



Hong Kong, October 2004

RESPONSE TO CONSULTATION PAPER

*Proposals to Contain the Problem
of Unsolicited Electronic Messages*

Developed by the Hong Kong Anti-Spam Coalition

Introduction

The Hong Kong Anti-Spam Coalition welcomes this opportunity to provide feedback in response to the consultation paper on "Proposals to Contain the Problem of Unsolicited Electronic Messages," issued by the Office of the Telecommunications Authority (OfTA) on 25 June 2004. We have included below our responses to each of the issues raised in the consultation document, as well as general background information on the Coalition.

The Hong Kong Anti-Spam Coalition

The Hong Kong Anti-Spam Coalition was formed during the summer of 2003. The coalition brought together a group of concerned industry participants such as the Hong Kong Internet Service Providers Association (HKISPA), the Asia Digital Marketing Association (ADMA) and business leaders from a variety of organisations including Microsoft, TimeWarner, MessageLabs, and Global Orient.

The Coalition aims to make a real difference to consumers, businesses and government by bringing together powerful local market knowledge and contacts to foster effective industry self-regulation, legislative solutions, information sharing, and other global best anti-spam practices.

As leaders in the industry, these companies and associations recognize they must share responsibility for dealing with spam. The group's efforts thus far have focused on the following areas:

- Discussion and development of industry best practices for commercial e-mail;
- Evaluation of extent of the spam problem in Hong Kong (and elsewhere in Asia), through both short and longer term projects;
- Developing information highlighting the problem of spam vis-à-vis computer users in Hong Kong and identifying key elements of effective anti-spam legislation;
- Development and sponsorship of training programs to educate local IT professionals on the dangers of spam and how to avoid having their systems abused by spammers;
- Where possible, sharing of information that would facilitate enforcement action against high-volume spammers;
- Liaison with the Hong Kong government in these areas.

Size of the Problem (Paragraph 34 of Consultation Document)

More and more people are now using the World Wide Web, making the Internet an increasingly integral part of everyday life. Many people now have Internet access and are using it to exchange text files, photos, videos and music. During the past few years, the number of Internet users has increased worldwide with incredible speed. As of the end of June 2003, 66.5% of households in the United States are online, 61% in Hong Kong, 59.8% in Sweden, 58.9% in Netherlands, 51% in Australia, and 44.0% in Japan. (Source: Nielsen/NetRatings, Aug. 2003)

Since one of the most widely used functions of the Internet is electronic mail, it is no surprise that as the number of individuals using the Internet increases, the number of e-mail accounts rises as well. Almost every individual and business, from large corporations to small enterprises, maintain multiple e-mail addresses. E-mail volume will continue to explode as person-to-person e-mails are joined by rapidly-growing numbers of spam and email alerts and notifications, according to IDC. In 2006, the total number of email messages sent daily is expected to exceed 60 billion worldwide, up from 31 billion in 2002, and slightly more than half of these messages will be person-to-person emails. E-mail is a powerful medium for expressing ideas, receiving information, sharing opinions, and supporting commerce. E-mail is a convenient way for businesses to address customer service issues, send invoices and receipts, and maintain intra-office communications. The dramatic explosion in E-mail use should surprise no one and can be attributed to its role as a quick and relatively inexpensive form of communication. E-mail has developed as the primary method of communication for personal and, more importantly, business use in 2003 and will surely increase in the future.

While the purpose of e-mail is to make communication more convenient, e-mail does not always provide the increased efficiency desired. Worldwide, spam (Unsolicited Bulk and Unsolicited Commercial Email) is estimated to comprise anywhere from 50-85% of all e-mail traffic, and is a growing problem in Hong Kong and throughout the Asia region. In the United States alone, the cost of spam to recipient organizations is believed to exceed US\$9 billion annually in lost productivity (Ferris Research 2003).

Not surprisingly, the spam problem in Hong Kong is similarly severe and apparently worsening rapidly. A survey conducted by the Hong Kong Internet Service Providers Association (HKISPA) in December 2003, gathering data from eleven ISPs that represent over 90% of Internet users in Hong Kong, revealed that at that time 50% of all e-mail in Hong Kong is spam. Based on international calculation methodologies, the annual economic costs of spam to Hong Kong – using figures from the HKISPA's January 2004 survey – could be as much as HK\$10 billion, with the cost of lost productivity alone estimated at HK\$6 billion. More recently, in April 2004

Brightmail estimated that the volume of spam as a percentage of total e-mail in Hong Kong exceeded 80%, suggesting that the total cost to Hong Kong in terms of lost productivity is even more extreme than previously believed. And information also indicates that Hong Kong is no longer just a recipient of spam but also a producer. According to Spamhaus's Register of Known Spamming Operations (ROKSO), over two dozen of the world's highest volume spammers are either based in or otherwise tied to Hong Kong.

Beyond costs associated with lost productivity and the need for additional storage space and bandwidth, spam poses significant dangers for computer users and for the broader online environment. Spam is frequently fraudulent, deceptive, or highly offensive. Additionally, there is an increasing and alarming convergence of the spamming and hacking communities, and spam is often used as a delivery vehicle for malicious worm and virus attacks and other forms of computer-related crime.

As reflected in the chart below, both the tangible and the intangible impact of spam on both individual and business Internet users in Hong Kong is already at critical levels.

| | | | | |
|------------------------------|---------------------------|----------------------|-----------------|--|
| <u>Tangible Costs</u> | - Low response rates | - Storage space | - Storage space | - Wasted time |
| | - Increased costs | - Hardware/Software | - IT Upgrades | - Cost of bandwidth, access time and storage |
| | - Decreasing opt-in rates | - Customer Service | - Legal risks | - Misused resources |
| | IT security | - Management time | - Productivity | -IT security |
| | | - Cancelled accounts | - Profitability | |
| | | -IT security | -IT security | |

| Marketers | ISPs/Portals | Companies | Recipients |
|----------------------------|-----------------------------|----------------------------------|--|
| - Erosion of impact | - Pressure to switch ISP's | - User trust breakdown | - Irritation and distrust |
| - Worsening environment | - Decline in trust | - Distraction from core business | - Possible fraud |
| - Clutter | - Seen as source of problem | | - Emotional upset at disturbing material |
| - Customer dissatisfaction | | | -Particular vulnerability of children to harmful content |

Industry Co-Operation (Paragraph 71 of Consultation Document)

As reflected in the government's consultation document, there are various voluntary codes of conduct regarding the transmission of electronic communications, and these can helpfully contribute to the overall solution to the spam problem. Members of the Hong Kong Anti-Spam Coalition do not see a need to make these codes of conduct mandatory and generally believe that governments should exercise a light touch in matters involving Internet governance. That said, the Coalition believes that the severity of the spam problem necessitates a legislative

solution, and that the government should enact specific and targeted legislation to address the deceptive and fraudulent practices used by today's spammers (*see* discussion below in relation to paragraph 83).

Anti-Spam Campaign (Paragraph 75 of Consultation Document)

In paragraph 75 of the consultation document, the government makes the important point that information campaigns are needed to raise awareness and provide accurate data and useful resources to users. The Hong Kong Anti-Spam Coalition is pleased to have helped to organize and carry out two major events in 2004 that were designed to achieve precisely these objectives. In January 2004, we partnered with the Office of Sin Chung Kai, Legislative Councillor for Information Technology and numerous other supporting organizations to hold a spam seminar that attracted leaders from government (including Office of the Telecommunications Authority), academia, and the private sector. This event was followed by another major spam forum held in June 2004 under the auspices of InterCham*; this event, which likewise brought together a wide range of interested parties from different sectors, provided the community with information on both policy and technology solutions as well as information on industry-developed best practices. Through these two events alone, we were able to reach hundreds of computer users in Hong Kong. Additionally, many members of our Coalition have carried out extensive awareness-raising campaigns on their own.

Industry should and undoubtedly will continue to carry out activities such as these but, again, raising consumer awareness is only part of the solution and will be of limited effect unless pursued in the context of a holistic approach to the problem – including the development and successful implementation of legislation.

* Intercham is an informal organisation uniting 27 international chambers of commerce and business associations present in Hong Kong. Intercham members include: American Chamber of Commerce, Australian Chamber of Commerce, Austrian Association, Belgium-Luxembourg Chamber of Commerce, British Chamber of Commerce, Canadian Chamber of Commerce, Danish Business Association, Dutch Business Association, Finnish Business Council, French Chamber of Commerce, German Chamber of Commerce, Hong Kong General Chamber of Commerce, Indian Chamber of Commerce, Irish Business Forum, Israeli Chamber of Commerce, Italian Chamber of Commerce, Japanese Chamber of Commerce, Korean Chamber of Commerce, Mexican Business Association, Nepal Business Association, New Zealand Business Association, Norwegian Business Association, Philippines Chamber of Commerce, Singapore Chamber of Commerce, Spanish Chamber of Commerce, Swedish Chamber of Commerce, and Swiss Business Council.

Technical Solutions (Paragraph 78 of Consultation Document)

As noted in the consultation document, technology solutions constitute a critical means of containing spam. In recent years, there have been major advances in filtering and other technologies that have had a significant impact in blocking unwanted mail. Indeed, a number of Coalition members have themselves invested considerable resources in refining anti-spam technologies with measurable results. These investments will continue in response to the needs of computer users and, over time, technology will be an increasingly effective means of eradicating spam. Regrettably, however, spammers are likewise becoming increasingly sophisticated and effective in circumventing today's technologies. For that reason, it is critical that spam be addressed on multiple fronts simultaneously and through close partnership between the public and private sectors.

Pros and Cons of a Legislative Approach to Spam (Paragraph 83 of Consultation Document)

The Hong Kong Anti-Spam Coalition strongly believes that legislation (and effective enforcement of the law) is a critical component of a comprehensive response to the spam problem. We note that a large and increasing number of markets across the Asia Pacific region and around the world have already implemented anti-spam laws or are well advanced in deciding the best legislative route forward. These include: Australia, New Zealand, Singapore, Malaysia, Mainland China, Japan, Korea, Taiwan, the United States, and Member States of the European Union. Legislation by itself will not solve the problem but it would serve a number of important objectives by (1) setting clear boundaries for legitimate digital marketers; (2) serving to deter spammers from engaging in improper activities and providing for enforcement in appropriate cases; (3) facilitating intergovernmental cooperation to address spam; and (4) preventing individual markets like Hong Kong from becoming "safe havens" for spammers.

Some have questioned the effectiveness of legislation, but experience under existing spam laws increasingly demonstrates that anti-spam enforcement, while challenging due to the deceptive practices employed by spammers, is possible. Governments, ISPs and others have taken numerous civil, administrative and criminal actions under anti-spam laws around the world, in some cases targeting notorious spammers believed to be responsible for the transmission of hundreds of millions of unwanted (and frequently fraudulent, deceptive, or offensive) e-mails. It is too early to accurately quantify the medium to long-term impact of legislation, although we note that some governments (e.g., the Republic of Korea) have reported a decrease in the volume of spam that they believe is partly attributable to an upswing in enforcement. However,

we believe that sustained enforcement actions in multiple markets will over time help significantly to change the economics of spamming and ultimately reduce the volume of unwanted mail.

Some have also expressed concern that anti-spam legislation would result in additional compliance costs to those who wish to send unsolicited electronic messages for marketing purposes. The Coalition believes that such costs would be negligible under appropriately crafted legislation. A well-drafted anti-spam law will help, rather than hinder, legitimate e-commerce by proscribing the deceptive and fraudulent practices used by today's spammers and providing for meaningful sanctions against those who violate the rules – thereby increasing the level of trust people place in computing. Prohibitions against the types of activities commonly employed by spammers (such as e-mail harvesting, dictionary attacks, the use of spoofed header information, etc.) should not impose any undue burden or cost on legitimate digital marketers, and any such costs would in any event be outweighed by the benefits of having an effective law in place. It is precisely for that reason that responsible entities who rely upon digital marketing – including members of the Hong Kong Anti-Spam Coalition such as Microsoft, TimeWarner, and members of the Asia Digital Marketing Association – have embraced anti-spam legislation.

The government has not in the consultation document asked for specific comments on the detailed aspects of legislation, although the paper raises important issues in this regard. Nonetheless, Coalition members use this opportunity to offer their perspective on some of the more important issues that should be addressed through anti-spam legislation. In particular, the Coalition supports comprehensive but targeted legislation that includes:

- Meaningful civil and criminal penalties for fraudulent e-mails: Anti-spam legislation should apply to both individuals and companies and should prohibit the use of false or misleading header information, false or misleading subject lines, and the misuse of third-party domain names. Spammers use tactics such as these to avoid detection and to encourage unsuspecting consumers to open spam mail.
- Requirements that unsolicited commercial e-mail messages include a functioning mechanism for opting out of receiving future e-mail messages, valid contact information, and identification of the message as an advertisement through an "ADV" label.
- A "safe harbour" to the "ADV" labelling requirement for digital marketers who follow e-mail best practices: The Coalition believes that technology can and should be used to help differentiate messages that are sent by legitimate marketers from those that are not. Legislation can create incentives for online marketers to adopt e-mail best practices and

to certify themselves as trusted senders who can be more easily identified by both filtering technologies and consumers.

- Rigorous measures to prevent harvesting and the use of “dictionary attacks,” and prohibitions on the use of scripts to establish large volumes of e-mail accounts from which to send spam.
- Effective ISP enforcement and language preserving ISPs’ rights to combat spam: ISP enforcement is an important means of combating the spam problem. Anti-spam legislation should facilitate, and not create barriers to, such enforcement efforts. Further, the law should not obligate ISPs to block or carry certain types of e-mail messages, nor should it inhibit an ISP’s ability to enforce its anti-spam policies.
- Sufficiently broad scope to cover all bad actors involved in sending unlawful spam: Anti-spam legislation should capture not only individuals and entities whose products are advertised in spam mail but also others who knowingly assist in the transmission of unlawful spam. The law should include an explicit and unambiguous exemption for mere routing activities.

Conclusion

The Coalition appreciates this opportunity to provide feedback on the issues raised in the government’s consultation document. Plainly, spam is a problem that has reached crisis proportions, including here in Hong Kong, and one that requires immediate action on a number of fronts. Much work has already been done with regard to technology solutions, industry collaboration and awareness-raising campaigns. This work should and will continue. Additionally and as outlined above, numerous governments around the world have sought to complement industry-led anti-spam efforts by developing legislation and allocating resources for enforcement. We submit that the time is now for an effective anti-spam law in Hong Kong and urge the government to move forward with the legislative process as expeditiously as possible.