

**For Discussion
on 13 May 2008**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Progress Update on the Implementation of
the Unsolicited Electronic Messages Ordinance**

Purpose

This paper seeks to provide Members with a progress update of the implementation of the Unsolicited Electronic Messages Ordinance (“UEMO”).

Background

2. To contain the problem of unsolicited electronic messages, the UEMO was enacted in May 2007 to regulate the sending of commercial electronic messages that have a “Hong Kong link”¹. The UEMO was brought to effect in two phases.

3. The first phase of implementation covering the following offences commenced on 1 June 2007 –

- (i) the use of unscrupulous techniques to expand the reach of commercial electronic messages; and
- (ii) fraudulent and other illicit activities related to the sending of multiple commercial electronic messages.

¹ In general, a commercial electronic message has a “Hong Kong link” if the message:

- (i) originates in Hong Kong;
- (ii) is sent to Hong Kong; or
- (iii) is sent to a Hong Kong telephone or fax number.

Detailed meaning of “Hong Kong link” is set out in section 3 of the UEMO.

4. The remaining and full provisions of the UEMO took effect on 22 December 2007. Senders of commercial electronic messages are now required:

- (i) to provide accurate sender information and unsubscribe facility in the message;
- (ii) to honour recipients' unsubscribe requests;
- (iii) not to send messages to any telephone/fax numbers listed on the do-not-call register established by the Telecommunications Authority (TA) (see paragraph 5 below) unless consent has been obtained from the registered user of the number concerned;
- (iv) not to withhold calling line identification information when sending pre-recorded telephone calls and fax messages; and
- (v) not to use misleading subject heading when sending email messages.

Do-not-call Registers

5. Three do-not-call registers for fax, short messages and pre-recorded telephone messages respectively have been established by the TA under the UEMO and launched in phases. If a person does not wish to receive any commercial electronic messages, he can register his telephone/fax number onto the do-not-call registers. The protection will take effect on the tenth working day from the registration date, and no further commercial electronic messages (except those messages to which consent has been given) should be received at the registered numbers afterwards. If unsolicited commercial electronic messages were received at the registered numbers after the protection commences, reports of contravention could be made to the Office of the Telecommunications Authority (OFTA) for investigation.

6. To register a number onto the do-not-call registers, the public can call the OFTA registration hotline by using the phone or the fax machine

of the number that they wish to register. The registration is free of charge. The public can also de-register numbers registered or check the status of their numbers (i.e. registered or not yet registered) by calling the OFTA hotline.

7. To comply with the statutory requirement of not sending commercial electronic messages to the numbers listed on the do-not-call registers, the sender can apply for a subscription account from the OFTA to access and download the do-not-call registers for vetting his sending lists. The subscription fee, which is set on cost-recovery basis, is \$1,600 per year which allows unlimited downloading during the subscription period. Sender who conducts ad hoc or short-term promotional activities may also apply for a three-month account at a fee of \$425.

8. Since implementation, the do-not-call register has been operating smoothly and in an orderly manner. As at 16 April 2008, about 660 000 numbers have been registered onto the three registers, the details of which are set out in **Annex 1**. About 220 subscription accounts have been opened with the OFTA and about 40 applications are being processed.

Enforcement

9. Except for the provisions relating to fraudulent activities which are enforced by the Hong Kong Police Force, the OFTA is the enforcement agency of the UEMO. Under part 2 of the UEMO, i.e. the rules governing the sending of commercial electronic messages (as set out in paragraph 4 above), the TA may issue enforcement notices to those senders for contravening the rules. Failure to comply with enforcement notice is a criminal offence and is subject to a fine up to \$100,000 on first conviction, and up to \$500,000 on second and subsequent conviction. In the case of a continuing offence, a further daily fine of \$1,000 can be imposed.

Channels to make report to the OFTA

10. Members of the public may lodge report to the OFTA if they suspect that the message they receive has contravened the UEMO. The report form is available on the OFTA's website, or can be obtained by fax

through the OFTA's enquiry hotline as well as by post. Apart from filling in the report form, reports on suspected contravention of the UEMO can also be made to the OFTA in writing.

Reports received before full commencement of the UEMO

11. The number of reports received during the first phase of implementation of the UEMO is set out in **Annex 2**. The total number of reports received from 1 June 2007 to 21 December 2007 is 1 446. Among the reports received during the first phase of implementation and with investigation concluded by the OFTA², 51% were found to be related to the rules of sending commercial electronic messages which had yet come into effect at that time while 35% were found not to have contravened the provisions. The remaining 14% cases were found to fall outside the scope of the UEMO, e.g. the reported message was not of a commercial nature. Accordingly, no prosecutions have been mounted during the first phase of implementation. The OFTA has, nevertheless, issued advisory letters to the senders who were the subject of the reports and reminded them to observe the rules of sending commercial electronic messages becoming effective from 22 December 2007. As a result of the approach by the OFTA, many of these senders were prepared to change their telemarketing practice in order to comply with the UEMO.

Reports received after full commencement of the UEMO

12. With full implementation of the UEMO, provisions governing do-not-call registers have been brought into effect. Members of the public may lodge complaints to the OFTA if they still receive commercial electronic messages after registering their numbers onto the do-not-call registers. The number of reports received after the full commencement of the UEMO is set out in **Annex 3**. The total number of reports received from 22 December 2007 to 16 April 2008 is 2 158. Most of the reports received during this period are related to allegations of contraventions of the rules about sending commercial electronic messages (part 2 of the UEMO). Among the reports received during this period, 71% is about fax while 15% involves unsolicited email.

² Out of the 1 446 reports, 11 cases have not yet been concluded by the OFTA.

13. To follow up on the reports received, the OFTA would approach the reported senders. Upon being approached by the OFTA, most of the senders were willing to take rectification action immediately (e.g. to suspend the sending of messages in contravention of the UEMO, to open do-not-call register subscription account if they have not yet done so, etc). In these circumstances, the OFTA will issue a warning letter to the relevant sender and monitor the situation to ensure that the sender would cease any activities which would contravene the UEMO. The warning letter will specify the breach concerned, and remind the sender of the other requirements under the UEMO. For cases which involve continuous contravention of the UEMO or in the opinion of the TA, the contravention will likely continue or be repeated, the TA may issue an enforcement notice to the sender requiring him to take steps to remedy the contravention.

14. As at 16 April 2008, a total of 25 warning letters have been issued in relation to contravention of the sending rules (e.g. the sender has sent messages to numbers registered onto the do-not-call registers, or has not provided unsubscribe facility in the message, etc). No cases warranting the issue of enforcement notices were found during this period.

Publicity

15. To enhance public awareness of the full operation of the UEMO, the OFTA has launched a package of publicity, including TV and radio Announcement in Public Interest, posters at MTR stations, leaflets, posting advertisements in the newspaper and online promotion. The OFTA has also arranged briefings for various trade and industry organisations and professional sectors on the statutory requirements for sending commercial electronic messages under the UEMO.

Anti-spamming Task Force

16. As undertaken in the 2007 Policy Agenda, the Anti-spamming Task Force has been set up to provide a platform for advice and views to be exchanged among service providers and user groups on how to further

tackle the problem of spamming. The Task Force is set up to assist the Government to monitor the effectiveness of the legislation as well as other measures in combating the problem of spamming. The Task Force is chaired by the Secretary for Commerce and Economic Development and comprises members drawn from the information and communications technology industry, chambers of commerce, telemarketing industry, consumer groups, social services organisations as well as individual members from the community. The Terms of Reference of the Task Force is at **Annex 4**.

International Collaboration

17. In order to deal with the problem of overseas spamming emails, the OFTA has established spam reporting channels with other jurisdictions including Australia, the Mainland, South Korea, Japan, USA and UK, etc. The OFTA will refer spamming emails originated from these economies to the relevant enforcement agencies for follow-up action and vice versa. Regular communication and exchange with overseas enforcement agencies play an important role in addressing the issue of overseas spamming emails. Currently, the OFTA is one of the 11 signatories of the Seoul-Melbourne Multilateral Memorandum of Understanding on Co-operation in Countering Spam. Through this platform, we share information and intelligence about spamming emails with other signatories in the Asia-Pacific region. The OFTA is in the process of joining the London Action Plan (LAP), which is another platform for international cooperation in countering spam and addressing spam related problems. Members of the LAP include US, UK, Canada, Japan and other economies. Joining the LAP will further enhance the OFTA's connections with overseas enforcement agencies and foster closer international cooperation in tackling the problem of spam.

Way Forward

18. The OFTA will continue its efforts to enforce the UEMO and will keep in view the compliance situation. Continual publicity efforts will be taken to further enhancing public awareness of the UEMO with focus directed to informing the community of the channels for making

contravention reports to the OFTA. General reminders to senders of commercial electronic messages not to send messages to the telephone/fax numbers listed on the do-not-call registers, unless consent has been given by the registered user of such numbers will also be issued.

19. Person-to-person interactive marketing calls are not regulated under the UEMO and only a few complaints have been received since the full implementation of the UEMO. In order to better assess the extent of the problem of person-to-person telemarketing calls and the views of the public towards such calls, the OFTA plans to commission a survey in mid-2008. The results of the survey when completed will be reported for Members' information.

Office of the Telecommunications Authority
5 May 2008

**The number of telephone/fax number registered onto the
Do-Not-Call Register (DNC) (as at 16 April 2008)**

	DNC for Fax <i>(launched on 22 Dec 2007)</i>	DNC for Short Message <i>(launched on 8 Jan 2008)</i>	DNC for Pre-recorded Telephone Message <i>(launched on 25 Jan 2008)</i>	Total Amount of Numbers Registered
Dec 2007 (i.e. 22-31 Dec)	14 843	-	-	14 843
Jan 2008	21 039	54 676	13 757	89 472
Feb 2008	22 600	26 329	82 584	131 513
Mar 2008	46 140	51 803	227 655	325 598
Apr 2008 (up to 16 April)	22 443	23 193	51 094	96 730
Total	127 065	156 001	375 090	658 156

**Number of reports received before full commencement of UEMO
(i.e. from 1 June 2007 to 21 December 2007)**

	Fax	Email	Others³	<i>Total</i>
Jun 2007	169	210	35	<i>414</i>
Jul 2007	191	90	28	<i>309</i>
Aug 2007	65	68	35	<i>168</i>
Sep 2007	51	33	25	<i>109</i>
Oct 2007	27	88	25	<i>140</i>
Nov 2007	49	12	32	<i>93</i>
Dec 2007 (up to 21 Dec)	9	169	35	<i>213</i>
Total	561 (39%)	670 (46%)	215 (15%)	<i>1 446 (100%)</i>

³ “Others” include pre-recorded telephone calls, short messages, person-to-person interactive calls, etc.

**Number of reports received after full commencement of UEMO
(i.e. from 22 December 2007 to 16 April 2008)**

	Fax	Email	Short Messages	Pre-recorded Telephone Calls	Others (including Person-to-person Interactive Calls)	Total
Dec 07 (22-31 Dec)	5	17	5	12	1	40
Jan 08	347	68	18	29	10	472
Feb 08	537	108	36	34	4	719
Mar 08	459	70	29	35	7	600
Apr 08 (up to 16 Apr)	190	50	27	45	15	327
Total	1 538 (71%)	313 (15%)	115 (5%)	155 (7%)	37 (2%)	2 158 (100%)

**Anti-spamming Task Force
Terms of Reference**

- (a) To consider and advise on policies and measures to tackle the problem of unsolicited electronic messages (UEMs);
- (b) To coordinate work undertaken by different parties and assist in the implementation of measures to tackle UEMs;
- (c) To advise on the best practices for adoption by the senders and recipients to tackle UEMs;
- (d) To advise on the matters relating to the implementation of the UEMO; and
- (e) To advise on community education and publicity programmes for promoting public awareness of the rights and responsibilities of senders and recipients of UEMs.