

Bills Committee on Unsolicited Electronic Messages Bill

Administration's Response to the Outstanding Issues

(Position as at 12 March 2007)

31 October 2006 and February 2007

Person-to-person interactive telemarketing calls (clauses 7 and 12) and
Committee Stage Amendments proposed by Hon. WONG Ting-kwong

Consistent with our position when the Bill was first introduced into the Legislative Council, we do not subscribe to the view that the Bill, or any part of it, should apply to person-to-person interactive telemarketing calls at this juncture. We consider that the Bill should aim to strike the right balance between respecting the rights of recipients and allowing the development of legitimate electronic marketing in Hong Kong. According to the Office of the Telecommunications Authority (OFTA) which monitored 200 telephone accounts set up by them over the past three months, on average, there is less than one person-to-person interactive telemarketing call received per month on each telephone account. It may be somewhat less than what we personally experience. Since those telephone accounts do not relate to any personal data, we believe that the majority of person-to-person interactive telemarketing calls we experience are likely related to the use of personal data for telemarketing purpose. The use of personal data in direct marketing is already regulated under section 34 of the Personal Data (Privacy) Ordinance (PDPO), under which the data subject can request the data user to stop using his personal data for such purpose. In view of the small number of person-to-person interactive telemarketing calls not involving personal data at present, we do not consider it justified to apply the Bill to person-to-person interactive telemarketing calls. We will continue to monitor the problem of such calls to assess if they warrant regulation under the Bill in future.

2. On the Committee Stage Amendments (CSAs) proposed by the Hon. WONG Ting-kwong, in view of –

- (a) the serious concern expressed by the telemarketing industry in their submissions that the proposed CSAs would have substantial adverse impact on the operation of the telemarketing industry;
- (b) the small number of person-to-person interactive telemarketing calls not involving personal data at present; and
- (c) person-to-person telemarketing calls involving personal data are already regulated under PDPO,

we do not support the amendments proposed by the Hon. WONG Ting-kwong for applying certain provisions of the Bill to some of the person-to-person interactive telemarketing calls at this juncture.

6 March 2007

Enforcement

3. The membership list of OFTA's Telecommunications Users and Consumers Advisory Committee is at **Annex A**.

Do-not-call registers

4. The information on the size of the do-not-call registers (in terms of actual number of telephone numbers and percentage of the total telephone numbers in use) in the United States and the United Kingdom is at **Annex B**.

Powers of entry, search, arrest, etc (clause 37)

5. In the light of the suggestion of the Bills Committee, we agree to include a provision modelled on section 25(7) of the Broadcasting Ordinance (Cap. 562) along the line that the authorized officers should, upon request, produce the search warrant for inspection.

Appeal Board established (clause 43)

6. Our research confirmed with the research undertaken by the Legal Service Division of the Legislative Council that, as far as appointments of chairmen, deputy chairmen or members of statutory appeal bodies are concerned, other than general legal or professional qualifications, no appointment criteria are set out in law. However, in respect of actual hearings or selection of appeal board members for individual hearings, some legislation, such as the Urban Renewal Authority Ordinance (Cap. 563), explicitly prescribes how potential conflict of interest should be avoided. Taking into account the nature and operation of the appeal board to be set up under the Bill, we have no objection to include similar provisions therein.

7. We agree to the Members' suggestion to specify the maximum tenure of the panel members in the Bill. We propose to suitably amend clause 43(4) to prescribe that the term of the panel members should not be more than 3 years, which is the same as that of the Chairman and Deputy Chairman.

Application of the Bill to the Government

8. We have conducted a survey among Government bureaux and departments on which of them send out electronic messages to the public. Among the 69 bureaux and departments surveyed, 19 of them send out electronic messages to the public regularly in order to carry out or promote their work. We understand that the electronic messages sent by these

Government bureaux or departments which might fall within the definition of “commercial electronic message” are mostly newsletters or other information about events or educational resources, usually sent in response to subscription or to a clearly defined group of recipients (e.g. schools) which may be interested in those events or educational resources. The bureaux and departments will stop sending such messages should the recipients so request. We are not aware of such messages becoming a cause of complaint by recipients. We therefore do not consider such activities amount to “spamming” that should be regulated under the Bill. Hence, we maintain our view that the Bill should not apply to the Government. Nevertheless, to ensure that the way in which bureaux and departments send electronic messages to the public would be on par with the best practice, we will, upon passage of the Bill, promulgate guidelines to all Government bureaux and departments requesting them to follow the requirements of the Bill.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
13 March 2007

Annex A

**Membership of the
Telecommunications Users and Consumers Advisory Committee**

Chairman: Deputy Director-General of Telecommunications Authority

Members: One representative from each of the following organisations:

- Consumer Council
- Communications Association of Hong Kong
- Hong Kong Telecommunications Users Group
- Hong Kong General Chamber of Commerce
- Hong Kong Wireless Technology Industry Association

One representative from each of the following sectors:

- the disabled
- the aged

One representative from each of the following departments:

- Social Welfare Department
- Education and Manpower Bureau
- Office of the Government Chief Information Officer

Ten members of the public

Two members appointed on an ad personam basis (e.g. academics, specialists, etc)

Annex B

Size of Overseas Do-not-call (DNC) Registers

Country	Number of Telephone nos. Listed in the DNC Register	Number of Telephone nos. in Use	Percentage of Telephone nos. Listed in the DNC Register
United States	110 million	342 million	32.2%
United Kingdom	10.5 million	95 million	11.1%