

## **Submission of Comment on the Proposals to Contain the Problem of Unsolicited Electronic Messages issued on June 25, 2004**

### **Abstract**

1. Hong Kong Broadband Network Limited (“HKBN”) welcomes the opportunity to present its view on the TA’s proposals regarding the proposed arrangement to contain unsolicited electronic messages.
2. HKBN noted TA’s concern on the problems of spamming in various electronic telecommunications services. HKBN is committed to the provision of state-of-the-art telecommunications technologies and services in Hong Kong. There is no doubt that each operator has the obligation to provide telecommunications services to meet their respective obligations under their license conditions.
3. To put forward, HKBN supports the TA’s initiative in minimizing spam. This is in line with the on-going measures taken by both the industry in Hong Kong and in foreign jurisdictions. However, what we concerned most is whether or not any of the anti-spamming measures or arrangement would be effective in bringing the ultimate benefits to the customers. Further, all the measures need to be flexible enough to accommodate and withstand the rapidly evolving Internet landscape and the needs of the public as a whole.

### **Definition of Spamming**

4. It has been addressed in the Consultation Paper that spam is defined as “unsolicited electronic messages”. In general, a message is considered to be unsolicited if there is no prior relationship between parties. Thus, it is ultimately important that the definition of spam should at least exclude messages delivered from a business to its existing customers or where prior relationship between the parties has been established so that normal business communications between them are “reasonably expected” or within the contemplation of the parties.
5. HKBN noted that the above definition would be similar to the Spam Act 2003 in Australia. Under that legislation, all “unsolicited commercial electronic messages” are treated as spam; but commercial electronic messages sent in the context of existing business relationship between the parties should not be considered as unsolicited as the customers would have inherently/impliedly consented to such communications. Thus, communication in electronic format between prior established relationships should not be considered as spam.
6. It comes to our attention that the most troubling “spam” has the following common characteristics:
  - It usually contains illegal content;
  - Its aim is either fraudulent or deceptive;
  - It is sent to an anonymous group of recipients and in a random manner; and/or
  - A valid “opt-out” feature is not available in the content of the unsolicited messages.
7. On the other hand, given in paragraph 14 of the Consultation Paper, spam could simply refer to electronic message sent in large quantities, but regardless of the content transmitted. HKBN agrees that electronic message transmitted in bulk could be one of the elements to determine whether such message is a spam.

8. For easy enforcement as well as providing a clear guidelines to the general public, we suggest the definition of “spam” should be further discussed and defined clearly in order not to obstruct any other legitimate communication in the ordinary course of business or living.

## **Background**

9. It is undoubted that e-mail spamming could severely congest Internet traffic and annoy customers. From business point of view, spamming not only affects genuine business communications but also reduces productivity. For example, referring to a report released by HKISPA in January, 2004, the cost of spamming alone caused lost in productivity at approximately HK\$6 billion per year. In light of this, HKBN would agree that spam is a problem that should not be neglected.
10. HKBN considered that, when spam has been identified, the best policy to contain the problem should include well co-ordinated efforts from various levels including without limitation: (1) public education and awareness, (2) appropriate legislations against spammers, and (3) international cooperation with various law enforcement agencies.
11. HKBN is pleased to provide our comments to the questions raised in the Consultation Paper as follows:

## **Proposals on industry co-operation**

12. At present, in order to contain the problem of unsolicited electronic messages, HKBN has long adopted various measures in protecting the interests of our customers from spamming.

13. HKBN has been tackling this problem through self-regulatory arrangements, such as, \_\_\_\_\_. By applying these control arrangements, the abuses of open relay mail servers have improved significantly (See Table 1 Below).

Table 1

14. For the problem of junk fax, HKBN has been well following the “Code of Practice for Handling Complaints against Senders of Unsolicited Fax Advertisements” as issued by OFTA on January 2, 2004 with a set of well-established escalation procedures to deal with the junk fax senders.
15. Given that, we do not see there is such a need to impose any mandatory obligation or adopt other additional codes of practice for handling unsolicited electronic messages on us. At present, all these self-regulatory guidelines and code of practices have provided clear and useful information on the handling of unsolicited fax advertisements and e-mail messages. We can revisit this issue when the problem shall deteriorate to such an extent that additional code of practice shall become necessary.
16. Having said that, HKBN believes voluntary codes of practices for the operators should be on a self-regulatory nature. Further, they should not be over burdensome which may in turn increase the operating costs of providing the services to the customers. Afterall, the problem of spamming is attributable to a number of factors and the operators should not be made solely responsible for solving this problem of spamming.
17. Moreover, as additional regulations would invariably lead to compliance costs on the operators, we would urge TA to consider the proposals so as to strike for a proper balance between costs and effectiveness of enforcement.

18. Besides, HKBN queries whether the proposed “common blacklist for spammers” would help to reduce the problem of spamming. From the experience of HKBN, we do not see it is an efficient tool to fight against spam. The main reason is because spammers usually provide a fake e-mail address in the sender field. Thus, it would be impossible for the recipient to request the sender to “opt-out” from their mailing lists.

### **Public Anti-Spam Campaign and Awareness**

19. Given the advancement in technology and the increasing popularity of Internet access service in Hong Kong, the problems of spamming not only affect corporate users but also many household users. HKBN believes educating the general public on how to prevent spamming so that they could take preventive measure themselves, would be a the most fundamental and more cost-effective measure to contain spamming.
20. Having said that, HKBN believes public education has to be carried out by the Government so that members of the public could be empowered with sufficient knowledge to protect their computer systems from spamming.
21. With such an awareness, customers shall then by themselves download those free anti-spamming software available or choose the appropriate anti-spamming software for themselves. If appropriate software tools are installed in every PC, it would definitely help a lot in curbing these email spamming, rather than just relying on the network operators to provide anti-spamming services.
22. Further, according to the survey presented at the ITU Communications Day on 9<sup>th</sup> July 2004, only 42% of recipients had anti-spam software in place. In light of this, we suggest the Government should take an approach to educate users on how to use anti-spam software and understand the procedures for spam reporting, so that relevant

information can be provided to the regulating authorities timely for handling and investigation.

23. We cannot emphasize more that in the long run educating the general public in preventing and controlling spamming would be one of the most efficient elements in containing the problem of spamming.

### **Legislative Approach to Combat Spam and International Co-operation**

24. HKBN noted that some overseas jurisdictions have introduced anti-spam legislation in the context of their own legislative regimes. For example, in Australia, they have anti-spam legislation (Spam Act 2003); in the US, they have CAN-SPAM Act 2003 enacted with the intention to reduce the distribution of pornographic materials and in the UK, anti-spam legislation has been incorporated into privacy legislation (The privacy and Electronic Communication (EC Directive) Regulations 2003).
25. In each of the countries mentioned above, anti-spam legislation was introduced by reference to their own situations in those jurisdictions. In Hong Kong, it is also appropriate to way forward to legislation to contain the growing problems of spamming. However, as mentioned below, the definition of spamming has to be carefully drafted or it would have the potential to discourage business communications like using electronic channels to advertise their product/service or prevent other legitimate communications.
26. On the other hand, based on to the report “Legislation: One of the key pillars in the fight against spam” issued by The Hong Kong Anti-Spam Coalition in January, 2004, among all the e-mail spamming complaints reported by Internet users in Hong Kong, 5% of which are originated in Hong Kong and the majority 95% of e-mail spamming complaints are originated outside Hong Kong.

27. Given that the main source of spamming comes from overseas, the imposition of legislation sent from Hong Kong is far from sufficient in addressing the problem of spamming. HKBN believes that in order to combat spamming efficiently, legislation should be able to take into account of other cross-border and international co-operation. Otherwise, we would doubt the effectiveness in rooting out the problems of spamming.
28. Further, all regulatory and legislative approach should take heed to the operators so that they be not over-burdened to bear the costs of anti-spamming. For example, would operators be entitled to be paid for supplying information in relation to spamming, or to what extent should the operators be required to assist in investigations. In any event, operators should not be mandatory required to invest in sophisticated and costly system enhancement solutions for containing the problem of spamming.

## **Conclusion**

29. In conclusion, HKBN supports TA's intention to reduce spam, but a well-coordinated and comprehensive approach including (1) significant emphasis on public education and awareness, (2) legislation against spammers; and (3) international cooperation with various law enforcement agencies would be prerequisites in order to effectively contain the problem of spamming in Hong Kong.
30. For the interests of the general public as a whole, the TA is mindful that whether to introduce additional regulations or arrangements, whether or not customer interests shall be cost-effectively served should be carefully considered.