

Formal Warning

Section 41 of the *Spam Act 2003*

TO: Apus Corporation Pty Ltd
ACN 109 351 877

OF: L&L Partners, Suite 233, Level 3, 813 Pacific Highway
Chatswood, NSW, 2067

ATTENTION: Mr Kai Shuen Chan, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Apus Corporation Pty Ltd, ACN 109 351 877, (**Apus**) has contravened subsection 16(1) of the *Spam Act 2003* (**the Spam Act**):

HEREBY issue Apus a formal warning under section 41 of the Spam Act for 24 contraventions of subsection 16(1) of the Spam Act being a civil penalty provision.

ACMA Investigation

On 14 April 2011, the ACMA commenced an investigation into allegations that Apus may have contravened subsection 16(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages that were unsolicited.

Obligations imposed under subsection 16(1)

1. Subsection 16(1) of the Act provides that:
 - (1) a person must not send, or cause to be sent, a commercial electronic message that:
 - (a) has an Australian link; and
 - (b) is not a designated commercial electronic message.
2. Clause 6 of Schedule 2 to the Spam Act provides that if an unsubscribe message is sent to the sender:
 - (1) ...the withdrawal of consent takes effect at the end of the period of five business days...

“Commercial electronic message” is defined in section 6 of the Act.

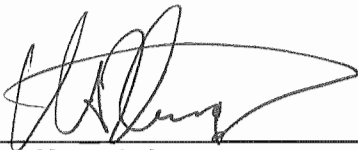
“Designated commercial electronic message” is defined in schedule 1 of the Act.

If a commercial electronic message falls within the definition of “designated commercial electronic message” section 16(1) does not apply.

Details of the contraventions

3. As a result of its investigation into this matter, and taking into account complaints made to the ACMA and information and documents provided by Apus and others, the ACMA has concluded that:
 - (1) Apus sent 24 electronic messages, with an Australian link, between 27 November 2010 and 15 February 2011;
 - (2) the messages were commercial electronic messages as defined in section 6 of the Spam Act; and
 - (3) the messages were sent by Apus without the consent of the electronic account holder as required by subsection 16(1) of the Spam Act.

Dated this 13th day of September 2011



Vince Humphries
Delegate of the Australian Communications and Media Authority