



Submission on the Spam Bill 2003, 20 Oct 2003

Mr Michael McLean
The Secretary
Senate ECITA Legislation Committee
Parliament House, Canberra

Dear Mr McLean,

Internet Society of Australia (ISOC-AU) Submission on the
Spam Bill 2003 and Spam (Consequential Amendments) Bill 2003

Given the fairly brief period of time between receiving an invitation to present a submission and the deadline to the ECITA inquiry on the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003, the Internet Society of Australia has only brief comments to offer. However, we would commend the departments involved on their excellent understanding of the problem derived from a wide range of submissions, and set out in the Explanatory Memorandums to the Bills.

Three comments:

1) The definition of what is connected with a breach of the Bill for purposes of inspections and search warrants etc. (e.g. Item 66 of the Explanatory Memorandum of the Spam (Consequential Amendments) Bill 2003) is -

- * a thing in respect of which the breach has happened;
- * a thing that may afford evidence about the breach; or
- * a thing that was used, or is intended to be used, for the purposes of the breach.

Many Internet users have interpreted "a thing that may afford evidence about the breach" to potentially cover a *received* spam email, hence providing for potential searches of the premises of victims of spam, rather than the senders of spam. A statement that excludes such an interpretation explicitly would be greatly appreciated.

2) There was some disquiet about the reversal of the onus of proof, in the "evidential burden" being on the alleged spammer. Despite most Internet users' wishes to see restrictions on spammers, this was seen as a negative step in general.

3) Although the financial impact on spam recipients is well-discussed, it omits a statement that recognises that one reason the spam problem has reached such an extent is because the "User Pays" principle has been flouted - the recipients rather than the senders of spam are carrying the major burden of costs, especially in download of traffic. There is a natural "throttling" action when senders must pay, but none when recipients pay, and the exploitation of this discrepancy is a fundamental cause of the problem becoming so extreme.

Yours faithfully,

Dr Kate Lance
Executive Director ISOC-AU
