



UCENET
UNSOLICITED COMMUNICATIONS
ENFORCEMENT NETWORK

Unsolicited Communications Enforcement Network (UCENet) Sweep 2017

UCENet Sweep Report

Central Sweep Coordinators:

UK Information Commissioner's Office

Canadian Radio-Television and Telecommunications Commission



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Introduction

This report presents an overview of the findings obtained from the UCENet Sweep that was conducted in June and July 2017. A sweep is an intelligence collection exercise whereby participating authorities conduct research pertaining to a specific theme. This year the sweep theme was affiliate marketing.

The purpose of the sweep was to identify entities within this sector that are conducting activities that are potentially non-compliant with the unsolicited communication regimes of the UCENet members. The sweep was also designed to enhance UCENet members' collective knowledge about affiliate marketing, which is a prevalent marketing model in electronic commerce.

The principal objectives of the UCENet Sweep were to:

- Improve each participants' knowledge of affiliate marketing and what constitutes "illegitimate / non-compliant" affiliate marketing by establishing a common understanding of terminology and identification of illicit methods.
- Identify areas of focus relevant to each participant's mandate and interest, as well as areas of common interest;
- Become more effective at working together and sharing information;
- Where possible, identify potential targets for individual, bi-lateral or multi-lateral investigation; and
- If deemed appropriate, raising the profile of the issue and of the efforts of UCENet to public and business through individual and/or coordinated media communications.

Summary of the Sweep

The sweep took place on different dates in June and July 2017. On average, the participating agencies devoted one or two days to complete the exercise. In total, 902 websites were visited by participants, and 221 websites were flagged for follow-up action. As part of the sweep, participating agencies also examined 6,536 consumer complaints related to affiliate marketing in their respective databases.



General Findings about Affiliate Marketing

- **Apparent lack of self-regulation:** A majority of participants noted that most of the publicly available terms of services between the affiliates, the merchants, and the affiliate platforms lacked appropriate unsolicited communication guidelines establishing what is permissible. This meant that an affiliate could send unsolicited communication without it impacting the contractual relationship with the merchant or the affiliate platform. The absence of guidelines on permissible conduct is an indication that some affiliate marketing platforms and merchants either do not have the intention to regulate or they lack the capacity to control the methods that their affiliates are using to generate sales or traffic.
- **Indication of lack of consent for electronic communication:** Some participating countries that have an opt-in unsolicited communication regime noted that affiliates generally do not possess the adequate consent of the consumer to send electronic communication.
- **Affiliate marketing platforms represent a strategic point in the industry:** Affiliate marketing platforms were identified by some sweep participants as a strategic point in the affiliate marketing ecosystem because these platforms handle the interactions and payments between the merchants and the affiliate. Affiliate marketing could benefit from outreach efforts. .
- **Investigation into affiliate marketing will require international collaboration:** Many sweep participants noted that the entities they came across had activities and assets in different countries, some of which were members of UCENet.
- **Prevalence of misleading advertising:** Many participants noted the prevalence of misleading advertising in the affiliate marketing ecosystem. Within minutes of beginning their research, sweepers were exposed to some form of misleading advertising. Some misleading advertising was directed at common internet users by affiliates in order to generate sales or traffic to a merchant’s website. Similarly and in parallel, some affiliate marketing platforms also used misleading advertising to recruit affiliates, promising substantial and effortless income.
- **Some affiliate marketing programs are compliant with unsolicited communication regimes.** The sweep has showed that some affiliate marketing programs are compliant with unsolicited communication regimes. For example, one participant conducted a compliance review of the business model and affiliate marketing program of a large e-commerce platform located within its jurisdiction. This participant found no indication that its affiliate marketing program was infringing any provisions of its unsolicited communication regime.



Next Steps

- Some participating agencies will present a more detailed view of their country-specific findings at the UCENET event in Toronto in October 2017.
- Participating agencies will consult on a common communication strategy to publicize the sweep.
- Participating agencies may pursue further analysis, investigation, and enforcement actions against targets identified during the sweep according to their respective calendar and priorities. If common targets of common interests are found, participating agencies may collaborate through UCENet on a bilateral or multilateral basis.