

Consultation Paper on

Legislative Proposals to Contain the Problem of

Unsolicited Electronic Messages

Issued by the Telecommunications Authority, Hong Kong

on 20 January 2006

Joint Consultation Response by

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Submitted by email to: uem@citb.gov.hk

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SECTION A: SUMMARY

Easy By Phone Company Limited and AGH Solutions Company Limited (“EBP AND AGH”) jointly welcome and support an anti-spam legislation as described in the consultative paper “**Legislative Proposals to Contain the Problem of Unsolicited Electronic Messages**” issued by the Telecommunications Authority (“TA”) on 20 January 2006.

EBP and AGH hope to share some responses for the TA’s consideration. Here is a summary of our responses:

1. EBP and AGH hope the TA may consider a revision of *Guiding Principle 2* to “There should be room for the development of e-marketing in Hong Kong as a legitimate promotion channel, and innovative applications of communication technologies in enhancing business processes and organization effectiveness.”
2. EBP and AGH hope the TA may consider using the term “marketing electronic messages” instead of “commercial electronic messages” to avoid possible misunderstanding by the public.
3. EBP and AGH hope the TA may include person-to-person calls in the anti-spam legislation, instead of excluding them.
4. EBP and AGH hope the TA may consider whether it will be appropriate and helpful to consider the role of the Technology Court developed and located in the High Court Building can play in the enforcement framework and, if so, whether any changes or additions to the High Court Rules and Practice Directions will be needed to facilitate the involvement of the Technology Court in the enforcement framework.

Elaborations on the background and rationale of the above responses are included in “Section B: Responses”. EBP and AGH wish their responses may contribute positively to the anti-spam initiative.

SECTION B: RESPONSES

Easy By Phone Company Limited and AGH Solutions Company Limited (“EBP and AGH”) jointly appreciate the opportunity to comment on the consultative paper “Legislative Proposals to Contain the Problem of Unsolicited Electronic Messages” (“Proposal”) issued by the Telecommunications Authority (“TA”) on 20 January 2006. EBP and AGH welcome and support a legislative move to contain unsolicited electronic messages (“UEM”), and wishes EBP and AGH may contribute positively to the anti-spam initiative through our responses, as follows:

RESPONSE 1

Guiding Principle 2 is too narrow. It should be enhanced to support innovative applications of electronic messages as well.

- 1.1 Guiding Principle 2 is too narrow since it does not take into account the fact that innovative technologies have been developed and used for proper and healthy uses such as customer relations management and improvement of business processes and organizational efficiencies and effectiveness. The TA should recognize that there are legitimate purposes and uses of electronic communications beyond marketing and promotional purposes. The public should not be misled into thinking that all electronic communications are marketing schemes.
- 1.2 The TA should therefore take into account and not lose sight of such technological developments and legitimate uses and ensure that such healthy and important developments and uses are not unnecessarily stifled.
- 1.3 Through a balanced act to contain problems of spamming, and at the same time educating the public about the correct application of multi-communication technologies, EBP and AGH foresee a great potential for the TA to support the development of an innovative applications of electronic messages, as described in [1.3] and [1.4].
- 1.4 Accordingly, EBP and AGH hope the TA may consider the following extension to Guiding Principle 2:

“There should be room for the development of e-marketing in Hong Kong as a legitimate promotion channel, and innovative applications of communication technologies in enhancing quality service, business processes and organization efficiencies and effectiveness.”

RESPONSE 2

Terminology of ‘Commercial Electronic Messages’ may be misleading.

- 2.1 The choice of the words “commercial electronic messages” seems to be a result of the narrow view of the development of electronic communications and illustrative of the tendency of equating all electronic messages with marketing schemes. This, in our submission, fails to recognize that there are important and healthy developments in electronic communications beyond mere marketing purposes. More importantly, such unwarranted equation of electronic messages with marketing will mislead the public into thinking that all electronic messages are marketing schemes and stifle the developments and healthy uses of electronic communications.
- 2.2 Based on the definition of the term “commercial electronic messages” in Paragraph 29(c) in the Proposal, the focus of UEM Bill is placed on containing problems of e-marketing-related “electronic messages”.
- 2.3 EBP and AGH submit that advertising, marketing and sales are just some examples of many functions in an organization where electronic messages may be used.
- 2.4 With the advances in electronic communication technologies that blend voice messages (through fixed-line and mobile phones), SMS, email, fax, and the web, enormous opportunities are yet to be exploited by companies and organizations through their innovative applications in enhancing quality service, and improving process effectiveness and efficiencies.
- 2.5 Accordingly, if the UEM Bill adopts the terminology of “commercial electronic messages”, it is

possible that the general public will soon be misled into associating all electronic messages for commercial purposes to be e-marketing related, and this will have a profound negative effect in the healthy growth of innovative information technologies in their infancy stage.

2.6 EBP AND AGH submit that the TA should consider changing the use of the terminology of “commercial electronic messages” to “marketing electronic messages”.

RESPONSE 3

Person-to-person calls should also be included in the anti-spam legislation.

- 3.1. EBP and AGH believe that person-to-person voice calls, which are suggested to be excluded in the Proposal, should be included in the scope of applicability of the UEM Bill.
- 3.2. To a recipient, any unsolicited voice calls, whether person-to-person calls or calls with “pre-recorded elements”, are a similar nuisance and a waste of time. Many consumers find that person-to-person calls are even more annoying and intrusive since the marketing agents making the calls are often persistent and harassing. Should the UEM Bill be effective towards UEM with “pre-recorded elements”, there is no reason why the same legislative framework should not be applied equally and effectively to person-to-person calls.
- 3.3. EBP and AGH understand from Paragraph 23 of the Proposal that the TA considers that person-to-person calls may not constitute a problem because “...Such promotion calls require the business entity undertaking the promotion to devote substantial manpower resources and time to the promotion.” Here EBP and AGH are highly skeptical if the cost factor is directly related to the level of spamming or incentive to spammers, especially when the cost-justification of making marketing calls depends on the underlying revenue and profitability structure of the products and services in question. Such reasoning is unwarranted and will clearly send out the wrong message to large corporations that can clearly afford the substantial resources. Both the public and the SME will suffer from this faulty reasoning and any legislation based on it.

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- 3.4. Further, if person-to-person voice calls are excluded in the Proposal, EBP and AGH are concerned that some sectors may regard that the Government of the HKSAR as favoring large corporations, which have competitive advantages over SME in allocating much more substantial resources for spamming activities.
- 3.5. EBP and AGH appraise the TA in taking a proactive stance to encompass ‘all’ forms of electronic messages in an attempt to cater for future developments in technologies and services. Here EBP and AGH would like to remark that besides the ‘form’ of electronic messages that can be evolved quickly as well, the cost structure of person-to-person calls could also evolve over time. For instance, VoIP technologies may provide a low cost for international phone calls, such that in future even person-to-person calls may be made from another location where staff cost is substantially lower than the cost of local telephone representatives today. Alternatively, if in future some telemarketers have devised innovative pay-on-results commission schemes for its person-to-person calls, unsolicited voice calls may trigger a new wave of spamming activities that is legally ‘outside’ the scope of the UEM Bill.
- 3.6. In sum, the exclusion of person-to person calls from the legislative framework will clearly be undesirable and defeat the TA’s purpose and efforts in undertaking the anti-spam initiative.

RESPONSE 4

The role of the Technology Court should be considered.

- 4.1 Electronic communications is a highly specialized area and the technological requirements needed for the proper and efficient enforcement of the anti-spam legislation should be considered.
- 4.2 The Technology Court, equipped with relevant technologies, is developed to cater for the needs of technological advancement and of improving in the judicial process. Any anti-spam initiative and legislative proposals should consider what role, if any, the Technology Court can play in the enforcement of any anti-spam legislation to enhance the effectiveness and the efficiency of the whole legislative framework.

4.3 EBP and AGH hope the TA will consider what role, if any, of the Technology Court can play in the enforcement framework and, if so, whether any changes or additions to the High Court Rules and Practice Directions will be needed to facilitate the involvement of the Technology Court in the enforcement framework.

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