

**HONG KONG'S  
UNSOLICITED ELECTRONIC  
MESSAGES ORDINANCE  
AND REGULATION**  
INSIGHT BRIEF

**JUNE 2007**

# Hong Kong Unsolicited Electronic Messages Ordinance and Regulation

Hong Kong's Unsolicited Electronic Messages Ordinance and Regulation took effect earlier this month.<sup>1</sup> In this Insight brief, Epsilon is pleased to offer a summary of this important new anti-spam effort in Hong Kong, and to offer recommendations for concerned marketers.

## Do the New Rules Apply to You?

The new anti-spam Ordinance and Regulation in Hong Kong will affect senders whose emails contain commercial advertising content and are (a) sent to individuals located in Hong Kong; (b) sent from a Hong Kong company; or (c) sent to a Hong Kong assigned electronic address, e.g., an email address that ends with .hk.

Therefore, it is prudent for marketers to follow the rules outlined in the Ordinance and Regulation with respect to any email that is directed to known Hong Kong addresses, whether their email originates from within or outside of Hong Kong's borders.

The law applies to many forms of electronic communication including instant messaging, SMS, telephone and fax, but this Insight brief examines the Ordinance and Regulation only as they apply to email communications.

## What Are the Rules for Sending Commercial Email in Hong Kong?

Although there are some notable distinctions, many of the provisions in Hong Kong's anti-spam Ordinance and Regulation mirror those in the U.S.'s CAN-SPAM Act, including its fundamental "opt-out" framework. The following summarises the key obligations imposed on senders of commercial email under the new law.

- ❑ **Recipients must always be afforded an opportunity to opt-out of commercial email.** Recipients must always have the ability to opt-out of receiving commercial email messages for free, and at any time. To facilitate this, senders of commercial email must provide and make clear and conspicuous an unsubscribe link or other facility that is convenient to use, readily available and does not itself contain a commercial message. Also:
  - Opt-outs must be processed within 10 business days of their receipt.
  - The opt-out mechanism must remain functional for at least 30 days after sending the email.
  - The opt-out request must be kept on record in the format in which it was received for at least 3 years after its receipt.
- ❑ **Commercial email must include identity and contact information.** All commercial email must include the name of the sending organisation, its postal address, telephone number, and email address. This information must be valid for at least 30 days after the message is sent.
- ❑ **Language requirements.** The opt-out instructions and contact information in commercial emails must be displayed in both English and Chinese, or another language as expressly indicated by the recipient. It's also okay to use either English or Chinese if the recipient directly expresses a preference for one over the other.
- ❑ **Tough penalties for the "deadly sins of spam."** The law bans misleading header information and subject lines. Also prohibited is the use of address-harvesting software (as well as the sale of such programs). Those who supply or use harvesting software to send spam can be fined up to HK \$1,000,000 and

<sup>1</sup> Unsolicited Electronic Messages Ordinance, June 1, 2007; Unsolicited Electronic Messages Regulation, June 7, 2007.

imprisoned for up to 5 years. The same applies to those who use “automated means” like dictionary attacks to send spam; those who run scripts to register 5 or more email addresses to send spam from; and those who retransmit spam through other networks (e.g., open-relays and “zombie” attacks). Spammers found to intentionally deceive recipients about the source of their messages can go to jail for as long as 10 years.

- ❑ **Claims for loss or damage.** Individuals who suffer loss or damage by reason of contravention of the Ordinance are entitled to bring proceedings against the alleged offender.
- ❑ **Exempted communications.** As in the CAN-SPAM Act, many of the rules for sending commercial email do not apply to email whose primary purpose is to facilitate transactions or relationships.
- ❑ **Study on “do not call” register.** Similar to the CAN-SPAM Act’s original requirement that the FTC study and report to Congress on the feasibility of establishing a do-not-email registry, the Ordinance in Hong Kong requires the nation’s Telecommunications Authority to study and make recommendations related to the launch of a “do-not-call register.” However, some legal experts in Hong Kong believe that if a register is set up, it would most likely apply only to phone and fax numbers, not email addresses.<sup>2</sup> In addition, under any circumstances, marketers would have the right to communicate with individuals listed on the do-not-call register if they have specifically opted-in to receive the marketer’s messages. Epsilon will keep clients informed of any relevant new developments.

## What Are the Penalties for Violations?

Email marketers who violate rules other than the “deadly sins”—i.e., contravention of the opt-out or contact information requirements—will not be immediately deemed to have committed an offense, but they should expect to receive enforcement notices from the Telecommunications Authority. And any subsequent violations of the Authority’s directions would then constitute a criminal offense with fines of up to HK \$100,000.

## Recommendations

- ❑ **Audit databases** for customers that may be located in Hong Kong.
- ❑ **Consult with attorneys with expertise in Hong Kong.** Epsilon strongly recommends that firms should seek formal legal counsel, especially if they (a) conduct email marketing in Hong Kong; (b) intend to do so; or (c) aren’t sure whether or not they send email in Hong Kong or plan to do so.
- ❑ **Implement compliance.** Regulated marketers should ensure that their practices comply with all provisions of the new law, as outlined above, and as directed by their attorneys. Some important notes to keep in mind as they do:
  - Some requirements go above and beyond what U.S.-based marketers may be familiar with in the CAN-SPAM Act. For example, the Hong Kong law requires the inclusion of contact telephone numbers within email marketing communications.
  - Clearly separate marketing from transactional messaging. Marketers should optimise their communications efforts by ensuring that promotional content is not included in what would otherwise be unregulated transactional and relationship messaging.
- ❑ **Work with Epsilon.** If you are concerned about the potential for your company to be affected by these new regulations—especially if you send email communications to individuals in the Asia Pacific region, please inform your Epsilon representative.

<sup>2</sup> Jeffrey S. Huang and Gordon Milner of Morrison & Foerster LLP, “The New Hong Kong Unsolicited Electronic Messages Ordinance,” Privacy & Security Law, Bureau of National Affairs, June 4, 2007.

- **Monitor this important issue.** Because this law has just come into effect, no enforcement actions have been taken to-date. How Hong Kong goes about enforcing the new Ordinance and Regulation can potentially be precedent-setting and have significant long-term implications for global marketers as the Hong Kong market continues to grow.

If you have any questions, or for more information about how Epsilon can help you navigate the global legal and regulatory compliance challenges that are facing today's email marketers, please contact us at [apac-info@epsilon.com](mailto:apac-info@epsilon.com).

## Notice

This is not legal advice and cannot be relied on as such. Epsilon is unable to provide any guarantee that the adoption of its recommendations will result in compliance with global laws and regulations. In addition, the overview of Hong Kong's Unsolicited Electronic Messages Ordinance and Regulation provided in this Insight brief does not take into account other potentially relevant laws and regulations that may impose additional obligations on covered entities and their activities. Clients should consult with their own legal advisors regarding compliance with laws and regulations.

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