

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

e360 INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, an individual,	)	
	)	06 CV 3958
	)	
Plaintiffs,	)	Judge Kocoras
	)	Magistrate Judge Brown
v.	)	
	)	
THE SPAMHAUS PROJECT, a company limited by guarantee and organized under the laws of England, a/k/a THE SPAMHAUS PROJECT, LTD.,	)	
	)	
Defendant.	)	

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTION  
FOR A RULE TO SHOW CAUSE**

NOW COMES the Defendant The Spamhaus Project,<sup>1</sup> by and through its attorneys Jenner & Block LLP, and submits the following in response to Plaintiffs’ motion for rule to show cause alleging that Spamhaus has failed to comply with the citation to discover assets that it served on October 23, 2006:

1. Plaintiffs’ counsel asserts that pursuant to Local Rule 37.1, he emailed counsel for Spamhaus on March 13, 2007, in an attempt to resolve the matter without need for court intervention. However, the proper rule for meet and confer, as referenced on this court’s website, is Local Rule 37.2. According to that rule, there must be “consultation in person or by telephone and good faith attempts to resolve differences.” One letter sent via email on March 13,

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<sup>1</sup> Defendant expressly objects to this Court’s jurisdiction over The Spamhaus Project because Defendant is based solely in the United Kingdom and does not conduct or transact business in Illinois. Moreover, Defendant reserves its arguments based on Plaintiff’s failure to properly effect service of process.

2007 is insufficient to satisfy the meet and confer standard. *See Sondker v. Philips Elecs.*, No. 03-C-2167, 2004 U.S. Dist LEXIS 14477, at \*5-7 (N.D. Ill. July 27, 2004) (holding that a letter requesting production of attachments to an email used by opposing party in a summary judgment motion does not satisfy the meet and confer requirements of Local Rule 37.2). Plaintiffs' counsel did not attempt to resolve these differences in good faith through consultation with Spamhaus prior to filing this motion.

2. Rather, Plaintiffs' counsel sent a letter via email on March 13, 2007, to which Spamhaus replied on March 15, 2007. Spamhaus at that time reiterated that it has no subsidiaries, successors, parent companies, or other such related entities. Thus, Spamhaus answered the question presented by Plaintiffs. After receiving Spamhaus' answer on March 15, 2007, Plaintiffs' counsel sent an email stating "I respectfully disagree and think the court will disagree as well. Our motion will be forthcoming." The motion was filed the same day, without any attempt by Plaintiffs' counsel to call Spamhaus' counsel to explain his disagreement or request additional information. This does not satisfy the spirit of meet and confer in the Northern District of Illinois — as this Court has noted, "Local Rule 37.2 is not a *suggestion* to the parties, rather it is a mandate... 'failure to comply with the local rules is not merely a "harmless technicality," but can be a "fatal" mistake.'" *Biedrzycki v. Town of Cicero*, No. 04-C-3277, 2005 U.S. Dist. LEXIS 16423, at \*6-7 (N.D. Ill. Aug. 8, 2005) (quoting *Ridge Chrysler Jeep L.L.C. v. Daimler Chrysler Servs. N. Am., L.L.C.*, 2004 U.S. Dist. LEXIS 26861, 2004 WL 3021842 at \*4 (N.D. Ill. 2004)). Plaintiffs' failure to properly attempt to meet and confer with Spamhaus regarding this difference of opinion is fatal to its Motion for Rule to Show Cause under Local Rule 37.2.

3. Spamhaus originally responded to the October 23, 2006 citation on November 10, 2006. In that response, Spamhaus answered Plaintiffs' questions and Steve Linford provided an affidavit certifying those responses. Furthermore, Steve Linford expressed his willingness to sit for a telephonic deposition relating to the assets of The Spamhaus Project. Plaintiffs never pursued the option of a telephonic deposition of Steve Linford. Nor did they ever object to the responses provided by Spamhaus on November 10, 2006.

4. Instead, Plaintiffs waited almost 3 months to complain about the answers asserted in the November 10, 2006 response. On January 31, 2007, Plaintiffs filed a second citation to discover assets that was substantively and procedurally defective. Upon receiving a letter from counsel for Spamhaus regarding the defective nature of the citation to discover assets, Plaintiffs withdrew the second citation.

5. On March 7, 2007, acting in good faith, Spamhaus answered the additional questions presented by Plaintiffs. However, that same day, Spamhaus learned that Plaintiffs had been serving subpoenas to third parties without serving those subpoenas on Spamhaus as required by Fed. R. Civ. P. 5(a).

6. In their motion, Plaintiffs allege that through the use of these illicit subpoenas, they discovered an entity named Spamhaus Technology, LTD, which Plaintiffs believe is owned by Steve Linford.<sup>2</sup> Steve Linford is not a named defendant in this lawsuit and The Spamhaus Project does not have any subsidiaries, successors, parent companies, or other such related entities, as requested by the citation to discover assets.

7. Plaintiffs claim that Spamhaus Technology, LTD is at least a "related entity" as the term was used in the citation to discover asset. However, the terms used were "subsidiaries,

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<sup>2</sup> Steve Linford only role in this litigation is as the director of The Spamhaus Project, not as an individual defendant.

successors, parent companies, or other *such* related entities” (emphasis added). Therefore, the term “related entity” as used by Plaintiffs infers that the related entity should be similar to a subsidiary, successor, or parent company. Spamhaus Technology, LTD is not a “*such related entity*” to The Spamhaus Project, as it is a separate company that is not a “subsidiary, successor or parent company” to The Spamhaus Project, nor is it owned by The Spamhaus Project.

WHEREFORE, Defendant The Spamhaus Project respectfully requests that this Court deny Plaintiffs’ motion for a rule to show cause.

Respectfully submitted,

THE SPAMHAUS PROJECT

Dated: March 19, 2007

By: s/Matthew M. Neumeier  
Matthew M. Neumeier  
Craig C. Martin  
Carrie A. Fino  
JENNER & BLOCK LLP  
330 North Wabash Avenue  
Chicago, IL 60611  
Telephone: (312) 222-9350  
Facsimile: (312) 527-0484

**CERTIFICATE OF SERVICE**

I, Carrie A. Fino, an attorney, hereby certify that I served the foregoing **Defendant's**

**Response to Plaintiffs' Motion For A Rule to Show Cause** upon:

Joseph L. Kish  
Kristen M. Lehner  
Bartly Joseph Loethen  
Synergy Law Group, L.L.C.  
730 West Randolph Street  
6th Floor  
Chicago, IL 60661  
Phone: (312) 454-0015  
Fax: (312) 454-0261

by depositing a copy of same in the United States Mail, postage prepaid, on this 19th day of  
March 2007.

s/Carrie A. Fino  
Carrie A. Fino

# **EXHIBIT B**

# SC

MAGAZINE

FOR IT SECURITY PROFESSIONALS

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## FEATURES

# Death threats, the Mafia and me

Why Steve Linford of Spamhaus needs to keep rocking the boat **P30**

**SC's new Threat Report**  
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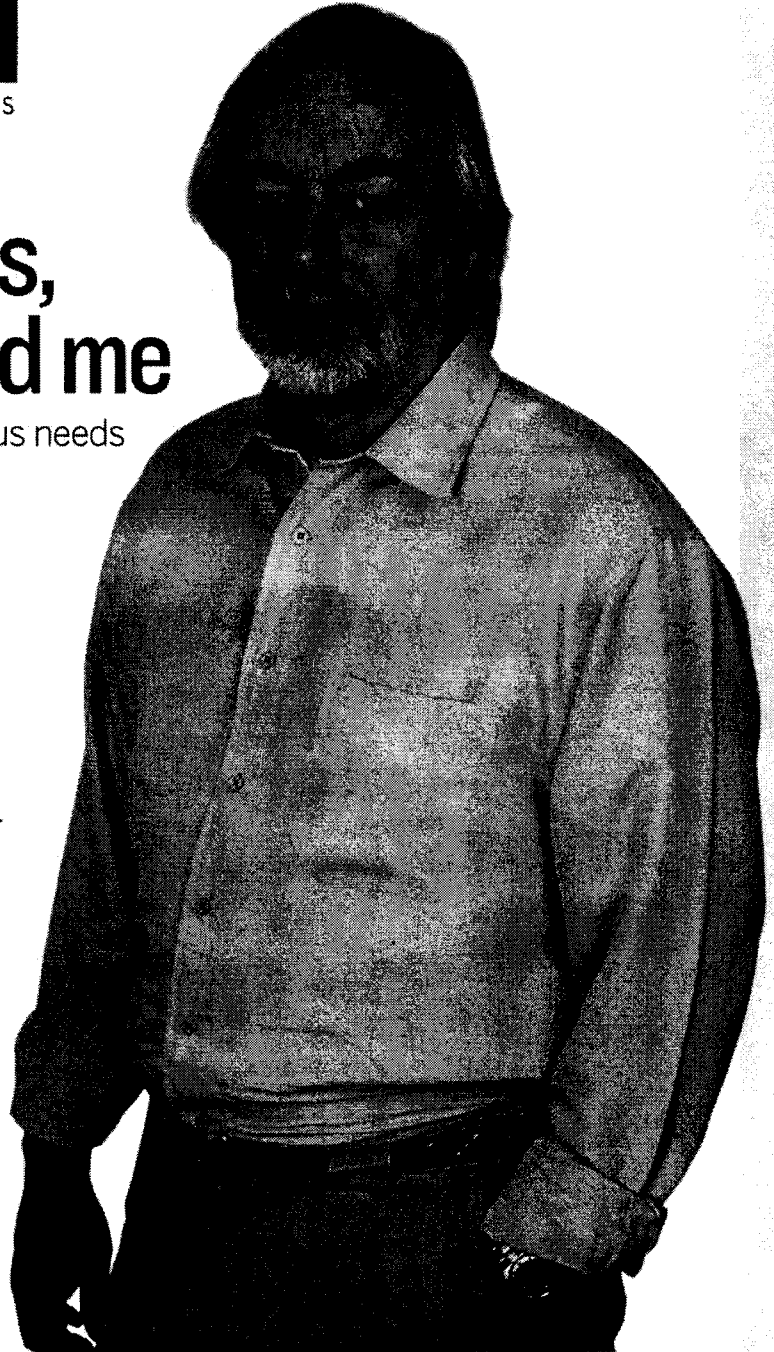
**Rogues in the building**  
Can you be sure that no one has installed wireless networks? **P34**

**Barbarians at your door**  
Fighting back against DDoS attacks is far from easy, but it can be done **P39**

## GROUP TESTS

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Keep spam at bay without all that effort. A round-up of the best of the best **P53**

» **Mobile data protection**  
Five products that will keep your digital information safe and sound **P74**



# Death threats, the

Out on the Thames is a man who cannot stop rocking the boat. David Quainton gets inside Spamhaus.org

**D**on't worry," says Steve Linford, as the room begins to sway. He leans back in his seat and begins to detail how he takes death threats more seriously these days.

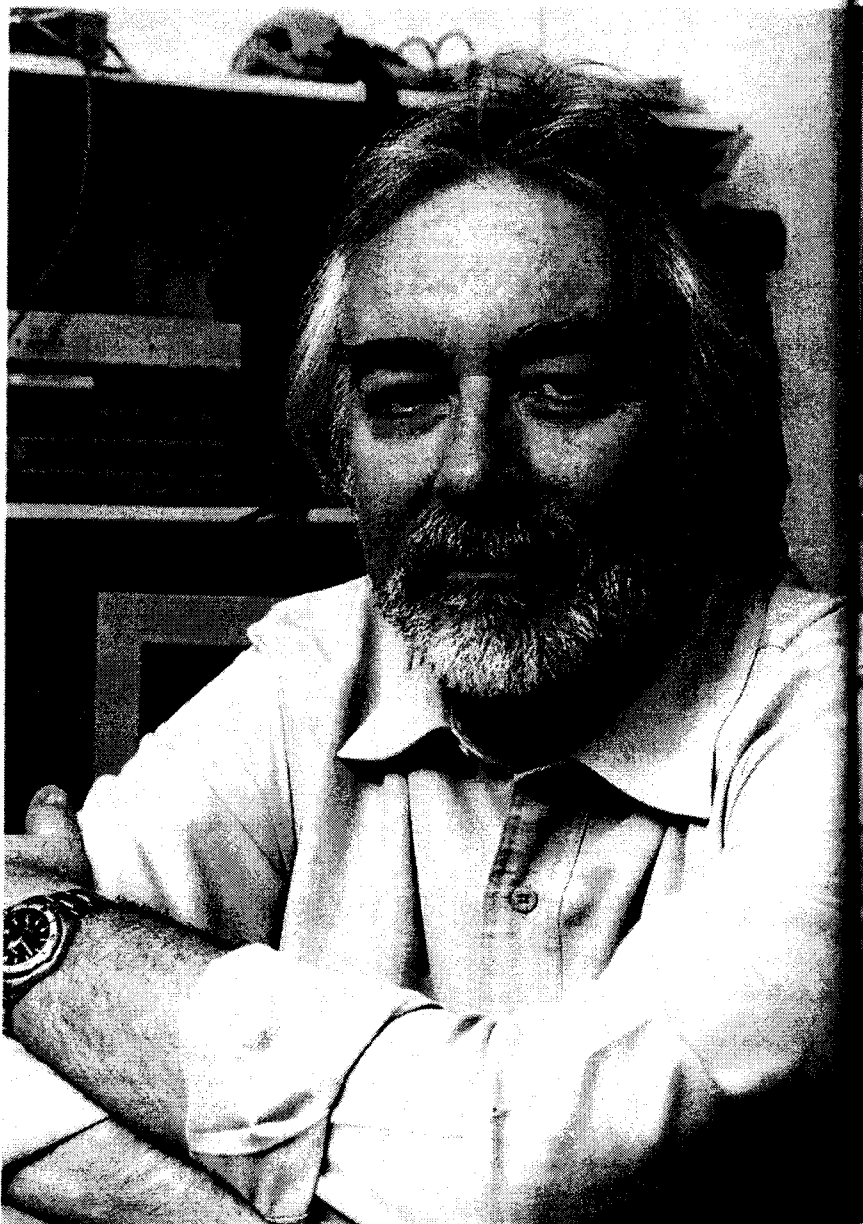
To his left, unaffected by seasickness, a dozen computers work overtime, tackling billions of spam messages. Over his shoulder a magpie spears out of the Hampton countryside, and plants its beak into one of the windows.

This is not going to be an ordinary interview. But then, Steve Linford is no ordinary anti-spam campaigner.

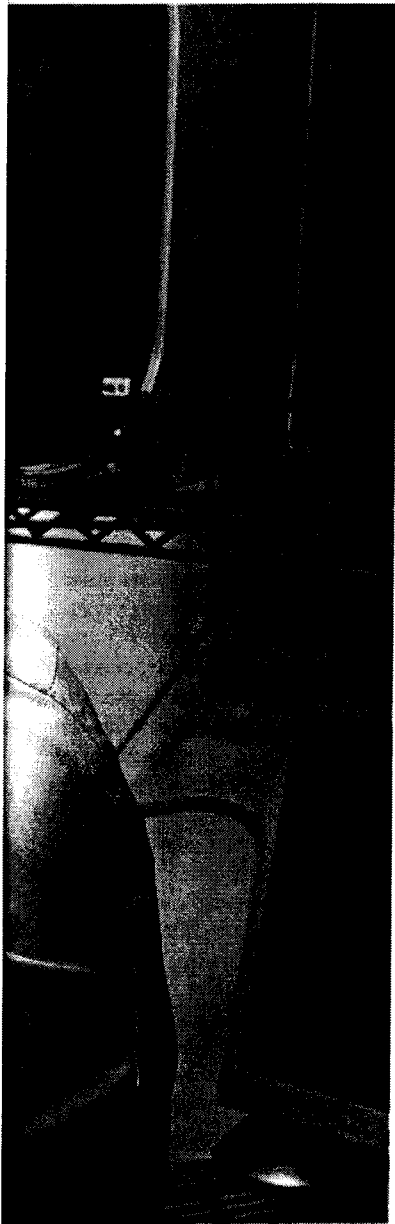
Linford's recitation begins with the person whose houseboat bobs up and down next door.

"That's Dave Gilmour's boat," says Linford. Gilmour played guitar with Pink Floyd. "I worked as production manager with them for 15 years. In the eighties, it all moved over to computers. I enjoyed using them, and in 1986 set up a company." After quitting life on the road and returning to the South East, Linford's business evolved with the formation of the web, eventually becoming hosting company Ultradesign.

But he received hundreds of queries from customers asking how to deal with spam, which led to his founding Spamhaus in 1998.



# Mafia, and Steve



It has since become the world's leading voice against spam.

Over the past seven years Linford and his small, dedicated, volunteer army have pushed for anti-spam legislation around the world. They have highlighted how ISPs exacerbate the spam problem, and they have provided a continual stream of information to law enforcement agencies trying to bring justice to an increasingly organised spam underworld. But Linford remains coy about his achievements.

"I don't know if it's all down to us," he says. "There's pressure from elsewhere too. But I think we're probably the most vocal. We were consulted directly about the Australian law, which has cut the spam problem there almost completely. I've spoken in Geneva, and we've been helping the Chinese."

Spam has been clogging email inboxes for years, with adverts for pornography, Viagra and get-rich-quick scams arriving at a dizzying rate. But three years ago

the picture changed slightly.

"Around Easter in 2002 virus spam started, and the problem took a different road," says Linford. "Viruses were commissioned and built to take over machines. It was when the criminal element got involved." A criminal element, in fact, that would worry even the most committed campaigner. After 2002, spam was no longer the preserve of individuals trying to make a quick buck. It was now the domain of organised crime.

"They try everything they can. I've had countless death threats, although initially we didn't take them seriously. The people we were chasing were your average small-time fraudsters," says Linford, seemingly recalling more innocent, halcyon days. "Now it's gangs, Russian-type gangs and the Florida- and Miami-based gangs. These are guys you have to take seriously."

Seriously enough that Linford has been advised not to open any unexpected packages. Seriously enough that when he dials 999 the police drop everything, no questions asked, and descend in force upon his exclusive island mooring. Seriously enough to make me start edgily looking over the Thames, unconsciously watching for the glint of a sniper's scope in the distance.

"We know who they are though," says Linford. "We know them all. All the information is on ROKSO."

The Register Of Known Spam Operations is another part of the Spamhaus service. Currently, America's Alan Ralsky, Michael Lindsay and Andrew Westmoreland sit atop this list of the world's most prolific spammers.

Further down are the spammers from

**The people we were chasing were average small-time fraudsters. Now it's gangs"**

—Steve Linford

## Cover story Interview

Brazil, Russia and Ukraine. And these are just the "nice" ones.

"There is a whole bunch of them we can't put in public," continues Linford.

"A second part of ROKSO is only used by law enforcement agencies. The New York Mafia and Australian Mafia are involved."

Linford's moves on to the lighter topic of the almost comical efforts at anti-spam legislation.

"Australia is the only place that brought in good legislation, and saw it work overnight," says Linford. "The reason is because of huge penalties, and because law enforcement backed it up. Every spammer received a letter telling them to stop what they were doing or face the consequences." Australian spammers face a \$1.1 million fine every day they continue to spam.

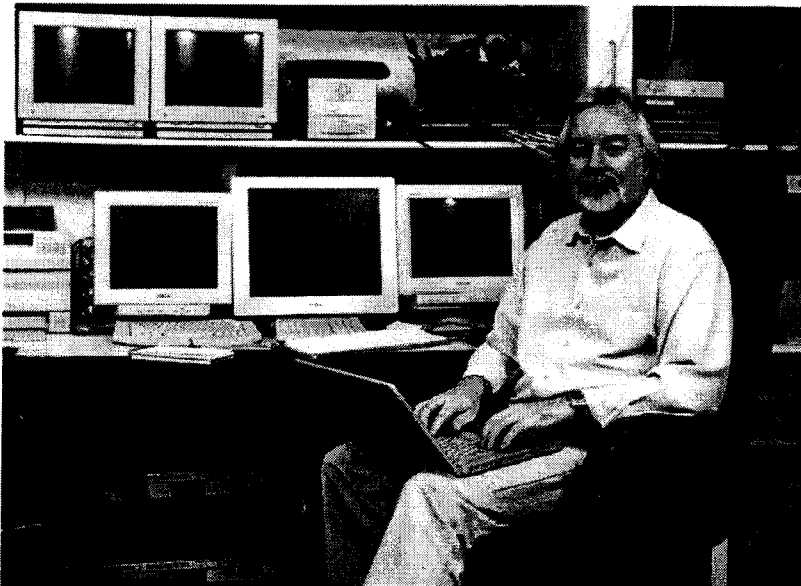
US legislative efforts, by contrast, such as the *Controlling the Assault of Non-Solicited Pornography and Marketing Act* (Canspam), have been failures, states Linford.

"In the US alone, there are 23 million small businesses," he says. "The *Canspam* act tells all of those you can send as much junk as you want – it's all legal. *Canspam* has created far more problems than it's solved."

In Linford's opinion there are currently three legislative camps. Australia nailed the problem first time. The US will eventually bring in effective legislation after many years of piecemeal changes. China simply does not understand.

"We tell the Chinese that 70 per cent of spam is hosted in their country," says Linford, getting animated. "And they don't understand. They see the problem with sending spam, but don't realise the advertising and hosting of websites needs addressing too."

In early discussions, Chinese officials argued that perhaps politely asking spammers to stop sending spam and using Chinese websites might help. The cultural barrier was clearly a problem.



### U.K. SPAM LAW: What went wrong?

UK anti-spam law was brought in over a year ago and has, as yet, not resulted in a single conviction.

According to Steve Linford convictions are unlikely because of massive legal loopholes, and misinformation.

"I spoke to Stephen Timmins [then a DTI minister] and he told me the government only wanted to implement the bare minimum standards suggested by the EU," says Linford. "I asked why, and he told me the DTI had been told that most British businesses actually wanted to receive spam! Have you ever met a businessman who wants spam?"

Under the law the maximum fine is only £5,000 – a fine only imposed after a spammer has ignored two letters sent by the DTI asking them to shut down his operation. But as yet not a single letter has been sent out.

For a conviction to happen, a spammer would have to be brought to book under the *Computer Misuse Act* (heavily criticised and under review), or for breaking an ISP's acceptable use policy.

EU-wide legislation, mirroring Australian anti-spam policy, is likely within two years. Until then British spammers can continue to spam freely, with very little likelihood of retribution.

"We had to explain that it's not Chinese people using these websites," says Linford. "It's criminals from America. These people aren't likely to listen to a polite request."

But China is finally approaching a solution – its own anti-spam legislation is imminent. Linford, however, thinks it will not be strong enough.

"I don't think it will be as effective as Australian law," he says, "and enforcement is going to be difficult. China Telecom claims to own the Chinese network. But we met their spam-abuse department and it was one teenage-looking guy who worked part-time!"

The spam behemoth, though, is the US, with four times the spam operations of any other country. Many of them are based in Florida, for reasons Linford makes clear.

"Florida state law is incredible," says Linford. "Legislation protects criminal assets, which is why so many crooks are based there. You can take someone to court in Florida, but assets cannot be touched. Al Capone can be put in jail, but you can't take his villa or his possessions."

The knock-on effect of this is that spammers such as Ryan Pitylak, recently hit with a \$2 million lawsuit by Microsoft and the state of Texas, happily continue spamming, safe in the knowledge their business will not be harmed.

But all is not doom and gloom.

Linford sees the fact that China is bringing in some form of anti-spam legislation as very positive, and expects EU-wide legislation, similar to the Australian model, within two years. He even expects the US to get it right eventually.

But the problem is not just legal. The problem is also the companies that have the power to stop spam today, if they wanted to.

"I'm constantly pressurising ISPs to do something about this," says Linford. "They could cut spam instantly. It really is that easy. [But] it's the sales people. These firms are run by marketing and lawyers. It's all about making money."

MCI comes in for a particularly vociferous attack. It has long been the spammer's friend, topping Spamhaus's list of ISPs that host spam organisations. MCI insists it has a zero-tolerance policy, but Linford sees it very differently.

"They make millions from hosting spammers," he says. "The amazing thing is MCI is now portraying itself as a security company, saying that it blocks spam. To do this it's using public black-lists - our technology!"

Over the next few months Linford will receive more death threats, see the introduction of ineffective Chinese legislation, and bear witness to the changing of seasons that makes working on a houseboat worthwhile.

An advertising campaign alerting the public to the threat of opening and replying to spam email has been mooted for the future, he says.

Until then, Linford will continue his campaign. Although it is a long way off, he foresees a time when spam is almost wiped out.

"Spamhaus's whole aim is to put itself out of business. We know we'll never

stop spam, just get it to some manageable level about eight years down the line from now," he says. "Governments will ban spam, ISPs will improve their policies and we'll have succeeded. But there's still a long way to go yet."

Before being driven back to Hampton Court train station, cossetted in Linford's tank-sized black Range Rover, there is time for one last question.

Why doesn't he set up his own spam operation, and rake in the cash?

"You and I are not the type of people that could send spam. You have to be a certain type of person. You have to be a sociopath, with no regard for privacy or the law.

"But if I did, I'd probably be able to set up a very good spam operation," he says. "Very good indeed." ■

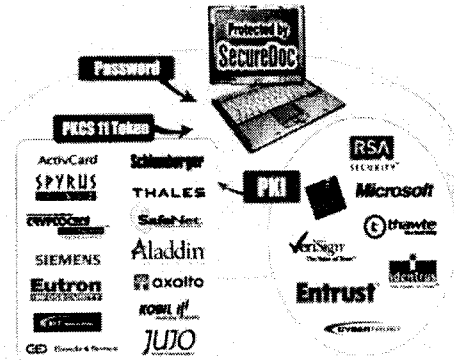
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