



Implementation of the Unsolicited Electronic Messages Ordinance - 2013

Telecommunications Users and Consumers Advisory Committee
21 November 2013

An overview of the Unsolicited Electronic Messages Ordinance

- The Unsolicited Electronic Messages Ordinance (“UEMO”)
 - in full force since the end of 2007
 - regulates the sending of commercial electronic messages (“CEMs”) that have a Hong Kong link, and covers fax, emails, short messages and pre-recorded telephone messages for promoting and marketing products or services
 - does not cover person-to-person marketing calls
- “Hong Kong link” refers to a CEM that
 - originates in Hong Kong
 - is sent to Hong Kong, or
 - is sent to an electronic address in Hong Kong (such as a telephone number)

“Opt-out” Regime

- A sender is not required to obtain prior consent from the recipient concerned when sending CEMs
 - but has to comply with the requirements of the UEMO
 - provide accurate sender information
 - provide free unsubscribe facilities
 - honour unsubscribe requests
 - cleanse the distribution lists against the do-not-call registers (“DNCRs”)
 - no misleading subjects shall be used in commercial email messages
 - no hiding of calling line identification is allowed when making a call or sending a fax message
 - until the recipient expresses his/her wish of not receiving CEMs by
 - making use of the unsubscribe facility provided by the sender
 - registering his/her telephone number to the relevant DNCR

The Code of Practice under the UEMO

- Pursuant to section 29 of the UEMO, the former Telecommunications Authority established a Code of Practice (“CoP”) in 2007 after public consultation
 - for the purpose of providing practical guidance to senders of CEMs on certain requirements in the UEMO as well as the Unsolicited Electronic Messages Regulation relating to sender information and unsubscribe facility as described therein
- A failure on the part of any person to observe any provision of the approved CoP shall not of itself render that person liable to legal proceedings
- However, the above CoP is admissible in proof and may be relied on by any party to the legal proceedings as tending to establish or negate the matter

Revisions of the CoP

- The original CoP provides descriptions of the position, display and presentation of the
 - sender information
 - unsubscribe facility and
 - unsubscribe facility statementin different types of CEMs
- The Communications Authority (“CA”) issued a consultation paper on 1 March 2013 to conduct a consultation on the proposed revisions of the CoP
 - for providing practical and updated guidance on the sending of CEMs in compliance with the requirements of the UEMO
- The revised CoP was gazetted on 30 August 2013 and will take effect on 30 November 2013

Gist of the Revisions of the CoP

- define “other short messages”
- cleanse the distribution lists of telephone numbers against the relevant DNCR
- provide the telephone numbers from and to which the fax message is sent
- provide guidance on the storage of different types of records of unsubscribe requests

Revision: Define “other short messages”

- classify short messages into the categories of “short-message-service” (SMS) messages and “other short messages”
- “other short messages” may contain:
 - text
 - graphic/images
 - short messages of audio/video file clips
 - including multimedia message service (“MMS”) messages and any short message conveyed via a variety of online messaging platforms available for smartphones, e.g. WhatsApp

Revision: Cleanse the distribution lists of telephone numbers against the relevant DNCR

- describe the scope of application of different DNCRs
 - DNCR for pre-recorded telephone messages
 - DNCR for fax messages
 - DNCR for short messages
- clearly state that a sender should not send CEMs to telephone numbers in the DNCRs, unless he/she has obtained consent from the recipient concerned

Numbers registered in the DNCRs

- As of 30 September 2013, more than 2.58 million telephone or fax numbers have been registered in the three DNCRs.

DNCR	Numbers registered
For fax	734,158
For short messages	641,724
For pre-recorded telephone messages	1,212,595
Total	2,588,477

Revision: Provide the tel. no. from and to which the fax message is sent in the commercial fax

- its purpose is to facilitate the recipient in identifying whether he/she is the intended addressee
- to minimise misguided complaints caused by call routing/forwarding or the duplex ringing number of a telephone line

Revision: Provide guidance on the storage of different types of records of unsubscribe requests

- To facilitate CEM senders to comply with the Ordinance's requirement regarding the storage of unsubscribe requests:
 - Telephone conversations should be recorded by a voice recorder and be either retained in the original format or converted into digital voice files for storage
 - Unsubscribe requests sent by fax should be retained in the original format (the hardcopy), or converted into images or PDF (portable document format) files for digital storage
 - Contents of SMS/other short messages should be retained and stored in the original format
 - For unsubscribe requests sent by e-mail, or by clicking an Internet hyperlink, an electronic record of such e-mail messages or the content returned by the web page of the hyperlink should be stored in the original format
 - For unsubscribe requests sent by pressing a button while listening to pre-recorded telephone messages, record of details showing the date, time and telephone number receiving the unsubscribe request should be retained

Implementation of the UEMO

- Members of the public may report to the CA on senders suspected to have contravened the UEMO
- Depending on the circumstances, the CA may issue advisory or warning letters to the senders
- Pursuant to the UEMO, the CA may issue to the senders enforcement notices directing them to take steps to remedy the contraventions. Any person who fails to comply with an enforcement notice, he/she may be liable to:
 - on the first conviction: a fine of up to HK\$100,000
 - on a second and subsequent conviction: a fine of up to HK\$500,00
 - for continuing offence, a further daily fine of HK\$1,000 for each day can be imposed by the court

Number of reports

- Since the full implementation of the UEMO, the CA had received a total of 24,775 reports as at 30 September 2013.

Type of reports	Number
Fax	14,900 (60%)
Email	3,589 (14%)
Pre-recorded telephone message	2,139 (9%)
SMS	3,118 (13%)
Others	1,029 (4%)
Total	24,775 (100%)

Enforcement situation

- As at 30 September 2013, the CA had handled 24,194 reports (i.e. 97.7% of the reports received)
 - After having been issued an advisory letter, senders in general are willing to take steps to remedy the contravention
 - Upon confirmation of the remedial measures, the CA will issue a warning letter to the sender, requiring him/her to observe the law
 - A total of 582 warning letters had been issued
- If the sender fails to give any legitimate explanation and refuses to take any remedial measures, we will consider issuing an enforcement notice
- The CA has issued a total of 22 enforcement notices to date, and is currently looking into the cases with the Department of Justice regarding the prosecution of some senders who are in breach of the enforcement notice
- We will adjust our strategies according to the situation so as to effectively combat contravention of the UEMO by senders

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