

**HKISPA Response to the Consultation Paper on the Proposals to Contain the
Problem of Unsolicited Electronic Messages.**

Executive Summary

The HKISPA welcomes the opportunity to respond to this Consultation Paper. While it applauds the action taken, it is also concerned that Hong Kong is lagging behind comparable jurisdictions in enacting measures to combat the problem of spam.

Spam is threatening the utility of email as a communications tool and eroding the potential economic and social benefits derived from this medium.

The HKISPA maintains that Spam is a major problem in Hong Kong and is costing both the HKSAR economy and ISPs large amounts of money on wasted infrastructure resources and lost productivity. It also emphasizes that the problem is continually evolving into far more sophisticated and menacing threats as seen recently with increased identify theft, use of botnets, installation of malicious code and the growing belief that organised crime is now involved.

The HKISPA , as the only coordinated voice of ISPs in Hong Kong, encourages the Government to take action on a variety of fronts. While legislation is not the sole answer to the problem, it is viewed as one important aspect of a multifaceted solution. The HKISPA also supports the use of technology, awareness programs, industry collaboration and best practice. It does not support the adoption of a mandatory code of practice, but rather believes that legal enforcement should be targeted at spammers themselves - not those who are, usually innocently, part of the spam chain (such as ISPs).

This response focuses on spam, or unsolicited electronic mail. While the HKISPA recognises that electronic messages of all types are covered in the Consultation Paper and supports taking a broader view in both the consultation process and any resultant actions, the area of greatest concern to the ISP community is spam.

The HKISPA looks forward to participating in further actions and dialogue and is committed to doing its part in dealing with this major issue.

HKISPA RESPONSES TO QUESTIONS RAISED IN THE PAPER

The extent of the problem.

There are many international studies that have been performed on the cost of spam to the economy and to enterprise. Assessed costs have ranged as high as USD20Billion per annum and USD1200 per employee per annum and more. We will not repeat these figures in detail here as they are easily referenced on the Internet. We will, however, state that it is now universally and undisputedly recognised in all areas of the IT industry that spam is a major problem with significant economic impact and shows no signs of any significant reduction. Spam is regarded as being among the three most critical issues currently faced by all ISPs surveyed by the HKISPA.

In the first half of 2003 the problem of spam was noticeably increasing in Hong Kong. Spam became a very hot topic in industry, government and the media, and this resulted in two major initiatives by the HKISPA: the co-founding of the Hong Kong Anti Spam Coalition as a broad industry group focusing on the problem of spam in Hong Kong and, after discussion with OFTA, a survey of all major ISPs in Hong Kong in order to gauge the extent of the problem specific to the region.

To date three surveys have been conducted by the HKISPA: the first in Dec 2003, and two follow up surveys in June 2004 and October 2004. These have established that spam is a major problem in Hong Kong and is getting worse, not better. The results are in line with expectations and international data.

The detailed survey results were presented in January this year at the “To Regulate or Not?” forum organised by the Legislative Councilor (Information Technology) Mr Sin Chung Kai:

http://www.sinchungkai.org.hk/jsp_sinchung/userFiles/anti-spam-andy.pdf

The first update was presented in June 04 at the “Damn the Spam” forum organised by Intercham, the Hong Kong Anti Spam Coalition, and HKISPA:

<http://www.chamber.org.hk/streaming/Spam/YorkMok.files/frame.htm>

The results of the survey were obtained by surveying 11 ISPs (representing a significant majority of Internet users in Hong Kong) and aggregating their results. The HKISPA also took the additional step of comparing the survey results to some international

benchmarks to estimate the potential economic impact of spam to HK. Though not scientifically precise, the results nevertheless demonstrate that the potential cost is very high. These comparisons can also be found at the links above.

During October 2004, ten of the ISPs that responded to the survey have been re-surveyed (one having gone out of business in the interim). Though not all data has been received in time for this paper, the results received to date cover the majority of HK internet users and show an increasing trend in overall spam levels. The latest survey results indicates that spam has risen from 50% of all email to around 60%, with some ISPs experiencing as much as 90%. Other results have not significantly changed.

The HKISPA has also performed some calculations on the likely cost of spam to HK ISPs, in terms of bandwidth, storage, helpdesk time, tools and resources used to try and combat the problem. By applying simple estimates of these costs to the level of spam in HK, and assuming 2 million email users, this cost has been calculated as HK\$5.9 Million dollars per month.

Industry cooperation

The HKISPA actively encourages and participates in industry cooperation. It participates in many industry activities, has mobilised an Anti-Spam Task Force, co-founded the Hong Kong Anti Spam Coalition, and co-organised two major anti spam events so far in 2004. As referred to in the Consultation Paper, the HKISPA has issued a Code Of Practice in 2000 regarding measures ISPs should take to prevent spam. This COP covers what was then best practice and, although still relevant today, it is due for a review and update. This COP is voluntary (as is membership of the HKISPA itself) and therefore has little enforceable power. However, checks by the association have shown that the majority of members are complying with most or all of the components, usually because of their own good practices and desire to eliminate spam from their network rather than an intention of strict compliance to the COP. On the occasions where ISPs have not been in compliance and this has been brought to their attention by the HKISPA, voluntary action has been taken to rectify the situation.

As previously mentioned, the HKISPA does not support mandatory adherence to a COP. The reason for this is that it believes if some form of regulation is to be imposed, it is best done at a level that covers the far broader aspect of the problem and specifically addresses the perpetrators of spam. Focusing solely on ISPs will be too narrow and

have little effect, especially as most are already in compliance with the COP. Contrary to some opinions the HKISPA would like to stress that ISPs themselves do not generate of spam, nor do they sell their email lists to spammers, but are often as much or more the victim as other corporate entities or individuals. It therefore believes that development of, and forced compliance to, such a code would result in few additional end user benefits and that the costs could be better invested elsewhere.

The HKISPA will seek to further develop international cooperation links. It has recently signed an MOU with the Internet Industry of Australia (IIA) and is seeking to establish stronger ties with the mainland (e.g. ISC), and other regional and international bodies.

The development of a more technical approach to the problem is strongly supported by ISPs in Hong Kong. A joint blacklist or other common technical approach is considered a viable possibility. The HKISPA would be able to lead this development but would need to seek funding to support it.

Spam awareness campaign

The HKISPA recognizes that education and awareness has a significant role to play in the battle against spam and has been actively involved in many related activities. As part of its participation in the Hong Kong Anti-Spam Coalition it has taken a role in authoring and presenting education materials, speaking engagements at public seminars, media discussions and other such activities.

The HKISPA is committed to continuing its involvement in activities of this kind and also encourages other industry and governmental bodies to add their support.

Technical Solutions

The HKISPA firmly believes that the most effective measures by which to combat spam are technical. At the “Damn the Spam” forum held on the same date as the release of this consultation paper, the HKISPA presented an overview of the different types of technical solutions available. This can be found at:

<http://www.chamber.org.hk/streaming/Spam/AndyLake.files/frame.htm>

The HKISPA would be willing to take a leading role in coordinating different technical solutions but would need to seek support and funding.

Pros & Cons of a legislative approach & whether or not existing measures should be strengthened

The HKISPA is of the belief that legislation is not the sole answer to the spam problem.

However, it also believes that enacting a strong set of legislative measures that send a deterrent message to would-be spammers, and that give enforcement agencies and our citizens the ability to take action against spammers operating in their own ‘back yards’, would be a complementary and powerful component to a multi-faceted approach to combating spam. The HKISPA also believes that to *not* enact legislative measures would be to go against the trends set by many of our closest economic partner countries and would stifle our ability to address the issue at an international level. Furthermore, it would send a message to the HKSAR citizens and the world that Hong Kong is tolerant of spammers.

We believe that a separate piece of well-considered legislation would be the best legislative approach and favor this over modification to existing legislation or to the mandatory requirement of industry codes.

The aspects of any legislation that are considered to be important are;

1. The legislation should be technically neutral and broad enough to encompass new forms of spam: instant messaging, mobile sms mms, VoIP, IPV6, etc.
2. The legislation should cover non-commercial messages, with appropriate exclusions for registered charities, political parties and other appropriate

bodies.

3. A message should not have to be “bulk” to be defined as spam. Techniques can be used to make each spam message sufficiently different as to escape strict definitions. Therefore legislation should be broad enough to allow for this.
4. The legislation should allow for both criminal and civil actions.
5. The opt-in and opt-out debate is, we feel, something of a smoke screen to the real issue and the details surrounding the definitions are the most important aspects. We believe that the critical point is that there must be a valid pre-existing relationship before an unsolicited message can be sent.
6. The legislation should make illegal the use of various techniques used by spammers. It should allow for the fact that these techniques are constantly evolving, and for the fact that spam and virus have recently converged.
7. Legislation should encourage best practice for operators. However, ISPs cannot carry the burden of increased compliance costs.
8. Labeling is not seen as a strong requirement.

Once again the HKISPA thanks the HKSAR Government for the opportunity to participate in this consultation and would like to make itself available for any further action required.

Hong Kong Internet Service Providers Association
October 25th, 2004