

立法會
Legislative Council

LC Paper No. CB(1)351/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the sixth meeting on
Tuesday, 14 November 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Mrs Marion LAI, JP
Acting Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr Franco KWOK
Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B1
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Miss Leonora IP
Senior Government Counsel
Department of Justice

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr WONG Siu-yee
Senior Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)246/06-07 -- Minutes of meeting on 31 October 2006)

The minutes of the meeting held on 31 October 2006 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(3)735/05-06 -- The Bill
LC Paper No. CB(1)2306/05-06(03) -- Marked-up copy of the relevant statutory provisions to be amended by the Bill
LC Paper No. CB(1)202/06-07(01) -- Extracts of relevant statutory provisions
LC Paper No. CB(1)2306/05-06(01) -- Letter dated 1 September 2006 from Legal Service Division to the Administration
LC Paper No. CB(1)2306/05-06(02) -- Reply letter dated 22 September 2006 from the Administration to Legal Service Division
LC Paper No. CB(1)168/06-07(03) -- Letter dated 13 October 2006 from Legal Service Division to the Administration
LC Paper No. CB(1)168/06-07(04) -- Reply letter dated 25 October 2006 from the Administration to Legal Service Division)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

3. The Administration was requested to –
 - (a) provide a written response to explain its position on the suggestions of –
 - (i) shortening the required retention period for unsubscribe requests from 7 years to 3 years;
 - (ii) narrowing the scope of legislation to be covered by the proposed section 24(2)(a) of the Telecommunications Ordinance (Schedule 2 to the Bill - Consequential amendments) by using "facilitating compliance with this Ordinance or the Unsolicited Electronic Messages Ordinance"; and
 - (iii) applying the requirements under clause 12 of the Bill to person-to-person interactive telemarketing calls;
 - (b) provide information on enforcement arrangements in Australia to facilitate the identification of an appropriate enforcement approach in Hong Kong;
 - (c) report how Schedule 1 to the Bill would be amended to clarify that web traffic and other modes of information provision in response to a request would be excluded from regulation under the Bill; and
 - (d) regarding the definition of "commercial electronic message", report its consideration on whether an express provision would be required to provide that it was immaterial whether the goods, facilities, etc. existed and whether it was lawful to acquire the goods, services, etc., as in the case of Australia.

III Any other business

4. Members noted that the next meeting would be held on Tuesday, 21 November 2006, at 10:45 am.
5. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the sixth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 14 November 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000032	Chairman	Confirmation of minutes of the meeting held on 31 October 2006 (LC Paper No. CB(1)246/06-07)	
000033 - 003155	Chairman Administration Mr WONG Ting-kwong Ms Emily LAU	<p>Enquiry on the Administration's view on the suggestion of applying the requirements under clause 12 of the Bill to person-to-person interactive telemarketing calls</p> <p>View that requiring telemarketers not to conceal calling line identification (CLI) information for person-to-person interactive telemarketing calls would not imply that there would be no room for the development of telemarketing because a normal business organization should not have hesitation in disclosing its CLI information to facilitate future contact</p> <p>The Administration's elaboration on its current thinking about the suggestion and the various relevant considerations</p> <p>Enquiry on overseas experience in regulating person-to-person interactive telemarketing calls</p> <p>The Administration's response that different approaches were adopted by different overseas jurisdictions; some focused on email spamming only while some others had separate legislation to regulate person-to-person interactive telemarketing calls, and Hong Kong should adopt an approach which would be most suitable to its own circumstances</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman's remark that as members did not have consensus on whether to apply the requirements under clause 12 of the Bill to person-to-person interactive telemarketing calls, members could move amendments themselves if deemed necessary</p>	
003156 - 003319	Chairman Administration	<p>Enquiry on the Administration's position on the suggestions of -</p> <ul style="list-style-type: none"> (a) shortening the required retention period for unsubscribe requests from 7 years to 3 years; (b) narrowing the scope of legislation to be covered by the proposed section 24(2)(a) of the Telecommunications Ordinance (Schedule 2 to the Bill - Consequential amendments) by using "facilitating compliance with this Ordinance or the Unsolicited Electronic Messages Ordinance"; and (c) applying the requirements under clause 12 of the Bill to person-to-person interactive telemarketing calls <p>The Administration's response that it agreed to (a) and (b), and had reservation on (c)</p> <p>Request for a written response from the Administration regarding its position on the above three issues</p>	Administration to provide a written response
003320 - 003734	Chairman Ms Emily LAU Administration	<p><u>Clause-by-clause examination of the English version of the Bill</u></p> <p>Long title of the Bill</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Enquiry on whether given the long title of the Bill, an amendment to extend the application of the Bill to person-to-person interactive telemarketing calls would be regarded as relevant to the subject matter of the Bill</p> <p>The Administration's response that the long title of the Bill would cover all issues related to the sending of commercial electronic messages, including sending of person-to-person telemarketing calls. However, person-to-person telemarketing calls were to be exempted from the scope of application of the Bill by virtue of Schedule 1. The Administration's intention was to amend Schedule 1 by a notice in gazette if it was considered necessary in future that the scope of exemption should be changed</p> <p>Clause 1</p> <p>Enquiry on the commencement date</p> <p>The Administration's response that different sections might have different commencement dates and the current thinking was for those provisions for regulating address-harvesting and fraud and other illicit activities to come into operation very shortly after the enactment of the Bill, whereas those provisions under Part 2 of the Bill that required enterprises to undertake certain compliance preparatory work and the promulgation of codes of practice by the Telecommunications Authority (TA) should come into operation at a later date, which might be about six months after the enactment of the Bill</p>	
003735 - 010611	Chairman Administration	Clause 2	

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	<p>Ms Emily LAU ALA3 Mr Andrew LEUNG</p>	<p>Enquiry on whether TA would require additional staffing for enforcement</p> <p>The Administration's response that initially, necessary manpower would be provided by internal redeployment within the Office of the Telecommunications Authority and the manpower requirement would be kept under review after implementation of the new regulatory regime; experience in Australia indicated that manpower requirement would not be significant because a targeted approach in enforcement had been adopted under which the emphasis was to collect intelligence to identify major spammers for taking actions</p> <p>Request for information on enforcement arrangements in Australia to facilitate the identification of an appropriate enforcement approach in Hong Kong</p> <p>Concern about the broad coverage of the Bill in that organizations which were not formed or incorporated for the purpose of or with a view to gaining profit were not exempted from the application of the Bill</p> <p>The Administration's response that the public was in general supportive of regulating unsolicited electronic messages of a commercial nature. Given this consensus and to avoid any grey area in the legislation which would give rise to practical difficulties in enforcement, it was considered appropriate to focus on the content of a message, rather than the nature of the organization which sent the message</p> <p>The Administration's further</p>	<p>Administration to provide information</p>

Time marker	Speaker	Subject(s)	Action required
		<p>explanation that –</p> <ul style="list-style-type: none"> (a) some non-commercial organizations such as charitable organizations might have a business arm or engage in commercial activities; (b) it would be difficult to arrive at a consensus on what types of organizations should be exempted; and (c) there were no appropriate legal definitions in Hong Kong law for some types of organizations, such as political parties <p>Enquiry on organizations exempted under similar legislation in Australia and Singapore</p> <p>The Administration's response that in Australia where an "opt-in" regime was adopted, government organizations, registered political parties, religious organizations and charitable institutions were exempted from the application of Spam Act 2003. In Singapore, where an "opt-out" regime was proposed, government and statutory bodies would be exempted from the application of the Spam Control Bill if the message was sent for a public purpose or in exercise of a statutory function</p> <p>Enquiry on how amendments could be made if some organizations were to be exempted under the Bill</p> <p>ALA3's advice that either Schedule 1 to the Bill or the definition of "business" could be amended</p> <p>Concern that the contents of electronic</p>	

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		<p>messages sent by political parties and other non-commercial organizations would be subject to censorship</p> <p>The Administration's response that there would not be any censorship on the contents of electronic messages because under normal circumstances, TA would only conduct investigation after receiving a complaint. Since only commercial electronic messages were subject to regulation, TA would first ascertain whether the content of a message fell under the definition of "commercial electronic message" in the Bill</p>	
010612 - 012500	<p>Chairman Administration Ms Emily LAU Mr WONG Ting-kwong</p>	<p>Enquiry on whether commercial electronic messages sent by non-commercial organizations to advertise/promote/supply goods or services to gain profit for charitable purposes would be regulated under the Bill</p> <p>The Administration's response that those messages would be regulated because the way in which the profit was used was immaterial under the Bill. The Administration would provide guidelines to various sectors of the community</p> <p>Enquiry on whether electronic messages for the promotion of events such as festive occasions or ceremonial events would be regulated under the Bill</p> <p>The Administration's response that as long as there were no commercial elements in those messages, they would not be subject to regulation. TA would ascertain the facts and see if a message would fall under the definition of "commercial electronic message" upon receiving a complaint</p>	

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012501 - 013422	Chairman ALA3 Administration	<p>Regarding the definition of "commercial electronic message", ALA3's reference to her written question to the Administration on whether provisions would be required to provide that it was immaterial whether the goods, facilities, etc. existed and whether it was lawful to acquire the goods, services, etc., as in the case of Australia</p> <p>The Administration's response that it would consider whether an express provision was required and would draw reference from the relevant provisions in Australia's Spam Act 2003</p> <p>ALA3's reference to her written enquiry to the Administration regarding the present drafting practice adopted in the Bill where the heading of a section was included whenever a cross reference of the section was made in another section</p> <p>The Administration's response that the purpose of the drafting practice was to provide readers with a brief description of the subject matter of the referenced section to make the law more user-friendly</p> <p>ALA3's advice that the Legal Service Division of the Legislative Council Secretariat would further liaise with the Department of Justice on this issue, which was a general law drafting issue affecting other legislation as well</p>	The Administration to report
013423 - 014253	Chairman Administration	Enquiry on the outcome of the Administration's consideration on the need to expand the definition of "commercial electronic message" in response to the suggestion of Stevenson, Wong & Co.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that the suggestion might unintentionally cast the net too wide, and the existing definition was clear and sufficient</p> <p>Enquiry on the definition of "electronic address"</p> <p>The Administration's response that it would be inappropriate to exclude Internet protocol (IP) address in the definition of "electronic address" because Voice over Internet Protocol (VoIP) technology used IP addresses as electronic addresses, and consideration was being given to clarifying that web traffic and other modes of information provision in response to a request (e.g. fax-back services) would be excluded from regulation under the Bill by amending Schedule 1 to the Bill</p>	<p>The Administration to report</p>
014254 - 014708	<p>Chairman Ms Emily LAU Administration</p>	<p>Concern about whether the definition of "electronic message" was too broad</p> <p>The Administration's response that using "but is not limited to" in the definition could cater for new types of messages on the basis of new technologies to be made available in future, and the definition would not have the effect of unduly expanding the scope of application of the Bill because only commercial electronic messages would be regulated under the Bill</p>	
014709 - 015114	<p>Chairman Administration Ms Emily LAU</p>	<p>Enquiry on the definition of "Hong Kong company"</p> <p>The Administration's response that it was similar to that used in other legislation</p> <p>Enquiry on the definition of "mistake"</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that the definition was the same as that used in Australia's Spam Act 2003</p>	
015115 - 015302	Chairman Administration	<p>Enquiry on the definition of "registered user"</p> <p>The Administration's response that "registered user" was adopted because there could be more than one user using an electronic address, and "owner of an electronic address " had been considered but was not adopted because some electronic addresses, such as free web email accounts, were not owned by the users. They were merely authorized to use those accounts</p> <p>Enquiry on the definition of "supply"</p> <p>The Administration's response that a "loan" would normally be classified as a lease or hire and it would therefore be included in the definition</p> <p>Enquiry on the definition of "telecommunications device"</p> <p>The Administration's response that the term was not defined in the Telecommunications Ordinance, and this definition in the Bill would refer to devices, such as computers, which could be used for the purpose of telecommunications</p>	
015303 - 020333	Chairman Administration Ms Emily LAU ALA3	<p>Enquiry on the definition of "working day"</p> <p>The Administration's response that Saturday was regarded a working day under the definition, which was consistent with the Interpretation and General Clauses Ordinance (Cap. 1)</p>	

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		<p>Enquiry on clause 2(2)</p> <p>The Administration's response that it was common for a reference to the performance of a function to include the exercise of a power and the discharge of a duty so as to simplify the terminology</p> <p>Enquiry on clause 2(3)</p> <p>The Administration's response that clause 2(3) would ensure that references to persons in the Bill would not be construed as excluding other entities such as companies</p> <p>ALA3's further explanation on the need for clause 2(3)</p> <p>Completion of clause-by-clause examination of the Bill up to clause 2(3)</p>	