

立法會
Legislative Council

LC Paper No. CB(1)368/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/SS/1/07

**Subcommittee on
Unsolicited Electronic Messages Regulation (Commencement) Notice**

**Minutes of the meeting on
Thursday, 15 November 2007, at 11:00 am
in Conference Room B of the Legislative Council Building**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC

Public officers attending : **Agenda item II**

Mr Alan SIU
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Franco KWOK
Acting Principal Assistant Secretary for Commerce and
Economic Development (Communications and Technology) B

Mr SO Tat-foon
Assistant Director of Telecommunications (Support)

Mr Henry CHANG
Head of Information and Communications Technologies
Office of the Telecommunications Authority

Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Action

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)3

Action

I Election of Chairman

Mr SIN Chung-kai was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 202 of 2007

LC Paper No. LS7/07-08

LC Paper No. CB(1)215/07-08(01)

LC Paper No. CB(1)256/07-08(01)

-- The Unsolicited Electronic Messages Regulation (Commencement) Notice

-- Legal Service Division Report

-- Background brief on Unsolicited Electronic Messages Ordinance (Commencement) Notice and Unsolicited Electronic Messages Regulation (Commencement) Notice prepared by the Legislative Council Secretariat)

Administration's paper on Amendments to the Unsolicited Electronic Messages Regulation (tabled at the meeting and issued to members on 16 November 2007))

2. The Subcommittee deliberated (index of proceedings attached at **Annex A**).

3. The Subcommittee requested the Administration to revise the proposed amendments to the Unsolicited Electronic Messages Regulation (UEMR) in relation to the language requirement for provision of sender information and unsubscribe facility statement in sending commercial electronic messages to the effect that –

Action

- (a) the sender information and unsubscribe facility statement might be sent to a recipient in Hong Kong or overseas in any language if the recipient of the message had indicated to the sender or the individual or organization who authorized the sending of the message that the information may be given in that language;
- (b) for a recipient in Hong Kong who had not indicated his/her language preference, the sender information and unsubscribe facility statement must be given in both Chinese and English; and
- (c) for a recipient outside Hong Kong, the sender information and unsubscribe facility statement might be given in any language if the sender or the individual or organization who authorized the sending of the message knows or reasonably believed that the recipient understood or was familiar with that language.

4. The Administration noted the Subcommittee's view and undertook to revert to the Subcommittee with revised proposed amendments to the UEMR.

III Any other business

Date of next meeting

- 5. The Chairman directed the secretariat to liaise with members on the date of the next meeting.
- 6. There being no other business, the meeting ended at 11:40 am.

(Post-meeting note: The Subcommittee subsequently agreed to the revised draft of the UEM (Amendment) Regulation provided by the Administration which was circulated to members vide LC Paper No. CB(1)293/07-08 on 20 November 2007.)

**Proceedings of the meeting of the Subcommittee
on Unsolicited Electronic Messages Regulation (Commencement) Notice
on Thursday, 15 November 2007, at 11:00 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000056	Mr WONG Ting-kwong Mr Ronny TONG Mr SIN Chung-kai	Election of Chairman	
000057 - 000129	Chairman	Opening remarks	
000130 - 000514	Administration	<p>Briefing by the Administration (LC Paper No. CB(1)256/07-08 tabled at the meeting)</p> <p>The Administration's explanation that in the light of members' and the industry's view that the bilingual language requirement was unnecessary for messages to be sent overseas targeting non-Hong Kong recipients, the Administration would propose amendments to the UEMR to avoid putting unnecessary burden on business operation targeting overseas clients while striking a balance between respecting the rights of recipients and allowing the development of legitimate electronic marketing in Hong Kong.</p> <p>The UEMR had been passed by the Legislative Council through the negative vetting process and was scheduled to come into operation on 22 December 2007 to tie in with the implementation of the second stage of the UEMO on the same day. The Administration therefore also proposed that the UEM(A)R should come into operation on the same day.</p>	
000515 - 002259	Mr Ronny TONG Administration	Mr Ronny TONG expressed support for the rationale and the intent of the proposed amendments to UEMR.	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr Ronny TONG expressed concern that the wording of the proposed amendments to sections 6(2) and 7(2) of the UEMR as presently drafted could not adequately convey the spirit of requiring or achieving the objective of sending the information in the language preferred by the recipient. For example a recipient might understand or was familiar with Chinese but preferred receiving the information in English, or a recipient with a Chinese name might not understand Chinese and preferred receiving the information in English.</p> <p>Mr Ronny TONG's view that the provision should ensure that when the information was given solely in one language (<u>solely in Chinese, English or another language</u>), that particular language must be the language that the recipient preferred. Where the preferred language of the recipient could not be ascertained, to err on the safe side, the information should be given in both Chinese and English.</p> <p>The Administration explained the proposed amendments to UEMR, and remarked that -</p> <p>(i) while the sender might reasonably determine which language the recipient understood or was familiar with on the basis of the information on hand and/or during the course of business dealings, it was difficult for the sender to ascertain which language was the recipient's preferred language; and</p> <p>(ii) as a safeguard to protect the rights of the recipient, the onus was on the sender to provide</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>evidence to prove that he reasonably knew and believed that the recipient understood or was familiar with the particular language used.</p>	
001830 - 004259	<p>Chairman Mr Ronny TONG Mr WONG Ting-kwong Administration</p>	<p>Discussion on the language requirement for sender information and unsubscribe facility statement included in commercial electronic messages to be sent overseas.</p> <p>Mr Ronny TONG's enquiry on the rationale of disapplying the bilingual requirement to messages to be sent overseas.</p> <p>The Chairman's remark about the telemarketing industry's concern that the requirement for sender information to be given in Chinese in messages to be sent to overseas countries such as India or the Middle East might put burden on the sender in handling recipient's enquiries and affected normal business operation.</p> <p>Mr WONG Ting-kwong's concern that the sending of information in Chinese to overseas countries not supported by Chinese computer software might generate illegible messages thus confusing the recipients and inviting queries and enquiries from the recipients.</p> <p>The Administration's response that the telemarketing industry was concerned that the mandatory bilingual requirement would unnecessarily affect normal business operation. The proposed amendments to the UEMR would address the concern raised by the industry, the Chairman and Mr WONG Ting-kwong.</p> <p>The Subcommittee suggested that</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>proposed new sections 6(2)(b) and 7(2)(b) be amended to read "the sender or the individual or organization who....understands or is familiar with the language <i>and</i> is not <i>an individual</i> or an organization carrying on business or activities in Hong Kong."</p> <p>The Administration's concern about enforcement and the difficulty in ascertaining the preferred language of an organization.</p> <p>On the language requirement for sender information and unsubscribe facility statement included in commercial electronic messages targeted at Hong Kong people and /or a local organization, the Subcommittee's consensus that unless the recipient had indicated his/her language preference, the information must be given in both English and Chinese.</p>	
004300 - 004402	Chairman Administration	<p>The Chairman summed up the Subcommittee's recommendation.</p> <p>The Administration undertook to further examine the issue and revert to the Subcommittee as soon as practicable.</p>	Admin to provide a proposed draft amendment (para. 3 of minutes)