

Spam Control Bill

Bill No. 6/2007.

Read the first time on 12th February 2007.

THE SPAM CONTROL ACT 2007

(No. of 2007)

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A BILL

i n t i t u l e d

An Act to provide for the control of spam, which is unsolicited commercial communications sent in bulk by electronic mail or by text or multi-media messaging to mobile telephone numbers, and to provide for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Spam Control Act 2007 and shall come
5 into operation on such date as the Minister may, by notification in the
Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“address harvesting software” means software that is specifically
10 designed or marketed for use for —

(a) searching the Internet for electronic addresses; and

(b) collecting, compiling, capturing or otherwise harvesting those
electronic addresses;

“Authority” means the Info-communications Development Authority
15 of Singapore established under section 3 of the Info-
communications Development Authority of Singapore Act
(Cap. 137A);

“business day” means any day other than a Saturday, Sunday or
public holiday;

20 “dictionary attack” means the method by which the electronic address
of a recipient is obtained using an automated means that generates
possible electronic addresses by combining names, letters,
numbers, punctuation marks or symbols into numerous
permutations;

25 “electronic address” means an electronic mail address or a mobile
telephone number to which an electronic message can be sent;

“Internet access service provider” means a person who provides a
service to give the public access to the Internet;

30 “recipient”, in relation to an electronic message, means an authorised
user of the electronic address to whom the message is sent, and
where a recipient of an electronic message has one or more
electronic addresses in addition to the address to which the

message was sent, the recipient shall be treated as a separate recipient with respect to each such address;

“sender”, in relation to an electronic message, means a person who sends the message, causes the message to be sent, or authorises the sending of the message;

“unsubscribe request” means a request by a recipient of an electronic message, requesting the sender to cease sending any further electronic messages to his electronic address.

Meaning of “commercial electronic message”

3.—(1) In this Act, a commercial electronic message is an electronic message, where, having regard to —

- (a) the content of the message;
- (b) the way in which the message is presented; and
- (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message,

it is concluded that the primary purpose of the message is —

- (i) to offer to supply goods or services;
- (ii) to advertise or promote goods or services;
- (iii) to advertise or promote a supplier, or a prospective supplier, of goods or services;
- (iv) to offer to supply land or an interest in land;
- (v) to advertise or promote land or an interest in land;
- (vi) to advertise or promote a supplier, or a prospective supplier, of land or an interest in land;
- (vii) to offer to provide a business opportunity or an investment opportunity;
- (viii) to advertise or promote a business opportunity or an investment opportunity;
- (ix) to advertise or promote a provider, or a prospective provider, of a business opportunity or an investment opportunity;
- (x) to assist or enable a person, by deception, to dishonestly obtain property belonging to another person;

(xi) to assist or enable a person, by deception, to dishonestly obtain a financial advantage from another person; or

(xii) to assist or enable a person to dishonestly obtain a gain from another person.

5 (2) For the purposes of paragraphs (i) to (ix) of subsection (1), it is immaterial —

(a) whether the goods, services, land, interest or opportunity exists; or

10 (b) whether it is lawful to acquire the goods, services, land or interest, or take up the opportunity.

(3) Any of the following persons may be the individual who, or entity which, is the sender of the message:

(a) the supplier or prospective supplier referred to in paragraph (iii) or (vi) of subsection (1);

15 (b) the provider or prospective provider referred to in paragraph (ix) of subsection (1);

(c) the first-mentioned person referred to in paragraph (x), (xi) or (xii) of subsection (1).

20 (4) Subject to subsection (5), a person who knowingly allows his product or service to be advertised or promoted by a sender shall be deemed to have authorised the sending by the sender of any electronic message that advertises or promotes that person's product or service.

25 (5) For the purposes of subsection (4), a person who takes reasonable steps to stop the sending of any electronic message that advertises or promotes that person's product or service shall be deemed not to have authorised the sending of the message.

Meaning of “electronic message”

4.—(1) In this Act, subject to subsection (3), an electronic message is a message sent to an electronic address.

30 (2) For the purposes of subsection (1), it is immaterial —

(a) whether the electronic address exists; or

(b) whether the message reaches its intended destination.

(3) For the purposes of this Act, a message is not an electronic message if it is sent by way of a voice call made using a telephone service.

Meaning of “unsolicited”

5 **5.**—(1) In this Act, an electronic message is unsolicited if the recipient did not —

- (a) request to receive the message; or
- (b) consent to the receipt of the message.

10 (2) For the purposes of subsection (1), a recipient shall not be treated as having requested to receive the message or consented to the receipt of the message merely because the electronic address of the recipient was given or published by or on behalf of the recipient.

15 (3) For the purposes of subsection (1), where a recipient of an electronic message, other than an unsolicited electronic message, submits an unsubscribe request, he shall not be treated as having requested to receive or consented to the receipt of any message sent after the expiration of 10 business days after the day on which the unsubscribe request is submitted.

Meaning of “sending in bulk”

20 **6.**—(1) For the purposes of this Act, electronic messages shall be deemed to be sent in bulk if a person sends, causes to be sent or authorises the sending of —

- (a) more than 100 electronic messages containing the same or similar subject-matter during a 24-hour period;
- (b) more than 1,000 electronic messages containing the same or similar subject-matter during a 30-day period; or
- 25 (c) more than 10,000 electronic messages containing the same or similar subject-matter during a one-year period.

(2) The Minister may, by order published in the *Gazette*, vary the number of electronic messages specified in subsection (1)(a), (b) or (c).

Application of Act

30 **7.**—(1) This Act shall not apply unless an electronic message has a Singapore link.

(2) For the purposes of subsection (1), an electronic message has a Singapore link in the following circumstances:

- (a) the message originates in Singapore;
- (b) the sender of the message is —
 - 5 (i) an individual who is physically present in Singapore when the message is sent; or
 - (ii) an entity whose central management and control is in Singapore when the message is sent;
- (c) the computer, mobile telephone, server or device that is used to
10 access the message is located in Singapore;
- (d) the recipient of the message is —
 - (i) an individual who is physically present in Singapore when the message is accessed; or
 - (ii) an entity that carries on business or activities in Singapore
15 when the message is accessed; or
- (e) if the message cannot be delivered because the relevant electronic address has ceased to exist (assuming that the electronic address existed), it is reasonably likely that the message would have been accessed using a computer, mobile
20 telephone, server or device located in Singapore.

(3) Notwithstanding subsection (1), this Act shall not apply to any electronic message specified in the First Schedule to such extent as may be specified therein.

PART II

25 DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

Application of this Part

8. This Part shall apply to all electronic messages, whether or not they are unsolicited commercial electronic messages.

Use of dictionary attack and address harvesting software

9. No person shall send, cause to be sent, or authorise the sending of, an electronic message to electronic addresses generated or obtained through the use of —

- 5 (a) a dictionary attack; or
 (b) address harvesting software.

PART III

UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

Application of this Part

- 10 **10.** This Part shall apply only to unsolicited commercial electronic messages.

Sender of unsolicited commercial electronic messages in bulk to comply with Second Schedule

- 15 **11.** Any person who sends, causes to be sent or authorises the sending of unsolicited commercial electronic messages in bulk shall comply with the requirements in the Second Schedule.

PART IV

CIVIL ACTION

Aiding, abetting, etc.

- 20 **12.**—(1) No person shall —
- (a) aid, abet or procure a contravention of section 9 or 11;
 - (b) induce, whether by threats, promises or otherwise, a contravention of section 9 or 11;
 - (c) be in any way, directly or indirectly, knowingly concerned in or
25 a party to, a contravention of section 9 or 11; or
 - (d) conspire with others to effect a contravention of section 9 or 11.
- (2) A person does not contravene subsection (1), section 9 or 11 merely because he provides, or operates facilities for, online services or network

access, or provides services relating to, or provides connections for, the transmission or routing of data.

Civil action

5 **13.**—(1) Where there is a contravention of section 9 or 11 in relation to electronic messages sent to electronic addresses, any person, who has suffered loss or damage as a direct or an indirect result of such contravention, may commence an action in a court against —

(a) the sender; or

(b) a person who has contravened section 12(1).

10 (2) This section shall not affect any liability that any person has under any other written law or rule of law.

Injunction and damages for civil action

14.—(1) Subject to the provisions of this Act, in an action under section 13(1), the types of relief that the court may grant include the following:

15 (a) an injunction (subject to such terms, if any, as the court thinks fit);

(b) damages;

(c) statutory damages under subsection (3).

20 (2) The types of relief referred to in paragraphs (b) and (c) of subsection (1) are mutually exclusive.

(3) In any action under section 13(1), the plaintiff shall be entitled, at his election, to —

25 (a) damages in the amount of the loss or damage suffered by the plaintiff as a direct or an indirect result of the contravention referred to in section 13(1); or

(b) statutory damages —

(i) not exceeding \$25 for each electronic message referred to in section 13(1); and

30 (ii) not exceeding in the aggregate \$1 million, unless the plaintiff proves that his actual loss from such electronic messages exceeds \$1 million.

(4) In awarding statutory damages under subsection (3)(b), the court shall have regard to —

- (a) whether the contravention by the defendant of section 9, 11 or 12(1) was wilful;
- 5 (b) any loss or damage that the plaintiff has suffered or is likely to suffer as a direct or an indirect result of the contravention referred to in section 13(1);
- (c) any benefit shown to have accrued to the defendant by reason of the sending of electronic messages;
- 10 (d) the need to deter other similar instances of sending of electronic messages; and
- (e) all other relevant matters.

(5) The loss referred to in this section includes any pecuniary loss suffered as a direct or an indirect result of the contravention referred to in
15 section 13(1).

Costs and expenses

15 **15.** In any proceedings under this Act, the court may, in addition to exercising the powers conferred by section 14, order the defendant to pay to the plaintiff the costs and expenses of and incidental to the proceedings, and any legal costs incurred in respect of the proceedings.
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PART V

MISCELLANEOUS

Code of practice

25 **16.**—(1) Internet access service providers and telecommunications service providers may, with the approval of the Authority, issue a code of practice in connection with —

- (a) minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages; and
- (b) such other matters as the Authority may require.

30 (2) Every Internet access service provider and telecommunications service provider shall comply with any code of practice approved by the

Authority under subsection (1), except that if any provision in any such code of practice is inconsistent with this Act, that provision shall not have effect to the extent of the inconsistency.

Amendment of Schedules

5 **17.**—(1) The Minister may at any time, by order published in the *Gazette*, amend any Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

10 **Regulations**

18. The Minister may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

15

FIRST SCHEDULE

Section 7(3)

EXCLUDED ELECTRONIC MESSAGES

1. This Act does not apply to any electronic message where the sending of the message is authorised by the Government or a statutory body on the occurrence of any public emergency, in the public interest or in the interests of public security or national defence.

2. For the purposes of paragraph 1, if any doubt arises as to the existence of a public emergency or as to whether any electronic message is sent in the interests of public security or national defence, a certificate signed by the Minister shall be conclusive evidence of the matters stated therein.

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SECOND SCHEDULE

Section 11

REQUIREMENTS FOR UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

5 **Interpretation**

1. In this Schedule —

“header information” means the source, destination and routing information attached to an electronic message, including, where applicable, the originating domain name and originating electronic mail address, and any other
10 information that appears in the line identifying, or purporting to identify, the sender of the message;

“mistake” means reasonable mistake of fact.

Unsubscribe facility

2.—(1) Subject to sub-paragraphs (2) and (3), every unsolicited commercial
15 electronic message shall contain —

- (a) an electronic mail address, an Internet location address, a telephone number, a facsimile number or a postal address that the recipient may use to submit an unsubscribe request; and
- (b) a statement to the effect that the recipient may use the electronic mail
20 address, Internet location address, telephone number, facsimile number or postal address, as the case may be, provided in the unsolicited commercial electronic message to submit an unsubscribe request, or a statement to similar effect.

(2) Where the unsolicited commercial electronic message is received by the recipient
25 by electronic mail, the unsolicited commercial electronic message shall include an electronic mail address to which the recipient may submit an unsubscribe request.

(3) Where the unsolicited commercial electronic message is received by the recipient by text or multi-media messaging sent to a mobile telephone number, the unsolicited commercial electronic message shall include —

- (a) a mobile telephone number to which the recipient may submit an
30 unsubscribe request by text if the unsolicited commercial electronic message is received by text; or
- (b) a mobile telephone number to which the recipient may submit an unsubscribe request by text or multi-media messaging at the recipient’s
35 option if the unsolicited commercial electronic message is received by multi-media messaging.

(4) The statement referred to in sub-paragraph (1)(b) shall be presented —

- (a) in a clear and conspicuous manner; and
- (b) in the English language and where the statement is presented in two or more languages, the English language shall be one of the languages.

(5) The electronic mail address, Internet location address, telephone number, facsimile number or postal address referred to in sub-paragraphs (1), (2) and (3) shall be —

- (a) valid and capable of receiving —
 - (i) the recipient's unsubscribe request (if any); and
 - (ii) a reasonable number of similar unsubscribe requests sent by other recipients (if any),
 at all times during a period of at least 30 days after the unsolicited commercial electronic message is sent; and
- (b) legitimately obtained.

(6) The use of the electronic mail address, Internet location address, telephone number, facsimile number or postal address referred to in sub-paragraphs (1), (2) and (3) to submit an unsubscribe request shall not cost more than the usual cost of using that kind or a similar kind of electronic mail address, Internet location address, telephone number, facsimile number or postal address, as the case may be, using the same kind of technology as was used to receive the unsolicited commercial electronic message.

(7) Where a recipient submits an unsubscribe request using the facility provided pursuant to this paragraph, no further unsolicited commercial electronic messages shall be sent after the expiration of 10 business days after the day on which the unsubscribe request is submitted.

(8) Any person who receives an unsubscribe request under this paragraph shall not disclose any information contained in the unsubscribe request to any other person, except with the consent of the person whose particulars are contained in the unsubscribe request.

(9) Sub-paragraphs (1) to (7) shall not apply if the unsolicited commercial electronic message is sent, caused to be sent or authorised to be sent by mistake.

Labelling and other requirements

3.—(1) Every unsolicited commercial electronic message shall contain —

- (a) where there is a subject field, a title in the subject field and that title is not false or misleading as to the content of the message;
- (b) the letters “<ADV>” with a space before the title in the subject field, or if there is no subject field, in the words first appearing in the message, to clearly identify that the message is an advertisement;
- (c) header information that is not false or misleading; and

(d) an accurate and functional electronic mail address or telephone number by which the sender can be readily contacted.

(2) Sub-paragraph (1) shall not apply if the unsolicited commercial electronic message is sent, caused to be sent or authorised to be sent by mistake.

5

EXPLANATORY STATEMENT

The object of this Bill is to control the sending of unsolicited commercial communications in bulk, commonly referred to as spam, by electronic mail or by text or multi-media messaging to mobile telephone numbers, and to provide for matters connected therewith.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 defines the term “commercial electronic message”.

Clause 4 defines the term “electronic message”.

Clause 5 defines the term “unsolicited”.

Clause 6 defines the term “sending in bulk”.

Clause 7 sets out the scope of application of the Bill. Generally, the Bill applies to electronic messages with a Singapore link but does not apply to electronic messages specified in the First Schedule to such extent as may be specified therein.

PART II

DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

Clause 8 states that Part II of the Bill applies to all electronic messages, whether or not they are unsolicited commercial electronic messages.

Clause 9 prohibits the sending of electronic messages to electronic addresses generated or obtained through the use of a dictionary attack or address harvesting software.

PART III

UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

Clause 10 states that Part III of the Bill applies only to unsolicited commercial electronic messages.

Clause 11 provides that senders of unsolicited commercial electronic messages in bulk must comply with the requirements in the Second Schedule.

PART IV

CIVIL ACTION

Clause 12(1) provides that a person must not aid, abet, procure, induce, be knowingly concerned in or a party to, or conspire with others to effect, a contravention of clause 9 or 11. Clause 12(2) provides that a person does not contravene clause 9, 11 or 12(1) merely because he provides, or operates facilities for, online services or network access, or provides services relating to, or provides connections for, the transmission or routing of data.

Clause 13 confers a right on any person, who has suffered loss or damage as a direct or an indirect result of the contravention of clause 9 or 11 in relation to electronic messages sent to electronic addresses, to take civil action in a court against specified persons.

Clause 14 provides for the types of relief that the court may grant in a civil action. These include an injunction, damages and statutory damages.

Clause 15 provides that the court may, in addition to exercising the powers conferred by clause 14, order the defendant to pay to the plaintiff the costs and expenses of and incidental to the proceedings, as well as any legal costs incurred in respect of the proceedings.

PART V

MISCELLANEOUS

Clause 16 provides that Internet access service providers and telecommunications service providers may issue a code of practice in connection with minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages and such other matters as the Info-communications Development Authority of Singapore (the Authority) may require. The clause also requires the code of practice to be issued with the approval of the Authority.

Clause 17 empowers the Minister to amend any Schedule by order published in the *Gazette*.

Clause 18 empowers the Minister to make regulations which are necessary or expedient for carrying out the purposes and provisions of the Bill and for prescribing anything that may be required or authorised to be prescribed by the Bill.

The First Schedule excludes electronic messages, where the sending of the messages is authorised by the Government or a statutory body on the occurrence of any public emergency, in the public interest or in the interests of public security or national defence, from the application of the Bill.

The Second Schedule sets out the requirements that senders of unsolicited commercial electronic messages in bulk must comply with, including the provision of an unsubscribe facility and certain labelling and other requirements.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIVES

<i>Spam Control Bill 2007</i>		<i>Derivatives</i>		
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Definition of “recipient”		—	3(14) (modified)	—
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		<i>Section</i>		
DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE	PART II			
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REQUIREMENTS FOR UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES	SECOND SCHEDULE	4, 17 and 18 (modified)	3(8) and 5(a) (modified)	Regulation 3.3 of Australia Spam Regulations 2004 (modified)