

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

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SENATE

Senate Bill No. 1384

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The unabated advancement in telecommunications made it easier and cheaper to send messages to other people, regardless if the sender knows them or not, or if the recipient requested for the message or not. According to an article in Asia Africa Intelligence Wire as early as 2005, Mr. Ben Corby, chief executive officer of Australian anti-spam firm Total Block stated that "about half of the daily 35 billion emails sent worldwide last year was unsolicited".

Spam is defined as "unsolicited email, often of a commercial nature, sent indiscriminately to multiple mailing lists, individuals, or newsgroups". For a time, spam messages both in electronic mails and cellular phones were manageable and were tolerated by subscribers. However, it has tremendously increased in the past years that according to recent statistics quoted by Elite email platform in September 2010, "spam has grown to represent almost 80% of total email traffic with estimated impact to the global economy of approximately US\$25 billion dollars per year".

Spam poses threat, including security and virus, both to the users and the networks which prompted internet service providers to undertake anti-virus and anti-spam measures. A relevant number of countries have also enacted spam control laws for this purpose.

This proposed measure seeks to protect the internet and phone users from unsolicited commercial communications sent by electronic mail, text message or multimedia message. For this purpose, the bill proposes to formulate a code of practice, which, among others, will set "minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages". Patterned after the spam control laws of other countries, it also provides for an unsubscribe facility which enables the recipients to block the spam sender from further sending unsolicited messages.

In view of the foregoing, the immediate passage of this bill is earnestly sought.

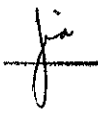

JINGGOY EJERCITO ESTRADA
Senator



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AN ACT
TO PROVIDE FOR THE CONTROL OF SPAM, WHICH IS UNSOLICITED
COMMERCIAL COMMUNICATIONS SENT IN BULK BY ELECTRONIC MAIL
OR BY TEXT OR BY MULTIMEDIA MESSAGING TO MOBILE TELEPHONE
NUMBERS, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Philippines
in Congress assembled:*

CHAPTER 1
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “**Spam Control Act of 2013**”.

SEC. 2. *Declaration of State Policy.* – It shall be the policy of the State to uphold the role of communication and information in nation-building by protecting the rights and privacy of the people who are availing of the technologies of telecommunications.

SEC. 3. *Definition of Terms.* – As used in this Act:

- (a) “**address harvesting software**” means software that is specifically designed or marketed for use for –
 - 1. searching the internet for electronic addresses; and,
 - 2. collecting, compiling, capturing or otherwise harvesting those electronic addresses;
- (b) “**Commission**” refers to the National Telecommunications Commission (NTC);
- (c) “**business day**” means any day other than a Saturday, Sunday or public holiday;
- (d) “**dictionary attack**” means the method by which the electronic address of a recipient is obtained using an automated means that generates

possible electronic addresses by combining names, letters, numbers, punctuation marks or symbols into numerous permutations;

- (e) "**electronic address**" means an electronic mail address or a mobile telephone number to which an electronic message can be sent;
- (f) "**header information**" means the source, destination and routing information attached to an electronic message, including, where applicable, the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, the sender of the message;
- (g) "**Internet access service provider**" means a person who provides a service to give the public access to the Internet;
- (h) "**mistake**" means reasonable mistake of fact;
- (i) "**recipient**", in relation to an electronic message, means an authorized user of the electronic address to whom the message is sent, and where a recipient of an electronic message has one or more electronic addresses in addition to the address to which the message was sent, the recipient shall be treated as separate recipient with respect to each such address;
- (j) "**sender**", in relation to an electronic message, means a person who sends the message, causes the message to be sent, or authorizes the sending of the message;
- (k) "**unsubscribe request**" means a request by a recipient of an electronic message, requesting the sender to cease sending any further electronic messages to his electronic address.

SEC. 4. Commercial Electronic Message. – In this Act, a commercial electronic message is an electronic message, where, having regard to –

- (1) the content of the message;
- (2) the way in which the message is presented; and,
- (3) the content that can be located using the links, telephone numbers or contact information, if any, set out in the message,

it is concluded that the primary purpose of the message is –

- (a) to offer to supply goods or services;
- (b) to advertise or promote goods or services;
- (c) to advertise or promote a supplier, or a prospective supplier, of goods or services;
- (d) to offer to supply land or an interest in land;
- (e) to advertise or promote land or interest in land;
- (f) to advertise or promote a supplier, or a prospective supplier, of land or an interest in land;
- (g) to offer to provide a business opportunity or an investment opportunity;
- (h) to advertise or promote a business opportunity or an investment opportunity;
- (i) to advertise or promote a provider, or a prospective provider, of a business opportunity or an investment opportunity;
- (j) to assist or enable a person, by deception, to dishonestly obtain property belonging to another person;
- (k) to assist or enable a person, by deception, to dishonestly obtain a financial advantage from another person; or

- (l) to assist or enable a person to dishonestly obtain a gain from another person.

For purposes of paragraphs (a) to (i), it is immaterial –

- (1) whether the goods, services, land, interest or opportunity exists; or,
- (2) whether it is lawful to acquire the goods, services, land or interest, or take up the opportunity.

SEC. 5. *Sender of Commercial Electronic Message.* – Any of the following persons may be the individual who, or entity which, is the sender of the message:

- (1) the supplier or prospective supplier referred to in paragraph (c) or (f) of Section 4 of this Act;
- (2) the provider or prospective provider referred to in paragraph (h) of Section 4 of this Act;
- (3) the first-mentioned person referred to in paragraph (j), (k), or (l) of Section 4 of this Act.

Subject to the following paragraph, a person who knowingly allows his product or service to be advertised or promoted by a sender shall be deemed to have authorized the sending by the sender of any electronic message that advertises or promotes that person's product or service.

For the purposes of the preceding paragraph, a person who takes reasonable steps to stop the sending of any electronic message that advertises or promotes that person's product or service shall be deemed not to have authorized the sending of the message.

SEC. 6. *Electronic Message.* – In this Act, subject to Section 5 of this Act, an electronic message is a message sent to an electronic address. However, it is not an electronic message if it sent by way of a voice call made using a telephone service.

For this purpose, it is immaterial –

- (1) whether the electronic address exists; or,
- (2) whether the message reaches its intended destination.

SEC. 7. *"Unsolicited", Defined.* – In this Act, an electronic message is unsolicited if the recipient did not –

- (a) request to receive the message; or,
- (b) consent to the recipient of the message.

A recipient shall not be treated as having requested to receive the message or consented to the receipt of the message merely because the electronic address of the recipient was given or published by or on behalf of the recipient.

Where a recipient of an electronic message, other than an unsolicited electronic message, submits an unsubscribe request, he shall not be treated as having requested to receive or consented to the receipt of any message sent after the expiration of ten (10) business days after the day on which the unsubscribe request is submitted.

SEC. 8. "Sending in Bulk", Defined. – For purposes of this Act, electronic messages shall be deemed to be sent in bulk if a person sends, causes to be sent or authorizes the sending of –

- (a) more than one hundred (100) electronic messages containing the same or similar subject matter during a 24-hour period;
- (b) more than one thousand (1,000) electronic messages containing the same or similar subject matter during a 30-day period; or
- (c) more than ten thousand (10,000) electronic messages containing the same or similar subject matter during a one-year period.

The Commissioner may, by order published in the Official Gazette, vary the number of electronic messages specified in this Section.

SEC. 9. Application of this Act. – This Act shall not apply unless an electronic message has a Philippine link, which can be determined by the following circumstances:

- (a) the message originates in the Philippines;
- (b) the sender of the message is –
 - i. an individual who is physically present in the Philippines when the message is sent; or
 - ii. an entity whose central management and control is in the Philippines when the message is sent;
- (c) the computer, mobile telephone, server or device that is used to access the message is located in the Philippines;
- (d) the recipient of the message is –
 - i. an individual who is physically present in the Philippines when the message is accessed; or,
 - ii. an entity that carries on business or activities in the Philippines when the message is accessed; or,
- (e) if the message cannot be delivered because the relevant electronic address has ceased to exist (assuming that the electronic address existed), it is reasonably likely that the message would have been accessed using a computer, mobile telephone, server or device located in the Philippines.

SEC. 10. Excluded Electronic Messages. – Notwithstanding Section 9, this Act shall not apply to any electronic message where the sending of the message is authorized by the Government or a statutory body on the occurrence of any public emergency, in the public interest or in the interests of public security or national defense.

For this purpose, if any doubt arises as to the existence of a public emergency or as to whether any electronic message is sent in the interests of public security or national defense, a certificate signed by the Commissioner shall be conclusive evidence of the matters stated therein.

CHAPTER 2 DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE

SEC. 11. Application. – This part shall apply to all electronic messages, whether or not they are unsolicited commercial electronic messages.

SEC. 12. *Use of Dictionary Attack and Address Harvesting Software.* – No person shall send, cause to be sent, or authorize the sending of an electronic message to electronic addresses generated or obtained through the use of –
(a) a dictionary attack; or,
(b) address harvesting software.

CHAPTER 3 UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

SEC. 13. *Application.* – This Chapter shall apply only to unsolicited commercial electronic messages.

SEC. 14. *Requirements for Unsolicited Commercial Electronic Messages.* – Any person who sends, causes to be sent or authorizes the sending of unsolicited commercial electronic messages in bulk shall comply with the requirements stated in this Section.

A. Unsubscribe Facility

- (1) Subject to subparagraphs (2) and (3), every unsolicited commercial electronic message shall contain –
 - a. an electronic mail address, an Internet location address, a telephone number, a facsimile number or a postal address that the recipient may use to submit an unsubscribe request; and,
 - b. a statement to the effect that the recipient may use the electronic mail address, Internet location address, telephone number, facsimile number or postal address, as the case may be, provided in the unsolicited commercial electronic message to submit an unsubscribe request, or a statement to similar effect.
- (2) Where the unsolicited commercial electronic message is received by the recipient by electronic mail, the unsolicited commercial electronic message shall include an electronic mail address to which the recipient may submit an unsubscribe request.
- (3) Where the unsolicited commercial electronic message is received by the recipient by text or multimedia messaging sent to a mobile telephone number, the unsolicited commercial electronic message shall include –
 - a. a mobile telephone number to which the recipient may submit an unsubscribe request by text if the unsolicited commercial electronic message is received by text; or,
 - b. a mobile telephone number to which the recipient may submit an unsubscribe request by text or multimedia messaging at the recipient's option if the unsolicited commercial electronic message is received by multimedia messaging.
- (4) The statement referred to in subparagraph (1) (b) shall be presented –

- a. in a clear and conspicuous manner; and,
 - b. in the English language and where the statement is presented in two or more languages, the English language shall be one of the languages.
- (5) The electronic mail address, Internet location address, telephone number, facsimile number or postal address referred to in subparagraphs (1), (2), and (3) shall be –
- a. valid and capable of receiving –
 - i. the recipient's unsubscribe request (if any); and
 - ii. a reasonable number of similar unsubscribe requests sent by other recipients (if any),
 - at all times during a period of at least thirty (30) days after the unsolicited commercial electronic message is sent; and,
 - b. legitimately obtained .
- (6) The use of the electronic mail address, Internet location address, telephone number, facsimile number or postal address referred to in subparagraphs (1), (2) and (3) to submit an unsubscribe request shall not cost more than the usual cost of using that kind or a similar kind of electronic mail address, Internet location address, telephone number, facsimile number or postal address, as the case may be, using the same kind of technology as was used to receive the unsolicited commercial electronic message.
- (7) Where a recipient submits an unsubscribe request using the facility provided pursuant to this paragraph, no further unsolicited commercial electronic messages shall be sent after the expiration of ten (10) business days after the day on which the unsubscribe request is submitted.
- (8) Any person who receives an unsubscribe request under this paragraph shall not disclose any information contained in the unsubscribe request to any other person, except with the consent of the person whose particulars are contained in the unsubscribe request.
- (9) Subparagraphs (1) to (7) shall not apply if the unsolicited commercial electronic message is sent, caused to be sent or authorized to be sent by mistake.

B. Labelling and Other Requirements

- (1) Every unsolicited commercial electronic message shall contain –
- a. where there is a subject field, a title in the subject field and that title is not false or misleading as to the content of the message;
 - b. the letters "<ADV>" with a space before the title in the subject field, or if there is no subject field, in the words first appearing in the message, to clearly identify that the message is an advertisement;

- c. header information that is not false or misleading; and,
 - d. an accurate and functional electronic mail address or telephone number by which the sender can be readily contacted.
- (2) Subparagraph (1) shall not apply if the unsolicited commercial electronic message is sent, caused to be sent or authorized to be sent by mistake.

CHAPTER 4 CIVIL ACTION

SEC. 15. *Aiding, Abetting, etc.* –

(1) No person shall –

- a. aid, abet or procure a contravention of Section 12 or 14 of this Act;
- b. induce, whether by threats, promises or otherwise, a contravention of Section 12 or 14;
- c. be in any way, directly or indirectly, knowingly concerned in or a party to, a contravention of Section 12 or 14;
- d. conspire with others to effect a contravention of Section 12 or 14.

(2) A person does not contravene the above subsection (1), Section 12 or 14 merely because he provides, or operates facilities for, online services or network access, or provides services relating to, or provides connections for, the transmission or routing of data.

SEC. 16. *Civil Action.* – Where there is a contravention of Section 12 or 14 of this Act in relation to electronic messages sent to electronic addresses, any person, who has suffered loss or damage as a direct or an indirect result of such contravention, may commence an action in a court against –

- a. the sender; or,
- b. a person who has contravened Section 15 (1).

This Section shall not affect any liability that any person has under any other written law or rule of law.

SEC. 17. *Injunction and Damages for Civil Action.* – Subject to the provisions of this Act, in an action under Section 16 (1), the types of relief that the court may grant include the following:

- (a) an injunction (subject to such terms, if any, as the court deems fit);
- (b) damages;
- (c) statutory damages.

The types of relief referred to in paragraphs (b) and (c) are mutually exclusive.

In any action under Section 16, the plaintiff shall be entitled, at his election, to –

- (a) damages in the amount of the loss or damage suffered by the plaintiff as a direct or an indirect result of the contravention referred to in Section 16; or
- (b) statutory damages –
 - (i) not exceeding One Thousand Pesos (P1,000.00) for each electronic message referred to in Section 16; and,
 - (ii) not exceeding in the aggregate Forty Million Pesos (P40,000,000.00), unless the plaintiff proves that his actual loss from such electronic messages exceeds P40 million.

In awarding statutory damages, the court shall have regard to –

- (a) whether the contravention by the defendant of Section 12, 14, or 15 (1) of this Act was willful;
- (b) any loss or damage that the plaintiff has suffered or is likely to suffer as a direct or an indirect result of the contravention referred to in Section 16.
- (c) any benefit shown to have accrued to the defendant by reason of the sending of electronic messages;
- (d) the need to deter other similar instances of sending of electronic messages; and,
- (e) all other relevant matters.

The loss referred to in this Section includes any pecuniary loss suffered as a direct or an indirect result of the contravention referred to in Section 16.

SEC. 18. *Costs and Expenses.* – In any proceedings under this act, the court may, in addition to exercising the powers conferred by Section 17 herein, order of the defendant to pay to the plaintiff the costs and expenses of and incidental to the proceedings, and any legal costs incurred in respect of the proceedings.

CHAPTER 5 MISCELLANEOUS

SEC. 19. *Code of Practice.* – Internet access service providers and telecommunications service providers may, with the approval of the Commission, issue a code of practice in connection with –

- (a) minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages; and,
- (b) such other matters as the Commission may require.

Every Internet access service provider and telecommunications service provider shall comply with any code of practice approved by the Commission except that

if any provision in any such code of practice is inconsistent with this Act, that provision shall not have effect to the extent of the inconsistency.

CHAPTER 6 FINAL PROVISIONS

SEC. 20. *Implementing Rules and Regulations.* – The Commission, together with the other concerned agencies, shall promulgate the implementing rules and regulations of this Act within ninety (90) days from the approval of this Act.

SEC. 21. *Repealing Clause.* – All laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 22. *Separability Clause.* – If any part or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

SEC. 23. *Effectivity Clause.* – This Act shall take effect fifteen (15) days upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved,