

Anti-Spam Legislation and ISPs: An Update

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What's the latest for ISPs with the proposed anti-spam legislation? Here we overview timing and implications for ISPs. For more detailed background, see our on-line FAQ article on the legislation and direct marketing.

The Bill, in mid-2006, is going through the Select Committee process. So, taking into account the likely four month implementation period, ISP obligations won't cut in until at least the first half of 2007.

The ISP's role, in the overall structure in the Unsolicited Electronic Messages Act, will be substantial, unless submissions from parties such as InternetNZ are accepted. InternetNZ notes the compliance cost for ISPs.

In particular, when recipients have complaints about unsolicited emails etc, generally their first contact point will be the ISP. The ISP needs to have a process to handle these complaints.

Given that the amendments to the Telecommunications Act around the end of the year will probably include a requirement that ISPs have a complaint handling process, we expect ISPs will develop their processes in parallel with that, if only to minimise ISP cost of compliance with the legislation. The Telecommunications Carriers Forum and

InternetNZ are developing customer complaint handling processes for adoption by the industry. The spam legislation is likely to require ISPs to have regard to industry-adopted codes (bodies such as InternetNZ, TCF and ISPANZ are the most likely vehicles for an ISP code). In the absence of a voluntary code, the Bill is quite broad-brush in its approach to ISP responsibilities.

As can be seen from the FAQs article, the Act will cover not only the large volume of spam that tends to be misleading and irritating, but also more routine and commercial email direct marketing as well. ISPs will continue to have decisions to make, and processes, around the degree to which (and how) anti-spam filtering is undertaken. As an ISP could wrongly reject legitimate emails under the guise of spam (if it decides to filter rather than pass them on identified as spam), it may choose over time to amend its contracts (eg: with customers) to minimise risk in this regard.

The ISP's role, when faced with a complaint about spam, will be to deal with it and, in appropriate cases, elevate the complaint to the Department of Internal Affairs. The Department can take actions such as imposing penalties on spammers, giving warning notices, and so on.

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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