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*How Lawsuits Against Spammers
Can Aid Spam-Filtering Technology:
A Spam Litigator's View From the Front Lines*

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What Is Spam?

Spam is

Unsolicited Bulk Commercial Email

Spam Is Unsolicited Bulk Commercial Email

- “Bulk” – substantially similar emails
- “Commercial” – not inherently illegal
- “Email” – challenges for convergence
- “Unsolicited” – KEY – intent of recipient

Recipient's Intent Can Be Reflected in 3 Sources:

- Text of email – difficult to distinguish spam from opt-in advertisements; Impossible to prevent spammer from reacting to filters*
- Input from recipient – difficult to obtain
- Input from sender – compelling when you can get it (spammers rarely have any evidence of recipient's intent)

* Effectiveness of filters should be measured by their resistance to evasion

Laws Against Spam

- AUPs – setting expectations
- Common law – trespass to chattels
- State statutes (i.e., Virginia computer crimes act; Washington anti-spam laws)
- Federal statutes (i.e., Computer fraud & abuse act -- general computer crimes statute)
- Pending federal legislation – silver bullets?

Law's Objectives

- Injunctions
- Damages
- Bankruptcy
- Imprisonment
- General & Specific Deterrence
- Retribution
- Education

Profile of a Spammer

- Hackers Gone Bad or Crooks Turned Geek
- Never Been So Successful In Any Other Job
- Big Spenders
- But Increasingly Professional

How Spammers Mail

- Spam Houses – increasingly offshore
- Dial up accounts – compromised, free or anonymously registered
- Bulk Email Software*
- IP spoofing?

* Look for more legal attention and research on bulk email software

What Spammers Advertise

- Point of Sale via Online Payment
- Lead Generation
- Rarely Advertise Non-Internet Sites (phone numbers, PO boxes)
- Almost Never Advertise Brand Awareness

Where Spammers Advertise

- HyperText Links – temporary sites linked to permanent sites

(www.freewebspace.com/mypage.html linking to www.xxx-example.com)

- Encrypted webpages/ Obfuscated URLs
- Redirecting webpages
- Temporary Connectivity is the Norm

Spam = Fraud

- Source and links are transient and falsified
- Domain name registrations – is every adult website offshore? (False info can lead to ICANN action (9/02 letter to Verisign))
- Webhosting – Spam Houses \$10,000/month
- Third Party Advertisers – In Search of Plausible Deniability

War Stories

- Contempt is Real -- AOL v. CN Productions
- Breaking the Webmaster Model -- AOL v. CEN
- You Can Sue Where the Spam Lands and Notice Will Be Presumed -- Verizon Online v. Ralsky
- Other cases: AOL v. Forrest Dayton, AOL v. Joseph Melle

Federal Legislation

- Shift Legal Burden to Sender to Produce Evidence of Intent – Presumption of Spam
- Sunshine via “custodian of records” disclosures (with Criminal Enforcement for False Disclosures) (18 USC 2257)
- Sliding Statutory Damages (based on presence of disclosure, evidence of intent and other forms of fraud)
- Government & ISP Enforcement

Limits of the Law

- Dependence on technical information
- Slow and Costly
- Growing International Scope



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