

立法會
Legislative Council

LC Paper No. CB(1)707/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the tenth meeting on
Tuesday, 12 December 2006, at 2:30 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 Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, 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 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)476/06-07 -- Minutes of meeting on
28 November 2006)

The minutes of the meeting held on 28 November 2006 were confirmed.

II Paper issued since last meeting
(LC Paper No. CB(1)475/06-07(01) -- Outstanding issues requiring
follow-up action by the
Administration (Position as at
11 December 2006))

2. Members noted the paper issued since last meeting.

III Meeting with the Administration
(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

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) report on its proposed amendment to add new provisions to sanction a telecommunications service provider who failed to comply with a direction issued by the Telecommunications Authority (TA) under clause 33;
 - (b) regarding the proceedings in which TA sought an order from a magistrate under clause 34(3), provide information on the procedure involved in the proceedings and consider the appropriateness of stating explicitly in the legislation that the affected person would have the right to be heard and make representations;
 - (c) review whether the wording of clauses 37(1) and 37(2) should provide that while no warrant would be required for TA or an authorized officer to arrest at public places any person whom TA reasonably suspected of having committed a specified offence, a warrant would be required if the arrest was to take place inside any private place or premises;
 - (d) regarding the provision in clause 37(2) to empower TA to use force to break into and enter any premises or place and to remove any person or thing by force, explicitly provide that only "reasonable force" would be used; and
 - (e) consider the need to specify that the information that TA might require to be produced under clause 37(3)(b) included "passwords" to ensure that TA could obtain relevant information contained in a computer or any other telecommunications device in carrying out a search under clause 37.

IV Any other business

5. Members noted that the next meeting would be held on Tuesday, 19 December 2006, at 10:45 am.
6. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the tenth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 12 December 2006, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000025	Chairman	Confirmation of minutes of the meeting held on 28 November 2006 (LC Paper No. CB(1)476/06-07)	
000026 - 000309	Chairman	Continuation of clause-by-clause examination of the Bill starting from clause 31	
000310 - 000926	Administration Chairman Mr WONG Ting-kwong	<p>Clause 31</p> <p>Enquiry on how the future do-not-call registers or the information contained in them would be made available to senders of commercial electronic messages</p> <p>The Administration's explanation that there were various possible methods, e.g. senders of commercial electronic messages could obtain information from TA and compare it with their own records to ensure compliance, or TA could delete electronic addresses listed in the do-not-call registers from the lists of electronic addresses submitted by senders. The Administration was considering various possible methods</p> <p>Enquiry on the form of the information in the do-not-call registers to be made available to senders of commercial electronic messages</p> <p>The Administration's explanation that its initial thinking was to provide the information in electronic form as it was expected that the do-not-call registers might contain a large amount of data</p>	

Time marker	Speaker	Subject(s)	Action required
000927 - 004046	Administration Mr WONG Ting-kwong Chairman Ms Emily LAU Mr James TO	<p>Clause 32</p> <p>Enquiry on whether the fines provisions under clause 32 would be applicable to senders of person-to-person interactive telemarketing calls if the suggestion of applying the requirements under clauses 7 and 12 to person-to-person interactive telemarketing calls was adopted</p> <p>The Administration's explanation that the fines provisions in clause 32 only applied to offences relating to misuse of information obtained through the unsubscribe facility and access to the do-not-call registers, while the requirements under clauses 7 and 12 were concerned with the inclusion of accurate sender information and disclosure of calling line identification information; there were separate provisions on the enforcement and sanctions for non-compliance with the requirements under clauses 7 and 12</p> <p>Enquiry on possible abusive uses of do-not-call registers and why the Administration did not intend to set up a do-not-call register for email addresses</p> <p>The Administration's explanation that setting up a do-not-call register for email addresses could be counterproductive. This was because spammers would be prone to use the email addresses listed in such a do-not-call register for spamming as this could significantly save their efforts on screening invalid electronic addresses. Moreover, unlike telephone calls, at present, the general technical standards for Internet email services did not</p>	

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		<p>provide for authentication of the origin of email messages. After conducting a review in 2004, the United States Federal Trade Commission maintained that no do-not-call register for email addresses should be set up. Hong Kong should draw reference to the experience of the United States in this regard</p> <p>Concern about information in the do-not-call registers obtained by one party being transferred to other parties and used for promotional purposes</p> <p>The Administration's explanation that clause 32(2) would regulate such an act</p>	
004047 - 004401	Administration ALA3	<p>Clause 33</p> <p>Enquiry on how TA could ensure that the directions issued to telecommunications service providers would be complied with</p> <p>The Administration's response that it would propose an amendment to add new provisions to sanction a telecommunications service provider who failed to comply with a direction issued by TA</p>	The Administration to report
004402 - 011714	Administration Chairman Ms Emily LAU ALA3 Mr WONG Ting-kwong	<p>Clause 34</p> <p>Enquiry on whether an affected person had the right to be heard and make representations in the course of the proceedings in which TA sought an order from a magistrate under clause 34(3)</p> <p>The Administration's explanation that the affected person could choose to appear before the Court hearing to</p>	

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		<p>make further representations to the Court and the Court could also invite the affected person to come in to make representations. The Bill would not rule out the affected person's right to be heard and make representations and the Court had the discretion to decide whether there was a need for a hearing after reviewing the representations from both parties. There were similar provisions in the Telecommunications Ordinance</p> <p>ALA3's comment that clauses 34(3)(a) and (b), as drafted, did not contemplate that the affected person would be given an opportunity to be heard and make representations at a hearing</p> <p>Request for the Administration to consider the appropriateness of stating explicitly in the legislation that the affected person would have the right to be heard and make representations</p> <p>Enquiry on whether there were any existing international agreements applicable to Hong Kong and related to unsolicited electronic messages as mentioned in clause 34(5)(b)(iii)</p> <p>The Administration's response that there were no existing international agreements at present. Clause 34(5)(b)(iii) would cater for such international agreements in future. However, there were at present a memorandum of understanding (MOU) on anti-spamming cooperation to which the Commerce, Industry and Technology Bureau was a signatory agency. This MOU served as a useful forum for the exchange of information on and</p>	<p>The Administration to consider and report</p>

Time marker	Speaker	Subject(s)	Action required
		<p>experience in combating the problem of unsolicited electronic messages and might pave the way for the establishment of international agreements in future</p> <p>Enquiry on whether there were any specific methods for serving a notice under clause 34 and the time the notice would be deemed to have been received if it was sent by post</p> <p>The Administration's explanation that while the Bill did not state any specific methods, a notice would normally be served by registered post or by hand</p> <p>Enquiry on the circumstances and procedures under which TA would disclose information or documents given or produced to him under clause 34 and the nature of the information or documents that would be disclosed</p> <p>The Administration's explanation that in circumstances such as tracing telephone call records during investigation, TA might have to disclose information or documents about the identity of a person to network operators in seeking their assistance in the investigation work</p>	
011715 - 012733	Administration Chairman Mr WONG Ting-kwong ALA3	<p>Clause 35</p> <p>Request for examples of special circumstances under which TA might require the relevant person to take steps specified in an enforcement notice as a matter of urgency under clause 35(4)</p> <p>The Administration's response that if the number of commercial electronic messages sent was extremely large</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>and many people were affected, TA might state a shorter period in the enforcement notice than that required under clause 35(3)</p> <p>ALA3's enquiry on how the issuance of enforcement notice would be triggered off and why the Bill did not include a mechanism to be adopted by TA for handling complaints</p> <p>The Administration's explanation that, similar to overseas anti-spam laws, TA would need flexibility in setting priorities for handling the large number of complaints expected, with a higher priority accorded to combating major spammers. While it was expected that the enforcement notice mechanism would mainly be triggered off by complaints on contravention of relevant provisions of the Bill, TA might also trigger off the mechanism if sufficient evidence for contravention of relevant provisions of the Bill from other sources, such as information collected by "honeypot" set up by the Office of the Telecommunications Authority for the purpose of detecting spamming activities</p>	
012734 - 013431	<p>Chairman Administration Ms Emily LAU Mr WONG Ting-kwong</p>	<p>Clause 36</p> <p>View that a fine of \$500,000 on a second or subsequent conviction was quite heavy and enquiry on whether the fine was comparable to those for offences of similar gravity in other legislation</p> <p>The Administration's response that it had made reference to the penalty provisions in other legislation in proposing a fine of \$500,000. It was the upper limit and the judge</p>	

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		<p>would decide the exact amount of the fine taking into consideration factors such as the seriousness of the offence. An upper limit of \$500,000 for the fine would act as a deterrent for repeated offenders</p> <p>Enquiry on what would constitute a second or subsequent conviction for an offender under clause 36</p> <p>The Administration's explanation that if the offender had previously been convicted for the same offence of not complying with an enforcement notice, the offender would be considered as having committed the offence for another time</p>	
013432 - 015457	Administration Mr SIN Chung-kai Mr WONG Ting-kwong Ms Emily LAU	<p>Clause 37</p> <p>Query on whether the wording of clauses 37(1) and 37(2) should provide that while no warrant would be required for TA or an authorized officer to arrest at public places any person whom TA reasonably suspected of having committed a specified offence, a warrant would be required if the arrest was to take place inside any private place or premises</p> <p>The Administration's response that clauses 37(1) and 37(2) were standard provisions conferring powers of entry, search and arrest on enforcement authorities and they were commonly used in other Hong Kong legislation. Deviation of a provision in a specific piece of legislation from the standard provisions might lead to litigation on whether the same interpretation could be applied to provisions with the same legislative intent but with</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>different wording</p> <p>Request for the Administration to review the wording of clauses 37(1) and 37(2), and comparable provisions in other legislation if necessary</p> <p>View that only "reasonable force" should be used to break into and enter any premises or place and to remove any person or thing</p> <p>The Administration's response that enforcement authorities had all along been using a level of force commensurate with the actual circumstances in relation to entry, search and arrest</p> <p>Reference to the Interception of Communications and Surveillance Ordinance (Cap. 589) and request for the Administration to explicitly provide that only "reasonable force" would be used in exercising the powers under clause 37(2)</p> <p>View that the information that TA might require to be produced under clause 37(3)(b) should include "passwords" to ensure that TA could obtain relevant information contained in a computer or any other telecommunications device in carrying out a search under clause 37</p> <p>The Administration's response that the usual practice during a search was to require the suspect to retrieve the required information from the computer or telecommunications device in the place or premises under search</p> <p>Request for the Administration to consider the need to specify that the</p>	<p>The Administration to consider and report</p> <p>The Administration to consider and report</p> <p>The Administration</p>

Time marker	Speaker	Subject(s)	Action required
		information that TA might require to be produced under clause 37(3)(b) included "passwords" Completion of clause-by-clause examination of the Bill up to clause 37(3)(d)	to consider and report
015458 - 015528	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
11 January 2007