



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
CONSUMER PROTECTION DIRECTORATE
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CPD-2(101)/11-PTA

Islamabad, dated 14th November 2011

Subject: IMPLEMENTATION - CONTENT FILTERING THROUGH SMS

1. This is with reference to meeting held with all Cellular Mobile Operators on 18 Oct 2011 at PTA Headquarters, Islamabad and comments submitted by Mr. Naveed Khalid Butt, CO (Corporate & Regulatory Affairs) on the behalf of cellular industry vide email dated 19 Oct 2011.
2. Article 14 of the Constitution of Islamic Republic of Pakistan, provides that "*the dignity of man and, subject to law, the privacy of home shall be inviolable*". Accordingly, under Article 19 of the Constitution it has been provided that "*every citizen shall have the right to freedom of speech and expression, freedom of the press, subject to any reasonable restrictions imposed by law....*".
3. The courts while interpreting articles 14 and 19 of the Constitution have construed that though under Article 19 of the Constitution of the Islamic republic of Pakistan freedom of speech is a fundamental right which provides that every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or in relation

to contempt of Court (commission of) or incitement of an offence. The right of free speech extends to all subjects which affects way of life without limitation of any particular fact. However, right of freedom of speech and expression is not unfettered and unbridled. While allowing freedom of speech and expression as a fundamental right, it is also provided under Article 14 of the Constitution, that dignity of man, subject to law, the privacy of home are inviolable. Such principle is required to be extended further to the case where any defamation is caused, because human dignity, honor and respect is more important than comforts and necessities. No attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace other person, thereby diminishing, decreasing and de-grading dignity, respect, reputation and value of life. While exercising right of freedom of speech and expression, one has to keep in his mind that he has also a corresponding responsibility and duty to ensure that his freedom of expression or speech may not transgress limits of freedom beyond the boundaries of Art.14 of the Constitution. "*While allowing freedom of speech and expression as a fundamental right, our Constitution also provides under Article 14 that the dignity of man and, subject to law, the privacy of home shall be inviolable.*" [2010 YLR 1647-Karachi]

4. Clause (d) of sub-section (1) of section 31 of the Pakistan Telecommunication (Re-organization) Act, 1996 provides that whoever "unauthorisedly transmits through a telecommunication system or telecommunication service any intelligence which he knows or has reason to believe to be false, fabricated, indecent or obscene" is an offence under the Act.

5. The function of the anti-spam filters is to effectively control spamming by means of implementing technical standards as provided in regulation 4 of the Protection from Spam, Unsolicited, Fraudulent and Obnoxious Communication Regulations, 2009. "Spamming" has been defined as *"the transmission of harmful, fraudulent, misleading, illegal or unsolicited messages in bulk to any person without express permission of the recipient, or causing any electronic system to show any such message or is being involved in falsified online user account registration or falsified domain name registration for commercial purpose"*

Therefore the constituents of a 'spamming' message shall be as follows:

- (a) 'harmful', 'fraudulent', 'misleading', 'illegal' or 'unsolicited'; and
- (b) in 'bulk' (bulk has been specified by the Authority in clause 1.6 of the SOP to control spamming)
- (c) 'without express permission of recipient'
- (d) 'for commercial purpose'.

6. With respect to privacy of communication the cellular mobile license under clause 7.6.1 provides that *"the licensee shall not monitor or disclose the contents of any communication conveyed over its licensed system except to the extent necessary for the purpose of maintaining or repairing any part of the licensed system or monitoring the licensee's quality of service, or except as required by the Act, the Rules, Regulations and conditions of this license"*.

7. Further, under license condition No.7.8 of the cellular mobile license *"The Licensee shall take all reasonable steps to track, locate and prevent the*

source of harassing, unsolicited, offensive, fraudulent or unlawful communication...”

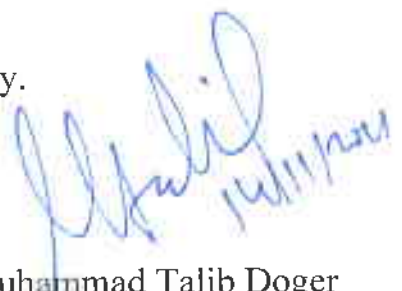
8. Based on the foregoing provisions and the dictum developed by the higher courts of Pakistan that the fundamental rights of privacy and freedom of speech and expressions guaranteed under the constitution are not unrestricted and are subject to reasonable restrictions imposed by law.

9. Therefore, content filtering through SMS must independently be considered for implementation under the purview and scope of “*Protection from Spam, Unsolicited, Fraudulent and Obnoxious Communication Regulations, 2009*” and the SOPs laid down there under, for controlling spamming. The filtering of SMSs and the unpredicted technical complexities involved therein, if required, may be done (as preventive measure) through automated machine process(s)/function(s) without going through or acquainting with or reading or disclosing the “content of intelligence” by a human being, with a view to protect the interests of consumers under provisions of the Act.

10. In view of foregoing explanation a list of words is attached for filtering the SMSs passing through the system and the SMSs shall be blocked containing the word(s) as per attached list. The system should be implemented within seven days of issuance of this letter and a report be

submitted to PTA on monthly basis regarding number of blocked SMSs by each operator.

11. This issues with the approval of the Authority.



Muhammad Talib Doger
Director General (Services)

To:

Regulatory Heads of all CMTOs and PMD

CC:

1. Director General (L&R), PTA HQs, Islamabad
2. Director General (Enforcement), PTA HQs Islamabad
3. SO to Chairman
4. PA to Member (Technical), PTA HQs Islamabad
5. PA to Member (Finance), PTA HQs Islamabad