

立法會

Legislative Council

LC Paper No. LS97/06-07

**Paper for the House Committee Meeting
on 22 June 2007**

**Further Report by Legal Service Division on
Unsolicited Electronic Messages Regulation (L.N. 108)
gazetted on 8 June 2007**

The above Regulation is made under the Unsolicited Electronic Messages Ordinance (9 of 2007) to supplement the rules for the sending of commercial electronic messages. In the report of the Legal Service Division (LSD) for the House Committee meeting on 15 June 2007 on the above Regulation (LC Paper No. LS89/06-07), it was reported that clarification on certain technical matters was being sought from the Administration and that LSD would make a further report upon receipt of the Administration's reply. LSD has further written to the Administration to enquire whether the industry has been consulted on the above Regulation.

2. The Administration has since given its reply which is summarised below:

(a) Definition of "SMS message"

SMS messages are among the various types of commercial electronic messages to which the Regulation apply. Under the Regulation, "SMS message" is defined to mean "a text message using the short message service as defined in the Global System for Mobile Communications (GSM) or any similar short message service". In response to LSD's enquiry on whether the definition of "short message service" under GSM should be incorporated into the definition of "SMS message" for the sake of clarity, the Administration has explained that the definition of "short message service" in GSM refers to the technical specifications specified in the two technical documents of GSM adopted by the

telecommunications industry.¹ These documents, which may be updated from time to time in view of technological development, provide for detailed technical specifications of SMS, including format, service elements, network architecture, functionalities, etc. Since the purpose of defining “SMS message” in the Regulation is to facilitate the identification of the type of text messages sent to a telephone number for the purpose of prescribing specific requirements under the Regulation which are applicable to such messages and given that any changes to the technical specifications would be technical in nature and hence would not change the essence of SMS messages as understood by telecommunications service providers as well as senders and recipients of commercial electronic messages, the Administration considers that it is not necessary to incorporate a technical definition of “short message service” under GSM into the definition of “SMS message” under the Regulation. In the event that the technological standards have advanced so far as to make the term “SMS message” obsolete, the definition of the term could be amended by way of amendment regulation.

(b) Requirement that an unsubscribe facility must be “convenient to use” under section 9(3)(a)

In response to LSD’s enquiry on the circumstances under which an unsubscribe facility is considered to be convenient to use and whether such circumstances should be stipulated in the Regulation, the Administration has replied that owing to the characteristics of different technologies, the circumstances under which an unsubscribe facility is considered to be “convenient to use” would vary from one type of electronic message to another. Accordingly, the Administration considers that it is not possible to provide an exhaustive list of circumstances in the Regulation which can apply to all types of electronic messages. Nevertheless, the Telecommunications Authority will give some examples in the codes of practice for each type of electronic message for reference by senders of commercial electronic messages to assist them in complying with the requirement.

¹ These two documents are, namely, *GSM 03.40-Technical Realisation of the Short Message Service Point-to-Point* and *GSM 03.41-Technical Realisation of the Short Message Service Cell Broadcast*.

(c) Consultation with the industry

According to paragraph 5 of the Administration's letter of 20 June 2007 which is annexed, subsequent to the meeting of the Panel on Information, Technology and Broadcasting on 14 May 2007, the Administration has sent the draft Regulation to the major industry stakeholders and the Consumer Council for their comments. In addition to the three submissions received before the above Panel meeting, one further submission was received. According to the Administration, those four submissions are in general supportive of the principle of the Regulation. Members may refer to paragraphs 6 to 11 of the Administration's letter for details of the consultation.

3. In view of the Administration's explanation set out in paragraph 2(a) and (b) above, we have no further queries and are satisfied that there is no difficulty in the legal and drafting aspects of the Regulation.

Encl.

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20 June 2007

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20 June 2007

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Dear Miss FUNG,

**Unsolicited Electronic Messages (UEM) Regulation
(L.N. 108 of 2007)**

Thank you for your letter dated 15 June 2007.

2. Our responses to your questions are set out in the following paragraphs.

Definition of “Short Message Service” (“SMS”)

3. The technical specifications of SMS are **not** made pursuant to any international agreements. The two documents specifying the technical specifications of SMS under Global System for Mobile Communications (GSM)¹ are related to the technical requirements and transmission of the SMS messages. They are maintained and developed by the Third Generation Partnership Project, a collaboration among a number of standardisation bodies of the telecommunications industry, for

¹ The two documents are, namely, *GSM 03.40 – Technical Realisation of the Short Message Service Point-to-Point*, and *GSM 03.41 – Technical Realisation of the Short Message Service Cell Broadcast*

interoperability purposes. Therefore, the definition of “SMS message” in the Regulation would not constitute an implementation of an international agreement in local legislation, nor would it give the technical specifications the force of law in Hong Kong without undergoing the law making process.

4. The inclusion of the definition of “SMS message” in the Regulation is to facilitate the identification of the type of text messages sent to a telephone number for the purpose of prescribing specific requirements under the Regulation which are applicable to such messages in order to recognise the physical constraints of such messages (namely, the message length). Although the technical specifications of SMS may change from time to time, or even be replaced by new standards, we consider that such changes would be technical in nature that the essence of SMS messages would remain largely unchanged. Therefore, we are of the view that telecommunications service providers as well as the senders and the recipients of commercial electronic messages would understand the types of messages the definition of SMS message refers to and there should not be uncertainty or ambiguity for compliance purpose. In the event that the technological standards have advanced so far as to make the term “SMS message” obsolete, we could amend the definition by way of amendment regulation. You may recall that we have adopted a similar approach in defining “SMTP data portion” in section 24 of the UEM Ordinance.

Feedback from the Industry

5. Subsequent to the meeting of the LegCo Panel on Information, Technology and Broadcasting on 14 May 2007, we have sent the draft Regulation to the major industry stakeholders and the Consumer Council for their comments. In addition to the three submissions received before the above Panel meeting, one further submission was received. In general, those four submissions are supportive of the principle of the Regulation. Their main comments and the Administration’s responses are described below.

Definition of “Name” (Section 3)

6. A submission suggested that for clarification, the abbreviation of the name in relation to an organisation should include trade names, business names, branch names, registered trademarks or logos. Bearing in mind that the statutory requirement to provide sender names is to help the recipients to identify the senders easily, we accept that trade marks registered under the Trade Marks Ordinance (Cap. 559) that contain or consist of the name of the senders should be easily recognised by the recipients as well as allowing the law enforcement agencies to identify the senders. We have therefore accepted registered trade marks containing or consisting of the name under which the business of that sending organisation is carried on as equivalent to the name of the sending organisation for the purpose of complying with the UEM Ordinance. However, we are of the view that branch names or logos of a business could be changed readily by the sending organisation and the recipient may not be familiar with them. Therefore, we have not accepted them as equivalent to the names of the sending organisation for the purpose of compliance with the UEM Ordinance.

Definition of “Address” (Section 3)

7. A submission suggested that the “usual place of business” should also include e-mail address or web address because some businesses may not have a physical shop or office, and thus it is unnecessary to include both the address and e-mail address in the same commercial electronic message as required under section 5 of the Regulation. We consider that provision of physical address is essential for the law enforcement agencies to locate the sender in order to undertake investigation or enforcement action when necessary. E-mail addresses and web addresses may be changed by the sending organisation readily and could not serve the same purpose as the physical address for law enforcement purposes. Therefore, we are of the view that a physical address is necessary and have not accepted the suggestion.

Content of Sender Information of SMS Message (Section 5)

8. A submission proposed that in the light of the inherent length constraint of SMS messages, sender information should not be required to be provided in the main text of the message if the sender name or other information required by the UEM Ordinance can be seen or found in other parts of the message, such as in the “sender address field” of an SMS message. Noting that the information contained in the “sender address field” will be displayed to the recipient together with the main text of the message, and that there is a constraint of message length for SMS messages, we accept that so long as any information attached to a commercial electronic message sent by SMS is displayable, there is no need to repeat them in the main text of the SMS message. The definition of “commercial electronic message” in relation to an SMS message, as set out in section 3, gives effect to this arrangement.

Presentation of Information (Section 8)

9. A number of submissions are concerned with our proposal to impose a requirement on the positioning of the sender information and statement on unsubscribe facility in the message, i.e. at the beginning of the message, arguing that this would limit their creativity in telemarketing message, or was not in accordance with the normal practice elsewhere. Their concern was on text messages, particularly e-mail message and SMS message, which recipients could “scroll” back and forth readily to locate the information. They agreed that this information positioning requirement is indeed necessary for pre-recorded voice or video telemarketing message, which the recipient must listen to or view sequentially without the ability to “scroll” the message.

10. The purpose of this proposal is to facilitate the recipient to learn of the sender information and statement on unsubscribe facility quickly. Having further considered the industry’s views, the nature of text messages and the international best practices, we agree to reduce the scope of application of the requirement on the positioning of such information to pre-recorded voice and video calls only at this initial stage. If it is found in future that there is a need to extend the requirement to other types of electronic messages, we could amend the Regulation speedily. We

understand that the Consumer Council has no objection to this arrangement.

Conditions relating to Unsubscribe Facility (Section 9)

11. A submission proposed to allow the sender to provide a webpage hyperlink as the unsubscribe facility. The Regulation imposed a general requirement that at least one of the unsubscribe facilities is capable of receiving an unsubscribe request submitted by the recipient through the same apparatus, equipment or service that received the message. This requirement ensures that the recipient could readily use the same device or service for opting out of receiving further messages received by that device or service. Because SMS messages are generally not part of the mobile package subscribed by mobile phone users, the Regulation requires that commercial electronic messages sent as SMS messages should provide Hong Kong telephone numbers capable of receiving unsubscribe requests made orally or by entering key inputs on a telephone, so as to enable the recipients to send unsubscribe requests without incurring expenses for sending SMS messages. So long as those requirements are met, the sender are free to provide any other types of unsubscribe facility, including the provision of hyperlinks as the unsubscribe facility.

Yours sincerely,



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