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for the attention of:

Communications and Technology Branch
Commerce, Industry and Technology Bureau
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(Attention: Assistant Secretary (B))

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THE ASIA DIGITAL MARKETING ASSOCIATION'S REVIEW OF OFTA'S PUBLIC CONSULTATION ON: "LEGISLATIVE PROPOSALS TO CONTAIN THE PROBLEM OF UNSOLICITED ELECTRONIC MESSAGES"

Summary of ADMA's Position:

The ADMA believes that legislation is an important part of the overall solution to the problem of SPAM; however it is not the only solution. Legislation with industry adherence to strong best practices, drafted through industry associations, and supported by a technological framework is the best solution for limiting the tide of unsolicited email, faxes and automated sales calls.

The ADMA would support legislation that, amongst other things, promoted an Opt-out mechanism, as opposed to an Opt-in mechanism, and helped the consumer to better differentiate legitimate commercial communications from SPAM.

As legitimate marketers the members of the ADMA are already adhering to the following best practices:

Notice: A marketer will state clearly what information they collect and what they intend to do with this information, including for marketing purposes.

Choice: The consumer should have the right, at all times, to choose what they receive and when, and have the ability to unsubscribe from any or all communications.

Transparency: The marketer should be a clearly visible entity and should: "Say what they do, and do what they say".

The ADMA will support legislation that promotes, supports, and regulates activities based on these three principles.

SUMMARY OF COMMENTS ON PROPOSED LEGISLATION

Guiding Principles

The ADMA is supportive of all six (6) of the Principles as they lay the groundwork for a legislation that is balanced and pragmatic, protecting both the consumer's right to choose, and the rights of the marketers. The ADMA is also supportive of Penalties and remedies that are proportionate to the severity of the offences, however these must be severe enough so as to act as a deterrent.

Scope of Coverage

While the ADMA supports the fact that the legislation should cover a wide spectrum of commercial messages, we believe that there is confusion as to the definition of what will be considered a commercial message. This confusion lies primarily in the contradiction between paragraphs 19 and 29(c).

Paragraph 19 defines commercial messages as those who *primary purpose* is the commercial advertisement or promotion of a commercial product or service.

However paragraph 29 (c) defines an email as commercial if "*at least one of the purposes ... is to offer, advertise, promote, or sponsor the provision of goods, facilities, services, land or a business or investment opportunity, etc.*".

We also believe the proposed legislation **should** provide rights to the consumer to Opt-out of receiving political, religious, or charitable communications as well. Unsolicited Electronic Messages are unsolicited no matter what the content.

The ADMA is supportive of the fact that the legislation will cover any message with a 'Hong Kong link', even if it originates outside of the HKSAR, and that the Government of the HKSAR is aware of the global implications of SPAM. However, we are not clear as to how any extra-territorial application will be handled and how effective they will be.

The ADMA is very supportive of the Opt-out approach as this protects the right of the consumer and at the same time does not unnecessarily impact the growth of e-marketing in Hong Kong.

The ADMA is supportive of the conditions under which "unsubscribes" must be provided and honoured.

AREAS OF CONCERN WITHIN THE LEGISLATION

Do not call registers

While the legislation does not immediately call for the establishment of a Do Not Email list, the ADMA would not support its establishment as it would not only be costly to maintain and add undue financial burden to legitimate marketers, but it would also potentially provide spammers with a legitimate means to disregard the unsubscribe wishes of consumers who have not signed up to it.

If marketers are following the other areas of the legislation by honoring opt-outs then the Do Not Email Register would become irrelevant.

Exclusion of Hong Kong Link

Paragraph 55 item (d) "except where, the person who sends the message does not know or could not with reasonable diligence have ascertained that the message has a Hong Kong link".

The ADMA believes this exclusion is unnecessary, and could create a loophole for spammers to exploit.

Rights of Service Providers

The ADMA is concerned that the legislation does not differentiate between service providers and the originators of email messages that could be considered as spam.

A number of the ADMA's membership base provide hosted email delivery platforms to legitimate marketers. While they undertake every effort to ensure the communications their clients send to their end users are permission based, the current proposed legislation appears to also hold the technology service provider liable for any breach of the legislation.

We believe that it should be clearly stated that it is the "originator" of the message and not the service provider that is responsible for the breach of the proposed legislation.

ABOUT THE ASIA DIGITAL MARKETING ASSOCIATION

The Asia Digital Marketing Association (ADMA) is the voice of, and advocate for, the digital marketing industry in Asia (excluding Japan). The ADMA is an umbrella organisation, guided by senior executives in the industry, and charged with gaining consensus and formulating a powerful point of view on all key industry issues. The ADMA actively promotes the benefits of using mobile and the internet as a channel to communicate with consumers and was established to provide leadership and guidance on issues, criticisms and misconceptions about digital marketing as well as lobbying and public relations assistance for member companies.

ADMA members are responsible marketers who are building ways to make consumers experiences with online marketers relevant, personal and trustworthy. Members include eBay, MSN, Cathay Pacific, DoubleClick and Yahoo! Hong Kong, plus a whole range of content, technology and marketing communications companies.

The ADMA has also been a vigorous participant in the Hong Kong Anti-spam Coalition, 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 and Time Warner. 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.

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