



CAN-SPAM Act: The 2005 “Report Card”

by Maurene Caplan Grey

In December 2005, two years after being signed into law, the Federal Trade Commission (FTC) released their report to Congress on the effectiveness of the CAN-SPAM Act.

The 116-page report gets an A+ on its in-depth research of the conditions that led to the spam problem (See <http://www.ftc.gov/reports/canspam05/051220canspamrpt.pdf>). It also earns an A+ for its explanation on the mechanics of e-mail in lay terms (see Appendix III of the report).

However, the report earns an F on its conclusions – which are interspersed throughout the report. For example, the report states: “One particularly significant development since the enactment of CAN-SPAM is that the volume of spam has begun to decrease.”

The Commission cites sources that state that less spam e-mail is reaching the user’s inbox. Today’s enterprise- and consumer-user inbox, indeed, contains less spam; however, the decrease of spam reaching the inbox is due to the deployment by enterprises and Internet service providers (ISPs) of increasingly sophisticated spam filtering technologies. Particularly over the last two years, e-mail messages have flagrantly been used as carriers of malicious code and for initiating phishing attacks (leading to potential identity theft).

While the CAN-SPAM Act was enacted in 2003, it is the spam-filtering technology improvements that reduced spam reaching the user’s inbox. These are coincidental and non-related events.

Short History of the Act

To put the Commission’s report in perspective, you need to understand the political landscape in December 2003 - when the CAN-SPAM Act was signed into law.

- In 2003, the FTC was not a supporter of the CAN-SPAM Act. The FTC supported a different bill (International Consumer Protection Enforcement Act [ICPEA]), which gave the Commission greater power in tracking down spammers. (See http://news.com.com/FTC+seeks+broad+powers+to+fight+spam/2100-1028_3-1015517.html?tag=nl).
- The majority of industry experts in the messaging and security markets declared the CAN-SPAM Act to be without merit. Nevertheless, with few exceptions, the Congress rallied around the Act. After all, to the average constituent the logical perception is that anything that reduces spam is good.

- As a federal law, the CAN-SPAM Act took precedence over more stringent state-level anti-spam laws.
- The CAN-SPAM Act did not remediate the common practice of spammers circumventing anti-spam laws by sending spam e-mails through an offshore ISP.

Report's Recommendations

The Commission made three recommendations:

- Continued consumer education on spam avoidance
- Continued investment in building out spam-filtering technologies

Both efforts have been and will continue to be pursued by many private and public parties. The Commission's recommendations did not request Congress to allocate monies toward these efforts.

The Commission's other recommendation is more revealing:

- No modification to the CAN-SPAM Act should be made and that the Commission remained committed to their 2003 stance

However, the Commission further recommended that power be provided to the Commission to "trace spammers and sellers whose operations are outside the borders of the United States." The report appeases Congress on the propriety of the CAN-SPAM Act, while reiterating the need for broader FTC-led surveillance and enforcement capabilities (quite similar to the FTC's support of the 2003 ICPEA). We expect that providing the FTC with greater spam-fighting powers will be a point of debate for several years.

What This Means to You

Anti-spam legislation is ineffectual unless it is universally agreed upon and equally enforced across global country boundaries – an unrealistic expectation over the next ten years.

- Security vendors have been bundling spam filtering within their broader security suites, which we support as a comprehensive approach. Enterprises should question their security vendor as to the completeness of their solution. Both enterprises and consumers should question their ISP on its spam filtering efforts.
- Differing levels of spam filtering capabilities are integrated into the latest releases of the majority of e-mail servers and e-mail clients. We urge enterprises and consumers to explore local system anti-spam capabilities as an additional line of defense.