

立法會
Legislative Council

LC Paper No. CB(1)277/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the fifth meeting on
Tuesday, 7 November 2006, at 4:30 pm
in Conference Room B 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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon Emily LAU Wai-hing, 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 Franco KWOK
Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B1
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Miss Leonora IP
Senior Government Counsel
Department of Justice

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)214/06-07 -- Minutes of meeting on 10 October 2006)

The minutes of the meeting held on 10 October 2006 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)175/06-07(02) -- Summary of views submitted to the Bills Committee and the Administration's response (Position as at 27 October 2006)

LC Paper No. CB(3)735/05-06 -- The Bill

LC Paper No. CB(1)2306/05-06(03) -- Marked-up copy of the relevant statutory provisions to be amended by the Bill

LC Paper No. CB(1)202/06-07(01) -- Extracts of relevant statutory provisions

LC Paper No. CB(1)2306/05-06(01) -- Letter dated 1 September 2006 from Legal Service Division to the Administration

LC Paper No. CB(1)2306/05-06(02) -- Reply letter dated 22 September 2006 from the Administration to Legal Service Division

LC Paper No. CB(1)168/06-07(03) -- Letter dated 13 October 2006 from Legal Service Division to the Administration

LC Paper No. CB(1)168/06-07(04) -- Reply letter dated 25 October 2006 from the Administration to Legal Service Division)

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to –
 - (a) consider shortening the required retention period for unsubscribe requests from 7 years to 3 years; and
 - (b) consider narrowing the scope of legislation to be covered by the proposed section 24(2)(a) of the Telecommunications Ordinance (Schedule 2 to the Bill - Consequential amendments).

III Any other business

4. Members noted that clause-by-clause examination of the Bill would commence starting from the next meeting.
5. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
20 November 2006

**Proceedings of the fifth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 7 November 2006, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000112	Chairman	Confirmation of minutes of the meeting held on 10 October 2006 (LC Paper No. CB(1)214/06-07)	
000113 - 000434	Chairman Administration	<p>Enquiry on the time needed for the Administration to consider the suggestion of applying the requirement of disclosure of calling line identification information to person-to-person interactive telemarketing calls</p> <p>The Administration's response that it would take about one and a half months to complete internal research and deliberation on the suggestion</p>	
000435 - 000624	Chairman	<p>Continuation of discussion of LC Paper No. CB(1)175/06-07(02)</p> <p>Paragraphs 3.1.1 to 3.1.4</p> <p>Members did not raise any questions</p>	
000625 - 004608	Chairman Administration Mr WONG Ting-kwong Mr James TO Mr Jasper TSANG	<p>Paragraphs 3.2.1 to 3.2.15</p> <p>Taking note of deputations' view regarding the required retention period of 7 years for unsubscribe requests and the Administration's written response</p> <p>View that retention of unsubscribe requests for 7 years should not be a problem by using facilities such as computers or microfilms</p> <p>Concern about the enforceability of the provision as senders of commercial electronic messages (CEMs) might destroy records of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>unsubscribe requests intentionally, and unless a recipient of CEMs made conscious efforts to keep record of his unsubscribe requests, there was virtually no way to ascertain if an unsubscribe request had been sent and received.</p> <p>View that a retention period of 2 to 3 years would suffice as it was highly unlikely that a person would initiate civil proceedings in respect of his unsubscribe request made more than 3 years ago</p> <p>Enquiry on the rationale for requiring senders to retain unsubscribe requests and how the requirement would protect senders/recipients, and concern about the effectiveness of the provision, given that an "opt-out" regime was adopted</p> <p>The Administration's response that senders were required to provide functional unsubscribe facility and retain records of unsubscribe requests for at least 7 years under the Bill and recipients were also likely to retain copies of unsubscribe requests for their own record; senders retaining complete records of unsubscribe requests could facilitate the Telecommunications Authority's (TA) investigation, and the records might serve to protect the senders in the case of civil proceedings</p> <p>The Administration's explanation that cases in which senders did not provide functional unsubscribe facility or destroyed records of unsubscribe requests intentionally would likely involve many victims and the Court would take into consideration all the available evidence in giving a ruling</p>	<p>The Administration to consider</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Enquiry on whether there would be surprise checks on records of unsubscribe requests</p> <p>The Administration's response that in accordance with clause 34, TA's exercise of the power to obtain information or documents was subject to the "reasonable grounds" test</p> <p>Enquiry on whether issuing an unsubscribe request would also prohibit future use of the recipient's personal data for other purposes</p> <p>The Administration's response that unsubscribe facility and use of personal data were two separate matters regulated under the Bill and the Personal Data (Privacy) Ordinance respectively; and the Administration would provide publicity materials to suggest to the public that they could exercise their rights empowered by the two Ordinances through the same request</p> <p>Suggestion of a mandatory requirement on senders to include in the unsubscribe facility a message on the availability of do-not-call registers</p> <p>The Administration's view that such a requirement would not be necessary because the Administration would launch publicity programmes to promote the do-not-call registers and the unsubscribe facility arrangement</p>	
004609 - 004700	Chairman	<p>Paragraphs 3.3.1 to 3.3.5</p> <p>Members did not raise any questions</p>	

Time marker	Speaker	Subject(s)	Action required
004701 - 005945	Chairman Mr James TO Administration Mr SIN Chung-kai	<p>Paragraphs 3.4.1 to 3.4.11</p> <p>Concern about overseas senders using low cost communications facilities for sending telemarketing calls, e.g. Skype telephones or servers set up in nearby regions</p> <p>The Administration's acknowledgement of the difficulties involved in tackling telemarketing calls made by overseas senders using Voice over Internet Protocol (VoIP); advice that technically, there would still be methods for tracing the source of the telemarketing calls with a Hong Kong Link, e.g. through the local gateway, and the enforcement agencies would establish channels to cooperate with overseas counterparts in combating the problem of spam</p> <p>Concern about spammers using shell companies for sending telemarketing calls, especially in circumstances where explicit terms prohibiting unlawful acts were included in the service agreements</p> <p>The Administration's response that a similar difficulty was also faced by other law enforcement authorities, and the enforcement agencies would make reference to their practices in carrying out enforcement work</p>	
005946 - 010109	Chairman	<p>Paragraphs 4.1.1 to 4.4.1</p> <p>Members did not raise any questions</p>	
010110 - 010340	Chairman	<p>Paragraphs 5.1.1 to 5.2.1</p> <p>Members did not raise any questions</p>	

Time marker	Speaker	Subject(s)	Action required
010341 - 010734	Chairman Mr SIN Chung-kai Administration	Paragraph 5.3.1 Enquiry on the basis of using "5 or more electronic addresses or 2 or more domain names" in clause 25(1) The Administration's response that clause 25(1) was drafted by making reference to the relevant provisions of the CAN-SPAM Act of the United States	
010735 - 011242	Chairman Administration Mr SIN Chung-kai	Paragraphs 6.1.1 to 6.2.11 Enquiry on the procedures for approving and issuing codes of practice and whether there would be any public consultation The Administration's response that although the approved codes of practice were not subsidiary legislation, the TA should, in accordance with clause 28(3), publish a notice in the gazette, and it was the normal practice of TA to consult members of the public and the industry in preparing codes of practice	
011243 - 011733	Chairman Mr SIN Chung-kai Administration	Paragraph 6.3.1 Enquiry on whether a warrant was required for entry, search and arrest The Administration's response that while no warrant was required for arrest on reasonable suspicion that a specified offence had been committed, a warrant was required for entry into and search of any premises or place	
011734 - 011739	Chairman	Paragraphs 6.4.1 to 6.4.2 Members did not raise any questions	

Time marker	Speaker	Subject(s)	Action required
011740 - 012213	Chairman Mr SIN Chung-kai Administration	<p>Paragraphs 6.5.1 to 6.5.4</p> <p>Enquiry on whether any notice had to be given to a person before requesting that person to provide information or documents relevant to investigation, and whether service providers would be requested to provide passwords of their clients</p> <p>The Administration's response that in accordance with clause 34, a notice had to be served in writing to a person before requesting that person to provide information or documents relevant to investigation, and the kind of passwords TA would probably need was the passwords to access the computer systems of the person to whom the notice had been served, and there must be reasonable grounds for such an act</p>	
012214 - 012646	Chairman Mr SIN Chung-kai	<p>Paragraphs 6.6.1 to 9.6</p> <p>Enquiry on the basis of the provisions relating to directors' liability</p> <p>The Administration's response that the provisions were modelled on the comparable provisions proposed under the Copyright (Amendment) Bill 2006</p>	
012647 - 014207	Chairman ALA3 Mr SIN Chung-kai Mr Jasper TSANG Administration	<p>Discussion of proposed consequential amendments in Schedule 2 to the Bill (LC Paper No. CB(1)2306/05-06(03))</p> <p>View that the scope of "facilitating compliance with this Ordinance or any other law" in a consequential amendment to section 24 of the Telecommunications Ordinance might be too broad</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's explanation on the rationale of the consequential amendment as detailed on page 10 of the Administration's reply dated 22 September 2006 to the Legal Service Division (LC Paper No. 2306/05-06(02))</p> <p>View that the scope of the consequential amendment should be narrowed and each relevant piece of legislation to be included should be specified, and consideration could be given to replacing the proposed section 24(2)(a) with "facilitating compliance with this Ordinance or the Unsolicited Electronic Messages Ordinance"</p>	The Administration to consider
014208 - 014259	Chairman	Clause-by-clause examination of the Bill at the next meeting	