

**立法會**  
**Legislative Council**

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**Panel on Information Technology and Broadcasting**

**Meeting on 17 March 2006**

**Background brief on proposals to contain the problem of  
unsolicited electronic messages**

**Introduction**

The development of information and communications technology has offered enormous potentials to expand business opportunities, increase efficiency and facilitate information dissemination. Nevertheless, the convenient distribution of information through the electronic medium has given rise to the problem of unsolicited electronic messages (UEMs) which may take the form of emails, promotional messages sent via short messaging service (SMS) and multi-media messaging service (MMS), fax and voice mails.

**Action taken by the Administration**

Public consultation

2. On 25 June 2004, the Office of the Telecommunications Authority (OFTA) issued a consultation paper on "Proposals to contain the problem of unsolicited electronic messages" with a view to ascertaining the size of the UEM problem and soliciting views from stakeholders on how the problem should be tackled. The consultation ended on 25 October 2004 and 42 submissions were received.

3. Having examined the submissions, the Administration has come to the conclusion that at present, fax and emails are the main problem areas. It has also pointed out that although UEMs transmitted through SMS and MMS are not yet a major nuisance, they may become a bigger problem if the costs for transmitting such messages come down in future.

## "STEPS" campaign to tackle the problem of UEMs

4. Subsequently, on 24 February 2005 the Administration announced the launch of a campaign entitled "STEPS" to fight UEMs in collaboration with the industry and the community. The campaign embodies a multi-pronged approach :

- "S" - Strengthening existing regulatory measures in conjunction with relevant industry associations and service providers in the areas of fax, SMS and MMS;
- "T" - Technical solutions to deal with spamming;
- "E" - Education to raise the level of awareness;
- "P" - Partnership in terms of the development of a common blacklist to filter spam at the local Internet Service Provider (ISP) level and global partnership; and
- "S" - Statutory measures involving the enactment of anti-spam legislation.

## Proposal to introduce anti-spam legislation

5. Having regard to overseas practice and having sought the views of representative stakeholders from March to June 2005, the Administration has drawn up the guiding principles and the key aspects of the framework for the proposed anti-spam legislation.

6. The proposed legislation will only regulate UEMs of a commercial nature and will cover all forms of electronic messages including emails, faxes, SMS/MMS and voice/multi-media messages generated by automated means. The proposed legislation will be applicable to the act of sending the UEM, if the initiator of the UEM, or an agent of the initiator of the UEM commissioned to send the UEM, is physically in Hong Kong. On the right of recipients, the Administration has proposed to adopt an "opt-out" regime. Three groups of spamming activities, ranging from undermining the proposed "opt-out" regime, techniques to maximize the reach for potential recipients, to activities undertaken with serious criminal intent, will be made criminal offences subject to levels of penalty commensurate with their severity.

## **Major issues considered by Members**

### Discussion at the Panel on Information Technology and Broadcasting

7. The Panel has been briefed on the outcome of the consultation exercise and the "STEPS" campaign, as well as the proposed legislative framework in

March and July 2005 respectively. While welcoming the Administration's multi-pronged approach to tackle UEMs, members raised a number of concerns.

*Proposed anti-spam legislation*

8. Some members enquired about the effectiveness of the proposed legislation in view of the extra-territorial nature of the spamming problem and the fact that many spam messages originated from overseas. The Administration considered that the enactment of anti-spam legislation would be effective in tackling the problem because most of the spamming by faxes and voice messages generated by automated machines received in Hong Kong actually originated locally. It would also prevent Hong Kong from becoming a safe haven sheltering illicit spammers and would strengthen co-operation with overseas jurisdictions with similar legislation in the investigation and enforcement work against spammers. The Administration would monitor overseas experience and examine carefully the issues of enforceability and reciprocity in considering whether extra-territorial jurisdiction should be provided for in the proposed anti-spam legislation.

9. Noting that one of the guiding principles for the proposed legislation is that the freedom of speech and expression must not be impeded, some members were concerned how this principle would be given effect, and whether there will be express provisions in the bill to safeguard such freedom. The Administration was also urged to ensure that only UEMs of a commercial nature should be regulated, while other non-commercial communications from political parties and Government-to-citizen communications should not be subject to the proposed legislation.

10. In view of the possible implications of the proposed anti-spam legislation on freedom of expression and on the business operations of small and medium enterprises (SMEs) which might rely quite heavily on the electronic means to promote their products and services, some members considered it important that the Administration should seek the views of human rights organizations and SMEs on the legislative proposals.

*Other non-statutory measures*

11. There is a recent trend that some direct marketing companies choose to configure the interactive voice response system (IVRS) to dial the telephone numbers of potential customers, play the pre-recorded voice messages to promote their products or services, and seek the potential customers to respond for follow up. Members were concerned about the nuisance caused by such unsolicited calls, especially since the call recipients would incur airtime charges if they answered the calls on their mobile phones on local or roaming networks.

12. While noting the Administration's intention to cover IVRS-generated unsolicited calls in the proposed anti-spam legislation, members exchanged views with the Administration on other options to contain the problem of

IVRS-generated spamming, such as the feasibility of adopting a "calling party pays" charging formula, or revising the existing settlement arrangements for interconnection charges between fixed and mobile network operators so as to discourage direct marketing companies from making calls indiscriminately from their fixed telephone lines. On the need for additional regulatory measures, members noted that OFTA had initiated discussions with both fixed and mobile operators with a view to developing an industry Code of Practice to regulate automatically generated promotional calls.

#### Discussion at Council meetings

13. The subject of spamming received ongoing attention by Members. Questions have been raised from time to time at Council meetings on issues such as statutory measures and/or industry self-regulation to prevent email spamming, junk faxes and unsolicited advertisements via fax or other electronic medium.

14. At the Council meeting held on 29 June 2005, Members passed a motion on enhancing the regulation of commercial marketing practices urging the Administration to, inter alia, establish a system for blocking promotional calls, define the term "spam" and consider requiring telecommunications companies to provide customers with services to filter spam promotional calls or short messages.

#### **Latest development**

15. Taking into account the views expressed by Members and the latest developments in anti-spam legislation in other jurisdictions, the Administration issued a consultation paper on 20 January 2006 to seek community's views on its detailed legislative proposals to contain the problem of UEMs. The consultation paper has been circulated vide LC Paper No. CB(1)1071/05-06(03). The Administration has indicated that it aims to introduce the Bill into LegCo within 2006.

16. The Panel will discuss the proposals with the Administration and deputations at the meeting to be held on 17 March 2006.

#### **Relevant papers**

17. A list of relevant papers is at **Appendix I**.

## List of relevant papers

Committee	Paper	LC Paper No.
Meeting of Panel on Information Technology and Broadcasting on 14 March 2005	<ul style="list-style-type: none"> <li>✧ Consultation paper on "Proposals to contain the problem of unsolicited electronic messages" on 25 June 2004</li> <li>✧ Administration's paper : "Proposals to contain the problem of unsolicited electronic messages"</li> <li>✧ Press release on "Government to Take "STEPS" against Spamming" on 24 February 2005</li> <li>✧ Minutes of meeting</li> </ul>	<p>CB(1)2316/03-04</p> <p>CB(1)1052/04-05(06)</p> <p>CB(1)1005/04-05(01)</p> <p>CB(1)1197/04-05</p>
Council meeting on 29 June 2005	<ul style="list-style-type: none"> <li>✧ A motion moved by Hon CHAN Kam-lam on enhancing the regulation of commercial marketing practices was passed with amendment</li> <li>✧ Hansard of meeting</li> </ul>	<p>--</p> <p>--</p>
Meeting of Panel on Information Technology and Broadcasting on 11 July 2005	<ul style="list-style-type: none"> <li>✧ Administration's paper : "Draft framework of proposed anti-spam legislation"</li> <li>✧ Background brief on proposals to contain the problem of unsolicited electronic messages</li> <li>✧ Minutes of meeting</li> </ul>	<p>CB(1)1985/04-05(01)</p> <p>CB(1)1978/04-05</p> <p>CB(1)2275/04-05</p>