

**Proposals to Contain the Problem of Unsolicited Electronic Messages
Response by the Hong Kong General Chamber of Commerce
November 2004**

The context

1. The Hong Kong General Chamber of Commerce is of the view that the problem of Internet spamming has reached a serious state. Although spam is less damaging to users than viruses, the large amount of spam is becoming more than just a nuisance, but is affecting the normal operation of business.
2. From the information we gathered, 80% of all email messages are spam, costing computer users US\$25 billion annually (from the International Telecommunication Union). In Hong Kong, a January 2004 survey conducted by the Hong Kong Internet Service Providers Association found that the spam in Hong Kong costs consumers and businesses approximately HK\$10 billion a year, and that about 50% of emails handled by ISPs in Hong Kong are spam.
3. To tackle the problem of spamming, a number of measures should be considered together. These include international cooperation, education, industry self-regulation and legislation.

International cooperation

4. Spamming is an international problem. As the consultation paper says, only 5% of spam is of Hong Kong origin. This means that even if all Hong Kong-originated spam were eradicated, the user would not experience any significant improvement if no progress were made in the rest of the world. International effort to combat spam is thus critical – anti-spam measures would only be effective through a concerted effort of regulators around the world.
5. Many governments around the Asia Pacific region and elsewhere in the world are taking measures, including legislation, to combat spamming. Given the borderless nature of spam, it is important that measures adopted by Hong Kong be consistent with international standards and look to best practices in other jurisdictions. This consistency would more effectively facilitate cross border enforcement and avoid creation of safe havens.

Education

6. In our view, consumer education is a key factor in any strategy to counter spam. In this regard, the information technology industry has a key role to play. It should be a champion of the anti-spam campaign in Hong Kong. Besides publicity and promotion, the industry could help consumers in a tangible way by bundling spam filtering tools in their products as well as offering support services. The government should be a key partner in this effort by giving a strong public message of support.

Industry self-regulation

7. There needs to be a coordinated effort amongst service suppliers to combat spam – including Internet service providers and their users who use email marketing and are hence potential spam-generators.

8. For Internet service providers, a first step should be the creation and maintenance of a spammers blacklist. A more positive step would be to engage their email-marketing users in developing a voluntary Code of Practice on e-mail marketing. Such a Code should require the user of email-marketing to allow recipients to choose whether to receive direct marketing through email.

9. From the point of view of the recipients, an “opt-in” requirement would be preferable, as the “opt-out” option would not prevent the initial volume of emails and spammers can continue to send out messages until the recipient requests the offender to stop. On the other hand, an “opt-in” method for collecting consent may be costly for SME marketers. To strike a balance, we propose a two-tier structure in the Code of Practice:

- Level I: opt-out. This is the minimum standard which has to be complied with by default.
- Level II: opt-in. This is the best practice which email marketers are encouraged to subscribe to. The Internet Service Providers can maintain a “good list” of Level II companies, which the latter can make use of in their own marketing.

Legislation

10. Generally, the Chamber is not in favour of legislation, as the policing and associated administration would incur additional cost to the government and hence to tax payers. On the other hand, the ease of spamming means that any effort that is entirely voluntary will not suffice in combating the problem. We therefore support a minimalist legislation to deal with specific problems of abuse.

11. If a law were to be enacted, it should be narrowly focused and targeted specifically at practices which have a deceptive element, so as not to interfere with legitimate e-commerce. Some example of deceptive practices include:

- using other people's identity to send email;
- using other people's server without authorisation;
- spoofed or fraudulent header information or subject lines.

12. The legislation should provide for significant civil and, where appropriate, criminal penalties. Internet service providers should be exempted from liability for mere routing activities.