Spam & Unsolicited Commercial Communications
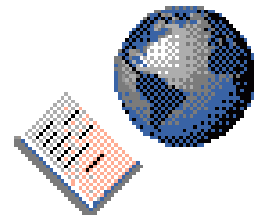
INTRODUCTION

INTRODUCTION

Spam is Generally:

❑ **Unsolicited commercial electronic messages (UCE) sent via electronic mail (e-mail; ie junk mail) or mobile phones**

❑ Source of e-mail addresses obtained by spammers usually from: Addresses of recipients from web pages, databases, guessing common names, domains, dictionary attacks

INTRODUCTION

Birth of SPAM:

❑ SPAM was born in Phoenix, Arizona, in 1994

❑ Two lawyers sent advertisement on internet to 8000 usenet newsgroups and it reached to 20 million quickly resulting in crashing of ISP's primitive servers
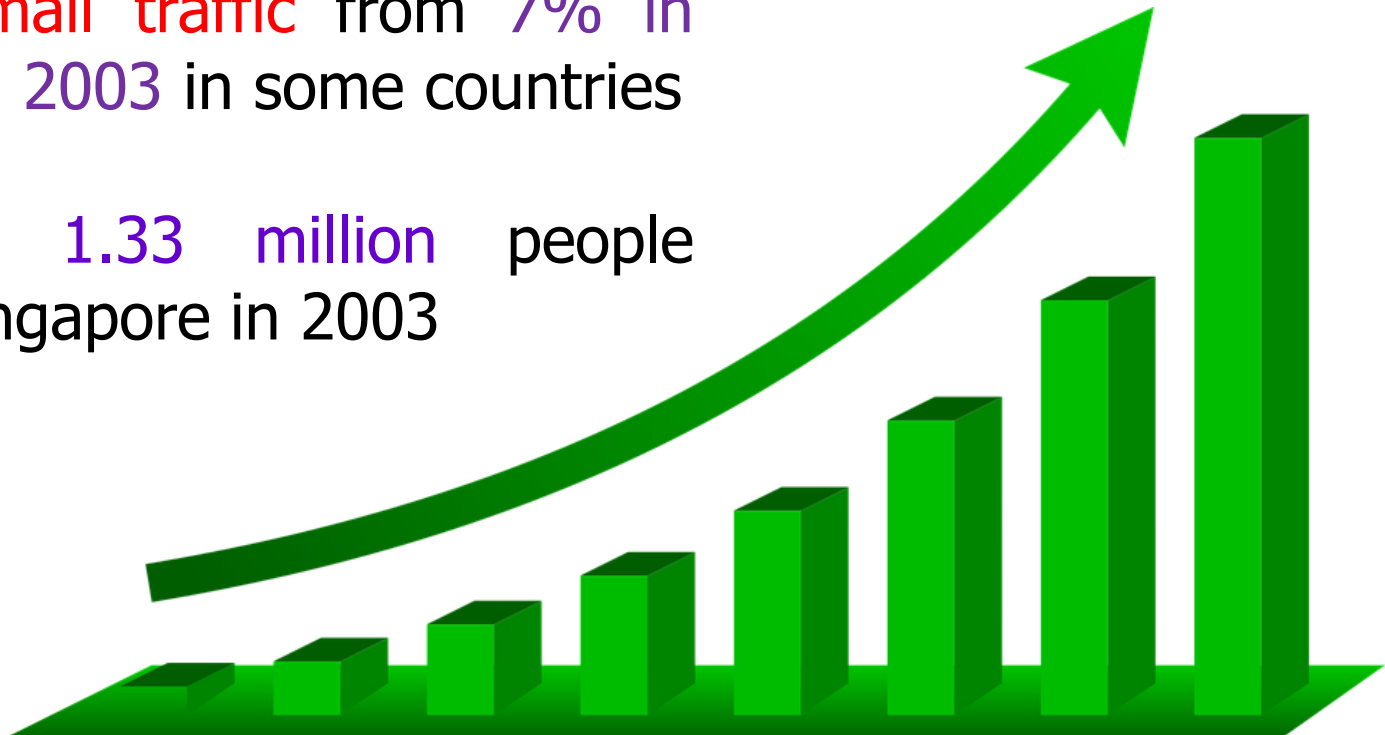
❑ A new marketing technique was born
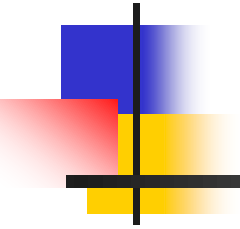
INTRODUCTION

Birth of SPAM:

❑ Jump in e-mail traffic from 7% in 2001 to 50% in 2003 in some countries

❑ IDA study: 1.33 million people spammed in Singapore in 2003

(then) IDA-AGC PROPOSED LEGAL FRAMEWORK ON SPAM

IDA-AGC PROPOSED LEGAL FRAMEWORK ON SPAM

Actions Taken:

❑ Public consultation: May - June 2004

❑ Collaboration with **ISP** (internet service providers), **CASE** (consumer association of Singapore), **DMAS** (direct marketing association of Singapore), **SBF** (Singapore Business Federation), **SiTF** (Singapore infocomm technology federation; now called SGTech) (public-private sector partnership)

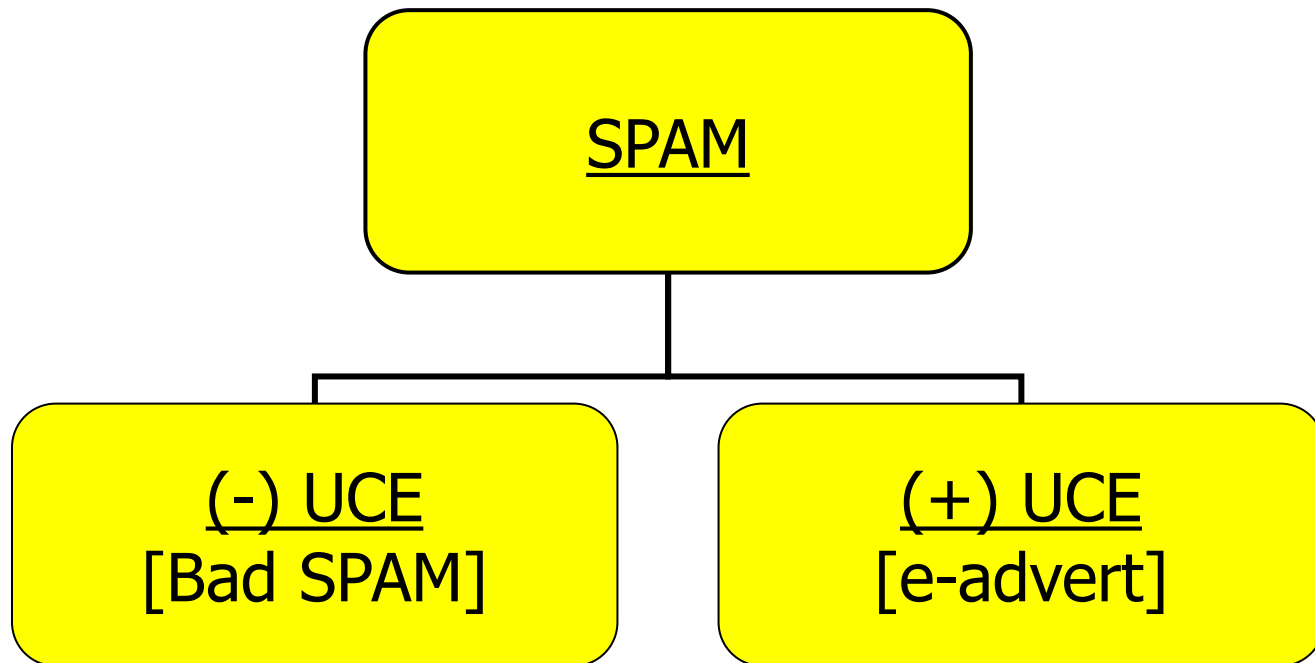❑ Idea is to introduce a multi-pronged approach to fight e-mail SPAM

IDA-AGC PROPOSED LEGAL FRAMEWORK ON SPAM

Definition of SPAM under IDA:

❑ **SPAM = unsolicited commercial e-mail messages**

❑ **E-advertising = UCE +**
- (a) opt-out option (functional)
- (b) appropriate labelling e.g.. Advertising [ADV]

❑ Commercial communications exclude communications such as those between:
- Private individuals
- Government to citizen communications
- Appeals for donations by charities/religious organization
- Messages which are purely factual in nature.

IDA-AGC PROPOSED LEGAL FRAMEWORK ON SPAM

Simple Diagram Differentiating UCE:

```
        ┌─────────────┐
        │    SPAM     │
        └──────┬──────┘
        ┌──────┴──────┐
   ┌─────────┐   ┌─────────┐
   │ (-) UCE │   │ (+) UCE │
   │[Bad SPAM]│  │[e-advert]│
   └─────────┘   └─────────┘
```

S'PORE PROPOSED LEGISLATION: AN "OPT-OUT" OPTION

EVALUATING IDA-AGC PROPOSAL: AN "OPT-OUT" OPTION

"Opt-Out" System:

❑Definition:

- A distribution model of sending unsolicited e-mail and allowing the recipient to request removal

- Permits sender to send unsolicited commercial e-mails to the intended recipients until such time they are asked by the recipients to stop sending

IDA-AGC PROPOSED LEGAL FRAMEWORK ON SPAM

Proposed Legislation is not against unsolicited commercial e-mail (UCE) if it has an opt-out regime:
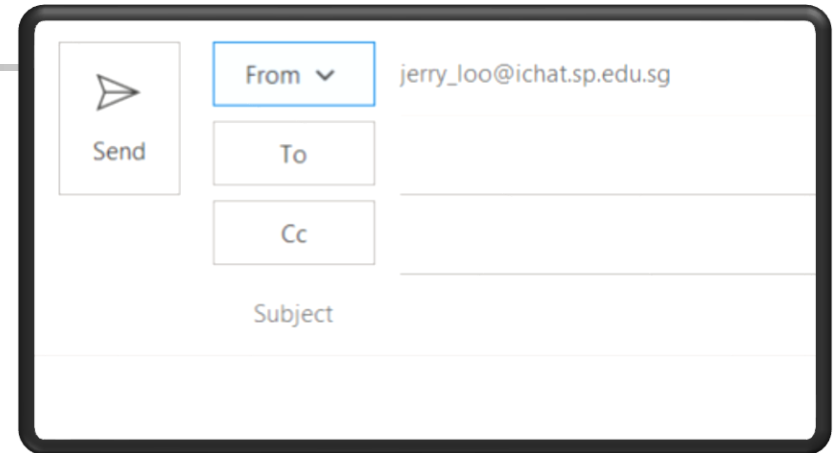
❑ Opt-out regime
  ▪ each UCE should have a valid return e-mail address
  ▪ other languages + English language
  ▪ opt-out mechanism should be functional
  ▪ sender must comply with opt out request within a certain time frame.
  ▪ the sender should not pass on the recipient e-mail to other business partners.

S'PORE PROPOSED LEGISLATION: AN "OPT-OUT" OPTION

Requirements:

❑ Labelling Standards:
- Subject titles should not be misleading
  - Subject titles should contain [ADV] – advertisement
  - e-mail messages should not contain a false header
  - e-mail messages should have a genuine e-mail address or postal address.

S'PORE PROPOSED LEGISLATION: AN "OPT-OUT" OPTION

S'PORE PROPOSED LEGISLATION: AN "OPT-OUT" OPTION

EVALUATING IDA-AGC PROPOSAL: Compare with OPT-In option

"Opt-In" System:

❑ Sender cannot send any unsolicited commercial communications by e-mail until such time the intended recipient indicated to the sender he is willing to receive such communications

❑ Characterized by recipients having signed up at websites, special advertisement banners or marketing channels. Those who signed up have thus "opted-in". Any e-mails sent would not be considered unsolicited

❑ Favours the consumer? Only by Consent

EVALUATING IDA-AGC PROPOSAL: AN "OPT-OUT" OPTION

"Opt-In":

- ❑ Legal uncertainty over what constitutes consent and opt-in assent.
- ❑ Unwanted e-mail bulk remains
- ❑ Less marketing opportunities.
- ❑ Extraterritorial hiccups (not effective due to lack of jurisdiction if spam from outside Singapore)

"Opt-Out":

- ❑ Business friendly
- ❑ Legitimizes SPAM?
- ❑ Identifying and abuse of "live" address
- ❑ Proliferation of SPAM
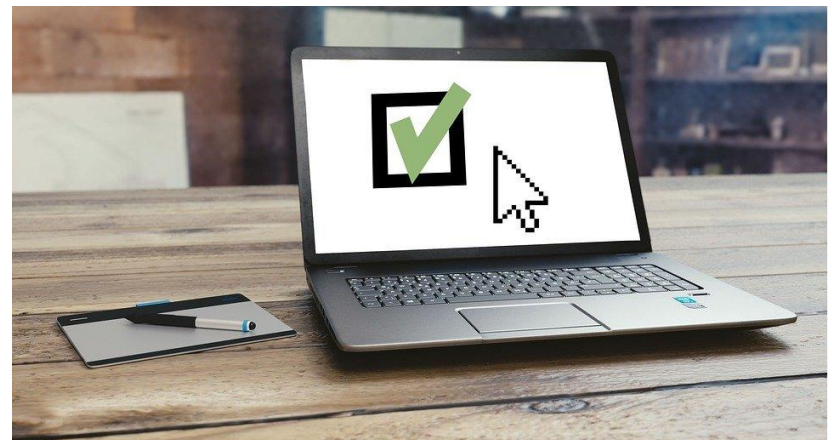
EVALUATING IDA-AGC PROPOSAL: AN "OPT-OUT" OPTION

Advantages of Opt-Out System:

❑ Reduce burden on businesses in complying with regulations.

❑ Avenue for conducting legitimate businesses.

❑ Consumers enjoy free access to information

❑ Consumers enjoy option to prohibit and select information.

❑ Minimum standards/requirements in place!

EVALUATING IDA-AGC PROPOSAL: AN "OPT-OUT" OPTION

Minimum standards of Opt-Out System:

❑ Valid e-mail address for recipient to send for opting out

❑ At least one set of opt-out instructions in English

❑ Functional

❑ No transfer of email address by sender

❑ Specified time frame

IDA-AGC PROPOSAL : APPLICATION OF LEGISLATION

Application of Legislation:

❑ Apply to SPAM also transmitted in "bulk" – but subjective test OR by reference to a minimum numerical threshold.

❑ Apply to SPAM originating from or received in Singapore (minimize the risk that Singapore may become a spam hub)

❑ The merchant or business commissioning or procuring spam should also be made liable for unlawful SPAM

SPAM CONTROL ACT 2007

- The Act came into effect on 15 June 2007

- Parliament accepted almost entirely the proposals made by the IDA-AGC joint committee

- The Act offers a framework to better manage SPAM as legal guidelines are reasonably easy for marketers to follow.

SPAM CONTROL ACT 2007

- **Users who do not want to continue receiving SPAM must unsubscribe** (opt-out scheme) and any business sending out such messages must provide such an avenue structured in a "consumer friendly" fashion

- A marketer who continues to SPAM those who unsubscribe will face potential financial penalties of $25 for each e-message up to a total of $1m

S'PORE PROPOSED LEGISLATION: LEGAL ACTIONS & OTHER OBLIGATIONS
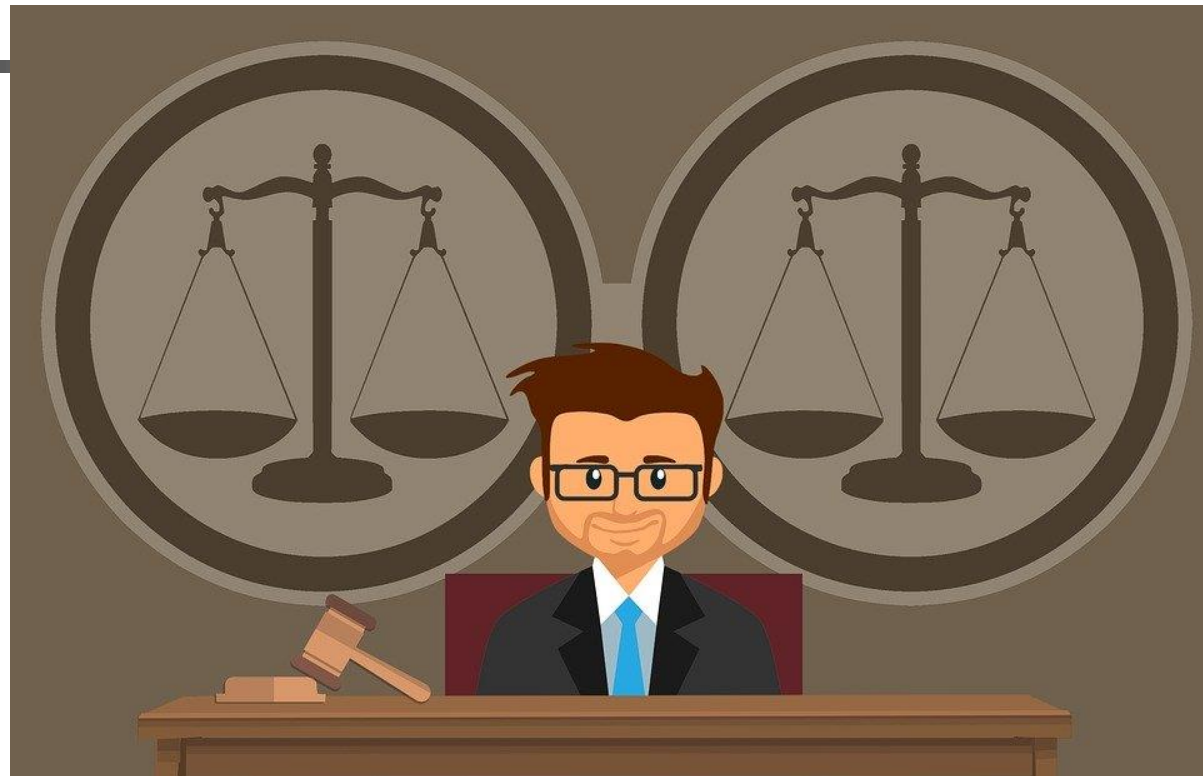
S'PORE PROPOSED LEGISLATION: LEGAL ACTIONS

Role of ISP

❑ ISP which have suffered loss or damage as a result spamming activities be given the right to commence civil action in court

❑ Remedies include:
- Damages for pure economic loss suffered
- costs and expenses of the action

S'PORE PROPOSED LEGISLATION: OTHER OBLIGATIONS

❑ Self-regulatory Code of Practices
(provide minimum standards of
technical SPAM control and best practice)

❑ ISP actions to curb SPAM in Singapore
    1. Provide clear feedback procedures for subscribers
    2. Make info available for subscribers to manage SPAM
    3. Introduce technical measures to manage SPAM
    4. Implement clear policies to discourage subscribers
   from using ISP facilities for sending SPAM

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, INDUSTRY SELF-REGULATION, INTERNATIONAL COOPERATION

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Importance:

- ❑ Global nature of SPAM – Self help as first line of defence

- ❑ Need to equip public with requisite knowledge

- ❑ Singapore aims to foster a Pro-Business as well as Pro-Consumer environment
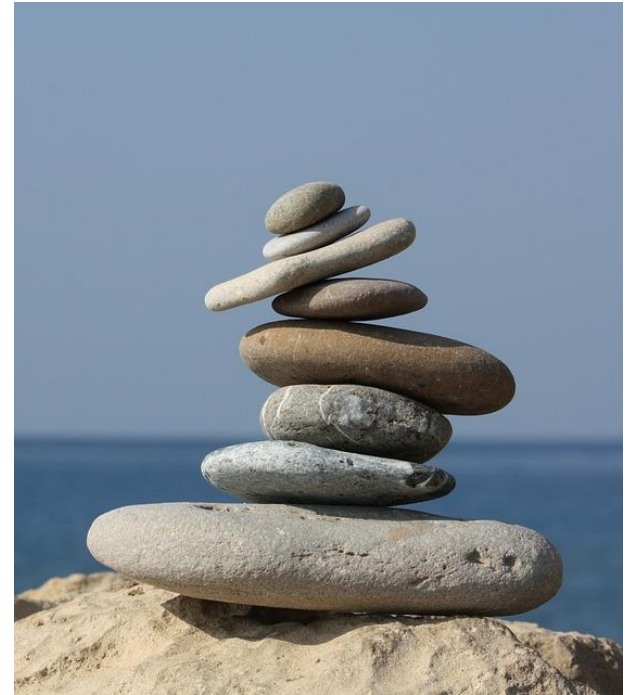
MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

<u>"Prevention is Still The Best Medicine"</u>

Methods to prevent/reduce SPAM:

❑ Avoid giving out your e-mail address to unfamiliar or unknown recipients

❑ Do not post your e-mail address online: e.g. Chat-rooms, newsletter, subscriptions, and online groups

❑ Have more than one email address

❑ Do not reply to unknown e-mail sources: e.g. "*to be removed from this list, click here.*" Spammers use these types of catch phrases to entice users to respond to the e-mails.

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Requisite Knowledge:

IDA's survey on unsolicited e-mails in 2003:

❑ 42% of e-mail users in Singapore unaware of how they can protect their e-mails against SPAM

❑ Public education therefore important

E-mail users should have requisite knowledge on:

❑ How spammers operate

❑ What are the important user habits they should adopt to limit the risks of receiving SPAM: e.g. Utilities of anti-spam software, firewalls

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Pro-Business & Pro-Consumer Environment:

In line with IDA Infocomm 21,

One of its six focus areas:

❑ Singapore will create a pro-business and pro-consumer environment to foster the development and growth of the digital economy

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Pro-Business & Pro-Consumer Environment:

SPAM impedes business efficacy:

❑ Results in loss in productivity as time wasted in deleting unsolicited commercial e-mails

❑ Wellesley, Mass.-based Nucleus Research Inc. estimates that companies will lose USD$1,934 for every employee in 2004, compared to USD$874 in 2003

❑ Anti-Spam filtering company (Postini Inc.) estimates SPAM currently accounts for more than 70% of total e-mail volume worldwide

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Pro-Business & Pro-Consumer Environment:

Fostering a Pro-Consumer environment:

❑ Mandatory code of practice - DMAS's Email Marketing Guidelines for Marketers

❑ Left unchecked, SPAM may erode consumer confidence in e-mail as a medium of communication and commerce

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Actions Taken:

❑ National Anti-Spam Website: www.antispam.org.sg

❑ IDA Anti-Spam Awareness Drive

❑ SiTF Anti-Spam Initiative

❑ Public Education Efforts by CASE & SBF

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Use of Technology:

❑ Consonant with public education

❑ Individual-based

❑ Install anti-spam filters to reduce SPAM receipt.

❑ Plethora of anti-spam software available: e.g. Firewalls

*KEY: To promote awareness and usage!

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Industry Self-Regulations:

❑ Marketers: Mandatory code of practice

- DMAS's e-mail Marketing Guidelines to be implemented

 DMAS guidelines for using commercial electronic messages

❑ ISPs: Implementation of Anti-Spam Guidelines by the three major local ISPs (now called spam control guidelines)

❑ e-mail users: Consumer Communications Preference Programme

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Reflection:

❑ Most SPAM comes from other countries

❑ Consumer now able to:
   ■ make more informed choices
   ■ given the right to change to a better spam-deterrent ISP

❑ Even if consumer given right to sue – enforcement problems: e.g.. lack of territorial jurisdiction will surface

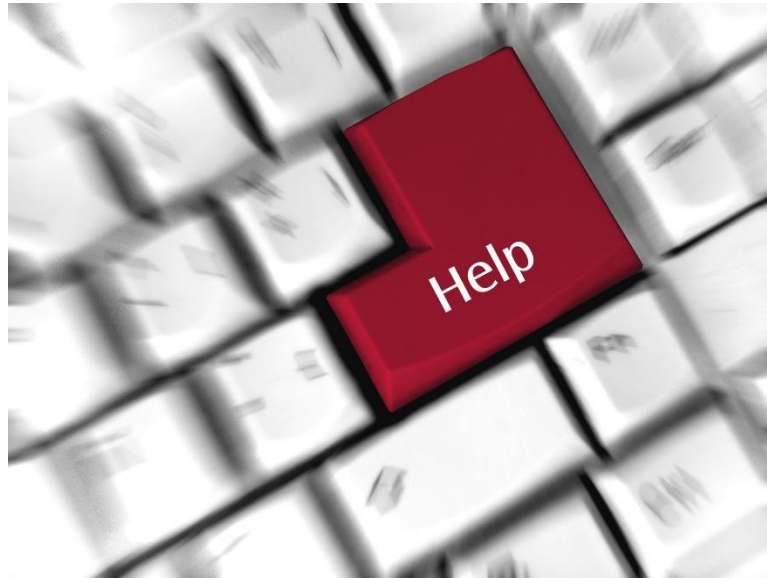# MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

International Cooperation

Spam is a global issue and Singapore cannot fight this battle alone. To extend Singapore's spam control efforts to international shores, IMDA is committed to partake in international initiatives, including participation in global and regional fora such APEC, ITU, OECD and ASEAN.

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Reflection:

❑ Realistically speaking, "Self-help" is the best option.

❑ Public education therefore a better front for fighting SPAM

MULTI-PRONGED APPROACH: PUBLIC EDUCATION, ETC

Summary of Spam Control Framework in Singapore:

a. Public Education
b. Industry self-regulation
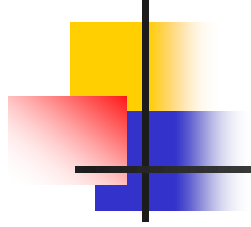c. Legislative framework
d. International cooperation

https://www.imda.gov.sg/regulations-and-licensing-listing/spam-control-framework

CHANGES AHEAD?

New rules proposed to cover marketing spam on chat apps like telegram and iMessage

End of Lecture