

立法會
Legislative Council

LC Paper No. CB(1)1194/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the thirteenth meeting on
Tuesday, 6 March 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
- Public officers attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- Miss Carrie TANG
Legal Adviser 5
Office of the Telecommunications Authority
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Miss Leonora IP
Senior Government Counsel
Department of Justice

Attendance by invitation : Mr LAU Kwok-wah
Legislative Assistant
Office of the Hon WONG Ting-kwong

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr WONG Siu-yee
Senior Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)806/06-07 -- Minutes of meeting on 16 January 2007)

The minutes of the meeting held on 16 January 2007 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(3)735/05-06 -- The Bill
LC Paper No. CB(1)995/06-07(02) -- Administration's response to the outstanding issues raised at the Bills Committee meetings

LC Paper No. CB(1)995/06-07(03) -- Marked-up version of the draft Committee Stage amendments to be proposed by the Administration

LC Paper No. CB(1)502/06-07(01) -- Submission dated 24 November 2006 from Hong Kong General Chamber of Commerce

LC Paper No. CB(1)995/06-07(04) -- Administration's response to the views submitted by Hong Kong General Chamber of Commerce

LC Paper No. CB(1)863/06-07(01) -- Draft Committee Stage amendments to the Bill proposed by Hon WONG Ting-kwong, BBS

Action

- LC Paper No. CB(1)1024/06-07(01) -- Explanatory note dated February 2007 from Hon WONG Ting-kwong, BBS in relation to his proposed Committee Stage amendments
- LC Paper No. CB(1)934/06-07(01) -- Letter dated 8 February 2007 from Hon WONG Ting-kwong, BBS
- LC Paper No. CB(1)502/06-07(02) -- Submission dated 6 December 2006 from The Hong Kong Call Centre Association)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to –
 - (a) provide the membership list of the Telecommunications Users and Consumers Advisory Committee and information on the mechanism for appointment of the members to the Committee;
 - (b) provide information on the size (in terms of the actual number of electronic addresses and percentage of the total electronic addresses in use) of the do-not-call registers in the United States;
 - (c) consider the suggestion of stating explicitly in the Bill that a copy of the warrant would be provided to the affected person. Reference might be made to section 25(7) of the Broadcasting Ordinance (Cap. 562) in this regard;
 - (d) reconsider stating explicitly in clause 43 of the Bill the basic criteria (such as the need to ensure that there would be no conflict of interest) for the appointment of the Chairman, Deputy Chairmen and panel members to the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board, and specifying the maximum tenure of appointment of panel members; and
 - (e) consider whether the provisions of the Bill should be binding on the Government.

III Any other business

4. There being no other business, the meeting ended at 10:40 am.

**Proceedings of the thirteenth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 6 March 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000303	Chairman	Confirmation of minutes of the meeting held on 16 January 2007 (LC Paper No. CB(1)806/06-07)	
000304 - 002223	Administration Chairman Ms Emily LAU	<p>Briefing by the Administration (LC Paper No. CB(1)995/06-07(02))</p> <p>Briefing on paragraphs 1 to 17</p> <p>Enquiry on the timing for the Office of the Telecommunications Authority (OFTA) to employ the additional three to five staff members and their ranks</p> <p>The Administration's response that additional staff would be employed after enactment of the Bill for handling enforcement work. They would be inspectors, engineers and information technology staff employed through internal redeployment or open recruitment</p> <p>Enquiry on the operation and membership composition of the Telecommunications Users and Consumers Advisory Committee (the Committee), and mechanism for appointment of members to the Committee; and view that members of the Committee should be elected by the relevant sectors so that they could reflect the views of their sectors and report deliberations of the Committee to their sectors</p> <p>The Administration's explanation that the Committee provided advice to the Telecommunications Authority and collected views proactively on relevant issues. There were two types of members; some were</p>	

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		<p>appointed in their personal capacity and some were nominated by their sectors for appointment to the Committee. The membership, papers and minutes of the Committee were placed on the website of OFTA. The public had access to those documents and could give views, and interested parties would be invited to attend meetings of the Committee if necessary</p> <p>Request for membership list of the Committee and information on the mechanism for appointment of the members to the Committee</p>	<p>The Administration to provide information</p>
002224 - 003145	<p>Administration Ms Emily LAU Mr WONG Ting-kwong</p>	<p>Briefing on paragraph 18</p> <p>View that there should be a clear division of responsibility between the Hong Kong Police Force (the Police) and OFTA to avoid confusion and enquiry on whether the Police and OFTA would both enforce provisions in Part 4 of the Bill</p> <p>The Administration's response that the Police and OFTA had reached a clear understanding on the enforcement arrangements that the Police would be the enforcement agency for Part 4 of the Bill. Complaints unrelated to offences in Part 4 would be handled by OFTA. OFTA would usually receive complaints first and see if offences in Part 4 might have been committed, and if so, refer them to the Police for follow-up work</p> <p>Enquiry on whether complainants should lodge their complaints to the Police or OFTA and concern about coordination and information exchange between the two departments</p>	

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		<p>The Administration's response that there would be publicity to inform the public of the proper ways to lodge complaints about commercial electronic messages, and there would be close liaison and information exchange between the two departments to ensure that complaints would be handled effectively</p>	
003146 - 004719	<p>Administration Chairman Mr WONG Ting-kwong Ms Emily LAU</p>	<p>Briefing on paragraphs 19 to 26</p> <p>Enquiry on the number of do-not-call registers to be established</p> <p>The Administration's response that there would be three do-not-call registers, one for pre-recorded voice or video messages, one for fax messages and one for messages through short messaging service/multimedia messaging service</p> <p>Enquiry on the updating arrangements for the do-not-call registers</p> <p>The Administration's response that-</p> <p>(a) the public could add/remove their electronic addresses to/from the do-not-call registers through an automated process by telephone; and</p> <p>(b) for surrendered telephone numbers, OFTA would discuss with telecommunications service providers on the appropriate implementation arrangements, such as the time limit and the method of providing the information, for periodic cleansing of the do-not-call registers</p> <p>Enquiry on how frequent senders of commercial electronic messages</p>	

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		<p>should access the do-not-call registers to ensure compliance with the provisions related to do-not-call registers</p> <p>The Administration's reference to clause 10(3) and advice that senders of commercial electronic messages should access the updated do-not-call registers at least every 10 days during the period of sending out commercial electronic messages</p>	
004720 - 010720	<p>Administration Chairman Ms Emily LAU Mr WONG Ting-kwong Mr Ronny TONG</p>	<p>Briefing on paragraphs 27 to 31</p> <p>Enquiry on why the Administration did not explicitly provide that only "reasonable force" would be used as in the Interception of Communications and Surveillance Ordinance (Cap. 589) and view that specifying the use of "reasonable force" would give more assurance to the public</p> <p>The Administration's response that the notion of "reasonableness" was implied by the common law and the existing wording of the Bill was in line with other legislation. Public officers should always act reasonably and a search that was carried out unreasonably could be invalidated. The Interception of Communications and Surveillance Ordinance was significantly different from the Bill and it was inappropriate to draw comparisons between the two</p> <p>View that specifying the use of "reasonable force" was a simple matter and the fact that the wording was not used in other legislation should not be an overriding consideration for not using the wording in the Bill. Legislation should be clear, easily understood by the public and should progress with</p>	

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		<p>the times</p> <p>The Administration's response that the present law drafting policy was to avoid duplicating principles in common law in the statutes because the courts might interpret it as an attempt to restrict or expand the relevant principles in common law. Variations in wording might have unanticipated adverse effects over time and undermine the legal system. The wording used in different statutes should be standardized as far as possible and variations should be introduced only if absolutely necessary</p> <p>Enquiry on whether there would be any difference in legislative effect between using "force" and "reasonable force"</p> <p>The Administration's response that there would be no material difference. Adding unnecessary words might prompt lawyers to compare the differences in the wording of statutes with the same legislative intent and try to draw some implications so that the judges would draw some significance not contemplated in the legislative process. The more standardized the statutes with the same legislative intent were, the better it would be in the administration of justice</p> <p>ALA3 shared the views expressed in the Administration's response. Under public administrative law, public officers were under a duty to act reasonably in exercising statutory powers. Otherwise, their action might be subject to legal challenge. The notion of reasonableness was laid down in case law and was a well-established principle in public</p>	

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		administrative law	
010721 - 012846	Administration Chairman Ms Emily LAU Mr WONG Ting-kwong Mr Ronny TONG ALA3	<p>Briefing on paragraphs 32 to 35</p> <p>View that a copy of the search warrant should be provided to the affected person to safeguard the rights of the affected person, and this practice should be reflected in the relevant proposed provisions</p> <p>The Administration's response that the Security Bureau had advised that generally, the search warrant would be shown to the affected person and a copy of the warrant would be provided to the affected person if he so requested. In exercising the powers of entry and search, OFTA would provide a copy of the warrant to the affected person as far as this was possible. As the circumstances would be different under different cases, it might not be desirable to specify in the Bill the provision of a copy of the warrant to the affected person</p> <p>View that the situation where there was no one in the premises should be considered if it was explicitly stated that a copy of the warrant should be provided to the affected person</p> <p>View that the Administration should be requested to make the legislation as perfect as possible and there should be a balance between the powers of enforcement agencies and the rights of citizens; and reference to the Anton Piller order for entry and search issued by the courts, a copy of which must be provided to the affected person</p> <p>View that internal guidelines might be an alternative to legislation</p>	

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		<p>View that the practice should be reflected in the legislation as legislation was accessible to the general public while internal guidelines were not</p> <p>ALA3's reference to a similar context in section 25(7) of the Broadcasting Ordinance (Cap. 562) under which a person authorized by the Broadcasting Authority was required, upon request, to produce for inspection evidence of his identity and of his authorization when exercising the powers of entry and inspection, etc. under section 25 of the Ordinance</p> <p>The Administration was requested to consider the suggestion of stating explicitly in the Bill that a copy of the warrant would be provided to the affected person</p>	<p>The Administration to report the outcome of its consideration</p>
012847 - 013610	Administration Ms Emily LAU Chairman ALA3	<p>Briefing on paragraphs 36 to 41</p> <p>View that the Administration should reconsider stating explicitly in clause 43 of the Bill the basic criteria (such as the need to ensure that there would be no conflict of interest) for the appointment of the Chairman, Deputy Chairmen and panel members to the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board, and specifying the maximum tenure of appointment of panel members. The Administration was requested to reconsider the matter</p> <p>The Administration's response that the panel members themselves would be in the best position to declare whether there was any conflict of interest</p> <p>ALA3 was requested to check relevant provisions in other</p>	<p>The Administration to report the outcome of its consideration</p> <p>ALA3 to provide the</p>

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		Ordinances	relevant information
013611 - 015814	Administration Chairman Ms Emily LAU Mr WONG Ting-kwong	<p>Briefing on paragraphs 42 to 44</p> <p>Enquiry on the respective pros and cons of different commencement dates of provisions related to do-not-call registers and the opt-out regime</p> <p>The Administration's response that-</p> <p>(a) under the arrangement where the provisions were brought into operation as soon as the do-not-call registers were operational without any time allowed for "pre-registration", a possible scenario was that a large number of registration might have to be processed within a short period of time and there might be times that the computer systems got jammed and could not respond to the registration requests of some users; and</p> <p>(b) in the case that the commencement date was set at a later date to allow for a period for "pre-registration" of electronic addresses on the do-not-call registers, registration of electronic addresses by users would probably be spread over the pre-registration period and thus the chance that the computer systems would get jammed would be low</p> <p>The Administration's advice that the computer systems of the do-not-call registers would be able to process some 120 000 registration requests each day</p> <p>View that the public might want an</p>	

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		<p>earlier commencement date and that the possibility of over-stretching the capacity of the system might not be high</p> <p>Concern about whether other users using the telephone network would be affected</p> <p>The Administration's response that the possibility of affecting other users would be low, but the computer systems of the do-not-call registers might be slowed down or jammed by simultaneous registration requests and could not respond to the registration requests of some users instantly. To address this possible problem, the Administration would consider administrative arrangements such as assigning different registration dates for electronic addresses with different suffixes. However, this approach would mean that some members of the public need to opt out from individual senders before their turn to register their electronic addresses</p> <p>Request for information on the size (in terms of the actual number of electronic addresses and percentage of the total electronic addresses in use) of the do-not-call registers in the United States</p> <p>Enquiry on the estimated size of the do-not-call registers in Hong Kong</p> <p>The Administration's response that it would depend on the actual response of the public in registering their electronic addresses on the do-not-call registers</p> <p>View that an earlier commencement date should be set while ensuring orderly registration through</p>	<p>The Administration to provide information</p>

Time marker	Speaker	Subject(s)	Action required
		administrative arrangements	
015815 - 020725	Administration Chairman Ms Emily LAU	<p>Briefing on paragraphs 45 to 46</p> <p>Enquiry on whether the provisions of the Bill would be binding on the Government</p> <p>The Administration's response that although the provisions of the Bill would not be binding on the Government, Government departments would not engage in spamming activities because they would generally send electronic messages to recipients who either requested to receive such messages or who did not object to receiving such messages from the Government</p> <p>View that the provisions of the Bill should be binding on the Government</p> <p>The Administration's response that most Ordinances were not binding on the Government</p> <p>The Administration was requested to consider whether the provisions of the Bill should be binding on the Government</p> <p>ALA3 was requested to check relevant provisions in other Ordinances</p>	<p>The Administration to report the outcome of its consideration</p> <p>ALA3 to provide the relevant information</p>