

Alleged global spammer taken to Federal Court

ACMA has taken alleged global spammer Clarity1 Pty Ltd of East Perth and its managing director, Wayne Mansfield, to the Federal Court in Perth.

The company and Mr Mansfield are alleged to have sent out at least 56 million commercial emails in the twelve months after the *Spam Act 2003* commenced in April 2004. Most of the messages are believed to have been unsolicited and in breach of the Act.

Clarity1, which uses the trading names Business Seminars Australia and the Maverick Partnership, is also alleged to have harvested some of the email addresses to which

emails have been sent and to have sent the emails from a network of servers around the world.

Mr Mansfield and Business Seminars Australia are listed by UK-based international anti-spam watchdog, Spamhaus, as allegedly one of the world's top 200 spammers. The top 200 produce 80 per cent of the world's email spam. Before the Spam Act commenced in April last year, the ACA wrote to alleged Australian-based

spammers on the Spamhaus list about compliance with the new Act. Spamhaus subsequently reported that several major Australian spammers on their list had stopped operating, or left the jurisdiction.

Penalties for contravention of the Spam Act can be up to \$220,000 per day for first-time corporate offenders and up to \$1.1 million per day for repeat offenders. Profits can also be forfeited and compensation paid to victims.

The reporting of spam emails by the public in Australia and overseas made a significant contribution to the investigation in this case, with

complaints about the company received from as far away as the United Kingdom.

On 20 July 2005, the Federal Court issued interim injunctions under the Spam Act against Clarity1 Pty Ltd of Perth and Mr Mansfield. Clarity1 Pty Ltd was ordered to not send commercial electronic messages with an Australian link to any electronic address, except when it has the prior consent of the recipient in accordance with the Spam Act or is otherwise permitted by the Act. Because of the scale of the alleged breaches, a hearing on 4 August 2005 extended the injunction until the trial.

Protection for consumers using mobile services that provide access to content has been strengthened. New rules cover content delivered by premium SMS services accessed on 19 numbers, premium services available through mobile carrier portals and the public internet accessed on a mobile terminal.

The rules are contained within internet co-regulatory codes of practice developed by the Internet Industry Association and registered

Rules for mobile content to protect users

by the former Australian Broadcasting Authority in May, and in service provider rules made by the former Australian Communications Authority in June.

Collectively, the rules apply to carriage service providers as well as the providers of

content for these services.

For content that is billed by mobile carriage service providers, the rules prohibit the supply of content rated X18+ or refused classification. They require that age-restricted content – content rated MA15+ or R18+ – is available only to adults who 'opt in' to such services. Mobile messaging services delivering age-restricted content are also required to use numbers starting with 195 and 196 to make them clearly recognisable.

Under the rules, operators of mobile chat room services must also implement safety measures to reduce the risk to children of being groomed by paedophiles.

ACMA is able to remove content or services delivered to mobile phones that cause serious harm to consumers, particularly children.

Carriage and content service providers are developing a self-regulatory scheme in connection

with the service provider rules. The scheme is aimed at ensuring that consumers are provided with clear and accurate information about the cost, terms and conditions of a mobile premium service at the time it is advertised and when it is being used. It will also specify an unsubscribe command, for example, 'stop', that can be used to cancel any mobile premium service that is supplied on a subscription basis. Under the scheme, an independent body will be set up for complaints that consumers have not been able to resolve with their carriage service provider or the provider of the content.

Mobile premium services include sports scores, audio and video music clips and sports highlights, mobile ring tones, mobile wallpaper, games and other downloads, age-restricted content and chat rooms.

More information about the rules is on the ACMA website at www.acma.gov.au (go to Internet> Content Regulation> Codes & Standards> Internet Content Codes of Practice> and to Phones> Premium Services> Premium Mobile Services).

