

From: Andrew Cormack [A.Cormack@ukerna.ac.uk]
Sent: 25 April 2002 09:34
To: ecom@dti.gsi.gov.uk
Cc: Andrew Cormack
Subject: The Electronic Commerce Directive (00/31/EC)

Mr Russell,

Following are my comments on behalf of UKERNA on the draft implementing regulations, published on the web at http://www.dti.gov.uk/cii/ecommerce/europeanpolicy/ecommerce_directive.shtml. UKERNA operates the JANET networks which provide Internet connectivity to the universities, colleges and research sector in the UK. These comments include some points raised by members of the JANET community in discussion of the draft regulations.

In general the regulations, and particularly the guidance notes, are a welcome clarification of these areas. However we have two major areas of concern over the meaning of the regulations. These concern Unsolicited Commercial Communications (section 10) and liability of service providers(sections 17,18,19).

On unsolicited commercial communications, we welcome the requirement to mark these clearly, however the benefit of this will be negated if there is no standard form such a mark is required to take. Within the existing regulations it appears possible for an advertiser to use a slightly different form of the words "this is an unsolicited commercial communication" in every batch of messages, thereby making it impossible for a service provider to recognise the messages automatically as suggested by the guidance notes.

In fact the only effective prevention of unwelcome unsolicited communication is to require that such mail only be sent to persons who have positively and explicitly agreed to receive such communications. In view of the growing volume of e-mails of this type, the adoption of this "opt-in" policy should be seriously considered.

Furthermore, the effect of sections 7(1),(2),(3) appears to leave the status of unsolicited commercial e-mails which pass across frontiers extremely unclear. Sections 7(1) and 7(2) do not apply, since "the permissibility of unsolicited commercial communications by electronic mail" is excluded by the schedule. If the regulations only apply to such communications as are both sent and received within the UK they will have little beneficial effect.

Concerning liability, we are worried that some beneficial, automated activities by service providers may have the effect of making them liable for the content of messages. Depending on the definition of 'information contained in the transmission' Section 17(1)(c) could have the effect of strongly discouraging both the automated removal of viruses from e-mail messages and attempts to block unsuitable material, for example when providing a service to children. Section 18(b)(i) would similarly discourage cache providers from removing hostile code or unsuitable material from the information they provide access to. Both of these would run counter to attempts to make the Internet a better place for families and businesses. If the wording of these sections is not to be changed we would welcome an addition to the guidance notes to clarify these points (note 6.1 is helpful but not sufficient).

Yours sincerely

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