

Bills Committee on Unsolicited Electronic Messages Bill

Administration's Response to the Issues Raised at the Bills Committee Meeting on 14 March 2007

Telecommunications Users and Consumers Advisory Committee (TUCAC)

The names of the non-official members of the TUCAC and the length of service of individual members are at **Annex**.

The Appointment Mechanism of TUCAC

2. The Office of the Telecommunications Authority (OFTA) noted Members' views and will consider possible refinements to the appointment mechanism of TUCAC.

Application of the Bill to the Government

3. The primary purpose of the Bill is to contain the problem of unsolicited commercial electronic messages. In line with anti-spam laws of overseas jurisdictions, we have adopted a wide definition of "commercial electronic message" in the Bill, essentially covering all promotions of products, services and organizations. However, this means that some electronic messages sent by Government bureaux and departments in order to carry out or promote their work, such as e-newsletters or other information about events or educational resources, may fall within the definition of "commercial electronic message". It is not our intention to regulate these Government messages as they are not spam.

4. As explained in the Administration's response dated 13 March 2007 (Paper No. CB(1)1124/06-07(03)), Government bureaux and departments have been following the spirit of the Bill as they generally send electronic messages to recipients who either requested to receive such messages or who do not object to receiving such messages. They will also stop sending such message should the recipients so request. We are not aware of any complaints about such Government messages becoming a source of spam for the public.

5. 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.

6. In the light of the above, we maintain our view that the Bill should not apply to the Government.

Committee Stage Amendments (CSAs) proposed by the Hon WONG Ting-kwong

7. One of the objectives of the Bill is to strike a proper balance between respecting the rights of recipients and allowing the development of legitimate electronic marketing in Hong Kong. We should avoid over-regulation in order not to affect adversely the viability of small to medium size enterprises which rely on electronic communications as a key way to promote their business. We consider that regulation of person-to-person telemarketing calls would be justified only if it causes a serious problem to the public.

8. As advised earlier, OFTA, which monitored 200 telephone accounts without associated personal data continuously from December

2006 to February 2007, revealed that, on average, there is less than 1 person-to-person telemarketing call to a telephone account every month. OFTA's continued monitoring showed the same low figure in March 2007. Therefore, we believe that most person-to-person telemarketing calls we experienced are related to the use of personal data of the recipients.

9. Person-to-person telemarketing calls which involve the use of personal data are already regulated under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). Section 34 of PDPO stipulates that data user who uses personal data for direct marketing purpose shall, on the first time he/she so uses those data, inform the relevant data subject that he/she is required to cease to so use those data if the data subject so requests. The data subject may at any time exercise his/her right to request the data user to cease to use his/her personal data for direct marketing purpose.

Enforcement Difficulties

10. As the content of person-to-person telemarketing calls could vary from call to call and usually no recording is available, upon the receipt of complaints, OFTA would have enormous difficulties in collecting sufficient evidence to ascertain whether a call would fall within the definition of "commercial electronic message" in order to follow up on such complaints from members of the public and enforce such provisions.

11. Given that the public may not be familiar with the proposed exemption for person-to-person telemarketing calls with previous or current business or client relationship, we envisage that, if the CSAs are enacted, OFTA will receive a large number of complaints about person-to-person telemarketing calls which do not provide accurate sender information or the caller display of which is concealed, irrespective of whether the recipients have any business or client relationship with the senders. OFTA has to spend substantial resources on investigating these complaints and collecting evidence. However, it is likely that most of the complaints cannot be followed up because of insufficient evidence due to

the difficulties mentioned in paragraph 10 above, or the existence of previous or current business or client relationship between the senders and the recipients. This is not desirable from the point of view of effective enforcement of the law and ensuring efficient use of resources.

12. We maintain our position that we do not support the amendments proposed by the Hon Wong Ting-kwong.

Scope of the CSAs

13. It has been clearly reflected in the Bill, the explanatory memorandum and the Legislative Council Brief that the purposes of the Bill do not include regulation of person-to-person telemarketing calls. Our legal advice is that the CSAs proposed by the Hon WONG Ting-kwong do not comply with the requirements of Rule 57(4)(a) of the Rules of Procedures of the Legislative Council¹.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
12 April 2007

¹ Rule 57(4)(a) of the Rules of Procedures stipulates that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

Annex

**Telecommunications Users and Consumers Advisory Committee
List of Non-Official Members**

Name	Sector	Number of Year of Service (as at end of March 2007)
Mr Alfred Fung	Consumer Council	2 years and 9 months
Dr Tony Seeto	Communications Association of Hong Kong	9 months
Mr Thomson Ho	Hong Kong Telecommunications Users Group	4 years and 5 months
Mr Eric Chin	Hong Kong General Chamber of Commerce	4 years and 5 months
Mr Kenny Chiu	Hong Kong Wireless Technology Industry Association	2 years and 5 months
Ms Y S Chiu	Disabled community	4 years and 5 months
Mr Timothy Ma	Aged community	5 months
Mr C L Kong	Member of the public	4 years and 5 months
Mr Bordford Kwan	Member of the public	4 years and 5 months
Mr Philip Chan	Member of the public	2 years and 5 months
Ms Tilly Leung	Member of the public	2 years and 5 months
Ms Florence Man	Member of the public	2 years and 5 months
Mr Thomas Sun	Member of the public	2 years and 5 months
Ms Elsa Cheng	Member of the public	5 months
Ms Jade Leung	Member of the public	5 months
Ms Pauline Yung	Member of the public	5 months
Mr Johnny Yeung	Member of the public	5 months
Ir W K Leung	Ad personam	2 years and 5 months