

*Mexico's Experience in Combating Spam. A Legal Perspective
From a Consumer Advocate*

Contribution to the ITU Thematic Meeting on Cybersecurity

By

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1. Background

Mexico was among the first countries in Latin America that enacted e-commerce legislation consistent with the international model laws and based on the experiences of other countries. The Decree of May 29, 2000¹ represents the first legislation containing specific rules for the regulation of electronic commerce in Mexican territory. Such decree amended four statutes at the federal level: Code of Commerce, Civil Code, Code of Civil Procedure and the Law on Consumer Protection.

The reforms to the Federal Law on Consumer Protection (hereinafter "*FCPL*") contained in the Decree of May 29, 2000 adopted and reflected some of the principles of the OECD Guidelines on Consumer Protection in the Context of Electronic Commerce² particularly principle III (Online Disclosures) and principle II (Fair Business, Advertising & Marketing Practices). The regulatory approach taken during that reform was somehow "*light*" for various reasons. First, e-commerce in Mexico was still in its infancy and in development; and second, there were great expectations that e-commerce particularly the B2C marketplace would self-regulate with the support of the high-tech and marketing industries and that such industries would provide additional technical measures and security standards that in combination with the "*light*" government regulation would create an atmosphere of trust among consumers and foster the full development of Mexico's e-commerce. Although, Mexico's e-commerce has gradually increased³, the consumer protection marketplace has not fully achieved the expected results and instead there has been an increase of false and deceptive marketing practices, in addition to a general lack of understanding and awareness among the e-consumer population, particularly in areas such as purchaser rights and privacy of consumer information.

Furthermore, during the *FCPL* reform of February 2004, and in view of the unexpected results (and in addition to a major growth of frauds perpetrated between 2000 and 2004), the Office of the Federal Attorney for Consumer Protection (Procuraduría Federal del Consumidor, hereafter "*PROFECO*") reinforced the consumer protection legislation and improved the rules of the game for the advertising and marketing industries without creating an excessive regulatory framework for such industries. This reform also gave PROFECO better enforcement tools and mechanisms against the enforcement of misleading and deceptive marketing practices – including those carried out through Internet – in national territory. For instance, PROFECO decided to continue with the "*Opt-out*" e-mail marketing policy adopted during the first e-commerce reform, improved consumer information disclosures and also included a provision that gives the opportunity to consumers to inform

¹ The Decree of 29 May 2000 is available in Spanish at: <http://www.firmadigital.gob.mx>.

² OECD Guidelines for Consumer Protection in the Context of Electronic Commerce are available at: http://www.oecd.org/document/51/0,2340,en_2649_34267_1824435_1_1_1_1,00.html

³ According to information from Mexico's National Institute of Statistics, Geography and Informatics (INEGI), as of May 2004, Mexico has 16.2 million Internet users, 26 per cent of whom use e-mail communications, 26 per cent of whom use the Internet for research, 17 per cent of whom chat online and 14 per cent of whom use education services, available at: <http://lac.derechos.apc.org/noticias.shtml?x=20562>. See also INEGI's website available at: <http://www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=tinfl42&c=4870>

businesses and providers alike that their personal data shall not be transmitted or shared with third parties, unless that transmission had been determined by a judicial authority.

Interestingly and surprisingly for Mexico's regulatory government agencies and the ICT industry, in February 2004, the UK based company Sophos included Mexico in its "Dirty Dozen" list⁴.

Likewise, according to a recent report from anti-virus company Symantec⁵, which has physical presence in Mexican territory, Mexico City was ranked among one of the cities with the highest level of infected computers as a result of the spam received. According to the Symantec report, the city of Sao Paulo in Brazil has the highest level with 16% followed by Mexico City with a 14% and 6% of phishing attacks respectively. Moreover, Monterrey city, which is the second largest industrial city in the north of the Mexican Republic, was ranked in sixth place with an average of 5%. The report also lists the top-ten Latin-American countries infected as a result of spam: Sao Paulo 16%, Mexico City 14%, Buenos Aires 9%, Rio de Janeiro 7%, San Juan 5%, Monterrey 5%, Santiago 5%, Guatemala 5%, Caracas 2% and San Salvador 2%⁶.

Although Mexico currently has a good anti-spam legal framework, there are still a large number of regulatory, policy and awareness and educational activities, which remain to be done in the area of spam at the national and international levels. For instance, at the national level, no self-regulatory initiative has been issued from the private sector to provide additional measures that enhance trust among Internet users, either through a combination of codes of businesses practices or technical standards for the filtering and authentication of e-mail and as a measure to complement the anti-spam national efforts. Spammers have practically surpassed the technical measures and the preventive efforts to control its flow in national networks⁷ and, in order to reduce the problem, the ISP's have an important role to play by providing meaningful businesses practices and technical resources to Internet users. In the international arena, Mexico has been very active participating in the fight against spam, through international organizations and enforcement groups, such as the OECD and the International Consumer Protection Enforcement Network (ICPEN). However, we firmly believe that there are still a large number of tasks and recommendations arising from such international policy making groups that need to be fully implemented in Mexico, to the extent where the legislation allows it. These policy and regulatory activities are necessary, in order to achieve full consumer trust in Mexican territory, to allow Internet users to rely on e-mail as a communication medium and to foster the use of the Internet as a place to purchase products, hire services or simply as a medium to access sources of information.

The purpose of this research paper is to give an updated overview of Mexico's current legal framework on spam, to analyze the latest regulatory and policy related activities at the national and international level and to assess consumer education and awareness campaigns

⁴ The total average of Mexico's spam origination accounted for only 1.19% during 2004; see: Sophos, Anti-Virus and Anti-spam for Business, "*Sophos outs 'dirty dozen' spam producing countries,*" (26 February 2004), available at: <http://www.sophos.com/spaminfo/articles/dirtydozen.html>. Mexico was not included in the latest Sophos's Dirty Dozen, see: "*Sophos reveals latest 'Dirty Dozen' Spam producing countries*" (7 April 2005), available at: <http://www.sophos.com/spaminfo/articles/dirtydozen05.html>

⁵ Symantec Spam Watch for Latin America, available at: <http://www.symantec.com/region/mx/spamwatch/>

⁶ Business News America, "*SP y Ciudad de México lideran infecciones con spam en Latinoamérica,*" (Friday 8 April 2005), E-Business News section, available at: <http://www.bnamericas.com>

⁷ Pisanty B., Alejandro, "*Spam el Correo No Solicitado*" Entérate, DGSCA UNAM (September, 2004), available at: <http://www.enterate.unam.mx>

that Mexico has carried out in the fight against spam. This paper is submitted as a voluntary contribution to the ITU Thematic Meeting on Cybersecurity and its aims are twofold: first of all, to contribute to the global battle against spam, and secondly, to serve as a reference document for all the stakeholders involved in the second phase of the World Summit on the Information Society (WSIS) process, its follow-up and its corresponding implementation stage at the national level.

2. The Current Anti-Spam Legislation

Mexico's *FCPL*⁸ *inter alia* contains specific rules for the marketing & advertising industries, which regulate and control their businesses practices and whose main purpose is: (i) to provide basic protection for consumers engaged in commercial transactions carried out through the Internet; (ii) to control the flow of unsolicited commercial messages originated and received by consumers; and (iii) to discourage unfair marketing practices in Mexican territory.

2.1. Opt-Out Clause

Article 76BIS section VI of the *FCPL*, gives the option to consumers to “*opt-out*”⁹ or withdraw from receiving commercial notices and advertisement in transactions carried out through the Internet. Section VII of article 76BIS obliges suppliers¹⁰ to avoid using sales or advertising strategies that do not provide clear and sufficient information on the services offered to the consumer¹¹, and warn suppliers on the marketing practices addressed to vulnerable populations, such as children, the elderly and sick people. Such provision also requires suppliers to incorporate mechanisms that warn when the type information will not be apt for such vulnerable populations.

2.2. Marketing and Advertising Practices

The *FCPL* contains four articles that marks the criteria that retailers, marketing and advertising companies should follow when they send commercial information to consumers by e-mail. These articles fall under four different categories, which are the following:

Marketing and Advertising Information for Consumers

“Article 16. Retailers and companies that use consumer information for marketing and advertising purposes are obliged to inform those consumers at no cost if they keep

⁸ The object of this law is to promote and protect consumer rights and to procure legal equity and security in relations between providers and consumers, Article 1 *FCPL*.

⁹ The *Opt-Out* clause allows consumers to withdraw, at any time, from receiving information on products and services contained in e-mail communications. The *Opt-Out* mechanism is an accepted information marketing practice that prevents consumer protection agencies from asserting fines to marketing and advertising firms for possible acts of misrepresentation. For more detailed information on the *Opt-Out* clause, see OECD, Committee for Information, Computer and Communications Policy “*Background Paper for the OECD Workshop on Spam*”, pp. 18-19 (22 January, 2004), available at:

http://www.oecd.org/document/47/0,2340,en_2649_34255_26514927_1_1_1_1,00.html

¹⁰ *Supplier* is defined as “an individual or legal person that periodically offers, distributes, sells, leases or grants the use or benefit of goods, products and services”, see article 1 subsection II of the *FCPL*.

¹¹ *Consumer* is defined as “an individual or legal person who acquires, realizes or possesses goods, products or services as an ultimate consignee”. The definition also includes the figure of “intermediary consumer” who is “an individual or legal person that acquires, stocks, uses or consumes goods and services with the purpose to include them in methods or process of production, transformation or commercialization or for rendering of services to third parties”. See article 1, subsection I of the *FCPL*.

information about them. If such information exists, retailers and companies must make it available at the request of the consumer or his representative and companies must also inform consumers if any of their personal data has been shared with third parties, as well as informing them as to the identity of such third parties and the recommendations carried out.

The response to any request shall be granted within the next thirty days of initial filing.

In case of ambiguity or inaccuracy in the consumer's information, the consumer shall point it out to the supplier or company, which shall make the corrections that the consumer request with good reason and inform of such corrections to third parties whose information has handed over within a term of thirty days from the date of the consumer request.

For purposes of this law, it is understood by marketing and advertising purposes the offering and promotion of goods, products or services to consumers”.

Information Disclosures and Opt-Out Clause

“Article 17. Commercial messages or advertising sent to consumers should indicate the name, address, telephone number and, where applicable, the e-mail address of the provider, and of the business that sends the publicity on behalf of providers and the name of PROFECO.

The consumer will demand directly from specific providers and businesses using its information for marketing or advertising purposes, that he does not wish to be molested at home, or at work e-mail or any other means in order to offer goods, products or services and not to receive advertising. Likewise, the consumer will be entitled to inform providers or businesses using its information for marketing or advertising purposes, at any moment, that his/her personal data must not be transmitted or shared with third parties, unless that transmission is determined by a judicial authority”.

Information Purpose and Consumer's Public Registry for Personal Data

“Article 18. It is strictly forbidden to use information with purposes other than credit or marketing for companies dedicated to credit and marketing research and its clients.

The Procuraduría could develop, where applicable, a consumers' public registry, which would list those not wishing their personal data to be used for marketing or advertising purposes. Consumers could notify the Procuraduría by letter or e-mail of its inscription request to the said registry, which would be at no cost”¹².

“Article 18 BIS. It is forbidden for providers and businesses as well as its customers that use consumers' information for marketing or advertising purposes to use the information related to consumers for purposes other than those of marketing or advertising, as well as sending advertising to consumers that have expressly requested not to receive it or that are subscribed to the registry referred to in the aforementioned article. Providers that are the object

¹² Pursuant transitory article fourth of the *Decree of February 4, 2004*; article 18 of the *FCPL* shall be in full effect nine months after the publication of such Decree, which was scheduled to occur on 3 November 2004. However, as of the date of the publication of this paper, PROFECO has not made any public announcements regarding the creation of the Consumer's Public Registry.

of advertising are responsible for the management of consumers' information when such advertising is sent through third parties".

2.3. Electronic Complaint Filing

The first paragraph of article 99 of the *FCPL* allows consumers to lodge complaints before PROFECO, including those complaints arising from false or misleading advertising practices contained in unsolicited e-mail messages by using telephone, electronic or any other viable means¹³.

2.4. Penalties and Fines

Articles 126, 127, 128, and 128BIS of the *FCPL* contain economic fines expressed in Mexican pesos and such articles provide penalties for non-compliance with the *FCPL* and its regulation from an amount of \$150.00 Mexican pesos (USD\$12.00) to a maximum of \$2,520,000.00 Mexican pesos (USD\$210,000.00), depending on the circumstances and the gravity of the case concerned. Article 129 entitles PROFECO to impose fines up to the double of the amounts established in the afore-mentioned articles in case of backsliding¹⁴ and even imprisonment of up to thirty-six hours.

In order to determine penalties, PROFECO shall utilize the provisions of the *FCPL* and its regulation and must assess the gravity of the infraction and should also take into consideration the following four elements: (i) the loss caused to the consumer or to society in general; (ii) the intentional nature of the violation; (iii) whether it is a case of recurrence; and (iv) the economic condition of the defendant. Likewise, PROFECO should also consider the general facts of the violation, in order to obtain the elements that may lead PROFECO to express the motive and reasons to assess the final amount of a penalty.

2.5. Do-Not Spam Registry

Article 18 of the *FCPL* gives PROFECO the authority to create a public registry similar to the initiative of the US Federal Trade Commission (FTC) Do-Not E-Mail Registry¹⁵ from November 2004 for Mexican consumers who do not want their personal information to be used for marketing and advertising purposes or shared with third parties.

In view of the outcome of the FTC Report of June 2004, whereby the FTC finally decided not to adopt a Do Not Spam Registry,¹⁶ it would be very unlikely that PROFECO decides to go ahead with such policy and adopt a consumers' public registry in Mexico for various reasons. First, PROFECO would have to spend a large sum of financial and human resources if it wants to implement and oversight the said registry in an efficient and continuous fashion. Second, even when PROFECO had the financial and human resources to implement the said registry, it would not possibly create desirable results among the Mexican marketing and advertising industry. Third, it would be very unlikely that consumers would sign up for such registry since a large number of them are wary about having their data used and handled by government

¹³ PROFECO has created an online form within its website, whereby consumers can submit their complaints, available at: <http://www.profeco.gob.mx/html/formas/fquejas.htm>

¹⁴ Backsliding occurs when the same person commits two or more violations of the same legal provision during the course of a year, from the day the first violation occurred. Article 130 *FCPL*.

¹⁵ Federal Trade Commission, "National Do Not Email Registry. A Report to Congress", (June 2004), available at: <http://www.ftc.gov/bcp/online/edcams/spam/reports.htm>

¹⁶ *Supra* note 15.

authorities. Another factor why the consumers' registry would not be feasible is because the Internet penetration and e-mail use in Mexico still remains very low¹⁷.

2.6. Anti-Spam Complaints and Cases

As of the date of this paper, there has not been any spam-related complaint brought to the attention of PROFECO and neither to the Mexican courts. This could be attributed mainly to three principal factors: (i) the lack of awareness among Mexico's population with access to the Internet; (ii) the fact that most of the spam generated comes from overseas and spammers are located in different jurisdictions making it almost impossible for PROFECO to enforce the law and identify and prosecute spammers within their national territory; and (iii) the fact that the existing consumer organizations and coalitions in Mexico are not specifically helping consumers to initiate and launch anti-spam complaints on their behalf.

3. International Cooperation in the Area of Spam

Immediately after the enactment of the first e-commerce legislation in Mexico,¹⁸ PROFECO has been proactive in the international arena by attending the meetings and participating in and following-up the international policy initiatives of the most important international organizations on e-commerce consumer protection policy. In this section, we will discuss the role and activities of PROFECO within those multilateral and bilateral organizations and how some policy initiatives have been implemented in Mexico.

3.1. Multilateral

a) Organization For Economic Cooperation and Development (OECD)

PROFECO has been making periodical contributions to the Consumer Policy Committee of the OECD since 2000. For instance, PROFECO has completed and updated the OECD Questionnaire on Cross-border Enforcement of Anti-Spam Laws and through PROFECO's Direction of International Affairs, has become a member of the *Anti-Spam Task Force*¹⁹ formed by the OECD in August 2004²⁰.

As part of the contributions of Mexico to the *OECD Anti-Spam Toolkit*,²¹ PROFECO has carried out activities to educate consumers in Mexico about the problems of spam and phishing

¹⁷ *Supra* note 3.

¹⁸ *Supra* note 1.

¹⁹ The OECD *Anti-Spam Task Force* seeks to coordinate and improve international policy responses in the fight against spam, encouraging best practices in industry and business, promoting enhanced technical measures to combat spam, improving awareness and understanding among consumers, and facilitating cross-border law enforcement. The Task Force has been given a two year mandate to study existing and emerging anti-spam strategies across all sectors; to develop and promote the initiatives set out in the *Anti-Spam Tool-Kit* and to promote a public awareness strategy, in order to support global efforts to combat spam.

²⁰ See OECD press release: "*OECD Task-Force to Coordinate Fight Against Spam*" (12 August 2004), available at: http://www.oecd.org/document/7/0,2340,en_2649_201185_33656711_1_1_1_1,00.html

²¹ The *Anti-Spam Tool Kit* is an initiative currently under development, which aims to provide countries with policy orientation and support in the fight against spam. The *Anti-Spam Tool Kit* focuses on multiple aspects: (i) anti-spam regulation; (ii) international cooperation and enforcement; (iii) industry driven solutions against spam; (iv) anti-spam technologies; (v) education and awareness raising; (vi) cooperative partnerships against spam; (vii) spam metrics; (viii) outreach. See OECD press release: "*OECD Launches Anti-Spam Tool Kit and Invites Public Contributions*" (21 September 2004) available at: http://www.oecd.org/document/50/0,2340,en_2649_34267_33732274_1_1_1_1,00.html

threats, which have undermined consumer trust among the population. For instance, in February 2005, PROFECO, along with Mexico's Federal Communication Commission (Comisión Federal de Telecomunicaciones, hereafter "*COFETEL*"²²) participated in an academic workshop²³ along with representatives of the industry, chamber associations, as well as government and academic groups, to discuss the present and future anti-spam activities of PROFECO within international forums²⁴.

Furthermore, during February 2005, simultaneously with the US FTC campaign known as "*Sweep Days*"²⁵, PROFECO with the support and assistance of other groups of the industry, academia and government in Mexico carried out the *Sweep Days* campaign²⁶.

b) International Consumer Protection Enforcement Network (ICPEN)

PROFECO is a member of the ICPEN since the nineties²⁷. As part of the activities of ICPEN, PROFECO has engaged in periodic conference calls with other country members of the network to discuss cases and legislative and law enforcement developments. PROFECO has also included links and information about ICPEN in its website, provided news on the latest developments of e-commerce consumer protection in Mexico for the ICPEN website and more recently, participated in the Spam Workshop organized in October 2004 by the UK Office of Fair Trading in London, England.

As part of the ICPEN's membership, PROFECO seeks to improve international spam enforcement cooperation with other country members, strengthen the protection and defense of consumer rights on electronic commerce and foster a new culture of Internet consumption in national territory.

c) London Action Plan (LAP)

²² COFETEL is Mexico's telecommunications regulatory agency, available at: <http://www.cofetel.gob.mx>

²³ Foro COFETEL-ULSA "*El Spam y su Impacto*", (3-4 March 2005) available at: <http://www.alfa-redi.org/ar-spam/spam1.jpg>

The report of this workshop is available in Spanish at: <http://www.alfa-redi.org/ar-spam/foro.doc>

²⁴ See "*El Spam y su Impacto, Combate Anti-Spam en el Marco Internacional y de los Foros Internacionales Especializados*". Presentation slides of the Direction of International Affairs of the Office of the Federal Attorney for Consumer Protection (PROFECO), (March 4, 2005).

²⁵ A Sweepday is an annual action conducted by the consumer protection authorities of the thirty-two member countries of the ICPEN. This year's theme was "*Scam by spam*". The purpose of the Sweepday of 2005, which took place on 21 February 2005 was to draw attention to the issue of spamming in each participating state, to publish the results of this inquiry to an educational end and to take appropriate actions, see the section of press releases of the ICPEN, available at: <http://www.icpen.org/>

²⁶ During the Sweepday campaign, PROFECO collected a total of 2,123 spam messages and analyzed 601 messages. The monitoring results led PROFECO to classify the messages into two categories. The first category was by the gender of spam received. Among those monitored types were: phishing, Nigerian letters, lotteries & fraudulent awards, pharmaceuticals, weight loss opportunities, miracle pills, cures and jewellery. The second category was by the type of spam offered in the message. Among the types of spam found in those messages were: computer, software, hardware; financial services such as credit and mortgages; business opportunities, working schemes and fraudulent job offers; pyramid schemes; academic degrees; casinos, holiday packages, pornography, music & electronic games and political and religious messages, *supra note 24*, available also at PROFECO's website: <http://www.profeco.gob.mx>

²⁷ PROFECO endorsed in 2001 the Memorandum of Understanding of the formerly known International Marketing Supervision Network (IMSN) and affiliated agencies on participation in the E-Consumer.gov project, available at: <http://www.ftc.gov/os/2001/04/econsumermou.htm>

The London Action Plan (LAP) is a multiparty initiative effort involving the government consumer protection agencies, telecommunication regulators and Internet Service Providers (ISP's) of nearly 30 countries responsible of enforcing anti-spam legislation. The general purpose of this Action Plan is to promote international spam enforcement cooperation and increase awareness of other spam-related problems, such as online fraud & deceptive practices, phishing, and the dissemination of viruses.²⁸

Mexico, through PROFECO and the telecommunications regulator COFETEL, has fully endorsed the LAP. As part of the LAP activities, both government agencies have participated in workshops and seminars in Mexico as a way to raise attention of the issue within the telecommunications industry and to increase consumer awareness among private Internet users, government staff and everyone involved in the use and development of the Internet in Mexico.

d) APEC Electronic Commerce Steering Group (ECSG)

Mexico, though the General Direction of Interior Commerce and Digital Economy (*Dirección General de Comercio Interior y Economía Digital*) of the Ministry of Economics (*Secretaría de Economía SE*²⁹) is member of APEC's Electronic Commerce Steering Group (ECSG)³⁰. Within this regional policy group, Mexico has participated in workshops, followed the online discussions and completed and updated surveys and questionnaires on e-commerce-related topics, including those related to anti-spam issues and privacy and data protection.

3.2. Bilateral

In January 2005, the US FTC and PROFECO signed a bilateral Memorandum of Understanding (MOU) to promote and enhance cooperation in the fight against cross-border fraud and to facilitate better law enforcement coordination in consumer protection matters affecting both nations.³¹ This first MOU that the FTC has ever signed with a Latin American country and with a non-English-speaking country sets forth *inter alia* the following objectives: (i) to share information and provide mutual assistance to facilitate the enforcement of their respective consumer protection laws to prevent fraudulent and deceptive commercial practices; (ii) to coordinate investigations, research, consumer and business education, and to provide information on investigations, speeches, research papers, compliance education programs and amendments to the legislation; (iii) to request mutual assistance pursuant to a list of criteria between the established points of contact on a confidential basis.

²⁸ See "*The London Action Plan on International Spam Enforcement Cooperation*", p 1. The participants also open the Action Plan for participation by other interested government and public agencies, and by appropriate private sector representatives, as a way to expand the network of entities engaged in spam enforcement cooperation, available at: http://www.nacpec.org/en/links/spam/combat_spam.html

²⁹ Ministry of Economics website available at: <http://www.economia.gob.mx>

³⁰ During 2005, the ECSG carried out activities related to curbing the spam problem within APEC economies. For instance, on February 2005, the ECSG through the US delegation issued a preliminary document containing the responses to a questionnaire on spam, which was previously distributed to the country members in October 2004, see "*Preliminary Summary of Member Economy Responses to the APEC Questionnaire on Spam*," document 2005/SOM1/ECSG/DPM/005, available at: http://www.apecsec.org.sg/apec/documents_reports/electronic_commerce_steering_group/2005.html

See also the website of the ECSG at: <http://www.export.gov/apeccommerce/>

³¹ Memorandum of Understanding on Mutual Assistance In Consumer Protection Matters Between the Federal Trade Commission of the United States of America and the Procuraduría Federal del Consumidor of the United Mexican States, available in English and Spanish at: <http://www.ftc.gov/opa/2005/01/memunderstanding.htm>

The MOU between the FTC and PROFECO will certainly serve as a vehicle for both countries to better enforce their anti-spam legislation and cooperate in a more coordinated fashion in the detection, investigation and prosecution of spammers and other con artists located in both jurisdictions.

4. Anti-Spam Draft Initiatives Pending in Mexican Congress

There are currently two anti-spam initiatives under discussion in the Mexican House of Representatives (Cámara de Diputados). The first bill was introduced in November 2004 by the Commission of Science and Technology of the Mexican House of Representatives (Comisión de Ciencia y Tecnología de la Cámara de Diputados), which seeks to regulate and criminalize anti-spam conduct in the Mexican Republic. The bill is a draft decree seeking to amend three federal statutes: the Criminal Code (Código Penal Federal), the Consumer Protection Law (Ley Federal de Protección al Consumidor) and the Code of Commerce (Código de Comercio).

The other bill was introduced in September 2004, by a deputy of the Green Ecologist Party (Partido Verde Ecologista) and this bill seeks to create an independent federal law that regulates the use of electronic communications, including e-mail and connectivity services to the Internet, as well as to punish misconduct of e-mail transmission within national territory. This draft bill calls for the creation of a Commission on the Regulation of Spam e-mail oversight by the Ministry of Communications and Transports (Secretaría de Comunicaciones y Transportes).

These two initiatives, which are still just drafts, are currently being studied and analyzed in the Mexican Congress and as yet there is no consensus on which one would prevail. Due to the extensive content of both draft bills, in addition to the possibility that they might fade or die during the current legislative period, its analysis is beyond the scope of this paper.

5. Consumer Education and Awareness

Consumer education and awareness campaigns in Mexico have turned out to be convenient and complementary methods to inform consumers about the potential dangers and threats posed by the rise of spam, phishing and spoofing messages and to prevent the population from falling victim to identity theft schemes.

For instance, the North American Consumer Project on Electronic Commerce (NACPEC),³² is a website that provides an understanding of specific issues in the area of e-commerce consumer regulation in North America and is currently working to enhance consumer education and awareness in Mexico. NACPEC has specifically created a section on spam. The purpose of this section and of the website in general is to provide users with the latest information and resources on spam such as statistics, international legislation and cases, publications, news and a list of frequently asked questions and suggestions based on the current Mexican legislation,³³ in order to help consumers to better identify and reduce spam and prevent them from falling victim to phishing techniques.

The academic sector in Mexico has also played an important role in promoting user awareness and education campaigns to fight spam and phishing at the national level. For instance, the

³² NACPEC's website is available at: <http://www.nacpec.org>

³³ See the FAQ's on Spam and Phishing developed in Spanish at: <http://www.nacpec.org/es/faq.html?lang=es>

website of the Direction General of Computing Academic Services (DGSCA) of the National Autonomous University of Mexico (UNAM)³⁴ contains information and updates on the latest Internet threats, including viruses, spam and phishing techniques and provides a list of preventive measures, including the use of e-mail filters. This website is mostly addressed to the Internet & ISP's industries and academic institutions to help them protect themselves and protect their computing systems and IT infrastructure from major Internet threats.

6. Conclusion

Mexico has an advanced anti-spam framework contained in its consumer protection legislation that discourages spam operations across the Mexican Republic while at the same time seeks to promote better marketing and advertising practices for both, the Internet and the physical marketplaces. We firmly believe that Mexico does not need to create a new anti-spam legislation, in order to deter or curb this global problem. A new piece of legislation not only would create adverse effects but it might also lead to other unnecessary consequences, such as obstacles to the full development of B2C electronic commerce, burdensome bureaucracies for anti-spam enforcement among the different national oversight agencies and general confusion during its implementation in the legal system. Instead, Mexico needs to adopt the multi-dimensional and multi-stakeholder approach, as recommended by the OECD³⁵.

At the local level, Mexico should continue to rely on the existing provisions contained in the *FCPL* and its corresponding oversight and enforcement by PROFECO, with the support of other local government agencies like COFETEL, as well as with the input and support of the private and academic sectors. Likewise, ISP associations and academic groups need to make more technical measures, such as anti-spam filters, authentication methods and security standards available to help consumers and businesses control the flow of spam in their inboxes and consider the adoption of code of business practices among the marketing and advertising industries, ISP's, academia and consumer groups in order to promote and enhance security practices and to provide trust among Internet users in Mexico.

At the international level, Mexico should consider entering into other collaborating and enforcement agreements at the bilateral level through the execution of MOU with consumer protection and telecommunications regulatory agencies from other countries, and shall continue to participate with international organizations such as the OECD, ICPEN, APEC and ITU, in order to put more emphasis on international cooperation and find effective cross-border mechanisms for law enforcement and judicial collaboration against spammers in a more coordinated manner. Last but not least, Mexico needs to continue providing more awareness tools and national education campaigns directed at the consumer population, in order to prevent them from falling victims of the latest Internet crime techniques, such as zombie networks, phishing,³⁶ identity theft crimes and other forms of spam dispersed through wireless communications, messengers and web bloggers.

³⁴ DGSCA's website is available at: <http://www.dgsc.unam.mx/>

³⁵ "Background Paper for the OECD Workshop on Spam," *supra* note 9, p.31.

³⁶ Three Latin-American countries, Brazil, Chile and Mexico, reported economic losses of more than 100 million US dollars during 2004, as a result of phishing attacks; see: "Usuarios de Bancos Vulnerables al Phishing" (April 29, 2005), available at: http://www.e-mexico.gob.mx/wb2/eMex/eMex_c79e_not428_usuarios_de_b