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CLIENT ADVISORY

Update from the FTC Spam Summit: Focus on Industry Self-Regulation and Industry/ Government Cooperation While Government Aggressively Attacks Malware, Fraud and Cybercrime

On July 11 and 12, 2007, the Federal Trade Commission hosted "Spam Summit: The Next Generation of Threats and Solutions." At the Summit, experts from the business, government, and technology sectors, consumer advocates, and academics came together to explore consumer protection issues surrounding abuses of email, including phishing (seeking personal information for identity theft), fraud, and the distribution of malware (messages with viruses, spyware, worms, and other harmful programs).

Since the FTC's Spam Forum and the passage of the CAN-SPAM Act in 2003, there has been great change in the world of email. Legitimate businesses sending emails have worked to become CAN-SPAM compliant. At the same time, spammers have been flooding the Internet with malicious spam and malware. Cybercriminals are even using spam and malware for the purposes of extortion, terrorism, and warfare. The attention of the FTC and other government enforcement officials appears now primarily to be focused on addressing malicious spam and they seek the assistance of legitimate businesses in identifying and prosecuting such abuses.

At the Summit, businesses and consumer advocates focused, as well, on (i) industry self-regulation and improving consumer education and consumer tools in response to the persistence of malicious spam, and (ii) the emergence of spam on instant messaging, blog comments, social networks, and multi-function mobile devices. Many urged legitimate businesses to use best practices such as email authentication, accreditation and reputation-based filtering services, and permission-based marketing in addition to the unsubscribe option already required by the CAN-SPAM Act. Others focused on tools to give consumers greater control and influence, including "Report Spam" buttons from their Internet Service Providers (ISPs), easy to use and reliable "Unsubscribe" options and feedback forms.

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In order for commercial use of email to be effective, emails from legitimate senders must reach consumers. Merely being CAN-SPAM compliant may not be sufficient to ensure deliverability of your messages as spam filtering by both consumers and ISPs becomes more aggressive. Adoption of practices like authentication and reputation systems may not only more effectively block and discourage malware and harmful emails, but also improve the deliverability of legitimate commercial email. Businesses must begin to adapt their practices now.

Most panelists did not want to let either abuses by bad actors or measures taken to enhance security against them, undermine the legitimate uses of email technology.

We hope you find this brief report on the FTC's Spam Summit helpful. This is only a general summary and should not be construed as providing legal advice. If you would like more information about legislation, regulation and industry practices in this area, please contact:

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