



**MALAYSIAN COMMUNICATIONS AND  
MULTIMEDIA COMMISSION**

**DISCUSSION PAPER**

**REGULATING UNSOLICITED  
COMMERCIAL MESSAGES**

**AUGUST 7, 2003**

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## INTRODUCTION

The Malaysian Communications and Multimedia Commission has undertaken a study on the issue of junk mail or “spam”. This information paper provides the salient findings from that study and the action plan to be out in place by the Commission in dealing with this issue in a proactive manner. They are:

- (a) Suggesting a possible definition of spam to be utilised by all service providers;
- (b) Identifying the scope of spam and its use as a marketing tool;
- (c) The impact of spam;
- (d) Identifying the need to regulate and monitor spam via Internet e-mail and mobile short messages (sms);
- (e) Identifying legal provisions in the Communications and Multimedia Act 1998 that deal with this issue; and
- (f) Developing and coordinating an action plan amongst the service providers, Content Forum, Consumer Forum and the Commission in managing this issue.

This discussion paper seeks to invite submissions from interested parties on the issues raised here, or on any other matter that is relevant to the subject. Responses from this Discussion Paper may be used toward formulating policy directions in implementing an action plan on spam. Written submissions, be it in electronic form or hard copy, should reach the Commission not later than 12.00 noon on September 3, 2003. Submissions should be addressed to:

Attention:  
Regulating Unsolicited Commercial Messages,  
Industry Development Division

Malaysian Communications and Multimedia Commission  
Level 11, Menara Dato' Onn  
Putra World Trade Centre (PWTC)  
45, Jalan Tun Ismail  
50480 Kuala Lumpur.

Tel: +60 3 4047 7087  
Fax: +60 3 2693 4881  
Email: [spamreview@cmc.gov.my](mailto:spamreview@cmc.gov.my)

The Commission extends its appreciation to interested parties for the participation in this consultative process.

### **SUGGESTED DEFINITION OF THE TERM “SPAM”**

1. Spam may be elucidated as the activity of sending unsolicited commercial messages (for example Internet e-mails, mobile SMS (short message service), etc. This is one possible definition of what spam is. The need for spam to be clearly defined is important in order to avoid confusion and differences in interpretation that may give rise to difficulties in managing this issue.

### **THE FEATURES OF “SPAM”**

2. A communication is considered to be **unsolicited** where there is no prior relationship between the parties. The recipient has not explicitly consented to receive such communication. When spam is repeatedly sent, it usually results in great annoyance on the part of the recipient.
3. The term **commercial** may be interpreted to mean the promoting of goods and services via messaging. Spam is differently put, another form of unwanted direct marketing.
4. **Messaging** here may take place via a variety of mediums such as Internet e-mail or mobile short messaging service.
5. Generally, address databases are utilized to send out thousands of messages simultaneously to many recipients.

### **SCOPE OF THE TERM “SPAM”**

6. The term spam may also apply to unsolicited mail received via the post and fax or unsolicited telephone calls. Spam sent via e-mail presents particular problems however, which are of a special concern. This is elaborated upon later in this paper.

### **POSITIVE EFFECTS OF “SPAM”**

7. It must also be emphasised that in dealing with the issue of spam, we have to be mindful of genuine businesses that may undertake marketing activities via e-mail,

- telemarketing, post or fax. These businesses however must be mindful of not imposing themselves on people who do not wish to receive mail/information of this nature. Hence the point of focus thus is not so much on “what is done, but how it is done”. Priority must always be placed on ensuring customer privacy and the entitlement to choose whether or not to receive such mail/information.
8. Spam has positive effects as well which must not be underemphasized, such as providing useful information on goods and services in the market; being utilized as a cost-effective marketing tool for small businesses; allowing for a personalised approach to marketing; and contributing to the take up and proliferation of applications services. This appears overshadowed by the perception that spam is commonly used to advertise businesses of a dubious nature such as pyramid schemes, “get rich quick” schemes, phone sex lines, pornographic Web sites, quack health products and illegally pirated software to name a few.
  9. When unsolicited message is sent, with no attempt to misrepresent or conceal the identity of the sender, it is difficult to say that the action of the sender is wrong or illegal. Regard must also be had to the fact that the sender is a subscriber of the service and may be willing to pay in order to utilize the service provider’s resources. Thus express instructions from the recipient indicating that unsolicited mail is not wanted may be necessary.

**QUESTION A:**

The Commission if the view that a clear definition of what spam is needs to be articulated. A study of anti-spamming policies put in place by service providers indicate the use of very general words and phrases like “sending large numbers of unsolicited mail” or posting “chain letters” or sending “mass unsolicited mail.” Consistency in the use of such definition across the board amongst all service providers may be necessary. Besides being useful in legal action, such consistency helps make it clear to the public what spam essentially is. Do you think the proposed definition of spam by the Commission identifies the nature of this problem clearly? Do you think that an express instruction from the recipient indicating that unsolicited mail is not wanted is necessary or feasible?

**DISTINGUISHING BETWEEN CONTENT BASED OFFENCES AND SPAM**

10. An important preliminary point to note is that the annoyance caused here has nothing to do with the “**content**” of the message sent. Where the content is malicious, offensive or indecent, this would constitute problems with content that is inappropriate/unacceptable. The term “spam” is used to connote problems that relate to misuse/strain of resources like processing power, bandwidth and storage capacity due to bulk mailing. Content related matters will fall under the purview of the advertising guidelines for now, and eventually under the **Content Code**. Legislative action is possible here under S 211 and 233(1) (a) of the Communications and Multimedia Act<sup>1</sup>.

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<sup>1</sup> S211 of the CMA 1998 pertains to the “prohibition on provision of offensive content.” S211 (1) states, “No content applications service provider, or other person using a content applications service shall provide content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person. S 211 (2) states “ A person who contravenes subsection (1) above shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is carried out after conviction. S 233 -see page 13 of this paper.

**WHAT SORT OF SPAM SHOULD WE CONCENTRATE OUR EFFORTS ON?**

11. The Commission is of the opinion that spam that is sent via Internet e-mail and mobile SMS require management. This is because

- (a) The economics of the Internet has created this problem since there is no “per message” cost. The charges borne by the consumer are for Internet access services per se. In the case of mobile SMS the charges on the sender are minimal to make this an attractive way to market goods and services.
- (b) The coming of MMS (multimedia messaging service) and 3G messaging services will further enhance this marketing tool.
- (c) Identifying the senders of such messages is difficult.

TABLE 1

## A COMPARATIVE ANALYSIS OF SPAM VIA DIFFERENT MEDIUMS

	Spam (E-mail)	Spam (fax)	Spam (post)	Spam (telephone)
Impact on recipient	Time and cost accessing, deleting and filtering spam.  Bandwidth, and storage capacity is wasted. Security is compromised due to use of open relays that disguise the origin of the messages.	Time and cost- paper and ink of recipient used for the fax print out. Cost of sending the message borne by sender.	No cost-just dispose the unwanted mail. Cost borne by sender.	No cost-terminate the call. Cost borne by caller.
Impact on service provider	Strain on internet resources-bandwidth, and storage capacity affected.  Extensive resources need to be utilized to monitor spamming.  Even if spammers pay for Internet access, this payment is very low compared to the costs incurred to tackle the problem.	Positive-service is paid for by the sender (spammer).	Positive-service is paid for by the sender (spammer).	Positive-service is paid for by the caller (spammer).
Magnitude of the problem	Severe. No strain on sender's resources.	Less severe	Less severe	Less severe
Security threat	System crashes and performance degradation	Nil	Nil	Nil
Annoyance factor	Tremendous  In <i>Cyber Promotions and American Online Inc.</i> <sup>2</sup> . A solitary spammer sent 2 million messages per day to an ISP.	Present to a lesser degree	Present to a lesser degree	Present to a greater degree as the user is forced to take the call.
Identification of the offending	Difficult due to the open architecture of the internet and the	Easily traceable provided	Easily traceable	Easily traceable-unless pre-

<sup>2</sup> 948 F. Supp. 456.459 (E.D. Pa.1995)



<p>party</p>	<p>use of forged headers Effective methods are few/expensive to implement.</p>	<p>subscriber has caller line identification features.  Even if the fax is sent via a third party such as a commercial fax service, identification should be possible provided a registration or identification system is in place to identify the "actual person" sending the fax to be responsible.</p>	<p>paid cards are used. The pre-paid number in question however can be identified and the service can be denied as an interim measure.</p>
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**QUESTION B**

**Do you agree with the comparative analysis provided in Table 1 and the Commission's stance of concentrating our efforts on Internet e-mail and mobile sms for the time being?**

**CAN WE IDENTIFY THE OFFENDERS IN THE CASE OF SPAM?**

12. This question can be answered in the affirmative.
13. An unsolicited message can be traced from where it originates in a network.
14. In a multi-service provider environment, the assistance and collaboration of the various network service providers are necessary to effectively identify the originating point or location of the message.
15. However, although the location or originating point may be identified, identifying the actual person responsible for the spam may need further investigation.
16. In monitoring and tracking spam, the service provider(s) must be mindful of the relevant legal provisions on interception and personal protection of data.

**QUESTION C:**

**In order for these obligations to be given effect to, service providers must take appropriate measures such as:**

- a. Purchasing appropriate software and technical systems to facilitate effective monitoring, supervision and investigation;**
- b. Ensure relevant technical expertise exists or is developed for this purpose;**
- c. Developing appropriate compliance policy and procedures;**
- d. Designating the function to a specific unit to attend to, coordinate or handle these issues; and**
- e. Acting expediently, which is vital in order to capture the pathways used by spammers. This solution necessarily requires the co-operation and collaborative efforts of all parties concerned, namely the ISPs, phone companies, the police and the Commission in monitoring, investigating and tracking down offenders successfully.**

**The Commission is of the view that failure to curb such activities as spamming can lead to serious system degradation, poor performance, resource wastage and hamper industry development in the long term. As such, a commitment towards anti-spamming measures may increase costs in the short-term, but this is outweighed by the benefits that can be reaped in the long run. The Commission seeks your comments and views on this matter.**

**LEGAL PROVISION UNDER THE COMMUNICATIONS AND MULTIMEDIA ACT 1998 THAT DEAL WITH SPAM**

17. Mechanisms for legal redress exist, pursuant to Section 233 of the Communications and Multimedia Act 1998 for this purpose.

18. **Section 233** deals with the “***improper use of network facilities or network services***”. This is essentially what spamming is all about.

19. It states

*(1) A person who-*

*(a) by means of any network facilities or network service or applications service knowingly-*

*(i) makes, creates or solicits; and*

*(ii) initiates the transmission of,*

*any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or*

*(b) initiates a communication using any applications service whether continuously, repeatedly or otherwise, during which communication may or may not ensue with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,*

*commits an offence.*

*(2) A person who knowingly-*

*(a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or*

*(b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a)*

*commits an offence.*

*(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a terms not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.*

20. Section 233(1)(a) deals with the content of the message/communication concerned. Thus the issue of wastage of resources like bandwidth, processing power and storage space is not dealt with here. This section appears feasible to be utilized to deal with hate mail etc. as the point of concern here is the content, as opposed to the strain such activity places on resources.
21. Liability of the offender/ spammer would be under S 233(1) (b). It captures the fact that the communication is sent without the identity of the sender disclosed, the intention to annoy or harass and notes the use of the applications service continuously, repeatedly or otherwise. The strain posed on resources like the server, bandwidth etc. is captured here. The sender of the spam can be made liable via this section.

**QUESTION D**

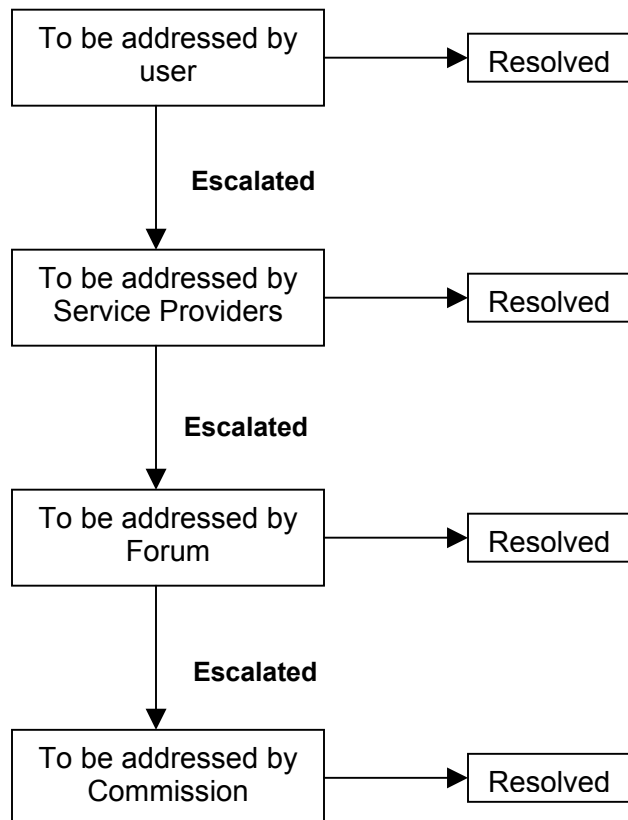
**Is the above provision adequate to handle spam?**

**ACTION PLAN: MANAGING THE PROBLEM**

22. In managing this problem, the Commission feels that a four-tiered approach is useful. In the first tier, self-management by users is to be encouraged and supported. Service providers are expected to assist users in this aspect.
23. If the problem remains unsolved, the user should then complain to the service provider. The next avenue for redress would be the Consumer Forum.
24. If the problem escalates it will be brought to the attention of the Commission, which may then consider taking legal action.
25. This tiered approach reflects the view of the Commission that in the long-term spamming cannot be compensated by legalistic conceptions such as rebates, fines or penalties when other alternatives are available.
26. A user of a service of is in the Commission's view more concerned with issues such as:
  - (a) The correction of the problem or interference in a timely manner, or
  - (b) An assurance from the service provider that the best efforts are being applied to deal with the problem, or
  - (c) Assurances that the problem will not recur.

## ACTION PLAN: MANAGEMENT OF SPAM

### Flowchart: Management of Spam



## **FIRST STEP: SELF REGULATION BY USERS**

27. The first step in managing this problem should be self-regulation by users .

### **Internet Users**

28. Internet users can ignore spam and delete it. Internet users can be advised to avoid going to places where spammers generate mailing lists, such as newsgroups, chat rooms and public directories.
29. Many e-mail servers have automatic filtering capabilities. This may be enabled or disabled at the users' preference by informing the service provider of their preferences. If this fails, a complaint should be lodged with the respective forums. If it is spam, this comes under the Consumer Forum whilst content matters should be under the Content Forum
30. Promoting the use of disposable or dispensable e-mail address.

### **Mobile SMS users**

31. In the case of SMS, the recipient can just delete the messages expediently. The numbers from which such messages are sent may be recorded if the recipient deems further action necessary.
32. If the volumes of the messages are excessive, complaints should be lodged with the service provider for them to take action according to their service contract/agreement. If this fails, a complaint should be lodged with the respective Industry Forums. If it is spam, this comes under the Consumer Forum whilst content matters should be under the Content Forum.

### **Challenges identified by the Commission:**

- (a) Education and awareness of consumers via initiatives by service providers



- (b) Education and awareness brochures or campaigns to be developed and distributed to the general public by the Commission
- (c) Making information available on this issue at the Commission's website
- (d) Promoting the installation and use of filtering mechanisms by users.

## **SECOND STEP: MANAGEMENT BY SERVICE PROVIDERS**

### **A) The Contract for subscription of services between Service Providers and Customers**

Management here is two-fold; i.e. the obligations of the customer to the service provider and the obligations of the service provider to the customer.

- 33. A study of most service application forms indicate that the terms of the service generally contain clauses pertaining to user responsibility and obligations, prohibited behaviour or use; and terms and conditions of service use or access. This takes into account the fact that spammers like all other service users may need to subscribe to ISPs for Internet access/use.
- 34. Such clauses are useful as they allow the service provider to cease to offer their service to spammers, if a complaint is lodged and the offending party can be accurately identified.
- 35. The service providers appear to have also put in place privacy policies, anti-spamming complaint centres, and acceptable user-policies in place. These policies include specifically prohibiting the sending of harassing or mass unsolicited email. Most of these policies are very comprehensive and valuable resources and information is disseminated on the service providers' websites. Users must be educated or encouraged to take full advantage of these resources.

### **Challenges identified by the Commission**

- 36. Making such policies the mainstay of all service providers. These service providers' policies and practices appear to be practiced predominantly by Internet

access service providers. This may no doubt be reflective of the fact that spam may be a particularly pressing problem in this medium. Notwithstanding, such policies should also be made the mainstay of all mobile messaging service providers.

37. Making certain that service providers have put in place the necessary infrastructure to handle this problem. This includes amongst others have to the purchasing of appropriate software and technical systems, and developing and committing technical expertise to facilitate effective monitoring, supervision and investigation activities. In short, it is crucial that policies put in place are implemented smoothly.
38. To initiate the setting up of regional and possibly global collaborative alliances amongst service providers to ensure that the problem is successfully tackled at the global level. This is pertinent to combat spam that originates outside Malaysia effectively.

**B) Service Providers' Obligations under the Content and the General Consumer Code**

39. Both the Content and the Consumer Codes<sup>3</sup> play a complementary role to the agreements made between the service providers and the users of the service.
40. The Content Code, once registered can be utilised effectively to manage content that is provided across a variety of platforms. Part 3 of the Code provides for strict advertising guidelines, whilst Part 5 of the Code deals specifically with online guidelines. This Code needs to include measures that specifically deal with spam.
41. The Consumer Code likewise endeavours to promote, protect and enhance consumer and customer expectations and rights with regards to the application aspects of all services such as pricing, packaging, use of data and description of services. This Code needs to include measures that specifically deal with spam.

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<sup>3</sup> The General Consumer Code and the Content Code have yet to be registered

42. The Consumer Code has outlined specifically the importance of protecting personal information. It lists out good practices that must be employed in collecting and maintaining such information; and the need for appropriate security and respect for consumers' preferences regarding unsolicited mails and telephone calls. Code rules have been drafted to facilitate this (*paragraph 2.3*) and emphasis is placed on service providers ensuring data security. Service providers must take reasonable precautions to ensure that data is not lost, misused or altered. Such an obligation must also be impressed upon third parties to whom such information may be transferred.
43. A complaint handling mechanism that is responsive is also provided for; where by the complaint handling process is made visible with clear assurances of a response within a given time frame. Whilst the time frame is dependent on the gravity of the complaint, there is an obligation on the part of the service provider to ensure that the customer is given regular updates of the process.

#### **Challenges identified by the Commission**

44. The Commission's Internal Content and Consumer Code Review Committee will work with the Forums to ensure that this issue is properly dealt with in the Codes. Concerted efforts will be made by the Commission to ensure that service providers make tackle this issue on an on going basis.
45. The Commission will also work to make certain that the Forums' have systems and work- flow processes as well as the resources to deal with this issue.
46. The Content Forum and the Consumer Forum must play an active role in educating the public on this issue and preparing information kits that enable users to take measures to combat spam, file complaints and assist in enforcement efforts.

### **THIRD STEP: LEGISLATIVE RECOURSE VIA THE COMMISSION**

47. This step should only be utilized as a last resort; after the first and second steps detailed in the management of this problem has been exhausted. This will ensure that our resources are wisely employed and all avenues for redress are explored. Legislative action under the Communications and Multimedia Act, specifically Section 233 (1) (b) shall be pursued.

#### **QUESTION E**

**The action plan proposed above takes into account cost considerations to service providers' vis-à-vis the rights and expectations of consumers. The Commission seeks comments from the public on the action plan proposed from paragraphs 22- 47 of this paper.**

### **SPAM THAT ORIGINATES OUTSIDE MALAYSIA**

48. Should the origin of the spam be beyond the geographical limits of Malaysia, two problems may arise; i.e. identifying the spammer and dealing with the offender effectively. This is due to jurisdictional issues in the legal system and processes. Filters utilized by end-users will help tackle spam that comes from beyond Malaysia as well. Service providers' filters or management of this problem as mentioned earlier will also help in this regard.

#### **Challenges identified by the Commission:**

49. To initiate the setting up of regional and possibly global collaborative alliances to ensure that the problem is successfully tackled. It is felt that alliances amongst service providers or service provider associations in various countries should be the first avenue for this alliance. This can eventually lead to further alliances at different levels, such as:

- (a) Amongst regulators;
  - (b) The Consumer and Content Forums and their foreign counterparts;
  - (c) Amongst service providers;
  - (d) Non-governmental organisations-such as “CAUCE” (Coalition Against Unsolicited Commercial E-Mail”) which is essentially a group of ISP administrators and technical experts dedicated to formulating good anti-spam laws, making advertisers accountable for their actions and empowering legal action by individuals; and
  - (e) Projects and initiatives that are committed to making these services useful and safe.
50. The Commission feels that an alliance amongst service providers regionally and globally is the most viable of these alternatives. Strategically, service providers would have to ensure the stable use of services by preventing system degradation and poor performance. Service providers also spend much time and effort in planning and maximizing the use of resources. As such, an alliance amongst the service providers appears sensible.
51. The service providers may also opt to prevent unsolicited mail from foreign jurisdictions by stopping such mail at the international gateways. (Such self - initiated action by industry not considered as censorship of the Internet under Section 3 (3) CMA 1998.

**QUESTION F**

**The Commission seeks your views/comments on the above.**

## **CONCLUSION**

52. These measures are necessary because they promote the national policy objectives for the communications and multimedia industry, more so when information based services provide the basis of continuing enhancements to the quality of life and work of an individual.<sup>4</sup>
  
53. These recommendations in our view are meant to enhance long-term regulatory efforts for end-users and integral to promoting a high level of consumer confidence in service delivery from the industry. These measures will go a long way in ensuring information security and network reliability and integrity<sup>5</sup>.

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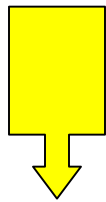
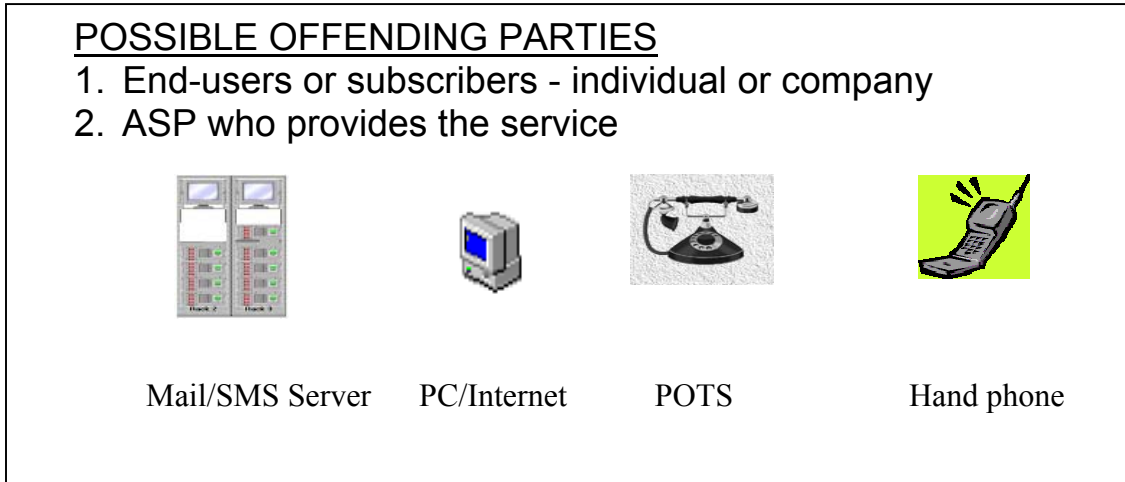
<sup>4</sup> Section 3 (2)(b) CMA 1998.

<sup>5</sup> Section 3 (2)(d) (e) and (f), CMA 1998

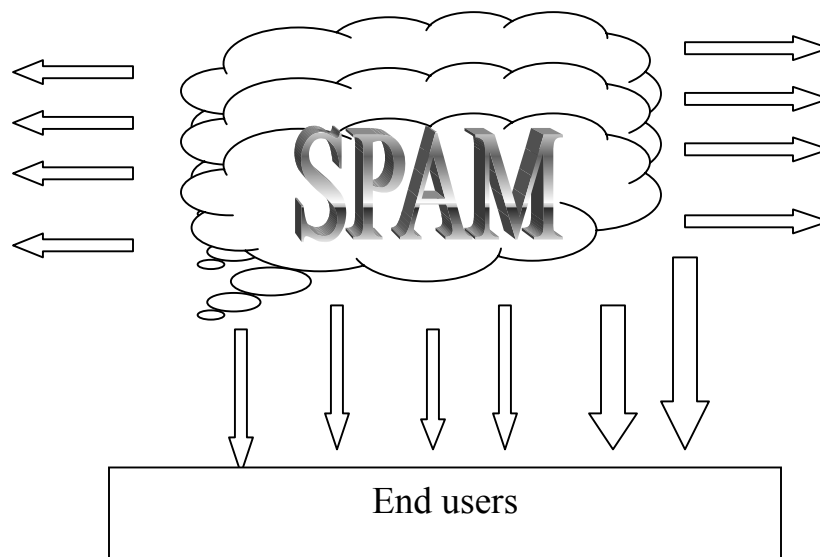
# **ANNEXURES**

## SPAMMING: MAPPING OUT THE SCENARIO

**Devices such as hand phones, telephones, mail/sms servers or  
PCs and customer database**

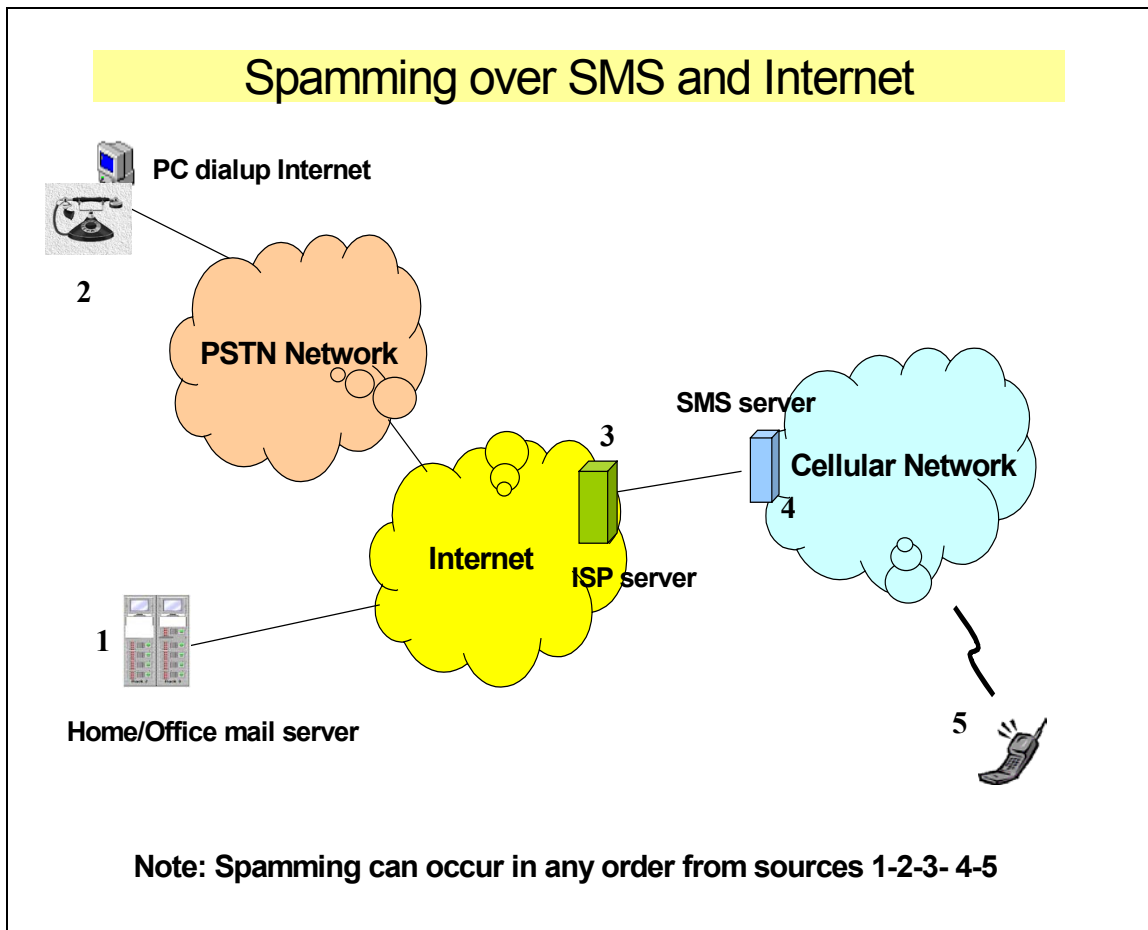


### The Network (Internet, PSTN, Mobile)





## Spamming over SMS and Internet



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