



"Paul Gardiner"

2006/08/11 PM 04:44


To <yklam@legco.gov.hk>

cc

bcc

Subject Re: BC on Unsolicited Electronic Messages Bill: Invitation for submissions

History:

 This message has been forwarded.

Dear Chairman,

Thankyou for the opportunity to comment on the UEM Bill. I am happy to provide some comments and suggestions as listed below:

1. Caller Identification: I am concerned as to how this can be enforced. If the sender does not provide a Caller ID, it is difficult if not impossible for a complainant to identify and follow up with a claim against the sender. Therefore, I would like to see the following provisions:

- a) all organisations providing a telephone or fax-based mass-marketing service - whether in Hong Kong or offshore - must register their number(s) with OFTA or with each Hong Kong telecomms company directly and undertake to comply with the UEM Bill
- b) no Hong Kong telecomms company will accept mass-marketing services over its network without a Caller ID from the marketing organisation.

Current software will facilitate the above. The only protection residents have against 'anonymous nuisance calls' especially from offshore, is that the local telecomms providers do not accept such calls without a Caller ID.

2. Multiple commercial electronic messages (emails). For similar reasons to the above, any Internet Service Provider in Hong Kong should be required to take steps to block incoming mass-commercial messages except from bona fide registered organisations. Such organisations must be validated to have a bona fide return address and undertake to comply with the terms of the UEM Bill (eg: in respect of unsubscribe requests). Again, it is the network service providers / ISPs that must be co-opted into assisting with the enforcement of the bill. I do not agree with giving these service providers immunity from the UEM Bill - it is their duty to protect their subscribers from nuisance messages. Furthermore, any ISP which hosts the sender of mass-marketing messages should also be required to prove that the sender has fully complied with the UEM Bill.

3. How is the UEM Bill to be enforced against offshore organisations? As these fall outside Hong Kong jurisdiction, it seems that the bill will merely promote the migration of marketing service providers to regional centres outside Hong Kong.

4. While the do-not-call register seems sensible within Hong Kong, unscrupulous organisations can use these databases as a free source of contact numbers/addresses for the purpose of their marketing efforts. 'Spam' e-mail will rise dramatically to these email addresses which are already identified as active by virtue of their being on the register. I believe this will be a serious weakness in the UEM Bill as applied to email messages. It is difficult to enforce against offshore organisations. Therefore, I do NOT agree with the establishment of a "do-not-call" register for email addresses. As for telephone/fax numbers below, every Internet Service Provider in Hong Kong should be bound NOT to reveal email addresses unless the subscriber POSITIVELY agrees to it.

5. Do-not-call register for telephones and faxes. Rather than publish these numbers in a do-not-call register, subscribers to telephone and fax services should be given the choice to reveal the number in a phone directory or go "ex-directory". Ex-directory numbers should be protected from mass-marketing calls - ie: the network service provider will not allow such calls to be connected to ex-directory numbers. The advantage is that ex-directory numbers remain more or less 'secret', ie: there is NO PUBLIC record available which offshore organisations can access in order to make nuisance or automated calls.

6. Anyone gathering address or contact number information in Hong Kong (or from outside Hong Kong) must be required to give the recipient an OPT IN clause to receive further information. I.e: Such organisations must be required NOT TO DIVULGE the information they have gathered unless the recipient has EXPLICITLY agreed via an OPT-IN clause to release such information. This is common practice in other jurisdictions. I am not in favour of OPT-OUT clauses as organisations abuse this by burying such opt-outs in the fine print where you can't find it.

7. I regret that the fines appear far too low to act as a deterrent against habitual breakers of the law. HK\$100,000 is fairly minimal for a commercial organisation. The fine should be based on an offence PER MESSAGE sent. I.e: at \$5,000 per message, 100 messages would be \$500,000, etc. This would provide a proper deterrent against unscrupulous organisations.

To summarise:

- A major weakness of the UEM Bill is its application and enforcement against offshore marketing organisations. Therefore local network providers must be co-opted into applying the provisions and must NOT be allowed to escape this duty if the application of the UEM Bill is to be effective.

- Rather than "opt-out" via "do-not-call" registers, telephone/fax subscribers should "opt-in" to a public directory IF they wish to receive marketing calls/faxes, otherwise they are PRESUMED not to wish to receive such calls AND their numbers remain SECRET and ex-directory. Similarly, email addresses should not be recorded in a public "do-not-call" register. This would be a disaster for spamming on a horrendous scale.

- Fines should be based on number of illegal messages sent, with a minimum of \$5,000 per message.

Yours faithfully,
Paul Gardiner

