

May 6, 2003

Henry Butz

re: Supplements to the Spam Forum Record.

Dear Federal Trade Commission,

I wish to submit for the record my comments previously submitted to the FTC Consumer Privacy Hearings of 1997. I would like to take this opportunity granted to me to illustrate the zero effect which "Self Regulation" has had upon the practice of spamming over a period of six years time.

Thank you,

Henry Butz

March 18, 1997

Henry Butz

Secretary, Federal Trade Commission
Consumer Privacy 1997 - Comment, P954807
Room H-159
Sixth Street & Pennsylvania Ave., N.W.
Washington, D.C 20580

re: Notice Requesting Public Comment and Announcing Public Workshop 1997
Public Workshop on Consumer Information Privacy - Comments Section Two:
Consumer Online Privacy

Dear Federal Trade Commission,

I wish to enter comments as indicated above. I have been a professional computer programmer for seventeen years, hold an A.S. and B.S. degree in Computer Science, am a Novell Certified Network Administrator, and have been actively involved with the Internet for eight years. I consider my observations representative of the average, active Internet consumer.

My comments are based upon unsolicited e-mail received to 71331.3543@compuserve.com, which may be found on the computer disk entitled, "raw_data.txt" (approximately 360 pages in length) in ASCII format, and "linet.txt," e-mail received to photo@li.net. [Note: The

exhibits are not available in electronic form due to the volume. Copies are available from Public Reference, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580]

Unsolicited Commercial E-mail

2.16 How widespread is the practice of sending unsolicited commercial e-mail? Are privacy or other consumer interests implicated by this practice? What are the sources of e-mail addresses used for this purpose?

I have noted an 86% increase in UCE (Unsolicited Commercial E-mail) in 1st quarter of 1996 compared to all of 1995, a 60% increase in UCE in the 3rd quarter 1996 compared to the first two quarters, and an additional 166% increase in UCE 4th quarter 1996. I have received 176 UCE messages in 1996, which is expected to increase to as much as 720 messages in 1997, or approximately 90 messages per month, at the present rate of increase.

The amount of sexually related UCE in the 1st quarter of 1996 was double that of all of 1995. There was another 50% increase of sexually related UCE in the 3rd quarter of 1996 compared to previous quarters. There was a 150% increase of UCE containing allegedly illegal trade practices in the 3rd quarter of 1996 from previous quarters; that is: Envelope stuffing employment which required a "start up" fee; Earnings based on adding new members to a group (Pyramid); Activity which involved mailing a number of dollars in a number of envelopes to specified addresses; Unsubstantiated claims of unusually large amounts of income in a relatively short period of time.

The primary source of gathering my e-mail address was the Internet public forums (newsgroups), followed by CompuServe's classified section, membership directories, and other CompuServe public areas. The next most popular source of gathering e-mail addresses was from website search engines, known as "Web Crawlers."

2.17 What are the risks and benefits, to both consumers and commercial entities, of unsolicited commercial e-mail? What are consumers' perceptions, knowledge, and expectations regarding the risks and benefits of unsolicited commercial e-mail?

There was a 400% increase in undesirable UCE (Unsolicited Commercial E-mail) containing sexual and adult services during the second half of 1996. There was also a 175% increase of of undesirable UCE containing allegedly illegal activity during the same time period. These activities included the following: Envelope stuffing employment which required a "start up" fee; Earnings based on adding new members to a group (Pyramid); Activity which involved mailing a number of dollars in a number of envelopes to specified addresses; Unsubstantiated claims of

unusually large amounts of income in a relatively short period of time.

I received no benefit from receiving UCE in the year 1996, nor in the first quarter of 1997. There is no projected benefit to be gained, which would outweigh the burden of cost to receive UCE. Any and all information received by consumers by UCE is readily available through much more cost-effective means to the consumer, such as: search engines, public forums, newsgroups, websites, or website URL's publicized by conventional advertising, and with much greater variety.

The public interest is not served by UCE. The public is forced to subsidize unwanted solicitations. Unlike conventional media, such as television and postal mail, UCE does not reduce the cost of Internet service to the public; in fact, it increases the cost to consumers. The Internet has existed before the practice of UCE and will continue to exist without UCE. Internet service providers are often overwhelmed with complaints about UCE originating from their service. UCE reduces bandwidth; that is, the Internet would continue to slow under the weight of ever-increasing UCE, while providing no benefit to the consumer or to the Internet service providers.

2.18 What cost does unsolicited commercial e-mail impose on consumers or others? Are there available means of avoiding or limiting such costs? If so, what are they?

The cost of receiving UCE (Unsolicited Commercial E-mail) to a CompuServe, or typical Internet provider, is calculated as follows: \$.05/minute to download (retrieve by modem to a local computer) for off-line reading, \$0.10 telecommunications charges, and \$0.25 e-mail to pager fee (in my case) equals \$0.40 per message. An additional average of ten minutes on-line is often required to remove the recipient from the original mailing list, at a cost of \$0.50 for on-line time charges, bringing the total cost to \$0.90 per message. I incurred \$158.40 for receiving 176 pieces of unsolicited commercial e-mail in 1996. This number is expected to triple over the next two years, with an expected average of 720 pieces of UCE per year, at the present rate of increase. An average of 32 hours was spent to remove myself from e-mail marketing lists in 1996. An average of 132 hours per year will be necessary to remove myself from future mailings, should I wish to keep my e-mail account functional, at the present rate of increase of UCE.

At the time of this writing, there exists no established way to reduce the cost imposed on consumers. CompuServe charges consumers for all on-line connect time while reading e-mail and does not reimburse consumers for charges incurred while reading UCE. The only way to reduce the cost to the consumer is to discontinue the e-mail service or change the e-mail address on a rotating basis.

No UCE labeling scheme has been introduced, which may facilitate filtering and a reduction in cost to the consumer. Marketing groups are not motivated to introduce a labeling and filtering scheme. Such a labeling and filtering scheme would only serve to burden the Internet provider's e-mail server with this task, while decreasing the overall Internet bandwidth; that is, the Internet would continue to slow under the weight of ever-increasing UCE, while providing no benefit to the consumer or to the Internet service providers.

It is evident from the ever-increasing amount of undesirable UCE that marketers do not share "remove" requests. No global mechanism exists for specifying consumer preference to stop receiving UCE. Removal must be done on a case by case basis; for example, I generated 176 requests for mailing list removal in 1996, but continue to receive UCE at an ever-increasing rate.

2.19 Are there technological developments that might serve the interests of consumers who prefer not to receive unsolicited commercial e-mail? If so, please describe.

In the past year, there have been no significant established technological developments to aid in the reduction of unsolicited commercial e-mail. Internet providers, such as CompuServe and America On-Line have begun mandatory filtering of all messages originated by known direct e-mail marketers, but only to the extent to reduce the cost to the provider, not necessarily to the consumer. These established filters are not configurable by the consumer. A small minority of e-mail accounts are technically capable of running a user-selectable filter, but this often provides no monetary benefit to the user; that is, the user must still read, filter, and delete undesirable e-mail, despite that the task is done automatically. All of these filters are easily and frequently bypassed by using falsified e-mail return addresses, unnecessarily high priority, deceptive subject titles, or new, different, or falsified domain registration names.

The consumer is at the mercy of the party sending the e-mail. The Internet was created to provide robust and redundant paths for receiving e-mail, not for blocking and filtering e-mail. The largest cost burden to consumers is coming from marketers who do not conform to the Principles for Unsolicited Marketing E-mail. There is no tangible benefit for marketers to conform to these principles, nor are any fines imposed upon those who do not conform.

It is to the direct e-mail marketer's benefit to bypass filters and ignore "remove requests." The cost to the marketer to send one, or one million, unsolicited pieces of e-mail is essentially the same. The cost to the consumer to receive each e-mail is substantially higher, because

of third- party Internet provider on-line charges and the use of "dial-up" Internet connections with their associated telecommunication charges.

The nature of the Internet provides the mechanism for distributing a virtually unlimited amount of e-mail for a single monthly service fee. This encourages marketers to allow their mailing lists to grow quickly into the millions. Thanks to the speed of computers, several million e-mail messages may be sent in a single 24-hour period. It is not cost-effective for direct e-mail marketers to trim their lists of unwilling recipients. A greater number of e-mail recipients will result in a greater number of positive responses. For example, Cyberpromo's response to consumer complaints to undesirable e-mail, posted on their webpage on March 19, 1997 at <http://www.cyberpromo.com>, is: "The Empire Strikes Back," and "The FLAMERS will be EXTINGUISHED," and "BULLET-PROOF." I interpret these statements to mean that the largest source of unsolicited commercial e-mail does not have the public interest in mind and does not honor "remove requests.". Despite my repeated phone calls, faxes, and e-mails to Cyberpromo, I still receive undesirable unsolicited commercial e-mail from them, who usually use falsified return addresses to bypass existing filters.

2.20 How many commercial entities have implemented the Principles for Unsolicited Marketing E-mail presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

I will address the first three of the five principles.

Item#1 - On-line solicitations consistent with forum policies. Nearly all of the more popular public discussion forums are overrun with inappropriate solicitations or messages inconsistent with the newsgroup charter. Most of these inappropriate solicitations are of a sexual nature (900 number advertising and sexual website services) or make dubious claims to unsubstantiated amounts of excessive income. While a number of marketers have started to conform to these suggested principles (i.e. bigfoot, businesslink.net), a majority of entities still find it profitable not to conform to these principles. The number of non-conforming marketers is increasing at an alarming rate. For example, approximately 20% of the messages posted to the fine-art public forums are sexual or dubious in nature.

Item#2 - Marketers should identify themselves - the majority of undesirable, unsolicited e-mail I receive originates from "throw away" accounts; that is, marketers who blatantly disregard established TOS (Terms of Service) of e-mail services to send website URL's, phone numbers, and fax numbers to unwilling recipients. These e-mail accounts are terminated with no fines imposed on the marketer, who is free to

repeat this practice indefinitely. The cost is passed onto the consumer and to the ISP (Internet Service Provider). Inappropriate Unsolicited Commercial E-mail is often the #1 complaint received by ISP's from consumers.

Item#3 - Individuals should be offered an opportunity to suppress this information - No established e-mail "opt-out" or "opt-in" list has been established by the Direct Marketing Association. Several individual "opt-out" lists have been formed (like the unpublished list maintained by the E.D.M.A., Electronic Direct Marketing Association), but these are voluntary lists, not widely used, and not used at all by the worst offenders. Several marketers actually use these "opt-out" lists for their own solicitations, targeting the people on "opt-out" lists (known as "Flamers") as the object of harassment. A list of approximately two-hundred individuals, who were complaining about unsolicited commercial e-mail on the public forum, "news.admin.net-abuse.email," have been targeted by e-mail "bombs" and placed on hundreds of additional marketing lists.

Item#4 - Marketers who run public forums should inform individuals of use of their e-mail address - Many Internet users no longer post public messages, or post falsified e-mail addresses in an attempt to thwart e-mail address collection "robots." E-mail marketers gather names from all of the public forums for their solicitations and provide no mechanism for the suppression of unsolicited e-mail. This has resulted in a great intellectual loss to the public forum. Intelligent conversation and exchange of ideas on the public forum have been replaced with commercial advertising, pyramid schemes, and dubious claims to unsubstantiated amounts of income. Many great minds have discontinued posting public messages for fear of being overwhelmed with unsolicited commercial advertising. The wealth of public intellect, which was once the Internet, is now a wasteland of free advertising by greedy marketers, whose justification for this exploitation has been, "This is a legal practice."