

For information  
on 14 May 2007

**Legislative Council Panel on  
Information Technology and Broadcasting**

**Proposed Regulation under the Unsolicited Electronic Messages Bill  
On Sender Information and Unsubscribe Facility  
in Commercial Electronic Messages**

**Purpose**

This paper briefs Members on the proposed regulation to be made shortly after the passage of the Unsolicited Electronic Messages Bill (UEM Bill) on sender information and unsubscribe facility in commercial electronic messages.

**Background**

2. The Bills Committee for the UEM Bill has largely completed its scrutiny of the Bill. We are planning to seek resumption of the Second Reading Debate for the UEM Bill on 23 May. Clause 56 of the UEM Bill provides that the Secretary for Commerce, Industry and Technology (SCIT) may make regulations, among others, for the purposes of any provision of the UEM Bill that contemplates or authorizes the making of regulations with respect to any matter.

Sender Information

3. Clause 7 of the UEM Bill (**Annex A**) requires a commercial

electronic message to contain clear and accurate information identifying the individual or organisation who authorized the sending of the message, and how the recipient can readily contact that individual or organisation. To enable the prescription of detailed requirements taking into account the characteristics of different forms of electronic messages, Clause 7(1)(c) of the UEM Bill provides that a commercial electronic message must also include such information and complies with such conditions as specified in any regulations.

### Unsubscribe Facility

4. Clause 8 of the UEM Bill (**Annex B**) prescribes the general requirements for a commercial electronic message which must provide an unsubscribe facility to enable the recipient to send an unsubscribe request to the individual or organisation who authorized the sending of the message. In particular, Clause 8(1)(b) requires that the statement that describes the unsubscribe facility must be presented in a clear and conspicuous manner. Furthermore, Clauses 8(1)(c) to 8(1)(e) prescribe the basic requirements of the unsubscribe facility, including the period for which such facility should be capable of receiving unsubscribe requests and that the recipient should be able to send an unsubscribe request free of any charge to the recipient for the use of the unsubscribe facility. To allow for more detailed requirements to be prescribed, the proposed Clauses 8(1)(ba) and 8(1)(bb) make clear that the statement on unsubscribe facility and the unsubscribe facility itself should also comply with any conditions as specified in the regulations.

### **Proposed Regulation**

5. We propose that SCIT should make the Unsolicited Electronic Messages Regulation (UEM Regulation) under Clause 56 of the UEM Bill shortly after the passage of the Bill in order to prescribe

more detailed information or conditions for the purpose of Clauses 7(1)(c), 8(1)(ba) and 8(1)(bb) of the UEM Bill. The key proposals are set out in the following paragraphs.

#### Content of Sender Information

6. We propose that the name, the physical address (i.e. usual place of business) and the contact electronic address (e.g. telephone number, e-mail address etc.) of the individual or organisation authorizing the sending of a commercial electronic message should be contained in the message. However, in view of the inherent message length constraint, we propose that text messages sent through Short Messaging Service (SMS) can be exempted from containing the physical address.

#### Language of Sender Information and Statement on Unsubscribe Facility

7. We propose that the sender information described in paragraph 6 above and the statement on unsubscribe facility should be presented in both Chinese and English. However, if the recipient has previously indicated his preference for a particular language to the individual or organisation which authorized the sending of the message, the sender information and the statement on unsubscribe facility could be presented in the preferred language only. If the name or address of the party who authorized the sending of the message is solely in Chinese or English, then it may be presented in that language only.

#### Presentation of Sender Information and Unsubscribe Facility

8. We propose that the sender information in paragraph 6 above and the statement on unsubscribe facility should be given at the beginning of the message so as to facilitate the recipient to learn of such information before reading the message itself. However, to obviate the need for recipients to listen to or read the potentially long physical address and

electronic address information in a the message sent as a voice, sound or video message to telephone numbers, we propose that the sender may choose to present only the name in the message, but to allow the recipient to press a key on the telephone for access to the address and contact electronic address. Furthermore, for such voice, sound or video messages sent to telephone numbers, we propose that the statement on unsubscribe facility should come immediately after the presentation of the name of the individual or organisation that authorized the sending of the message. In this way, a recipient should be able to learn quickly who has called and how to send unsubscribe messages.

#### Conditions for Unsubscribe Facility

9. We propose to require that an unsubscribe facility must be capable of being used conveniently and readily by recipients to make unsubscribe requests. This should prevent unscrupulous senders from making such facility difficult to use or of insufficient capacity to handle the potential unsubscribe requests. The Office of the Telecommunications Authority (OFTA) will give further guidance on how to comply with this requirement in a Code of Practice to be published after the passage of the UEM Bill and the making of the UEM Regulation. We also propose that the unsubscribe facility itself should not contain any commercial electronic messages.

10. We propose that the party who authorised the sending of a commercial electronic message should provide at least one unsubscribe facility which is capable of receiving an unsubscribe request submitted by the recipient through the same apparatus, equipment or service that received the message (e.g. for an Internet e-mail message, one of the unsubscribe facilities should be through the Internet, whether by an Internet e-mail address or by an Internet website). However, for commercial electronic messages sent as SMS messages, we propose that a Hong Kong telephone number capable of receiving unsubscribe

requests made orally or by entering key inputs on a telephone should be provided as an additional unsubscribe facility. This would ensure that the recipient would not incur additional charges by being forced to use SMS services to send the unsubscribe request.

### Timing of Commencement

11. The UEM Regulation should come into operation at the same time as Clauses 7 and 8 of the UEM Bill. The exact date of commencement would depend on the date of passage of the UEM Bill, the period of time allowed for businesses involved in telemarketing activities to upgrade their systems to comply with the UEM Bill, and the progress of development of the do-not-call register systems by OFTA. We aim to commence the UEM Regulation towards the end of 2007 and SCIT will appoint such a date in due course by notice in the Gazette.

### **Feedback of Industry Associations**

12. In early April, we have sent our proposals to a number of representative industry associations to seek feedbacks on the practicability and acceptability of the above proposals. So far, two telemarketing associations have provided specific comments. Both supported the majority of the proposals. Their only reservation is on the requirement to provide sender information and the statement on unsubscribe facility at the beginning of the message (paragraph 8 above). They consider that such requirements would limit the marketers' creativity and it should be sufficient to require the information to be presented in the message.

13. We understand their concern. However, we consider that the proposed UEM Regulation should give priority to measures that facilitate the recipients to identify the parties who authorized the sending

of the message and the way to send unsubscribe requests to them. Furthermore, for pre-recorded voice, sound or video messages, where a recipient cannot just “browse” through the message easily to look for such information, there is a need to ensure that those basic sender and unsubscribe information is presented first so that the recipient could make a choice early.

### **Way Forward**

14. After considering Members’ views, we will finalise our proposal and, subject to the passage of the UEM Bill, invite SCIT to make the UEM Regulation. We hope that the negative vetting process for the UEM Regulation could be completed before the summer recess of the Legislative Council, so that we could include the requirements in the UEM Regulation in our guidelines and publicity materials for the telemarketing industry and the community on compliance with the UEM Bill and UEM Regulation and launch them as quickly as possible to allow sufficient time for senders of commercial electronic messages to prepare for the commencement of the opt-out regime in the UEM Bill.

**Communications and Technology Branch**  
**Commerce, Industry and Technology Bureau**  
**7 May 2007**

**7. Commercial electronic messages must include accurate sender information**

(1) A person shall not send a commercial electronic message that has a Hong Kong link unless –

- (a) the message includes clear and accurate information identifying the individual or organization who authorized the sending of the message;
- (b) the message includes clear and accurate information about how the recipient can readily contact that individual or organization;
- (c) the message includes such information and complies with such conditions as is or are specified in the regulations, if any; and
- (d) the information included in the message in compliance with this subsection is reasonably likely to be valid for at least 30 days after the message is sent.

(2) Subsection (1) does not apply if the person –

- (a) sent the commercial electronic message by mistake; or
- (b) did not know, and could not with reasonable diligence have ascertained, that the message had a Hong Kong link.

**8. Commercial electronic messages must contain unsubscribe facility**

(1) A person shall not send a commercial electronic message that has a Hong Kong link unless –

- (a) the message includes –
  - (i) a statement to the effect that the recipient may use an electronic address or other electronic means specified in the message (“the unsubscribe facility”) to send an unsubscribe request to the individual or organization who authorized the sending of the message; or
  - (ii) a statement to similar effect;
- (b) the statement is presented in a clear and conspicuous manner;
- (ba) the statement complies with such conditions as are specified in the regulations, if any;
- (bb) the unsubscribe facility complies with such conditions as are specified in the regulations, if any;
- (c) if the unsubscribe facility is a telephone number or facsimile number, it is a number allocated or assigned by the Authority;
- (d) the unsubscribe facility is reasonably likely to be capable of receiving the recipient’s unsubscribe request, if any, at all times during a period of at least 30 days after the message is sent; and

(e) the unsubscribe request may be sent by the recipient free of any charge to the recipient for the use of the unsubscribe facility.

(2) Subsection (1) does not apply if the person –

(a) sent the commercial electronic message by mistake; or

(b) did not know, and could not with reasonable diligence have ascertained, that the message had a Hong Kong link.

(3) A person to whom an unsubscribe request is sent under this section shall ensure that a record of the request is retained in the format in which it was originally received, or in a format that can be demonstrated to represent accurately the information originally received, for at least 3 years after its receipt.

(4) In this section, “unsubscribe request” (取消接收要求), in relation to a commercial electronic message the sending of which is authorized by an individual or organization, means –

(a) a message to the effect that the registered user of the electronic address to which the message is sent does not wish to receive, at that electronic address, any further commercial electronic messages from or authorized by that individual or organization; or

(b) a message to similar effect.