

立法會
Legislative Council

LC Paper No. CB(1)214/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the third meeting on
Tuesday, 10 October 2006, at 9:00 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon WONG Ting-kwong, BBS
- Public officers attending** : Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr Franco KWOK
Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B1
- Mr Henry CHANG
Head, Information and Communications Technologies of
Office of the Telecommunications Authority
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

**Attendance by
invitation**

: Mail Prove Limited

Mr Jeffrey VONG
Chief Executive Officer

Hong Kong Direct Marketing Association

Mr Randall DAVIDSON
Chairman

Professional Information Security Association

Mr Antony Y K MA
Vice Chairperson External Affairs

Tseung Kwan O District Environment Concern Group

Mr SHI Hau-kit
Chairman

Doctor First Centre Ltd.

Mr AU Man-kei
Manager

Business Software Alliance

Mr Kenny CHEUNG
Legal Representative

The American Chamber of Commerce in Hong Kong

Ms Anita LEUNG
Intellectual Property Committee Chair

The Hong Kong CAS/COM Joint Chapter of
The Institute of Electrical and Electronics Engineers

Mr Jerome C W LIU
Executive Committee Member

Mr Y W LIU
Executive Committee Member

Hong Kong Computer Society

Mr Allan DYER
Vice Chairperson of ISSID

The British Computer Society (Hong Kong Section)

Ms Viny TONG Wai-lan
Honorary Treasurer

Consumer Council

Mrs CHAN WONG Shui
Chief Executive

Mr Victor HUNG
Chief Research & Trade Practices Officer

Civic Party

Mr Francis AU YEUNG
Hong Kong Island Branch
Legal Counsel

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

Ms Christina SHIU
Legislative Assistant (1)7

Action

I Meeting with deputations and the Administration

(LC Paper No. CB(1)2253/05-06(03) -- Submission dated 11 August 2006
from Mr Paul GARDINER

LC Paper No. CB(1)2253/05-06(05) -- Joint submission dated 4 July 2006
from 張國衡先生 and 趙祥貴先生

LC Paper No. CB(1)2253/05-06(06) -- Submission dated 12 July 2006 from
Mr YIP Ming

LC Paper No. CB(1)2253/05-06(07) -- Submission dated 11 August 2006
from Miss CHUI

LC Paper No. CB(1)2307/05-06(05) -- Submissions dated 24 and
27 September 2006 from 周文先生

Action

- LC Paper No. CB(1)2307/05-06(06) -- Submission dated 29 September 2006 from Mr Edward BROOK
- LC Paper No. CB(1)2307/05-06(07) -- Submission dated 3 October 2006 from PCCW-HKT Telephone Limited
- LC Paper No. CB(1)2323/05-06(02) -- Joint submission dated 6 October 2006 from Hong Kong CSL Limited and New World PCS Limited)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to –
- (a) confirm the feasibility of translating calling line identification information into the name of the sender in the transmission process and displaying the name of the sender on the electronic device of the recipient, especially in circumstances where the recipient was using roaming service;
 - (b) consider whether an exception should be provided for transactional or relationship messages with a commercial focus sent in furtherance of a pre-existing business relationship;
 - (c) clarify whether the following types of messages were subject to the regulation of the proposed legislation –
 - (i) an incidental promotional message in an email sent in reply to a recipient's enquiry or in continuation of an email dialogue;
 - (ii) promotional emails in categories consented to or not unsubscribed by a user using paid or free email service; and
 - (iii) promotional materials on websites visited by users;
 - (d) address the concern on whether the originator's own company logo containing a slogan would constitute "commercial electronic message";
 - (e) consider strengthening the concept of "unsolicited" to combat spam emails;
 - (f) address the concern on a recipient being charged for using roaming service even in the circumstances that the recipient did not accept a call after seeing the calling line identification information; and
 - (g) consider the need to improve Schedule 1 to the Bill to make it clear that television and radio advertisements would be exempted from the regulation of the Bill.

Action

II Any other business

3. Members agreed that the next meeting would be held on Tuesday, 31 October 2006, at 4:30 pm, instead of 24 October 2006 at 10:45 am as previously scheduled.
4. There being no other business, the meeting ended at 11:00 am.

Council Business Division 1
Legislative Council Secretariat
1 November 2006

**Proceedings of the third meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 10 October 2006, at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000311	Chairman	Opening remarks	
000312 – 000750	Hong Kong Direct Marketing Association (HKDMA)	Presentation of views (LC Paper No. CB(1)24/06-07(02), tabled and subsequently issued to members on 11 October 2006)	
000751 – 000930	Hon Emily LAU Chairman	Availability of submissions and paper numbers	
000931 – 001113	Professional Information Security Association (PISA)	Presentation of views (LC Paper No. CB(1)2307/05-06(02))	
001114 – 001145	Chairman	Paper number	
001146 – 001426	Tseung Kwan O District Environment Concern Group (TKODECG)	Presentation of views (LC Paper No. CB(1)2253/05-06(02))	
001427 – 001647	Doctor First Centre Ltd. (DFC)	<p>Presentation of views</p> <p>The view that calling line identification information must be displayed, and parties sending commercial electronic messages should be registered</p> <p>The view that the definition of "electronic message" was too broad and it was not clear whether television advertisements and electronic billboards would be regulated under the Bill</p>	
001648 – 001713	Chairman	Paper number	
001714 – 002358	Business Software Alliance (BSA)	Presentation of views (LC Paper No. CB(1)2307/05-06(03))	

Time marker	Speaker	Subject(s)	Action required
002359 – 002909	The American Chamber of Commerce in Hong Kong (ACCHK)	<p>Presentation of views</p> <p>The provisions in the Bill should be harmonized with the United States CAN-SPAM Act of 2003</p> <p>Only electronic messages the primary purpose of which was to promote business should be regulated</p> <p>The requirement to keep unsubscribe requests for seven years was unnecessary and would impose heavy compliance costs on enterprises</p> <p>Opposition to set up a do-not-call register for emails</p> <p>There should be an exception for pre-existing business relationships in relation to prohibitions on sending messages to those listed on do-not-call registers</p> <p>No criminal proceedings should commence before the results of appeals against enforcement notices were known</p> <p>The private right of action should be limited to certain parties or a threshold amount of loss should be set</p>	
002910 – 003407	The Hong Kong CAS/COM Joint Chapter of The Institute of Electrical and Electronics Engineers (HK CAS/COM Joint Chapter of IEEE)	<p>Presentation of views (LC Paper No. CB(1)24/06-07(03), tabled and subsequently issued to members on 11 October 2006)</p>	
003408 – 003907	Hong Kong Computer Society (HKCS)	<p>Presentation of views (LC Paper No. CB(1)2253/05-06(04))</p>	

Time marker	Speaker	Subject(s)	Action required
003908 – 004137	The British Computer Society (Hong Kong Section) (BCS(HK))	<p>Presentation of views</p> <p>Calling line identification information must be disclosed</p> <p>More effort should be devoted to tackling email spamming messages and it would be preferable to tackle the problem at the level of Internet Service Providers</p> <p>Concern on unauthorized dissemination of electronic addresses without the consent of the registered users of the electronic addresses</p> <p>The view that as it was difficult to differentiate commercial messages from non-commercial messages, such differentiation might be unnecessary</p>	
004138 – 004635	Consumer Council (CC)	<p>Presentation of views (LC Paper No. CB(1)2323/05-06(01))</p>	
004636 – 005103	Civil Party (CP)	<p>Presentation of views (LC Paper No. CB(1)24/06-07(01), tabled and subsequently issued to members on 11 October 2006)</p>	
005104 – 005339	Mail Prove Limited (MPL)	<p>Presentation of views</p> <p>In sending promotional messages, the sender should include information on whether the "opt-out" or "opt-in" policy was being adopted as the recipient usually had no knowledge of this</p>	
005340 – 005909	Mr Ronny TONG ACCHK	<p>Concern on whether television programme services and sound broadcasting services as mentioned in Schedule 1 to the Bill included advertisements</p> <p>Reference to ACCHK's concern that the definition of "commercial electronic message" had a very broad</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>coverage and that the definition did not include the concept of "unsolicited" or "uninvited"</p> <p>ACCHK's comment that some messages, the primary purpose of which was non-promotional, might contain an incidental promotional message and these messages were not commonly regarded as spamming; and that using the phrase "the primary purpose" rather than "one of the purposes" in the definition of "commercial electronic message" could exclude those messages from the regulation of the proposed legislation.</p>	
005910 – 010009	Mr SIN Chung-kai	Concern on whether mandatory display of calling line identification information was feasible	
010010 – 010548	Mr James TO PISA DFC TKODECG	<p>Solicitation of deputations' views on whether using a special prefix for telemarketing calls would be a workable solution</p> <p>PISA's support for the suggestion and comment that the price of the special prefix might soar unless sufficient number of prefixes could be provided to meet future demand in the long run</p> <p>DFC's comment that it would only work for those senders who would be willing to comply and there must be mandatory disclosure of calling line identification information; and that those who did not want to disclose their calling line identification information could be required to register or to pay a much higher airtime charge</p> <p>TKODECG's view that using a special prefix would enable the recipient to decide whether to accept a call; or the</p>	Administration to explore the feasibility of

Time marker	Speaker	Subject(s)	Action required
		calling line identification information could be translated into the name of the sender and displayed on the electronic device of the recipient	the suggestions
010549 – 011055	Mr SIN Chung-kai Administration	<p>Enquiry on whether calling line identification information would be relayed by local network operators</p> <p>The Administration's response that local operators must relay calling line identification information at the network level. However, whether such information would be displayed at the recipient's end was subject to the preference of the sender</p> <p>Enquiry on whether calling line identification information would be relayed for overseas calls</p> <p>The Administration's response that the calling line identification information of all calls outgoing from Hong Kong would be relayed out but whether such information would be received and displayed at the recipient's end would depend on a number of factors, including whether such information would be relayed by the international gateway operators to the mobile networks outside Hong Kong on which the recipients were roaming, and whether caller number display service was available on those overseas networks</p>	
011056 – 011605	Ms Emily LAU HK CAS/COM Joint Chapter of IEEE ACCHK HKDMA CC	<p>Emphasis on the need to strike a proper balance among the interests of various parties and solicitation of views on the "opt-in" regime and "opt-out" regime</p> <p>HK CAS/COM Joint Chapter of IEEE's view that responsible businesses would comply with either regime and either an "opt-in" regime</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>or "opt-out" regime was needed for enforcement</p> <p>ACCHK's and HKDMA's support for the "opt-out" regime</p> <p>CC's support for the "opt-in" regime</p>	
011606 – 012151	<p>Mr Jasper TSANG BCS(HK) HKCS DFC TKODECG CC HKDMA</p>	<p>Solicitation of views on whether person-to-person interactive telemarketing calls should be exempted</p> <p>BCS(HK)'s view that the "opt-out" regime could be adopted for those calls</p> <p>HKCS's view that those calls were annoying and there should be an "opt-out" mechanism applicable to these calls</p> <p>DFC's objection to regulating those calls under the proposed legislation</p> <p>TKODECG's support for regulating those calls</p> <p>CC's view that it was undesirable that recipients did not have an "opt-in" option and had to pay for the airtime charges</p> <p>HKDMA's view that those calls were more costly than machine-generated calls for senders and that this marketing practice was providing many employment opportunities</p>	
012152 – 012705	<p>Mr Ronny TONG Administration DFC</p>	<p>Enquiry on why the definition of "commercial electronic message" did not include the concept "unsolicited", with the effect that all commercial electronic messages would have to comply with Clause 7 even if there was a pre-existing business relationship between the sender and</p>	<p>Administration to consider</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the recipient</p> <p>The Administration's response that under the "opt-out" regime, the concept "unsolicited" was not a core concept because senders could send commercial electronic messages until the recipient refused to further receive such messages; and the Administration's view that the requirements in Part 2 of the Bill were generally good commercial practices and thus should apply to all commercial electronic messages</p> <p>DFC's view that the concept of "unsolicited" was difficult to define precisely in the context of electronic messages and hence enforcement would be very difficult</p> <p>Suggestion that the Administration should further consider the issue taking into account the concerns expressed by deputations that the catch-all provisions in Part 2 would significantly increase the compliance costs of business enterprises</p>	
012706 – 013230	Mr James TO DFC	<p>Concern that a recipient being charged for using roaming service even if the recipient did not accept a call after seeing the calling line identification information and complications involved in handling the issue of person-to-person telemarketing calls</p> <p>DFC's view that operators could consider only charging accepted calls</p>	Administration to address
013231 – 013737	Ms Emily LAU Administration PISA	<p>Enquiry on the "opt-in" regime and "opt-out" regime</p> <p>The Administration's explanation that having considered different views of the community and practices in other places, the Bill adopted an "opt-out"</p>	

Time marker	Speaker	Subject(s)	Action required
014316 – 014723	Mr James TO HK CAS/COM Joint Chapter of IEEE Administration	Solicitation of views on receiving commercial electronic messages as a condition of using free email service, and whether such messages should be regulated under the Bill HK CAS/COM Joint Chapter of IEEE's view that the concept of "unsolicited" should be strengthened in the Bill to combat spam emails The Administration's response that the issue would be considered	Administration to consider
014724 – 015200	Chairman Mr Ronny TONG Mr SIN Chung-kai	Concern on whether the following types of messages were subject to the regulation of the proposed legislation – (a) an incidental promotional message in an email sent in reply to a recipient's enquiry or in continuation of an email dialogue; (b) promotional emails in categories consented to or not unsubscribed by a user using paid or free email service; and (c) promotional materials on websites visited by users View that accessing a website was an active process and therefore promotional materials on websites should not be regulated under the Bill	Administration to address
015201 – 015527	Chairman Administration Ms Emily LAU	The way forward Date of next meeting	