

Response to the Public Consultation Paper on Code of Practice under the Unsolicited Electronic Messages Ordinance (Cap. 593) Released 7 September 2007

By Allan Dyer, 2007/10/08

1 Interpretations, Section 4

Says, ““commercial electronic message”, in relation to an SMS message, includes the main text and any displayable information attached to the message transmitted to the recipient;” but does not clarify what “displayable” means. For example, most email clients allow viewing of the raw RFC822 message, which includes the full headers and encoded attachments, but only a technically-savvy user would do so. The raw view is displayable, but not normally displayed.

2 Guidelines, Section 6.1, 6.2, Question 1

Section 6.1 says, “If the message is a facsimile, all sender information should be:” but “all sender information” is not defined. Similarly for section 6.2. For a fax, sender information should include:

1. Legal name of the person or entity sending the message
2. Working Contact fax number

For an email, sender information should include:

1. Legal name of the person or entity sending the message
2. Working Contact email address

3 Guidelines, Section 6.3, Section 6.5 Question 2

Section 6.3 allows a choice of providing the sender information as audio or text/image based. However, this will present a problem for people who are hearing or sight impaired. Therefore, unless the sender knows that the recipient will be able to access the information in the form

presented, the sender MUST provide the information in BOTH audio and text forms in a video call.

Similarly for Section 6.5, if the medium allows audio and text, the sender information MUST be included in BOTH forms.

4 Guidelines, Section 6.4 Question 2, Question 3

Allows the sender to mark the contact number in only one language, if the message is in a single language. However, most of the unsolicited SMS messages I have received have been in a language I cannot read (Chinese). Allowing the sender to use only one mark will make it difficult for mono-lingual recipients to unsubscribe. Therefore, senders MUST always mark the contact number in both English and Chinese, unless recipient has indicated to the sender that the sender information may be given solely in a specified language. Additionally, the contact number MUST be presented in Arabic numerals, not Chinese numerals (Arabic numerals are readable in both English and Chinese, but Chinese numerals are not).

5 Question 3

I agree that that, in case of a long SMS message that is split into two or more transmissions, the sender information must be included in the first transmission of the SMS message. However, the sender MUST NOT introduce any delay between the first and subsequent transmissions.

6 Guidelines Section 8.2a Questions 4, 6

Requiring a recipient to visit a webpage to unsubscribe from an email list is unreasonable, particularly in the light of the large number of abusive emails that contain links leading to malware and security exploits. Security advice to end-users often recommends that links in unsolicited messages should NEVER be followed. Also, some senders utilise visits to websites as an unscrupulous means of collecting additional (personal) data, or correlating already collected data (e.g. matching a cookie to an email address) - when this is in the form of single-pixel externally-served images in emails (so-called web-bugs), it can be defeated by configuring the email client to not load external images, but a link to an unsubscribe mechanism could fulfill the same, unscrupulous purpose.

Therefore, the mandatory unsubscribe mechanism for email should be email alone.

7 Guidelines, Section 8.2b Question 5

Certain email servers include list managers that can automatically include subscribe and unsubscribe headers in the message, for example, in the Mercury email server, if a list is configured with the option:

```
LIST_HEADERS: Y
```

The server will add headers similar to the following to all messages sent via the list:

```
List-Unsubscribe: <mailto:Maiser@yuikee.com.hk?body=unsubscribe%20Example>
```

```
List-Subscribe: <mailto:Maiser@yuikee.com.hk?body=subscribe%20Example>
```

These will be displayed as subscribe and unsubscribe links in compatible email clients.

OFTA should investigate whether Internet Standards cover these header types, and how widespread client support for these mechanisms is in common email clients and present clear advice in the Guidelines on which mechanisms are commonly usable and, therefore, would be acceptable as an unsubscribe facility under the Ordinance.

Clear advice on this could reduce the burden of compliance for responsible senders considerably, as they might only have to check their List configurations and turn on the relevant option to comply.

8 Guidelines Section 8.4 Questions 4, 6

Senders **MUST** always include the unsubscribe number in Arabic numerals and mark it in both English and Chinese, unless recipient has indicated to the sender that the sender information may be given solely in a specified language. See Section 4 of this document, above.

9 Guidelines Section 8.4 and 6.4 Questions 4, 6, 7

If the same number is provided for contact and for unsubscribing (e.g. in the address field of the SMS message), there is a question of how the purpose of contacting the number is communicated. As the sender and recipient may not share a common language, the Guidelines should specify a default protocol that is easy to use in English or Chinese. If the sender requires a different protocol, the message must include clear instruction on how to use it in both languages.

10 Guidelines Section 8.5 Questions 4, 6

Again, to ensure that disabled recipients are able to unsubscribe, messages in any medium that supports both audio and video must include BOTH audio and video forms of the unsubscribe facility statement.

11 Question 5, 6

The Guidelines should make clear what types of unsubscribe mechanism are mandatory for what types of message. As a minimum, a fax message must provide fax unsubscribe, SMS provide SMS unsubscribe, voice provide voice unsubscribe etc. However, should an SMS message have a voice unsubscribe facility? It is necessary for the Guidelines to be clear on this, so that recipients don't waste time, for example, voice calling an SMS number if this is not mandatory.

12 Question 8

The performance level for the unsubscribe mechanism is reasonable, should it also be applied to email servers and SMS?

However, there are circumstances where a sender might not be aware of the failure of incoming lines that are used for unsubscribe requests. In particular, there is no simple way for end users to test that all of a group of Direct Dial In lines is functioning. There is at least one case where DDI lines were not functioning for months, without the knowledge of the customer paying for those lines. It would be unjust for a company to be fined for non-compliance if the fault lay with a phone company that took the company's money, but failed to provide the required service.