
New E.U. Spam Restrictions Won't Stop US Marketers

2002-08-12

Unsolicited commercial e-mail, or "spam," remains an unpopular reality on the Internet. Congress has not yet passed U.S. spam legislation, but many states have attempted to restrict spam, as discussed in our [October 26, 1999 Internet Alert](#). Now, the European Union intends to restrict spam e-mail in 15 European countries.

On May 30, 2002, the [European Parliament](#) approved the draft [Directive on the processing of personal data in the electronic communications sector](#). The European Council went on to approve the draft Directive on June 25, 2002. The new Directive updates a previous Directive also dealing with the electronic communications sector (known as the "[ISDN Directive](#)" and already implemented in most EU member states) to cover privacy issues relating to the Internet, including unsolicited communications such as spam e-mail.

The new Directive bans the use of spam e-mail, for purposes of direct marketing to individuals except if:

1. The recipient has given prior consent or "opted in" to receive the e-mail; or
2. The recipient is an existing customer of the sender and is given an opportunity to "opt out" from receiving marketing e-mails at the time their contact information is initially collected in connection with a purchase of a product or service, and on each subsequent message.

The Directive appears to pave the way for U.S. companies that do not have any operations subject to the jurisdiction of an EU member state to send marketing e-mail that EU companies may not send. Such companies will not be subject to the new Directive and will thus not be prohibited from "spamming". The EU Privacy Directive will restrict EU companies from providing EU-origin e-mail distribution lists, as discussed in our [December 27, 2001 Internet Alert](#).

Member States will have until October 31, 2003 to implement the Directive into their national law.

This development illustrates the gradual emergence of international norms in the area of e-mail marketing.

Authors



Barry J. Hurewitz

PARTNER

✉ barry.hurewitz@wilmerhale.com

☎ +1 202 663 6089