

According to the news report, I understand the trouble due to SPAM or Junk e-mail. Basically, I do agree to put forward to legislation against SPAM. However, there may be some conflict with Article 27 of Basic Law (on the session of Freedom of Speech) Sending out SPAM is a kind of speech, which is just promoting some kinds of products or services. Article 27 does protecting such freedom of speech, which is also an important element for Free Market.

However, for some extreme cases, they have already been breaching Criminal Ordinance in the Law of Hong Kong. For example, if someone sent huge size SPAM or repeatedly until causing an overload on an e-mail box, the sender would violate the Criminal Damage ordinance; if someone sent SPAM with cracking the junk e-mail filter of the recipient, then the sender committed Criminal Damage Ordinance (cap 200 sect59). If that SPAM even spread around others over the network, beside criminal damage, it may also violate Cap 200 sect 161 (Access to computer with criminal or dishonest intent).

Actually, there are three ordinances in the Law of Hong Kong can be applied on SPAM. They are:

- a. Personal Data (Privacy) Ordinance
- b. Access to computer with criminal or dishonest intent
- c. Criminal Damage

The above three are under criminal proceeding.

Therefore, if further legislation against SPAM is put forward, it should cover any grey area in those three ordinance. In addition, Freedom of Speech should also be cared, e.g. users may have a junk e-mail box to allow promotional material being sent. If those promotional materials directly sent to users, then it will violate the new SPAM ordinance.

Just to sum up my suggestion:

On coming SPAM ordinance, it should extend Privacy Ordinance by including e-mail address as a private data. How can those company know so many e-mail addresses? Possibly service provider leaked them. If e-mail addresses are private data, it need the owner's agreement to release it. Even SPAM may be considered as speech and cover by Article 27, distributors cannot easily distribute it without proper agreement with e-mail address owners.

Horace Cheng