

FILE



Privacy Commissioner
Te Mana Matapono Matatapu

Office of the Privacy Commissioner

19 June 2007

Keith Davidson
Executive Director
InternetNZ
PO Box 11-8811
WELLINGTON

Dear Keith

Draft Internet Service Providers Spam Code of Practice (Version 0.95)

I provide the following brief submission from the Office of the Privacy Commissioner on the draft Internet Service Providers Spam Code of Practice. Thank you for the extension to the deadline of 18 June 2007.

I refer to clause 8 of the code which concerns IP address information. The code suggests that service providers retain this data for a minimum period of 28 days to allow a reasonable period for dealing with complaints.

Clearly for the spam complaint and investigation processes to work effectively service providers will have an important part to play and IP address information will need to be consulted. Service providers' retention practices do therefore seem to be appropriate matters for the code to address. However, requiring the retention of such data on all customers does create some privacy risks even when spam investigation is not in issue. The information in question may reveal something about individuals' communications and activities. Retaining the data creates the possibility of access, disclosure and secondary use for non-spam complaint related matters. I therefore suggest that there would be merit in casting the clause in a way that reminds service providers about the need to safeguard the data. Good practice in this regard may not only benefit privacy but also service provider reputation and the preservation of evidence etc.

There is also the issue of not holding the data unnecessarily long. Spam appears to be transient in nature, which may suggest that in many instances only a very rapid response will protect customers from further exploitation, perhaps limiting how this data can be useful beyond a short 'window'. I have some suggestions to change the wording to recognise this concern and the points made above. I have noticed that some of the language of the code is focused upon best practice and have couched the suggestions as recommendations. If preferred a mandatory tone could be adopted and still convey the same ideas.

The current draft clause 8 provides:

IP Address Information

Service Providers directly responsible for the assignment of IP addresses to their Customers will use all reasonable efforts to retain information pertaining to those assignments for a minimum period of twenty-eight (28) days, to allow a reasonable period to address complaints.


I suggest that it be changed to read:

IP Address Information

- 8.1 Service Providers directly responsible for the assignment of IP addresses to their Customers must adopt a policy on retaining information pertaining to those assignments to allow a reasonable period to address complaints.
- 8.2 Experience in handling such complaints will inform services providers as to the optimal time for retention but as a minimum a default period of twenty-eight (28) days is recommended.
- 8.3 Service Provider policies should also ensure that the information retained is safeguarded and address such matters as security, authorised access for spam complaints investigation, disclosure, retention for evidential purposes and destruction when no longer required. Staff should be trained in their responsibilities.
- 8.4 Service providers are reminded of their general obligations to safeguard personal information under the Privacy Act 1993 and the Telecommunications Information Privacy Code 2003 issued by the Privacy Commissioner.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Blair Stewart', written in a cursive style.

Blair Stewart
Assistant Commissioner