

Date: 25 October 2004

By Post and By Email : uem-consultation@ofta.gov.hk

Office of the Telecommunications Authority
29/f., Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

Attn: Public Affairs Manager
(Consumer & Corporate Affairs)

Dear Sirs

Re: Consultation Paper on Proposals to Contain the Problem of Unsolicited Electronic Messages

We write to submit our views and comments on the Consultation Paper regarding the above.

We are grateful for the comprehensive review of the problem of spamming and the summaries of the relevant laws set out in the Consultation Paper. Our views and comments are as follows:

- (1) We understand that, according to HKISPA, only 5% of the spam experienced in Hong Kong originate from Hong Kong. In view of the pre-dominantly extra-territorial nature of spam experienced in Hong Kong and the lack of extra-territorial effect of any new anti-spam legislation, we are of the view that the legislation approach to tackle spam is not appropriate for Hong Kong. Both the process of drawing up new anti-spam laws and the enforcement of those laws would require significant resources which, in our opinion, would be better spent elsewhere if the new laws and the enforcement thereof would only be effective to tackle a very small percentage of the problem.
- (2) It is noted that the CAN-SPAM Act of the United States create civil and criminal penalties and that Australia has chosen, under its Spam Act, to go for civil rather than criminal penalties. The flexibility and scalability of a civil penalty regime and the relative economy in the administration of such a regime may be strong incentives to adopt a model that makes civil penalties an option. Given that Hong Kong has a relatively less serious spam problem in terms of locally originated spam and given that the anti-spam regimes of other jurisdictions from which most spam originate have only just been put in place, perhaps Hong Kong should learn from the experience of the said other jurisdictions first before a decision is made on whether Hong Kong should employ a wholly criminal penalty regime, an US CAN-SPAM Act style regime that provides for criminal as well as civil penalties or a solely civil regime modeled on the Australia Spam Act.

- (3) Any present, we believe that the resources of the Government will be better spent by focusing on ways to enhance and facilitate:
- (i) industry co-operation by adopting the measures explained in paragraphs 68 to 70 of the Consultation Paper, which measures should be voluntary as voluntary measures can more easily evolve to adopt to the frequently changing requirements of the industry; also, devising and enforcing mandatory measures would be tantamount to passing and enforcing new laws which would, for the reasons discussed above, be undesirable for Hong Kong at present; and
 - (ii) educating and empowering members of the public with a view to achieving the four purposes that such education and empowering should seek to achieve according to the Spam Review Report of the National Office for the Information Economy of Australia set out in paragraph 73 of the Consultation Paper.
- (4) For the purposes as referred to in (3) above, the Government should sponsor and help fund (i) industry forums for participation by industry players to, for example, formulate and/or update voluntary codes of practice and (ii) information campaigns to be held at schools and local communities.

Yours faithfully
For and on behalf of
Hutchison Global Communications Limited



Mau-Sum But
Legal Counsel