

**Consumer Council**  
**Submission to Bills Committee on Unsolicited Electronic Messages**  
(10 October 2006)

**Introduction**

1. The Consumer Council is fully supportive of the objective and intention of the Unsolicited Electronic Messages Bill. It is beyond doubt that the current spam problems are local as well as global. They should be solved by international cooperation at governmental level in the latter instance. We welcome the government's initiative in introducing anti-spam legislation which demonstrates Hong Kong's commitment to global spam control.

**Opt-in Regime – Consumer's Real Choice**

2. However, the "Opt-out Regime" would unduly burden the consumer recipients rather than the senders who have the control over transmission of the messages. We are of the view that an "Opt-in Regime" would render consumers real choice and is an effective guard against spamming.

**Unsubscribe Request**

3. Furthermore, we have significant reservations over the effectiveness of the Bill. It is our concern that the rules supporting the "Opt-out Regime" would defeat the purpose of the legislation rather than help achieve it. It appears that an overseas spammer would not be held responsible for not responding to an unsubscribe request under Clause 8 in view of the difficulties in extra-territorial enforcement. On the contrary, it may enable them to confirm the existence of the electronic address from which the request was sent. This would facilitate further spamming. Whilst the grace period of 10 working days under Clause 9 will not have any effect on overseas spammers, it is likely that local spammers would pour in as many messages as possible to the electronic addresses within the 10-day period.

**Do-not-call Registers**

4. The difficulty of extra-territorial enforcement would paradoxically encourage overseas spammers to harvest from the do-not-call register which

is intended to prevent abuses of the opt-out regime. The penalties for offence though heavy as it may be, would not deter overseas spammers unless enforcement against them is effective.

5. As mentioned above, the grace period of 10 working days are susceptible to be abused by spammers who may send many spams to newly listed addresses before the period expires.

6. In this connection, we see the need of expediting international co-operation to tackle the problem of extra-territorial enforcement. We also suggest the Bills Committee to seriously consider preventive measures to alleviate the possibility of abuse, such as shortening the grace period.

### **Exclusion of Person-to-Person Marketing Calls**

7. The Council is disappointed that person-to-person marketing calls are excluded from the Bill. Consumers could still be disturbed by telemarketers. To strike the balance between leaving room for normal and legitimate marketing activities and prevention of nuisance to consumers, we urge the government to consider the feasibility of assigning special number prefix for marketing calls so that consumers can screen off the messages at their discretion. Consequently, caller-party charging scheme could be instigated to encourage telemarketers to be more selective when sending out messages.

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