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LEGAL ASPECTS OF SPAM IN THE REPUBLIC OF UZBEKISTAN

Everyone receives spam while working on the Internet. Someone accepts this fact as unavoidable one, and, keeping enviable peace of mind, deletes the incoming correspondence from unknown senders. Someone is growling out and demonstrates his displeasure to a provider or sender. There are others, who read carefully every incoming message, thus deriving sometimes a profit for themselves. All the persons mentioned above participate in the specific informational public relation via the Internet and e-mail using.

First of all, spam — are the electronic messages posted by sender, but unasked in advance by recipient ('unsolicited' ones)¹. Secondly, a posting (dispatch) has a large scale (in foreign countries the term 'bulk' is used to describe this feature). There are two ways of spam dissemination, of which the first is to send a single message to numerous e-mail addresses, and the second is to send multiple messages to a single recipient.

Spam message could either contain commercial information or be unrelated to commercial activity, depending on purposes and tasks of a sender (spammer). On basis of the last feature, i.e. depending on the contents of message, a 'commercial' spam - 'unsolicited commercial e-mail' (general abbreviation - 'UCE') and a 'non-commercial' spam - 'unsolicited bulk e-mail' ('UBE') could be discriminated.

E-mailed text can contain 'subject' field describing the nature of message (for instance, showing that this comprises an advertising information). The text (the body) of message can justify what was the reason for sender's direct address to recipient without preliminary consent, and specify what the actions the recipient should take to avoid further receipt of sender's messages. In other words, e-mail address, Internet resource or the telephone number (usually it is a toll-free phone number) should be given, which are designated for unsubscribing (cancellation of subscription) from unsolicited information (this feature is currently described by the term 'opt-out').

The specified features (indication in 'Subject' field and availability of unsubscribing option) evidence that a sender suggests the information, offered by him, to be obtrusive for recipients, and that he is bona fide trying to reduce probable negative influence. However, quite often a spammer has no desire to reduce discomfort caused by spam. Moreover, he does not assume responsibility for his actions, falsifying the sender's address, using a third person address, and falsifying headings of messages by means of specialized software.

This choice is a deliberate one aimed to hinder those fighting spam on the Internet from identifying the sender's personality and taking appropriate measures against the latter.

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¹ This section does not cover the matter of e-mail status as an element of the institute of personal data and of possibility to use the latter in civil circulation without permission of its owner.

Why they are fighting spam? Firstly, because e-mail users have to pay the providers for the time (traffic) spent for receiving the spam. Secondly, the bulk distribution of spam is hampering operation of the information systems and resources, ultimately creating an idle load for them. Thirdly, spam often contains misleading information and pursues unfair or illegal purposes. Whilst the first and the last negative consequences of spam could be hardly estimated, the second one is the most obvious for providers, whose systems and resources are the instruments for unsolicited correspondence sending and receiving².

Providers are capable of setting up their systems and resources against spam, thus making the greatest contribution to such fight. In the meantime, clients of the providers can also fight spam by complaining of difficult life or accordingly setting up their own client's software, although, such actions are less effective.

To fight spam, providers primarily use such methods as filtration (selection and deletion of messages) and blocking (identification and refusal of receiving the messages). They also join each other using self-regulation techniques, and taking joint technical-organizational measures to enhance efficiency of fighting bulk e-mails and spammers.

While realizing the danger of spam, some countries adopted the Acts aimed at restriction or prohibition of unsolicited bulk mailing of either commercial or non-commercial contents.

Up to the date, no adequate and balanced approach to development of special rules regulating bulk e-mail has emerged in our Republic. Quite a few bills proposed for last years with respect to the Internet and electronic commerce stipulate different approaches to regulation of distribution and receiving of unsolicited information.

The following technical maintenance of spam spreading shall also be inadmissible:

- purposive scanning of contents of the information resources, aimed at gathering of e-mail addresses, and other delivery services;
- distribution of a software designated for spam spreading;
- creation, verification, maintenance or distribution of databases of addresses of e-mail or other delivery services, (except for the case all owners of the addresses included in such a database in an explicit form have agreed to include their addresses in this specific database);
- open publication of an address can not be considered by such a consent.

For the lack of direct rules, let us analyze a considered public relation, associated with bulk mailing in terms of current legislation of the Republic of Uzbekistan, which, as mentioned above, yet contain no one subjective rule targeted either to protection of interests of senders, addressees of bulk mailings, or providers (operators of communication).

According to Article 29 of the Constitution of our Republic, persons have the right of free distribution (transmission) of the information. In the relation at issue the

² In particular, we couldn't display economic calculations of the damage of recipients of spam in the Internet in different countries.

distribution of information becomes feasible owing to granted communication services, namely, an e-mail service¹. A specified service shall be rendered to recipients by operators of communication within the framework of civil relations on a contractual basis, and its quality is to be stipulated by the standards, technical norms, certificates, terms and conditions of the contracts for rendering services of communication.

Accordingly, a person involved with bulk mailings, in overwhelming majority of cases is under the contract with an operator of communication.

Generally, compliance with legislation of the Republic of Uzbekistan or ban from the actions classified as spam, could be stipulated by the specified contracts. The category of spam shall be interpreted in the contract either as 'commercial' (UCE), or 'usual' spam (UBE). Sometimes this notion is not interpreted.

After the bulk mailing exercised a provider can (simplifying the situation) either to announce of unilateral cancellation of the contract or to ignore spam and not to cancel the contract.

In case of bulk-mailed advertising the provider's position can be strengthened by the following argumentation.

First, realization of a spammer's constitutional right of free dissemination of the information does not formally and automatically entail the occurrence of other users' duty to obtain information in the form of spam (these is so-called consensual communications).

Moreover, exercising of the mentioned right could be considered as abuse of right.

Secondly, spammer's actions cause material losses to a provider and users. therefore in compliance with Article 985 on general bases of the responsibility for causing harm, the same should be compensated for.

It is quite important that after stop rendering e-mail services to spammer by the communication operator initiative, the latter as well as other providers are tempting to enter a spammer to a peculiar 'black list' and further refuse him of services.

If an operator of communication does not desire to put pressure upon a user-spammer, other operators of communication often start acting, whose users receive spammer's mailings, or those informed of mailings by third parties.

Generally, the specified persons use in such a situation blocking and filtration of post messages mentioned above. The given actions are carried out with the good purpose to guarantee interests of clients.

Firstly, these actions lead to loss of connectivity of public communication networks, thereby contradicting the principle of freedom of transfer of message via networks and means of telecommunication.

Secondly, what is very important, the clients of the operator of communication are not informed of taken measures.

In contrast to USA and some other States, in the Republic of Uzbekistan there is neither certain legal regulation nor a subjective court practice in terms of spam. Therefore, in the current situation, when real necessity is to impose restrictions to spam, while not infringing the

rights either of spammers or Internet users, it seems to be rational to focus primarily on economic instruments affecting the spam phenomenon. As I see it, those should be reflected by actions of operators of communication, their economic policy and a contractual basis. Moreover, such basis should detail the prohibiting principles of falsifying the data concerning e-mail sender, solution of a judicial issue, as well as proving of evidences, when disputes occur in connection with the fact per se and with the mode of spam distribution. It seems to be necessary to bind an operator of communication with the duties to provide the clients with the information concerning provider's policy concerning spam and particular actions targeted to implementing of such a policy.

As long as the majority of unsolicited letters are addressed to national users from abroad, the participation of Uzbekistan in the development and subsequent adoption of the appropriate international agreements dealing with the subjective rules regulating distribution of spam and public information as a whole is necessary.

Резюме

В статье рассматривается вопрос о новых Интернет отношениях связанных со спамом, то есть отношения связанные с получением незапрашиваемых получателем электронных писем.

Автор с разных точек зрения рассматривает отношения связанные со спамом и их отправителями спаммерами. В статье рассмотрены к чему приводят рассылки спама и какие последствия они влекут за собой. Также в статье рассматривается вопрос урегулирования отношений связанных со спамом в других странах.

Изучая данную тему, автор предлагает принять новые законы, которые будут непосредственно регулировать отношения связанные со спамом или же незаконными рассылками и будут защищать права пользователей Интернетом, электронной почтой в сети Интернет.

¹ Law of the RUz "About connection". 13.01.1992. N 512-XII // ILS "Norma".