

**BRIGHTMAIL**

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Dear Mr Russell,

I am writing in response to the recently published Draft Implementing Regulations and the Interim Guidance for Businesses for those regulations, regarding the Electronic Commerce Directive (00/31/EC).

Brightmail Inc. is a San Francisco based company founded in 1997 to provide Anti-Spam solutions for Internet Service Providers (ISPs). The Brightmail Solution Suite protects ISPs and their customers from spam, by filtering it out before it reaches the end user's inbox. Spam is sidelined to a separate holding area, which the user can review at any time through a web interface (no email download required). Up to 90% of spam and less than 0.01% legitimate e-mail is filtered.

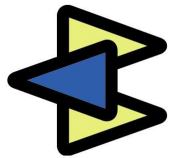
The Brightmail Solution Suite is installed at some of the world's largest ISPs, including AT&T Worldnet, MSN, Earthlink, Verizon, Easynet and many more.

Brightmail responded to chapter 4 of the Electronic Commerce Directive consultation on commercial communications; however, as the government has decided against regulating on unsolicited commercial communications there is no need for a full response. Instead Brightmail wishes to state its recognition of the reasons why the DTI has decided not to legislate; being that existing industry self-regulation and codes of conduct already provide recipients of unsolicited commercial communications by email with effective protection, and that the upcoming Communications Data Protection Directive addresses the issue.

As acknowledged, the issue of unsolicited commercial communications is difficult to address, and the present situation in the European Union of the differences of opinion between the Commission, Parliament and Council of Ministers over whether to opt-in or opt out is testament of that.

Brightmail continues to have concerns that those involved in enacting such legislation have not taken account of the true nature of unsolicited commercial communications.

The majority of unsolicited commercial communications come from illegitimate sources (individuals or companies) that harvest e-mail addresses from the Internet, or who buy lists from spammers who have themselves harvested e-mail addresses. The majority of unsolicited commercial e-mail is sent from countries outside of the European Union, where European legislation has no jurisdiction. It is therefore imperative that complementary solutions to legislation are also considered, including the requirement for e-mail filtering at the ISP server level.



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Brightmail will welcome the opportunity for further comment when the government consults on the Communications Data Protection Directive; however, in the mean time it fully accepts and understands the government's reasons for not legislating on this much contended issue at present.

Yours Sincerely,

François Lavaste  
Vice President, Europe