

立法會
Legislative Council

LC Paper No. CB(1)476/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the eighth meeting on
Tuesday, 28 November 2006, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Ronny TONG Ka-wah, SC
- 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)351/06-07 -- Minutes of meeting on
14 November 2006)

The minutes of the meeting held on 14 November 2006 were confirmed.

II Paper issued since last meeting
(LC Paper No. CB(1)350/06-07(01) -- Issues requiring follow-up
action/consideration by the
Administration (Position as at
27 November 2006))

2. Members noted the paper issued since last meeting.

III Meeting with the Administration
(LC Paper No. CB(1)369/06-07(01) -- Administration's Response to the
Issues Raised at the Bills
Committee meeting on
14 November 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

Action

- 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
- 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))

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).
4. The Administration was requested to –
 - (a) provide the following information on the planned arrangements for the enforcement of the Bill –
 - (i) the enforcement procedures to be adopted, including the means by which the public could lodge complaints against unsolicited electronic messages and how the complaints would be dealt with;
 - (ii) the estimated manpower requirement for enforcing the Bill with details on the organizational structure of the relevant unit within the Office of the Telecommunications Authority (OFTA); and
 - (iii) the mechanism for which the opinions of the industry and members of the public on the enforcement of the Unsolicited Electronic Messages legislation could be gauged;
 - (b) advise the circumstances to which clause 21 of the Bill would be applicable but section 161 of the Crimes Ordinance (Cap. 200) would not, and to provide information on the experience in the application of the statutory provision comparable to clause 21 in the United States;
 - (c) with regard to the codes of practice to be approved and issued for the purpose of providing practical guidance in respect of the application or operation of any provision of the future Unsolicited Electronic Messages Ordinance, consult the Panel on Information, Technology and Broadcasting on the relevant draft codes of practice; and
 - (d) advise what offence(s) was involved in the recent case in which a person used the email address of rfan@legco.gov.hk to send emails to some other Legislative Council Members and falsely represented himself/herself as the

Action

President of the Legislative Council in the emails. The message in those emails was not a commercial electronic message.

III Any other business

5. Members noted that the next meeting would be held on Tuesday, 5 December 2006, at 10:45 am.
6. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
11 December 2006

**Proceedings of the eighth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 28 November 2006, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000130	Chairman	Confirmation of minutes of the meeting held on 14 November 2006 (LC Paper No. CB(1)351/06-07)	
000131- 005102	Chairman Mr WONG Ting-kwong Ms Emily LAU Administration Mr Andrew LEUNG Mr SIN Chung-kai	<p>Reference to the Administration's response to the issues raised at the Bills Committee meeting on 14 November 2006 (LC Paper No. CB(1)369/06-07(01))</p> <p>Enquiry on whether there would be a designated unit within OFTA for the enforcement of the Bill</p> <p>The Administration's response that OFTA already had a designated team for handling matters related to the Bill and additional manpower could be deployed for the enforcement work depending on the actual workload in future</p> <p>Enquiry on the mechanism for which the opinions of the industry and the members of the public on the enforcement of the Unsolicited Electronic Messages legislation could be gauged</p> <p>The Administration's response that consideration could be given to expanding the functions of the existing advisory bodies set up by OFTA to advise on the issues relating to the enforcement of the Bill</p> <p>Enquiry on whether the Secretary for Commerce, Industry and Technology should further clarify the enforcement arrangements, such as the division of enforcement responsibilities between the</p>	The Administration to provide information

Time marker	Speaker	Subject(s)	Action required
		<p>Telecommunications Authority (TA) and the Hong Kong Police Force for different provisions of the Bill, during the resumption of the second reading debate of the Bill</p> <p>The Administration's response that the functions and powers of TA in respect of the administration and enforcement of the Bill had already been provided in the relevant provisions of the Bill</p> <p>Request for information on the enforcement approach to be adopted and the estimated manpower requirement with details on the organizational structure of the relevant unit within OFTA</p> <p>The Administration's agreement to provide the requested information</p> <p>Enquiry on the preparation of codes of practice</p> <p>The Administration's response that draft codes of practice would be drawn up upon enactment of the Bill, and the industry and the Panel on Information Technology and Broadcasting would be consulted on the draft codes of practice</p> <p>View that Hong Kong should accord priority to combating telephone and fax spams; and adopt a targeted approach in combating email spams like Australia</p> <p>View that detailed enforcement arrangements including the means by which the public could lodge complaints against unsolicited electronic messages and how the complaints would be dealt with should be in place before enactment</p>	<p>The Administration to provide information</p> <p>The Administration to follow up in due course</p> <p>The Administration to provide information</p>

Time marker	Speaker	Subject(s)	Action required
		<p>of the Bill and the arrangements should be well publicized</p> <p>Enquiry on whether detailed enforcement arrangements could be included in the Bill</p> <p>The Administration's reservation on the idea as no overseas jurisdictions had included detailed enforcement arrangements in the principal legislation for spam control and there was a need to allow flexibility to meet changing circumstances. Regulations would be made under the future Unsolicited Electronic Messages Ordinance and there would be guidelines for the public on how to handle unsolicited electronic messages</p> <p>Enquiry on enforcement statistics of the Australia Communications and Media Authority in the Annex to LC Paper No. CB(1)369/06-07(01)</p> <p>The Administration's explanation that in Australia, recipients of spam emails and short messages could report to the enforcement agency easily through an automated system and this accounted for the large number of spams reported. Such report figures were not equivalent to complaint figures, and as explained in the Administration's response, the Australian authority adopted a targeted approach against major spammers and therefore the enforcement figures appeared to be low</p>	

Time marker	Speaker	Subject(s)	Action required
005103 - 005855	Administration Chairman Ms Emily LAU	<p>Continuation of clause-by-clause examination of the Bill</p> <p>Clause 20</p> <p>Enquiry on the thresholds prescribed under clause 20(2) and reference to a deputation's view on the need to tighten the definition of "multiple commercial electronic messages" by reference to the number of messages received by a recipient from the same source</p> <p>The Administration's response that Part 4 of the Bill was intended to combat sophisticated spammers. For this purpose, it was considered appropriate to prescribe the thresholds for the definition of "multiple commercial electronic messages" based on the number of messages sent by a sender within a specific time limit. Sophisticated spammers would likely exceed the specified thresholds in initiating the transmission of electronic messages. For example, the open relay "honeypot" set up by OFTA recorded that on average each single spammer sent more than 10 000 messages per day</p>	
005856 - 011713	Administration Mr WONG Ting-kwong Chairman Ms Emily LAU Mr SIN Chung-kai	<p>Clause 21</p> <p>Enquiry on the level of fine and imprisonment</p> <p>The Administration's response that there would be no upper limit of the level of fine for clause 21 as well as other provisions in Part 4 and that it would be subject to the Court's decision, and the proposed imprisonment term for 10 years was advised by the Department of Justice by making reference to the term of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>imprisonment for the offence of criminal damage, which was also 10 years</p> <p>Request for information on the circumstances to which clause 21 of the Bill would be applicable but section 161 of the Crimes Ordinance (Cap. 200) would not, and request for information on the experience in the application of the statutory provision comparable to clause 21 in the United States</p> <p>The Administration's response that it was not uncommon that some offences could be charged under the provisions of different legislation, and the prosecutor would investigate the facts and decide the appropriate charges which could adequately reflect the offender's culpability. Each piece of legislation had its own focus and though there might be an extent of overlapping, clause 21 would not duplicate provisions of other legislation because it consisted of unique elements. Part 4 of the Bill was drafted with a view to harmonizing with the CAN-SPAM Act of the United States</p> <p>Enquiry on whether it was necessary to specify the enforcement authority for clause 21 explicitly</p> <p>The Administration's explanation that clause 21 would be enforced by the Hong Kong Police Force, and that there was no need to state this explicitly because the Police Force Ordinance (Cap. 232) already conferred on police officers the necessary powers of enforcement including the power to arrest persons who committed offences under any law of Hong Kong</p>	<p>The Administration to report and provide information</p>

Time marker	Speaker	Subject(s)	Action required
011714 - 012158	Chairman Administration Mr SIN Chung-kai	Clause 22 Enquiry on whether the sending of electronic messages using another person's email account without authorization would be regulated under clause 22 The Administration's response that such an act would not be regulated under clause 22 if the messages sent were not multiple commercial electronic messages	
012159 - 012644	Administration Mr SIN Chung-kai Chairman	Clause 23 Enquiry on why the content in the Simple Mail Transfer Protocol (SMTP) data portion was excluded from the definition of "header information" for a commercial electronic mail message and whether clause 23 would cater for new protocols emerging in future The Administration's explanation that as the content in the SMTP data portion contained information, such as name or alias, which was configurable by an ordinary user, it was considered appropriate to exclude such information from the definition of "header information". The Bill would focus on falsification of the device-related part of the header information, such as originating domain name or Internet protocol address, by sophisticated spammers. Clause 23 would cater for new protocols because the definition of "SMTP data portion" had already included a reference to any successor protocols published by the Internet Engineering Task Force or any of its successors	

Time marker	Speaker	Subject(s)	Action required
012645 - 014509	Administration Mr SIN Chung-kai Chairman Mr WONG Ting-kwong Ms Emily LAU	<p>Clause 24</p> <p>Enquiry on the circumstances under which the registration for electronic mail addresses or domain names would be an offence</p> <p>The Administration's explanation that the crucial element was using information that materially falsified the identity of the actual registrant during the registration process. The names of the electronic mail addresses or domain names being registered would be irrelevant</p> <p>Enquiry on the basis of using "5 or more electronic addresses or 2 or more domain names"</p> <p>The Administration's response that the thresholds were modeled from the CAN-SPAM Act of the United States and sophisticated spammers would likely exceed the specified thresholds</p> <p>Enquiry on the regulation of the sending of commercial electronic messages without an element of fraud or involving any illicit activities</p> <p>The Administration's response that Part 2 of the Bill would apply</p>	
014510 - 015248	Administration Chairman Mr SIN Chung-kai Ms Emily LAU	<p>Clause 25</p> <p>Enquiry on what offence(s) was involved in the recent case in which a person used the email address of rfan@legco.gov.hk to send emails to some other Legislative Council Members and falsely represented himself/herself as the President of the Legislative Council in the emails. The message in those emails was not</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>a commercial electronic message</p> <p>The Administration's response that as these e-mails were not electronic messages of a commercial nature, the case would not fall within the scope of the Bill. However, the Administration undertook to seek advice on the matter and report to the Bills Committee</p> <p>Completion of clause-by-clause examination of the Bill up to clause 25</p>	The Administration to report
015249 - 015408	Chairman	Date of next meeting	