

3 October 2006

for the attention of:

The Hon. Howard Young  
Chairman  
Bills Committee  
Legislative Council

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**THE ASIA DIGITAL MARKETING ASSOCIATION'S VIEWS ON:  
"UNSOLICITED ELECTRONIC MESSAGES BILL"**

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**Summary of ADMA's Position:**

The ADMA believes that legislation is an important part of the overall solution to the problem of SPAM; however it is not the only solution. Legislation with industry adherence to strong best practices, drafted through industry associations, and supported by a technological framework is the best solution for limiting the tide of unsolicited email, faxes and automated sales calls.

ADMA would support legislation that, amongst other things, promoted an Opt-Out mechanism, as opposed to an Opt-in mechanism, and helped the consumer to better differentiate legitimate commercial communications from SPAM.

As legitimate marketers the members of the ADMA are already adhering to the following best practices:

**Notice:** A marketer will state clearly what information they collect and what they intend to do with this information, including for marketing purposes.

**Choice:** The consumer should have the right, at all times, to chose what they receive and when, and have the ability to unsubscribe from any or all communications.

**Transparency:** The marketer should be a clearly visible entity and should: "Say what they do, and do what they say".

The ADMA will support legislation that promotes, supports, and regulates activities based on these three (3) principles.

## SUMMARY OF COMMENTS ON PROPOSED LEGISLATION

### Guiding Principles

The ADMA is supportive of all six (6) of the Principles as they lay the groundwork for a legislation that is balanced and pragmatic, protecting both the consumer's right to choose, and the rights of the marketers. The ADMA is also supportive of Penalties and remedies that are proportionate to the severity of the offences, however these must be severe enough so as to act as a deterrent.

### Scope of Coverage

While the ADMA supports the fact that the legislation should cover a wide spectrum of commercial messages, we believe the definition is currently too broad, by including any message of which 'one of the purposes' is to promote goods and service etc, as in Part 1 Section 2 '**commercial electronic message**'.

This would also include newsletters whose primary purpose is to inform, but while at the same time they may carry small advertisements. We believe that the legislation should be focused on messages whose **primary purpose** is to promote and sell goods or services etc.

We also believe the proposed legislation **should** provide rights to the consumer to Opt-out of receiving **political, religious, or charitable communications** as well. Unsolicited Electronic Messages are unsolicited no matter what the content.

The ADMA is supportive of the fact that the legislation will cover any message with a 'Hong Kong link', even if it originates outside of the HKSAR, and that the Government of the HKSAR is aware of the global implications of SPAM. However we are not clear as to how any extra-territorial application will be handled and how effective they will be.

The ADMA is very supportive of the Opt-out approach as this protects the right of the consumer and at the same time does not unnecessarily impact the growth of e-marketing in Hong Kong.

The ADMA is supportive of the conditions under which unsubscribes must be provided and honored.

## AREAS OF CONCERN WITHIN THE LEGISLATION

### Consent

Under the initial proposal the Bill was to follow an **opt-out** approach, meaning a message could be sent unsolicited to a recipient but must contain full unsubscribe instructions, which must be honoured once actioned. This was deemed to be in support of SMEs in Hong Kong.

However as the bill currently stands, consent as described under Part 1 Section 5, is explicit and requires affirmative action to show it as given, in other words an **opt-in** approach.

*For the purposes of this Ordinance, the registered user of an electronic address shall be treated as having given his consent to the sending of a commercial electronic message to that electronic address if the registered user or a person on his behalf—  
(a) has, either in response to a clear and conspicuous request for consent or at his own initiative, given his consent to the sending of the message*

While the ADMA is a strong support of the consumers' right to choose the Bill is taking an approach that is in contradiction to initial discussions between CITB and the industry, and one that would hinder the growth of SMEs in Hong Kong.

### **Do not call registers**

While the Bill does not immediately call for the establishment of a Do Not Email list, the ADMA would not support its establishment as it would not only be costly to maintain and add undue financial burden to legitimate marketers, but it would also potentially provide spammers with a legitimate means to disregard the unsubscribe wishes of consumers who have not signed up to it.

If marketers are following the other areas of the legislation by honoring opt-outs then the Do Not Email Register would become irrelevant.

### **Exclusion of Hong Kong Link**

**Part 2 Section 7 2b** "except where, the person who sends the message does not know or could not with reasonable diligence have ascertained that the message has a Hong Kong link;"

The ADMA believes this exclusion is unnecessary, and could create a loophole for spammers to exploit.

### **Rights of Service Providers**

The ADMA is concerned that the legislation does not differentiate between service providers, other than telecommunication service providers, and the originators of email messages that could be considered as spam.

A number of the ADMA's membership base provides hosted messaging delivery platforms to legitimate marketers. While they undertake every effort to ensure the communications their clients send to their end users are permission based, the current proposed legislation appears to also hold the technology service provider liable for any breach of the legislation.

We believe that it should be clearly stated that it is the "originator" of the message that is responsible for any breach of the proposed Bill, and not the telecommunications service provider or other such organisations that provide the infrastructure and technology to deliver such messages.

## **ABOUT THE ASIA DIGITAL MARKETING ASSOCIATION**

The Asia Digital Marketing Association (ADMA) is the voice of, and advocate for, the digital marketing industry in Asia (excluding Japan). The ADMA is an umbrella organisation, guided by senior executives in the industry, and charged with gaining consensus and formulating a powerful point of view on all key industry issues. The ADMA actively promotes the benefits of using mobile and the internet as a channel to communicate with consumers and was established to provide leadership and guidance on issues, criticisms and misconceptions about digital marketing as well as lobbying and public relations assistance for member companies.

ADMA members are responsible marketers who are building ways to make consumers experiences with online marketers relevant, personal and trustworthy. Members include eBay, MSN, Cathay Pacific, DoubleClick and Yahoo! Hong Kong, plus a whole range of content, technology and marketing communications companies.

The ADMA has also been a vigorous participant in the Hong Kong Anti-spam Coalition, formed during the summer of 2003. The coalition brought together a group of concerned industry participants such as the Hong Kong Internet Service Providers Association (HKISPA), the Asia Digital Marketing Association (ADMA) and business leaders from a variety of organisations including Microsoft and Time Warner. The Coalition aims to make a real difference to consumers, businesses and government by bringing together powerful local market knowledge and contacts to foster effective industry self-regulation, legislative solutions, information sharing, and other global best anti-spam practices.

## **CONTACT**

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