In my previous column on spam, I presented arguments suggesting that spammers cost their victims money but pay little or nothing for sending vast quantities of junk e-mail. In this article, I look at some of the ways that victims have used civil law to attack spammers for their fraudulent practices and misuse of private corporate resources.

A good summary of early cases is the netlitigation site run by Sugarman Rogers Barshak & Cohen [1]. Many of the cases are against the notorious Sanford “Spamford” Wallace and his Cyberpromotions company. Wallace was involved in sending junk faxes long before he started annoying millions of people with junk e-mail [2] and must take the record for the most imaginative (or deluded) use of legal arguments to defend spam in the history of civil law. As summarized in [1], his attorneys argued unsuccessfully that (a) spamming was supported by First Amendment guarantees of the US Constitution [3]; (b) CompuServe should not be able to limit spam because it might someday be classified as a public service [4]. CyberPromotions was finally put out of business when Earthlink sued Wallace and his company in 1998 [5].

AOL has continued its legal battles against spammers and has recorded the results of 23 cases in an archive that will be useful to anyone looking for legal precedents in preparation for similar lawsuits [6].

Another big gun targeting spammers is Microsoft. In June 2003, the software giant launched 15 lawsuits – 13 in Washington State and two in the United Kingdom [7]. Victims interested in their own lawsuits may learn from the details of the cases: most of the lawsuits mention deceptive subject lines, spoofed headers falsely naming msn.com or other Microsoft ISPs, content misusing Microsoft trademarks or fraudulently associating the senders with Microsoft, and refusal to obey cease-and-desist orders. Although I am not a lawyer and this is not legal advice, it seems to me as a layperson that the company’s attorneys are deliberately focusing on clear damage to their interests rather than trying to break new ground by making the spamming itself the issue. The British cases are also interesting because they accuse unknown parties (John Does) of using Microsoft servers to validate e-mail addresses in preparation for spamming.

In discussing these cases, senior attorney Tim Cranton of Microsoft said, “Microsoft feels very strongly that the spam problem requires a multi-pronged strategy that involves not just enforcement, but new technology, strong anti-spam legislation, and the development of industry best practices for legitimate commercial e-mailers. Each of these pillars depends on the other three to be effective. [8]”

In my next and final column in this series, I’ll be looking at legislation that tries to regulate or stop spammers.

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References:

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[6] AOL Decisions & Litigation -- Junk E-mail Archive 
< http://legal.web.aol.com/decisions/dljunk/aolarchive.html >
< http://www.microsoft.com/presspass/features/2003/jun03/06-17SpamEnforcement.asp >

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MSIA: 18-month online Master of Science in Information Assurance offered by Norwich University; see < http://www3.norwich.edu/msia > for full details.

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