

Summary

New Development of Spam-Regulations in Netherlands

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In Netherlands, OPTA (Onafhankelijke Post en Telecommunicatie Autoriteit) regulates Telecommunication Act (Telecommunicatiewet, 1998 : 610).

Article 11. 7 paragraph 1 of this act provides “The use of automatic calling systems without human intervention, faxes and electronic messages for transmitting un-requested communication to subscribers for commercial, idealistic or charitable purposes will only be permitted if the sender can demonstrate that the subscriber concerned has given prior consent”.

And article 11. 8 provides “The application of Articles 11. 6 and 11. 7 shall be limited to subscribers who are natural persons.”

A bill of reform of this act wants to delete article 11.8, because commercial e-mail without prior consent reduce productivity of legal person more seriously today. New act will be into force from spring in 2009.

OPTA may order not only to stop illegal e-mail and prevent further infringement, but also to pay administrative fine (up to 450 thousand euro or 10% of sale)(Article 15. 4 of this act).

OPTA shall be entitled to enter every place, with the exception of a dwelling without the consent of the occupant (Article 5.15 of Algemene Wet Bestuursrecht, Awb). OPTA shall be entitled to require the provision of information(Arti-

cle 5.16 of Awb). OPTA shall be entitled to inspect and measure goods and take samples of them (Article 5. 18 of Awb). Also OPTA may order to give information in necessary extent for investigation (Article 18. 7 of Telecommunication Act). By this article, OPTA can get information of sender from providers, because this article release obligation of providers to hold such information under Data Protection Act and Telecommunication Act.

The investigation of OPTA is hereinafter. At first complaints from consumers are collected on the website of OPTA. Then OPTA investigates both “online” and “offline”. At last, OPTA orders, for example, to pay administrative fine.

From May 2004 to July 2008, OPTA has already warned in about 60 cases, and ordered administrative fine in 25 cases includes a case in which OPTA has ordered fine total 510 thousand euro.

After introduction of “opt-in” system, the number of spam written in Dutch has reduced dramatically (at 85% reduced), but intensification of international cooperation for the fight against spam written in English from foreign countries is the one of the most important issues of OPTA today, because spam is international phenomenon.

The reason why the number of spam written in Dutch has reduced dramatically after introduction of “opt-in” system is hereinafter. In Netherlands, at first, commercial e-mail without consent of subscriber is sanctioned by very high fine. At second, there is the burden of proof about existence of the consent on the side of the sender of e-mail, because this fine is administrative one. At third, the problem about weakness of power of administrative investigation has solved by reinforcement of the power in necessary extent. These factors make legal regulations about spam in Netherlands more effective, and deterrent effect against spam higher.