prescription drugs, etc. offered in the illegal spam.

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