

工商及科技局
通訊及科技科

香港中環花園道
美利大廈一至二樓



CB(1)175/06-07(01)
COMMUNICATIONS
AND TECHNOLOGY BRANCH
COMMERCE, INDUSTRY
AND TECHNOLOGY BUREAU
1/F-2/F Murray Building
Garden Road
Central, Hong Kong

本局檔號 OUR REF : CTB(CR) 7/5/18 (06)
來函檔號 YOUR REF : CB1/BC/4/05
電 話 TEL. NO. : 2189 2210
傳 真 FAXLINE : 2511 1458
電子郵件 E-mail Address: tyyli@citb.gov.hk

By Fax
(Fax No. 2121 0420)

26 October 2006

Ms Anita SIT
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms SIT,

Bills Committee on Unsolicited Electronic Messages Bill

Third Meeting on 10 October 2006

I refer to your Wong Siu-ye's letter on 16 October 2006.

Our response to the issues set out in paragraph 2 of the minutes of the above meeting is as follows.

(a) Calling Name Display Service

At present, calling name display service, as a value-added service, is supported by three local fixed network operators individually. However, such service is only available for intra-network calls, i.e. within their own network. No fixed network operator is providing the calling name display service across networks.

We also understand that the calling name display service is not defined in the common Global System for Mobile Communications (GSM) standard. No mobile operator in Hong Kong is providing or considers to provide such service. Thus, it is not feasible to impose this feature as a mandatory requirement for sending unsolicited electronic messages via telecommunications networks.

(b) Transactional or relationship messages

As prescribed in clause (2), “commercial electronic message” is defined as an electronic message the purpose or one of the purposes of which is to promote or advertise goods or services or the supplier in the course of or in the furtherance of any business. Therefore, a pure transactional or service-related message (e.g. an invoice or bill or welcome message) without any promotional/advertising elements, or any inducement for further business, will not amount to a “commercial electronic message” under the Bill. If these types of messages are excluded from the application of the Bill, they may be exploited for sending promotional/advertising messages without the need to fulfil the obligations under Part 2 of the Bill.

(c) Messages to be covered by the Bill

Whether or not an electronic message will fall within the definition of “commercial electronic message” will depend on the facts of the particular case, in particular the purpose(s) of the message. If the message contains any commercial element in the sense described in the definition of “commercial electronic message”, it is likely to be covered by the Bill.

For promotional materials on websites, they are uploaded onto the Internet for public access. As websites are displayed in response to requests made by viewers (e.g. by entering an Internet Protocol address or a domain name, or by clicking a hyperlink on a webpage), we do not intend to cover website traffic under the Bill. We will consider if further clarification is necessary to exclude such type of activity from the scope of the Bill.

(d) Company logo containing slogan

Please refer to our response in first part of paragraph (c) above. We will consider further views from Members.

(e) The concept of “unsolicited” in the Bill

The concept of “unsolicited” can be regarded as “without consent” of the recipient. The meaning of “consent” has already been provided in clause 5. As explained in the Bills Committee meeting, unsolicited commercial electronic messages can be sent under the proposed opt-out regime until the recipient refuses to further receive such message. We do not see how further strengthening this term could help to combat spam e-mail under the proposed opt-out regime and would be pleased to discuss further with Members.

(f) Roaming service charges

If a recipient uses the roaming service provided by his mobile operator, whether or not roaming charges will be incurred in the circumstance that the call is not answered will depend on how the recipient has configured the call forward/diversion services. Different scenarios are set out in **Annex A** for reference.

In the event that a recipient uses a third party ‘roaming’ service which is not offered by his mobile network (such as International Call Forward service), charges may be incurred when a roamed call is ringing on a roamed mobile phone, subject to the actual contractual arrangement for this service.

(g) Television and radio advertisements

Advertisements on TV are part of the television programme services regulated under the Broadcasting Ordinance and hence would be excluded

from the application of the Bill by virtue of Item 3 of Schedule 1. Similarly, advertisements on radio are part of the sound broadcasting services under the Telecommunications Ordinance and hence would be excluded from the application of the Bill by virtue of Item 4 of Schedule 1.

Our response to other views submitted to the Bills Committee is appended at **Annex B**.

Yours sincerely,



(Tony Li)
for Secretary for Commerce,
Industry and Technology

c.c. DG Tel (Attn: Mr T F SO)	Fax No. 2116 3334
D of J (Attn: Mr Jeffery Gunter)	Fax No. 2869 1302
Ms Leonora IP)	Fax No. 2845 2215

Roaming Charge Arrangements

Scenario	Effect/ Roaming Charge
<p>1. The user has arranged call forward/diversion to another number or a voicemail number in Hong Kong.</p> <p>The roamed call is not answered or the line is busy (including the user rejecting a call).</p>	<p>The call will be forwarded to the preset number or the voicemail number in Hong Kong. Roaming charges will be incurred for both the call from Hong Kong to overseas and the forwarded call from overseas to the preset number or the voicemail number in Hong Kong.</p>
<p>2. The user has arranged call forward/diversion to another number or a voicemail number in Hong Kong.</p> <p>The mobile phone is turned off or is outside the coverage of the network whilst overseas.</p>	<p>The call will be forwarded to the preset number or the voicemail number in Hong Kong. No roaming charge will be incurred.</p>
<p>3. The user has not made or has cancelled the call forward/diversion arrangement.</p> <p>The roamed call is not answered or the line is busy (including the user rejecting a call).</p>	<p>The call will not be forwarded to any number in Hong Kong. No roaming charge will be incurred.</p>
<p>4. The user has not made or has cancelled the call forward/diversion arrangement.</p> <p>The mobile phone is turned off or is outside the coverage of the network whilst overseas.</p>	<p>The call will be forwarded to operator-supplied voicemail system automatically as local call. No roaming charge will be incurred.</p>