Second Contribution to the October - December 2021 Open Consultation of the ITU CWG-Internet

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Summary

While spam does not account for much traffic, it does not appear to provide social or economic benefits, thus its suppression would seem to be a priority item in order to reduce electricity consumption which has a negative environmental impact. Developed countries who previously opposed treaty-level provisions regarding spam are now promoting such provisions in WTO. Since more countries are members of ITU than of WTO, it would appear logical that developed countries should now promote similar anti-spam provisions in the ITU's International Telecommunication Regulations.

Contribution

The topic for the October - December 2021 Open Consultation is:

> **The Environmental Impacts and Benefits of the Internet**
>
> - What effects does the Internet have on the environment and vice-versa?
> - How can we improve the impact the Internet has on the environment and take advantage of its potential to help address climate-related issues?
> - What role should stakeholders play in shaping the environmental impacts and benefits of the Internet?
> - What are the policy, regulatory and other relevant matters associated with the environmental impacts and benefits of the Internet?

A. What effects does the Internet have on the environment and vice-versa?

1. Any use of the Internet requires electricity and, as such, has a negative impact on the environment. In many cases, the direct negative impact is offset by positive indirect effect, for example greater efficiency of transportation or production processes.
2. However, spam does not appear to have any positive effect. It is not contested that a significant proportion of email is actually spam: according to some sources, the vast majority of email is spam, according to others spam is a significant share.[2, 3, 4]
3. Spam uses electricity when it is created, when it is transmitted, when it is screened by spam filters, and when it is read by users who may need to verify whether a message flagged as spam really is spam.
4. This use of electricity contributes to climate change for no good reason. Thus it would appear beneficial for the environment to eliminate, or at least reduce, spam.

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[1] info@apig.ch

[2] https://dataprot.net/statistics/spam-statistics/

[3] https://donotpay.com/learn/spam-accounts-for-approximately-percent-of-all-email

[4] https://www.statista.com/statistics/420400/spam-email-traffic-share-annual/

5. The 2012 International Telecommunication Regulations (ITRs) contain an article on combating spam (referred to as "unsolicited bulk electronic communications"). The article states:

> 7.1 Member States should endeavour to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services.
>
> 7.2 Member States are encouraged to cooperate in that sense.

6. When this text was agreed in 2012, most developed countries objected to it, and refused to sign the treaty in question, arguing that the above provision on spam regulates Internet issues and invites governments to take content-based action and moves into the realm of regulating speech on the Internet.[5]
7. As argued in an academic article and book, this is a highly questionable interpretation of the text.[6]
8. Be that as it may, it appears that the views of developed countries have changed, because they are now strongly supporting anti-spam language in trade agreements, see for example the proposals discussed in the margins of the World Trade Organization (WTO) that appear to have reached consensus[7]. Those proposals were unfortunately not publicly available when this paper was written, but a leaked version is reproduced in the annex of this paper.
9. As can be seen, the WTO proposals are far more detailed and more prescriptive than the text of the 2012 ITRs.

B. How can we improve the impact the Internet has on the environment and take advantage of its potential to help address climate-related issues?

10. More countries are members of ITU than of WTO. Consequently, those countries that support the anti-spam provisions mentioned above in WTO should logically also support them in ITU, in particular because reducing spam would reduce the direct negative effect of the Internet on climate change, by reducing unwanted and unnecessary consumption of electricity.
11. That is, they should support inclusion of those provisions in the International Telecommunication Regulations.

C. What role should stakeholders play in shaping the environmental impacts and benefits of the Internet?

12. See above.

D. What are the policy, regulatory and other relevant matters associated with the environmental impacts and benefits of the Internet?

13. See above.

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[5] Hill, Richard (2013a) *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History,* Schulthess/Springer, p. 75;
Hill, Richard (2013b) "WCIT: failure or success, impasse or way forward?", *International Journal of Law and Information Technology*, vol. 21 no. 3, p. 313, DOI:10.1093/ijlit/eat008, available at: https://academic.oup.com/ijlit/article-abstract/21/3/313/752213

[6] Hill (2013a) *op. cit.*, pp. 76-78; and Hill (2013b) *op. cit.*

[7] https://www.wto.org/english/news_e/news21_e/ecom_05feb21_e.htm

Annex
Leaked version of WTO proposal regarding spam

(2) Unsolicited commercial electronic messages

Co-convenors' note: This article was cleaned in informal discussions then endorsed at the 5 February 2021 plenary meeting [of the Joint Statement Initiative on e-commerce].

1. "Commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person [1] through telecommunication services, comprising at least electronic mail and to the extent provided for under domestic laws and regulations, other types of messages. "Unsolicited commercial electronic message" means a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient.

2. [Parties/Members] recognize the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. Each [Party/Member] shall adopt or maintain measures that:

(a) require suppliers of commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or

(b) require the consent, as specified in the laws or regulations of each [Party/Member], of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

3. Each [Party/Member] shall endeavour to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and contain the necessary information to enable recipients to request cessation free of charge and at any time.

4. Each [Party/Member] shall provide access to either redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 2.

5. [Parties/Members] shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

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