

*Task Force on Spam:
Stakeholder Roundtable*

December 3, 2004

Background Paper

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Task Force on Spam: Stakeholder Roundtable Background Paper

The growing flood of unsolicited commercial electronic mail (generally known as spam) has reached epidemic proportions. According to various reports, in 2002 spam accounted for about 30 per cent of email traffic. In early 2003, the amount of unsolicited commercial e-mail had surpassed that of legitimate Internet communications. This trend has continued despite new laws and regulations being enacted in several countries, resulting in international recognition that laws alone were not enough to resolve the issue. The current volume of spam creates a considerable financial burden for Internet service providers and network operators, whose facilities carry these communications, and has reduced the overall effectiveness of email for the conduct of legitimate business. Consumers, increasingly annoyed and offended by the volume and content of spam messages, are also starting to turn away from the Internet and electronic mail. In the absence of successful means of reducing spam, the problem therefore threatens to undermine the use of email and the Internet as an effective platform for online commerce and general communications.

A Canadian Action Plan

Following a lengthy period of public consultations, the Minister of Industry announced an *Anti-Spam Action Plan for Canada* on May 11, 2004. Based on a “tool kit” approach to combating spam, the strategy included: better enforcement of existing laws, including the *Criminal Code of Canada* and the *Personal Information Protection and Electronic Documents Act*; actions by the Internet and information technology industries to resolve some network technology issues that facilitated e-mail abuse; improved codes of practice both by service providers and industries that used e-mail for legitimate commercial purposes; and better consumer education and awareness.

In recognition of the broad scope of the problem and the need to develop broad, cooperative solutions, the Minister of Industry also announced the creation of Canada’s Task Force on Spam, whose role was to oversee the implementation of the *Action Plan*.

Canada’s Task Force on Spam

Chaired by a senior Industry Canada official, the Task Force brings together representatives from the information technology industries, internet service providers, consumers, Internet law specialists, and public advocacy organizations. A Secretariat to the Task Force was established in the Electronic Commerce Branch of Industry Canada.

Membership:

- Michael Binder, Task Force Chair, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications
- Lori Assheton-Smith, Senior Vice-President and General Counsel, Canadian Cable

Telecommunications Association

- Tom Copeland, President, Canadian Association of Internet Providers
- Bernard Courtois, President, Information Technology Association of Canada
- Michael Geist, Canada Research Chair in Internet and E-Commerce Law, University of Ottawa
- Amanda Maltby, Senior Vice-President, Canadian Marketing Association
- Suzanne Morin, Assistant General Counsel, Regulatory Law and Policy, Bell Canada
- Geneviève Reed, Head of Research and Representation, *Option Consommateurs*
- Neil Schwartzman, President, Coalition Against Unsolicited Commercial Email Canada
- Roger Tassé, Partner, Gowling Lafleur Henderson LLP

Process:

Despite a relatively small number of members, the Task Force represents a broad range of organizations with a stake in the future of e-mail communications, from individual users to the large companies that develop and supply the software and equipment that fuels Internet growth. In order to organize its work and engage other stakeholders, the Task Force established five working groups to address specific points contained in the *Action Plan*: Legislation and Enforcement, Technology and Network Management, Validating Commercial Email, Public Education and Awareness, and International Collaboration. Membership in the working groups was open to any interested individual or organization. To date, there are approximately 60 organizations involved in the work. The bulk of working group deliberations have been accomplished through conference calls, with some in-person meetings for specific discussions.

The Task Force also established an Interdepartmental Committee made up of senior officials from federal government departments and agencies who had a role and responsibility in dealing with the spam problem. This group has met on an as-required basis, since a number of federal departments are also active participants on the individual working groups.

The Task Force wanted to consult as broadly as possible on the issue, and focused on two mechanisms to do so. It issued a notice in the *Canada Gazette* in the summer of 2004 and established an On-Line Forum where individuals can express their views on any of the subject areas under consideration by the Task Force. To date, the On-Line Forum has been moderately active. The somewhat limited use of the forum can be attributed to the widespread national participation that has been achieved within the working groups.

Working Group Mandates and Progress to Date

Working Group on Legislation and Enforcement

Mandate:

This Working Group will:

- Identify and examine obstacles to the use of existing laws and regulations to reduce and control spam, including the Personal Information Protection and Electronic Documents Act, the Competition Act, the Criminal Code of Canada, and any other relevant statutes;
- Support efforts to test the application of existing laws and regulations to reduce and control spam, including:
 - the identification of requirements for effective investigation and prosecution of spammers; and
 - the development of guidelines reflecting various fact situations which can be used for the kinds of cases that may be referred to the appropriate investigative body.
- Identify any need for new enforcement or legislative initiatives to reduce spam, including any amendments to existing laws and regulations required to support anti-spam enforcement measures, and/or any other new laws that might be required.

Background:

Many Email stakeholders and observers believe that improved enforcement of existing Canadian laws could have a significant impact on reducing the flow of spam. They cite the *Personal Information Protection and Electronic Documents Act* (PIPEDA) that treats electronic mail addresses as personal information, the *Competition Act*, the *Telecommunications Act*, and the *Criminal Code of Canada* as tools to reduce the volume of unsolicited email communications.

This Working Group will examine the use of existing laws and legal processes to control spam, the enforcement requirements and implications of so doing, encourage agencies to take action against spam, and assess whether additional legislation is needed to reduce and control spam in the future.

Progress to Date:

The initial focus of this group has been on facilitating discussions among private companies and the federal enforcement agencies responsible for legislation that could be used to address spam, including the Competition Bureau, the Office of the Privacy Commissioner, and the Royal

Canadian Mounted Police (RCMP). The intent is to evaluate the effectiveness of the individual statutes in prosecuting offences related to spam.

As a first step, all federal statutes that could apply to different elements of spam were identified. The working group decided to focus its efforts on the elements that had the clearest link to existing statutes:

Element(s)	Statute
Unauthorized use of an email address Failure to remove an email from a list after “opt-out” request	<i>Protection of Personal Information and Electronic Documents Act</i>
False or misleading product claims (in content of email)	<i>Competition Act</i>
Illegal methods of sending email (e.g. unauthorized use of email servers)	<i>Criminal Code of Canada</i>

The working group established a number of smaller task groups to discuss the requirements of different fact situations involved in pursuing cases under each statute. The Competition Bureau is currently investigating a number of spam complaints, specifically dealing with spam messages that make misleading performance claims, such as weight loss. The Office of the Privacy Commissioner is investigating complaints related to unauthorized use of email addresses, and failure to remove people from email lists when requested. Both agencies have given priority to their spam investigations to facilitate the work of the Task Force.

Progress on the *Criminal Code of Canada* has been more complex, as there are jurisdiction issues with primary responsibility for prosecution resting with provincial governments and local law enforcements. However, the Task Force has been working with these groups to advance the issue. In addition, the Task Force has been working with Justice Canada and the Royal Canadian Mounted Police (RCMP) Technological Crime Branch to identify general evidentiary requirements that would be involved in bringing a case forward under specific provisions of the *Criminal Code*.

In the initial stages of its work, the working group has served to educate both enforcement agencies on the extent and severity of the spam problem, and private companies on the legal requirements, and competing priorities, for the pursuit of cases. This process of mutual education has been invaluable, and will facilitate the next stage of discussions on identifying the need for any new legislative initiatives. One point that has been raised and echoed in working group discussions is that possible legislative changes would not, in and of themselves, be enough. Enforcement agencies face limited resources and competing priorities that would continue to affect their ability to pursue spam cases.

As background to its deliberations, the working group has undertaken research into various aspects of spam legislation. In collaboration with the International Collaboration Working Group, it is undertaking an analysis of spam legislation in other countries, with a particular focus on the United States, United Kingdom and Australia. Further, the working group has

commissioned a study examining the question of private right of action for spam in Canada, including the existing legislative framework, the key elements of building such a right, and the views of Canadian companies on the need for such a right.

Questions for the Stakeholder Roundtable:

Are there particular legislative models that have been implemented in other countries that might work for Canada? That might not work?

Is existing legislation Canadian adequate for addressing the spam problem?

Are existing enforcement mechanisms adequate for addressing the spam problem?

Is a right of private action needed in Canada? Would it be an appropriate tool in the Canadian context?

If new legislative measures are required, what would be the best vehicle? (e.g. amend existing legislation, draft new legislation) What enforcement agency would be most appropriate?

What would be the specific objectives of new legislative measure?

Working Group On Anti-Spam Technology and Network Management

Mandate:

This Working Group will:

- encourage the adoption of effective anti-spam technologies and network management practices by Canadian ISPs and major business network managers; and
- identify and encourage the adoption and implementation of industry codes of practice that will reflect and promote the use of effective anti-spam technologies and network management practices.

Background:

There is a consensus among stakeholders on a number of technical tools and approaches that can be taken by Internet service providers and major business networks to reduce the flow of spam to users. Some of these initiatives relate to the development and application of anti-spam technology, others to the implementation and enforcement within industry of formal codes of business practise which reflect these practices.

This Working Group will promote the adoption of these technologies, tools and management practises among network managers in Canada that control and reduce spam, their formal

adoption of these as business practises by industry, and collaboration and communications within the industry on anti-spam measures.

Progress to Date:

The creation of this working group represents the first ever collaborative and concerted effort involving a broad range of organizations, including most of the country's largest and smallest broadband and dial-up Internet service providers, other network operators, large enterprise users, software developers, anti-spam advocates and government. The agreement of these stakeholders to work together to develop and implement industry-wide spam solutions is a major step forward.

The working group has already developed a series of recommended technical best practices that are intended to help reduce spam in Canada. The working group's mandate represents a continuation of efforts and progress that have been underway in this area for some time in Canada and internationally. The working group has, however, advanced this work to establish the first truly national consensus on recommended technical measures to combat spam. In these best practices, Canada has a model to share internationally in the global fight against spam. The recommended best practices document will be distributed to all Roundtable participants.

The working group, which represents the vast majority of email subscribers in Canada, has also been gathering metrics to help measure the spam problem. These metrics could be helpful in assessing spam trends over time.

A final area that the working group has been looking at is a review of other emerging and related technology trends, including: the development of IPv6 and whether it will have an impact on the volumes of spam; spyware, instant message and cellular phone spam.

Questions for Stakeholder Roundtable:

Will the recommended best practices have a significant impact on the volumes of spam received in Canada?

Are voluntary best practices the most appropriate mechanism for addressing technical solutions?

What are some of the next steps for the best practices? Can they be used as a model internationally?

What are the latest trends in spam volumes? Are they increasing, decreasing?

What are some other emerging and related issues that should be addressed? Will the measures taken by the Task Force and its working groups have an effect on phishing? Spyware? Mobile phone spam?

Working Group On Validating Commercial E-mail

Mandate:

This Working Group will:

- encourage and support Canadian marketers in adopting spam-free marketing techniques;
- promote the establishment of industry codes of practice that make it clear that spam has no legitimate role in Canadian e-commerce; and
- define and encourage adoption of a framework for establishing and implementing among Canadian marketers a commercial email authentication system.

Background:

There are now several candidate technologies and protocols available for blocking unwanted commercial email communications by facilitating the movement of certified, legitimate e-mail. Regardless of which candidate systems emerge as standards, implementation will require criteria by which legitimate and trusted commercial email is designated, and an agreed-upon approach to establishing and managing the authentication system, including a method of sharing system costs. There is also a recognized need for the adoption of a clear and rigorous code of practice among Canadian marketers that makes it clear that spam plays no legitimate role in the Canadian marketing mix.

Progress to Date:

The initial focus of this working group has been to bring together a group of stakeholders who have not traditionally worked together to discuss the challenges posed by spam for legitimate commercial emailers and to address ways to improve the “deliverability” of legitimate commercial email. There are a number of technical and business measures that can be applied to this issue. One area of effort has been the development of best practices for commercial email marketers, including the identification of measures that they can take to improve the deliverability of their messages.

With respect to technical measures, the working group decided to focus on certification, as it was felt that domain level authentication would be addressed by the Internet Engineering Task Force (IETF) and its working groups. It was suggested by a member of the working group that Canada, as a small but technologically advanced market, may be in a strong position to explore the development and implementation of a certification regime for legitimate commercial email.

For the purposes of the working group, certification is defined as a method of identifying an email as legitimate by inserting an algorithm, stamp, token or other certificate in the email that will enable facilities and service providers, or a user, to determine that it comes from a valid

verifiable source. The working group is currently developing a reference paper on existing certification regimes and their business models. The group will then look at the options and possibilities for implementing such a regime in Canada.

An additional focus of the group is to determine the extent of the “deliverability” problem, i.e. the volume of legitimate commercial email not reaching the intended recipients. Part of addressing the problem has been the ongoing dialogue between commercial emailers and internet service providers. The working group will be undertaking a Canadian trial to establish the volume and also the reasons why legitimate commercial e-mail was being blocked. Members also agreed to look at means to establish a better process to allow marketers to resolve their transmission problems with service providers.

Questions for Stakeholder Roundtable:

What are available mechanisms for certification?

Is the development of a Canadian certification regime a realistic objective? Could such a regime be useful as a model internationally?

Who should bear the cost of such a regime?

What is the extent of the “deliverability” problem for legitimate commercial email marketers?

What are reasonable expectations for “deliverability”?

Working Group On Public Education and Awareness

Mandate:

This Working Group will:

- identify and promote user practices and behaviours which can effectively control and limit spam; and
- encourage and support the development of a multi-stakeholder public information and awareness campaign to foster increased adoption of anti-spam practices and behaviours by end users in Canada.

Background

While there is much that industry and marketers can do that is effective in combating spam, and seamless for e-mail users, there is general agreement among stakeholders that more needs to be done to inform end users about what they can do to limit the amount of unwanted commercial e-mail they receive.

There is now a considerable body of available information on best online practices to avoid spam, including spam reporting by consumers, practices aimed at limiting the ability of spammers to harvest personal and business email addresses, and use of user-level Internet security and filtering tools to block spam and malicious programs sent by spammers, and to prevent the hijacking of end-user network connections by spammers.

This Working Group will identify best practises in this area, and encourage and support a multi-stakeholder approach to communicating these practises to Canadian end users.

Progress to Date:

The working group has conducted and reviewed existing public opinion research related to consumers' views on spam, and current education and awareness campaigns, both domestic and in other countries. Many of these initiatives had enjoyed limited exposure and in certain cases, key messages have lacked consistency. Following the review of research and initiatives, the group developed a general communications strategy to identify the objectives, key audiences and tools for a broad-based public education campaign on spam.

The first phase of this strategy was the development of an Internet-based campaign. Critical to this initiative was the development of consistent key messages, a common "look", and the broad dissemination by a wide range of partners of three key tips for users to protect themselves and fight spam. Working with communications and marketing experts, the working group developed an icon that could be hosted on partners' websites that would contain a link to user tips, available at www.stopspamhere.ca . Information on becoming a partner is also available at that location. The working group is currently enlisting both government and non-government partners to host the icon on their websites. This Internet campaign will be launched at the Roundtable.

The next phase of work for the working group will be the development of a broader campaign, including the development of specific vehicles and messages for particular target audiences, including small businesses and youth.

Questions for Stakeholder Roundtable:

What other actions/activities could be undertaken to promote these key tips? Would Internet service providers be willing to disseminate these messages via their own communications systems (e.g. billing, customer e-mail, etc?)

What groups are the most affected by the spam problem?

What type of information is needed by small business? educators? parents? others?

What are the most effective means of reaching these target groups?

Working Group On International Collaboration

Mandate:

To promote a strong presence for, and coordinated efforts by, the Government of Canada and any and all Canadian stakeholders in developing and implementing international and bilateral approaches to fighting spam.

Background:

For a number of years, the Government of Canada has been active in several international fora where Internet issues have been discussed. Canada is a member of the Task Force on Spam within the Organisation for Economic Cooperation and Development (OECD). The Task Force has completed the development of an action plan on unsolicited commercial e-mail. The Government of Canada is also involved in relevant work in the Asia-Pacific Economic Cooperation (APEC) forum and by the business-led Global Business Dialogue on Electronic Commerce (GBDe).

The Government of Canada will continue to play a leadership role in international efforts to reduce and control spam. It also wishes to encourage email stakeholders in Canada and elsewhere to become more actively involved in developing and implementing a broad range of anti-spam approaches.

Progress to Date:

The working group is actively promoting a strong presence for, and coordinated efforts by, the Government of Canada and any and all Canadian stakeholders in developing and implementing international bilateral and multilateral approaches to fighting spam. The working group is active in a number of important fora.

OECD Task Force on Spam

Canada is represented on both the OECD Task Force on Spam and is one of the few countries invited to participate on its secretariat. The first meeting of the Task Force on Spam was held in Paris on October 22, 2004. The meeting focussed primarily on the Outline of the Anti-Spam Toolkit, which is similar to Canada's "toolkit" approach.

Individual countries have volunteered to lead or participate in elements of the toolkit. Canada has volunteered to undertake a comparative analysis of the legislative frameworks in place internationally, which will also contribute to the work of the legislation and enforcement working group. Canada has also offered to contribute its work on a number of items (public education and awareness, anti-spam technologies and industry-led measures) that are resulting from our Task Force on Spam efforts. Of particular note is the recommended best practices that are the product of the working group on Technology and Network Management.

International Spam Enforcement Cooperation:

On October 11, 2004, a broad range of government/public agencies and private sector representatives from 15 countries, including Canada, met in London to discuss international spam enforcement cooperation. Due to the different legislative frameworks in place internationally, the meeting brought together enforcement agencies that may not usually work together, such as data/privacy protection, consumer protection, competition, and communications regulators.

The result of this event was the *London Action Plan on International Spam Enforcement Cooperation*, which aims to develop international links to address spam and spam-related problems. These include:

- encouraging communication and coordination between agencies to achieve efficient and effective enforcement;
- regular conference calls to discuss: cases, legislative developments, investigative techniques, ways to address obstacles to enforcement, consumer and business education projects; and
- encouraging dialogue between government agencies and private sector representatives to promote ways to support government agencies in bringing spam cases and pursue their own initiatives to fight spam.

This Action Plan does not replace existing international agreements that already exist between enforcement agencies. Rather, its primary purpose is enhanced communication among the diverse agencies involved in the fight against spam. Canada's Task Force on Spam has indicated its support for the Action Plan, and is participating in its implementation through Industry Canada. The Office of the Privacy Commissioner of Canada (OPCC) also intends to participate.

Efforts and results of the The London Action Plan on International Spam Enforcement Cooperation will feed directly into the deliverables of the OECD Task Force on Spam.

Multilateral Cooperation:

The working group is also actively involved in relevant work in The Asia-Pacific Economic Cooperation (APEC) forum, by the business-led Global Business Dialogue on Electronic Commerce (GBDe) and The International Telecommunications Union, and also supports related efforts through the United Nations Conference on Trade and Development, The Internet Engineering Task Force (IETF) and The International Consumer Protection and Enforcement Network (ICPEN).

Bilateral Initiatives:

Canada is actively encouraging cooperation concerning anti-spam policies and strategies through bi-lateral policy agreements with key partners including Australia, the United Kingdom, the United States, South Korea and the European Commission. The working group anticipates that agreements with Australia and the United Kingdom will be signed by early 2005.

Working Group Membership

Legislation and Enforcement

Co-chairs:

Michael Geist, Canadian Research Chair in Internet and E-Commerce Law, University of Ottawa

Roger Tassé, Partner, Gowlings Lafleur Henderson LLP

Member Organizations:

Canadian Radio-television and Telecommunications Commission

Canadian Wireless Telecommunications Association

COGECO Cable Inc.

Competition Bureau

Gowlings Lafleur Henderson LLP

Industry Canada

Justice Canada

LinuxMagic

Microsoft Canada

Nortel Networks

Office of the Privacy Commissioner of Canada

Rogers Communications Inc.

Royal Canadian Mounted Police

TELUS Communications Inc.

University of Ottawa

Network and Technology

Co-chairs:

Tom Copeland, President, Canadian Association of Internet Providers

Lori Assheton-Smith, Senior Vice President and General Counsel, Canadian Cable Telecommunications Association

Member Organizations:

24/7 Canada Inc.

Allstream

AOL Canada

Bell Canada

Canadian Association of Internet Providers

Canadian Cable Telecommunications Association

Canadian Internet Registration Authority

Canadian Marketing Association

Canadian Wireless Telecommunications Association

CANARIE Inc.
CipherTrust
Coalition Against Unsolicited Commercial Email (Canada)
COGECO Cable Inc.
Cornerstone Group of Companies
easyDNS Technologies Inc.
E-Gate Communications Inc.
Industry Canada
Interlink Connectivity
Internet Light and Power
LinuxMagic
Nortel Networks
Partners Inc.
Rogers Communications Inc.
SecuritySage Inc.
Shaw Communications Inc.
Technology Surveys International
TELUS Communications Inc.
The ASCII Ribbon Campaign
The Internet Engineering Task Force
University of British Columbia

Validating Commercial Email

Co-chairs:

Neil Schwartzman, Coalition Against Unsolicited Commercial Email (Canada)
Amanda Maltby, Senior Vice President, Canadian Marketing Association

Member Organizations:

24/7 Canada Inc.
Bell Canada
Canadian Marketing Association
Cornerstone Group of Companies
Industry Canada
Partners Inc.
Technology Surveys International
The Internet Engineering Task Force

Public Education and Awareness

Co-chairs:

Suzanne Morin, Assistant General Counsel, Regulatory Law and Policy, Bell Canada
Geneviève Reed, Head of Research and Representation, Option consommateurs

Member Organizations:

Bell Canada
Competition Bureau
Consumers Council of Canada
Consumers' Association of Canada
Industry Canada
Information Technology Association of Canada
Office of Consumer Affairs, Industry Canada
O'Malley Communications Inc.
Option consommateurs
Public Interest Advocacy Centre
University of Ottawa

International Collaboration Working Group

Co-chairs:

Bernard Courtois, President, Information Technology Association of Canada
Michael Geist, Canadian Research Chair in Internet and E-Commerce Law, University of Ottawa

Member Organizations

Competition Bureau
Department of Communications, Information Technology and the Arts, Australia
Department of Trade and Industry, United Kingdom
Industry Canada
Information Technology Association of Canada
LinuxMagic
Microsoft Canada
Organization for Economic Cooperation and Development
The Canadian Chamber of Commerce
University of Ottawa

Interdepartmental Committee

Chair:

Michael Binder, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry Canada

Member Organizations:

Canada Post

Canadian Radio-television and Telecommunications Commission

Communications Research Centre of Canada

Competition Bureau

Financial Consumer Agency of Canada

Industry Canada

Justice Canada

Law Commission of Canada

National Research Council

Office of the Privacy Commissioner of Canada

Public Safety and Emergency Preparedness Canada

Public Works and Government Services Canada

Royal Canadian Mounted Police

Treasury Board of Canada