

## ACMA moves to stop missed call marketing

ACMA has advised two companies alleged to have engaged in 'missed call' marketing that these marketing activities are likely to constitute serious and extensive contraventions of the *Spam Act 2003*. Following ACMA's intervention, the companies responsible have now stopped making these calls while further ACMA investigations are undertaken.

Missed call marketing is the term given to the practice of calling a mobile phone for such a short period of time that the owner cannot answer the call. When the marketer disconnects the call, most mobile phones present a missed call

notification with the marketer's number. The marketer intends that the owner of the phone will think that they have missed a legitimate call and ring the number back, in which case they hear a recorded promotional message.

After scrutinising the missed call marketing practice, ACMA believes it breaches the anti-spam legislation and wants to send a clear message to the public and the industry about the legality of the practice. In the first and most prevalent example of missed call marketing, callers were told about a gift of mobile content that they could receive by calling a 190 premium rate

number. In a more recent example of this type of marketing, callers were advised of a mobile premium SMS-based dating service operated on a '19' number.

ACMA will not provide further comment on its 'missed call' investigation until it has completed it, but recommends that members of the public should be wary of calling back missed calls from numbers they do not recognise.

ACMA is responsible for the administration and enforcement of the Spam Act, which came into force on 10 April 2004, and regulates the sending of commercial electronic messages. Enforcement actions

ACMA has undertaken since commencement of the Act have included the issue of several fines and the successful prosecution of a major Australian spammer in the Federal Court.

Complaints about missed call marketing can be lodged on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au) (go to Consumer > SPAM or junk e-mail > Introduction). Complainants are asked to include as much detail as possible, including the calling number, date and time of the missed call, and, if the complainant has rung the number, the content of the recorded message.

## International cooperation detects local spammer

ACMA recently executed a search warrant on residential premises in relation to an allegation that an Australian resident was sending billions of unsolicited commercial electronic messages, referred to generally as 'spam'.

More than two billion emails were sent in one spam campaign. ACMA analysis to date has identified that the messages in the spam campaign primarily promoted Viagra products.

The investigation commenced after ACMA received information from OPTA, the Dutch Independent Regulator of Post and Telecommunications

(OPTA). The information from OPTA alleged that an Australian resident was responsible for the sending of very large volumes of unsolicited commercial electronic messages using computer servers located in the Netherlands.

While the messages are alleged to have been sent from computer servers located overseas, under the Spam Act if an 'Australian link' exists this activity falls within the jurisdiction of this Act.

The information supplied by the overseas regulators was in accordance with the Australian Government's commitment to maintaining strong international

co-operation with regulatory agencies in the fight against spam. ACMA continues to receive data from overseas agencies in relation to spam and also provides information to overseas agencies regarding the possible identification of overseas spammers.

While the spam being examined by ACMA in the current investigation appears to have been sent from overseas, section 7 of the Spam Act 2003 makes it an offence for an Australian to be involved in the sending of spam if there is an 'Australian link'. As part of its investigation, ACMA is investigating whether there is

an Australian link associated with this spam campaign and expects that its investigation will continue for some months.

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.

Spam can be reported and the SpamMATTERS reporting tool can be downloaded from the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).