Defending a Blurred Line: Is It Spam or Just a Company Marketing by E-Mail?

PARIS, Oct. 15 — When a torrent of unsolicited e-mail arrives with cut-rate promotions for pheromone cologne and mint-flavored Viagra, a volunteer foreign legion of antispam warriors is ready to fight back with its most lethal weapon: blacklists.

But lately, online global guardians like the Spamhaus Project are facing fierce challenges to their blacklists, or blocklists, which are intended to help businesses and Internet service providers filter out the worst spammers from Ukraine to the United States.

The Spamhaus Project, which has battled computer viruses along with an online attack last month that shut down its Web site, is now confronting a new kind of siege. An American marketer is complaining that the organization exacts a vigilante style of online justice carried out by anonymous, unaccountable volunteers.

From suburban Chicago, David Linhardt, president of a small marketing company, E360insight.com, is pressing to

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suspend Spamhaus’s Internet address until it complies with a September ruling in Illinois federal court. The ruling ordered Spamhaus to post a Web site notice saying that E360 was not a spammer and to pay E360 $11.7 million in damages.

The Web address suspension appears unlikely for now, because last week the Internet Corporation for Assigned Names and Numbers, which presides over domain names, signaled that it lacked the authority to suspend the address of Spamhaus, a nonprofit company based in London. Still, the legal battle underscores the tricky nature of defining spam and of creating standards for monitoring groups.

Spamhaus, which was formed in 1998 and is operated by 25 volunteers around the world, is one of many spam-busters that emerged around the same time to aid Internet service providers and businesses desperate to filter out spam before it reached consumers. Their mission is to offer antispam protection for Internet networks to stave off an onslaught of unsolicited bulk e-mail, which is how they define spam. But international authorities have yet to agree precisely on the definition of spam, leaving antispam groups vulnerable to challenges.

Most European countries require prior consent from recipients before a sender can transmit bulk e-mail messages to them. The United States and Japan favor a freedom-of-commerce approach that does not require advance consent but does offer a choice to unsubscribe from mass mailings.

However spam is defined, the volunteers are having an impact; in the last quarter of 2005, 203 billion e-mail messages were filtered and prevented from being delivered; 61 billion of those were blocked by blacklisting, according to a report released in April by the Organization for Economic Cooperation and Development, which has 30 countries as members.

The report also noted that the quality of antispam blacklists varied widely, partly because of the absence of a general code for evaluating them. It found that many lists “are poorly managed, abandoned or of dubious integrity: names can be added quickly, the applied criteria may be unclear, and the removal from the list may be virtually impossible.”

In Britain, the Department of Trade and Industry is in discussions with Spamhaus to make the system of blacklisting aggressive marketers more transparent, with a well-defined procedure for those who want to challenge their placement on the lists.

Spamhaus is arguably the most prominent group tracking spammers, according to officials of various governments who specialize in the issue.

Combing newspapers, public records and incorporation filings, Spamhaus keeps several lists of top offenders, including a registry of “known spam operations,” companies that it says have been ousted by three or more Internet service providers because of spamming.

“Spamhaus.org blocks 50 billion spamns per day,” Steve Linford, its chief executive, said in an e-mail message, citing a figure that far exceeds O.E.C.D. estimates. “The effect of 650 million e-mail boxes suddenly receiving such a barrage of illegal spam, scams and bank phishes is extremely dangerous.”

Mr. Linhardt, the president of E360insight, never got top billing on the “known spam operations” list, but his name and his company were included in information about another person accused of spamming. Mr. Linhardt said that when he tried to challenge his inclusion, he found it difficult to reach anyone directly at Spamhaus, forcing him to make his appeals in a series of increasingly heated e-mail exchanges with people he could not speak to.
“We tried to resolve this amicably,” Mr. Linhardt said in a telephone interview, saying he first came under Spamhaus’s scrutiny in 2003. “They basically just respond, ‘stop spamming, spammer.’ They call you names, and they threaten you. I don’t know even know who is responding. They say they have a network of volunteers, but who are they to be regulating U.S. companies?”

Spamhaus protects the identities of its volunteers and board members because spammers would try to attack them online if their names were known, Richard Cox, a spokesman for the Spamhaus Project, said in a telephone interview.

Spamhaus listens to companies’ appeals, said Mr. Linford, the chief executive.

“One spam can be a mistake,” he said. “For example, a company may have hired a rogue marketer. But months of spamming bulk adverts to millions, combined with illegal spamming via hijacked computers, is very hard to explain. We also offer advice on how to stop spamming and how to send bulk e-mail responsibly.”

In the case of E360, Mr. Linford said Mr. Linhardt had “refused to stop spamming, saying that his spam was ‘not spam’ because his definition of the word ‘spam’ was different from that of ours and the Internet industry.”

In the United States, the Can-Spam Act of 2003 permits bulk e-mailing as long as messages are marked as advertising and include a way for the recipient to decline them. Mr. Linhardt says that when he sends out bulk mailings for clients, like BargainDepot.net, his company sends messages only to people who have signed up for e-mail alerts on that Web site.

Spamhaus scoffs at his claims, saying it has collected samples of Mr. Linhardt’s e-mail messages sent to some of the group’s own investigators, along with examples sent in by Internet users who said they never agreed to accept such material.

Spamhaus did not defend itself in the United States court case because it argued that the court lacked jurisdiction over a British group.

In its September ruling, the court ordered Spamhaus to stop offering blacklist information to block E360’s e-mail until it provided “convincing evidence” that the Chicago company had violated federal spam law. The court, in its default judgment, also demanded that Spamhaus post a message on its Web site saying that E360 had been erroneously listed as a spammer, and awarded E360 the $11.7 million in compensatory damages.

Spamhaus said last week: “We are working with lawyers to find a way to both appeal the ruling and stop further nonsense by this spammer.”

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