

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

Consumer Council's Response

1. The Council welcomes the Government initiative to explore measures to contain the problem of unsolicited electronic messages, and has pleasure in responding to the proposals in the consultation paper in the following.

Industry co-operation

2. The Council notes that there are voluntary codes of practices on the conduct of sending messages by fax, email and SMS/MMS. The Council supports the view that the industry bodies should build on their existing work to tackle the problem of spam, for instance by

- developing strategies to have Internet users shut down open relay mail servers;
- publishing tips for their subscribers for dealing with spam; and
- compiling a common blacklist of spammers.

3. Although a self-regulatory approach based on industry co-operation is preferable, the Council is concerned that the voluntary measures to be introduced by industry co-operation may not be effective judging from the experience with junk fax which attracted high complaint figures in 2003. The Council therefore suggests that there should be mandatory codes of practice to regulate the conduct of FTNS operators, ISPs and mobile operators.

4. As to the proposal that an anti-spam campaign could be mounted by the industry, the Council believes that an anti-spam campaign should involve representatives from the industry and consumers. The information from the campaign should clearly spell out the responsibility of the service providers and consumers. Consumers should be provided with accurate information about the nature of spam and the choice of resources available to consumers to counter the problem of spam.

Legislative Approach

5. The Council notes that overseas jurisdictions such as the US, UK and Australia have anti-spam legislation. In view of the pervasiveness of electronic means of communication, the circulation of illicit content, nuisance and invasion of personal privacy perpetrated by spam, the Council suggests that legislation against unsolicited electronic message should be considered.

6. The Council would support the legislative route to demonstrate that spamming is an unacceptable behavior in Hong Kong. Since the Council has always supported the technology neutral policy by the Government, the

Council considers that the law against spam should be technologically neutral in covering all forms of unsolicited messages delivered by electronic means, including cold calls, voice and video. The law should cover only electronic messages of a commercial nature.

7. The Council would prefer civil rather than criminal penalties in the proposed anti-spam legislation. Moreover, representative action should be allowed in this specific legislation so that designated bodies such as OFTA or the Consumer Council can be given the locus standi to bring action on behalf of the affected consumers. Precedent can be found in the SFC taking derivative action in cases of market misconduct/manipulation or misleading/false information.

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