

'Spam' Lawsuit Dismissed

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Utah's 10-month-old statute targeting "spam" e-mail has been dealt a setback. Its first courtroom test ended with a Sandy judge's dismissal of a proposed class action lawsuit brought against Sprint Communications Co.

The suit, filed in state court last July on behalf of South Salt Lake resident Terry Gillman, accused the telecommunications giant of violating the Unsolicited E-Mail Act by sending him unsolicited advertising.

In her ruling, Judge Denise Lindberg found that Gillman had given his permission to receive third-party promotional messages when he signed on to the Audio Galaxy Web site in April. That site sold e-mail addresses to other parties, among them Sprint.

Paul Drecksel, an attorney representing Sprint, hailed the dismissal as an important initial victory in his company's defense of Sprint and numerous other clients in more than 50 unsolicited e-mail complaints.

"At least in cases similar to this one, this ruling has a great deal of importance," he said Thursday. "This is the first time a court in Utah has been called upon to qualify what amounts to unsolicited e-mail."

Drecksel said the decision also was important in light of the more than 30 states with often conflicting anti-spam e-mail laws. Because unsolicited e-mail can come from widely scattered geographic locations - often even from overseas -- determining which of the varying standards applies is a legal nightmare.

"The purported purpose of all these statutes is mainly to stop unsolicited pornography and scams," Drecksel said. "But what we find in practice is that these laws do nothing to stop those two bad acts. Those companies are here today, gone tomorrow, so lawyers can't make any money pursuing them."

Instead, he argued, "legitimate companies with deep pockets" -- such as Sprint -- end up in court.

Sandy attorney Denver Snuffer, whose firm filed Gillman's and dozens of e-mail complaints in court, did not immediately answer telephone and e-mail messages seeking comment. Gillman, whose phone is unlisted, also could not be reached.

However, the sponsor of the state's anti-spam statute, Sen. Patrice Arent, D-Holladay, remained dedicated to ridding Utahns' in-boxes of unsolicited e-mails. She said that civil suits -- an estimated 1,000 of which have been filed under the act in the past year -- remain the best way to enforce the law's provision for fines of \$10 per unwanted e-mail up to a maximum of \$25,000 per day.

The Gillman case "does not sound like it was really a good test of the statute," Arent said. "Clearly, the statute is intended to protect people against unsolicited commercial and sexually explicit e-mails -- not preventing e-mail from companies with pre-existing relationships" with recipients. "You still need to be careful and cautious about what you sign up for online."

Gillman requested removal on May 14, 2002, from the e-mailing lists his visit to Audio Galaxy a month earlier had linked him to. Two days later, he received a Sprint "Nickel Nights" ad, and on May 28 he filed suit. The court found his attempt to have himself removed from the lists was technically insufficient to void the "pre-existing business relationship."

Arent acknowledged her bill's language could use some fine-tuning, something she had attempted to do during the recent legislative session. "We ran out of time," she said, noting that revisions included providing unsolicited e-mailers "reasonable time" to comply with requests for removal.