

ELECTRONIC PRIVACY INFORMATION CENTER

[By e-mail authenticationsummit@ftc.gov]

September 28, 2004

Email Authentication Summit-Request to Participate
Secretary
Federal Trade Commission
Room 159—H (Annex V)
600 Pennsylvania Ave.
Washington, DC 20580

Dear Secretary,

On behalf of the Electronic Privacy Information Center, I request the opportunity to participate in the E-mail Authentication Summit to be held in Washington, DC on November 9-10, 2004.

EPIC is a not-for-profit research center that focuses on privacy, the First Amendment, and promoting Constitutional values. EPIC has a long history of participation in the spam debate from a pro-consumer perspective. In particular, we have focused on the application of new technology to the spam problem, including the risks posed by single-signon identification systems, such as Microsoft Passport; databases, such as WHOIS; and emerging technologies, such as ENUM (Electronic Numbering).

Most recently, EPIC submitted a paper on spam to the International Telecommunications Union. *Consumer Perspectives on Spam*, by Marc Rotenberg and Samantha Liskow, discusses consumer approaches to spam domestically and internationally. That paper specifically discusses authentication to address spam, warning that:

From the consumer perspective, it remains unclear whether this approach will reduce the spam problem. While consumers clearly favour techniques that will diminish spoofing and phishing, user-identified e-mail also raises the prospect of more intrusive data collection that will lead to more aggressive commercial marketing by the private sector and more surveillance under law enforcement. Such a scheme could also impact on principles of free expression and anonymity, if senders of non-commercial messages are required to disclose their identity. As the Council of Europe stated in its Declaration on Freedom of Communication on the Internet:

Council of Europe Declaration on Freedom of Communication on the Internet Principle 7 - Anonymity
“In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity. This does not prevent member states from taking measures and cooperating in order to trace those responsible for criminal acts, in accordance with national law, the Convention for the Protection of Human Rights and Fundamental Freedoms and other international agreements in the fields of justice and the police.”

Source: Council of Europe at: <http://www.coe.int/>.

United States law also recognizes a Constitutional right to protect the privacy of identity in several contexts, including membership in political organizations, commercial protest, political speech, and even door-to-door solicitation. The right of anonymity is viewed as critical component of the First Amendment.

At the very least, user-identified techniques for countering spam should comply with international data protection principles, including ones that require the minimization or elimination of the collection of personally identifiable information. User-identified e-mail, while perhaps the favoured solution of industry groups, imposes a new cost on Internet users and that is in the loss of privacy that results.

EPIC has participated in anti-spam efforts in a number of contexts. In April 2004, EPIC submitted comments to the Federal Communications Commission on wireless spam. In March 2004, EPIC submitted comments on the proposed do-not-email list. In July 2003, the Privacy Coalition announced a framework for approaching spam. EPIC has also testified before the Senate in May 2003 on spam. EPIC participated in the April 2003 Federal Trade Commission spam forum as well.

We think it critical that the Commission clearly understand the difference between identification and authentication. In comments accompanying this letter, we explain that the notice announcing the E-mail Authentication Summit does not clearly discern the difference between identification and authentication. At times, the notice seems to blame the spam problem on anonymity directly. At the Summit, we will urge the Commission to protect anonymity in any authentication system endorsed.

We furthermore will urge the Commission to make it easier for consumers to identify spam businesses and the companies that employ them.

Sincerely,

/s/

Chris Jay Hoofnagle
Associate Director