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Panel on Information Technology and Broadcasting

Meeting on 11 July 2005

**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. Having regard to the views received during consultation and recent developments, the Administration announced on 24 February 2005 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.

Major issues raised by Members

Discussion at the Panel on Information Technology and Broadcasting

5. The Panel received a briefing on the outcome of the consultation exercise and the "STEPS" campaign proposed by the Administration. While welcoming the Administration's multi-pronged approach to tackle UEMs, members raised a number of concerns.

Proposed legislation

6. Regarding the Administration's proposal to introduce local anti-spam legislation, some members enquired about its effectiveness in view of the extra-territorial nature of the problem and the fact that many spam mails originated from overseas. The Administration nevertheless advised that the enactment of anti-spam legislation would prevent Hong Kong from becoming a safe haven sheltering illicit spammers. It would also strengthen co-operation with overseas jurisdictions with similar legislation in the investigation and enforcement work against spammers. Given that anti-spam legislation had only been introduced recently in other jurisdictions, the Administration would monitor developments, including the outcome of overseas court cases, closely.

7. Another concern was the need to ensure that the enactment of anti-spam legislation would not hamper the free flow of information and genuine marketing activities. The Administration assured members that it was mindful of the need to strike a reasonable balance between the interests of various stakeholders when formulating its legislative proposal. It will brief the Panel on the draft legislative framework before proceeding to draft the bill.

Junk fax

8. The Panel discussed with the Administration the severity of the problem of junk fax and possible measures to deal with the problem. Members noted the Administration's plan to strengthen industry co-operation whereby the fixed network operators would penalize advertisers who continued to spam recipients on the "not-to-call" list for fax by reducing the timeframe required to cut off their access to telecommunications services, which was their means to send out fax advertisements. The Administration would also consider including unsolicited fax in the proposed definition of "electronic messages" in the anti-spam legislation.

Spamming arising from the use of Interactive Voice Response System (IVRS) technology

9. There is a recent trend that some direct marketing companies choose to configure the IVRS system 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.

10. In this connection, the Panel noted the Administration's intention to cover IVRS-generated unsolicited calls in the proposed anti-spam legislation. On whether the legislation should only target at calls of a commercial nature, the Administration would continue consultation with stakeholders and make reference to overseas practice.

11. Members also 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

12. 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 regulation to prevent email spamming and junk faxes and unsolicited advertisements via fax or other electronic medium.

13. 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 position

14. After consultation with different stakeholders, the Administration will report the overall legislative framework to regulate spamming to the Panel at its meeting in July 2005.

Council Business Division 1
Legislative Council Secretariat
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