TABLE OF CONTENTS

Foreword Abbreviations		
1.1	Introduction	3
1.2	Spam: Introducing the Legal Problem	7
1.3	Defining Spam	9
1.4	Spam: The Economics	12
1.5	Spam and Fundamental Rights	14
1.6	Old Legal Framework	19
1.6.1	Data Protection Directive	19
1.6.2	Distance Selling Directive	20
1.6.3	Telecommunications Privacy Directive (ISDN Directive)	20
1.6.4	E-Commerce Directive	21
1.7	Conclusions	23
Two	Article 13	25
2.1	The New Framework	27
2.2	E-Privacy Directive	29
2.3	Article 13	31
2.4	Scope I: Unsolicited Communications	33
2.5	Scope II: Direct Marketing	39
2.6	Opt-in	42
2.6.1	13(1): Prior consent	43
2.6.2	13(2): Soft opt-in	46
2.7	13(3): Other Unsolicited Communications	50
2.8	13(4): Identification	51
2.9	13(5): Users, Subscribers, Corporations	51
2.10	Conclusions	54

Spam and Security	57
Introduction	59
Article 4 and the Processing of Personal Data	60
'Appropriate Technical and Organizational Measures'	64
Interpreting the Notion of 'Security'	64
4(2): Duty to Inform	65
Conclusions	66
Harvesting E-mail Addresses	67
Introduction	69
Relationship Between the DPD and the E-Privacy Directive	70
Personal Data and Unlawful Processing	73
DPD Enforcement	78
Conclusions	79
Implementation and Enforcement	81
Introduction	83
National Implementation Measures	85
France	85
Germany	86
The Netherlands	87
The United Kingdom	88
Position Legal Persons	90
Enforcement	91
Introduction	91
Enforcement authorities	92
Notification of complaints	94
Gathering evidence	95
Initiating action; remedies and sanctions	96
Execution	100
Conclusion	101
International Co-operation and Challenges to Effective	
Cross-border Enforcement	105
Introduction	107
European Co-operation Initiatives	108
International Co-operation Initiatives	112
	Introduction Article 4 and the Processing of Personal Data 'Appropriate Technical and Organizational Measures' Interpreting the Notion of 'Security' 4(2): Duty to Inform Conclusions Harvesting E-mail Addresses Introduction Relationship Between the DPD and the E-Privacy Directive Personal Data and Unlawful Processing DPD Enforcement Conclusions Implementation and Enforcement Introduction National Implementation Measures France Germany The Netherlands The United Kingdom Position Legal Persons Enforcement Introduction Enforcement authorities Notification of complaints Gathering evidence Initiating action; remedies and sanctions Execution Conclusion International Co-operation and Challenges to Effective Cross-border Enforcement Introduction European Co-operation Initiatives

6.4	Other Aspects of Cross-border Enforcement	115
6.5	Conclusions	117
Seven	Other Aspects of the Fight Against Spam	121
7.1	Introduction	123
7.1.1	Anti-spam technology	123
7.1.2	Filtering	124
7.2	Legal Alternatives: Tort	127
7.3	Fraud and Deception	129
7.4	Unsolicited Pornographic or Racist E-mail	130
7.5	Self-/Co-regulation	131
7.6	Consumer Awareness	131
7.7	Conclusions	132
Eight	Conclusions and Recommendations	135
8.1	Main Conclusions	137
8.2	Recommendations	142
References		145