

**UNSOLICITED ADVERTISEMENTS SENT BY FACSIMILE**

**A CONSULTATION PAPER**

**17 July 1998**



**Office of the Telecommunications Authority**

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## **Introduction**

From time to time, OFTA received complaints from recipients of unsolicited advertisements sent by facsimile (fax). (Such advertisements are often called “junk fax”.) Recipients of “junk fax” complain that such messages block their fax machines from receiving important messages and consume their fax paper. This causes inconvenience and financial loss to them. The Telecommunications Users & Consumers Advisory Committee (UCAC) under the auspices of OFTA has expressed concerns about this problem and urges OFTA to take effective actions to deter “junk fax”. (A copy of the UCAC Paper No. 7/1997 discussed in June 1997 is in Appendix I.)

## **Unsolicited Fax Advertisements**

### ***Legislative or Administrative Approach to Tackle Problem?***

2. Because of the flat-rate tariffing structure for fixed telephone services in Hong Kong, there is financial incentive to send advertisements by fax. In fact, fax has been taken by people of Hong Kong as a very common and effective means to send messages. It is therefore impractical and almost impossible to prohibit unsolicited fax advertisements.

3. During discussions at the UCAC as well as meetings between OFTA and the four Fixed Telecommunication Network Services (FTNS) operators, some took the view that the issue should best be dealt with by enacting legislation to make it an offence to send unsolicited fax advertisements or “junk fax”. The existing Summary Offences Ordinance provides for the offence of “send[ing] any message by telegraph, telephone, wireless telegraphy or wireless telephony which is grossly offensive or of an indecent, obscene or menacing character” (section 20). One option would be to update this provision to include modern forms of telecommunication services such as fax and to expand the scope of messages prohibited to include “unsolicited advertisements”. However, it is very difficult to define precisely “unsolicited advertisements” and a blurred definition in legislation for “unsolicited advertisements” could have the accidental effect of restricting freedom of communications.

4. At present, under section 34 of the Personal Data (Privacy) Ordinance, there is a requirement for a data user who (a) has obtained personal data from any source and (b) uses the data for direct marketing purposes to (i) at the first time he so uses the data, to inform the data subject that the data user is required, without charges to the data subject, to cease to so use those data if the data subject

so requests and (ii) if the data subject so requests, to cease to so use those data without charge to the data subject. However, this provision can only be used against “junk fax” messages directing at a particular person. It cannot be applied to a situation where the “junk fax” is not addressed to a particular person as no “data subject” is involved.

5. The practices in some overseas countries in tackling “junk fax” is given in Annex D to the UCAC paper in Appendix I.

6. The general conclusion from the discussions participated by OFTA is that initially stepped up administrative measures and public education might be a better alternatives to tackle the “junk fax” problems. OFTA would consider legislation or other alternatives if it is found that the proposed approach could not effectively deter “junk fax”.

### ***Code of Practice for FTNS Operators***

7. FTNS operators generally have incorporated into their “Conditions of Service” that sending unsolicited fax advertisements is prohibited. Using fax lines to send unsolicited fax advertisements would constitute a breach of the service contract between the customers and the FTNS operator concerned and that operator is entitled to terminate the service to the customer in breach. FTNS operators have enforced these contract conditions and lines proven to have been involved in the sending of unsolicited fax advertisements have been disconnected. To step up this approach of tackling “junk fax” problem, it is proposed that an industry Code of Practice for the handling complaints against “junk fax” senders be issued by the Telecommunications Authority (TA) for compliance by the FTNS operators so that a more consistent and effective approach can be adopted in taking actions against senders of unsolicited fax advertisements. A draft of the Code is in Appendix II.

### ***Guidelines for Unsolicited Fax Advertisement Senders***

8. OFTA proposes to introduce a set of guidelines for senders of fax advertisements to follow in using fax lines for sending advertisements. This is given in Appendix III. “Unsolicited fax advertisements” sent in compliance with the guidelines may be tolerated.

9. The guidelines will operate with immediate effect from publication and senders of “unsolicited fax advertisements” will be requested to voluntarily comply with it. Although the guidelines will be voluntary in nature, advertisers should have the incentive of complying with them because to achieve the desired effect of promoting the goods and services advertised, they would not wish to upset the recipient of the “unsolicited advertisements”. Furthermore, failure to comply with the guideline could lead to ultimate disconnection of the fax lines used to send the advertisements. The TA will monitor the implementation. If there are practical problems in the implementation of the proposed procedure or the “junk fax” problem could not be effectively resolved even after the full implementation of the proposed procedure, the TA will consider other alternatives, for example, enactment of new legislation or introduction of other alternatives.

### ***“Not-to-Call” List***

10. The operation of the codes depends on the availability of a “not-to-call” list to be maintained by the senders of fax advertisements. The senders should not send their messages to numbers on the “not-to-call” list. The “not-to-call” list should include

- entries in a centralized “not-to-call” list maintained by FTNS operators; and
- numbers of fax line users who have contacted individual senders for inclusion on the “not-to-call” list.

11. The purpose of the centralized “not-to-call” list is to enable a fax line user to notify his fax line supplier once and this would stop the receipt of all unsolicited fax advertisements. The FTNS operators should cooperate to exchange among themselves information on fax line users requesting to have their numbers included so that one common up-to-date “not-to-call” list is maintained. Such a list should be supplied upon request to senders of fax advertisements.

12. Fax line users also have the flexibility of contacting individual senders of fax advertisements so that their numbers are included on the “not-to-call” list of the senders contacted (that means they would still receive fax advertisements from senders not contacted).

### ***Independent Complaint Committee***

13. It is also proposed by FTNS operators to establish an independent complaint committee to decide on service suspension/termination. Possible terms of reference of the complaint committee would be as follows:

- to advise the TA on any necessary amendments to the Code of Practice concerning distribution of unsolicited fax advertisements;
- to monitor the compliance by FTNS operators with the Code of Practice;
- to decide on significant or representative cases of service suspension/termination for fax users sending unsolicited fax advertisements in breach of the guidelines.

14. One option is for the complaint committee to be set up as one of the committees under the existing UCAC of OFTA. The complaint committee would include representatives from telecommunications operators and users. The secretariat and funding will be provided by OFTA.

### **Consumer Education**

15. OFTA will also design a leaflet to educate the public about the code of conduct that senders of fax advertisements are expected to comply with and their rights and procedure to lodge complaints against “junk fax”. The initial content of the leaflet is in Appendix IV. The leaflet will be widely distributed through various offices of the Government to which the public have access.

16. Consumer education will also be pursued through other media - OFTA’s website, announcements of public interest, etc.

### **Consultation**

17. You are invited to give OFTA your comments on the following questions:

- Do you consider that “junk fax” is a serious problem?
- Do you agree with the above proposed measures to tackle the “junk fax” problem?

- What else do you think the Government, OFTA or the FTNS operators should do to tackle the “junk fax” problem?

18. Your comments should be sent to OFTA by the following means before 17 September 1998:

Office of the Telecommunications Authority  
29/F, Wu Chung House  
213, Queen’s Road East,  
Wanchai  
Hong Kong

(Attn: Administrative Officer (Regulatory))

Telephone: 2961 6629  
Facsimile: 2803 5112  
E-mail: [comments@ofta.gov.hk](mailto:comments@ofta.gov.hk)

**Office of the Telecommunications Authority**  
17 July 1998

For discussion on 7 June 1997

UCAC Paper No. 7/1997

**TELECOMMUNICATIONS USERS & CONSUMERS  
ADVISORY COMMITTEE**

**Treatment of Junk Fax (III)**

**INTRODUCTION**

At the 14th UCAC meeting on 1 February 1997, Members discussed UCAC Paper No. 1/ 1 997 - Treatment of Junk Fax (II) - and the Chairman said that OFTA would conduct studies in the following areas -

- legislation;
- overseas experience; and
- how to strengthen the administrative measures taken by Hong Kong Telephone Company (HKTC).

This paper sets out the results of the studies in the above 3 areas.

**AN OVERVIEW OF THE PRESENT SITUATION**

**The problem**

2. By definition, junk fax refers to massive transmission of unsolicited messages. The most common type of junk fax in Hong Kong is unsolicited fax advertising.

3. Over the past two years, HKTC received more than 185 000 complaints (or more than 7700 complaints every month) on junk fax. (OFTA also receives complaints of this kind from time to time, and in most cases, they are referred to HKTC for follow-up.) Among these cases, 33 junk fax senders attracted more than 250 complaints in the 2-year period and are suspected to be running a "junk fax service" business. These 33 junk fax senders accounted for 28.6% of the total complaints received. Details of these 33 cases are in Table 1.

4. It should however be noted that a certain number of junk fax victims have not taken the liberty to file a complaint to HKTC or OFTA, or are unable to do so due to the fact that the junk fax senders withhold their fax numbers.

	No. of Complaints received	No. of Warning Letters issued	No. of Lines Terminated
A1	256	2	-
A2	1,283	2	-
A3	1,383	8	-
A4	2,619	24	5
A5	851	8	1
A6	508	8	1
A7	1,386	21	-
A8	2,726	23	2
A9	3,098	13	-
A10	1,289	6	-
A11	2,056	55	1
A12	3,377	14	1
A13	1,421	13	-
A14	1,802	13	3
A15	2,391	4	-
A16	785	3	1
A17	1,161	2	1
A18	3,787	4	-
A19	2,375	3	3
A20	1,176	4	-
A21	1,105	8	3
A22	590	4	1
A23	3,380	46	2
A24	1,280	2	2
A25	284	6	-
A26	976	3	3
A27	2,391	5	2
A28	1,621	3	1
A29	241	2	-
A30	341	3	-
A31	1,611	14	1
A32	2,594	20	2
A33	1,258	6	3

## Legislation

5. At present, a number of legislation contain provisions which may relate to the junk fax problem.

(a) Telecommunication Ordinance (Cap 106)

6. Section 27 of Telecommunication Ordinance stipulates that -

"Any person who damages, removes or interferes in any way whatsoever with a telecommunication installation with intent to -

- (a) prevent or obstruct the transmission or delivery of a message;
- (b) intercept or discover the contents of a message,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20,000 and to imprisonment for 2 years."

7. The key element in applying section 27 of Telecommunication Ordinance to junk fax is the intention to use up the victim's fax paper or to obstruct the victim's fax machine from receiving other taxes. In 1993, a person was successfully prosecuted for sending a large number of taxes containing computer-generated, unintelligible messages, which as a result damaged the victim's fax machine. It was understood that the defendant deliberately did this after having a dispute with the victim.

8. The constraint of the above is that it can only address the junk fax problem under specific circumstances. Obviously unsolicited fax advertising messages do not fall into the remit of this provision.

9. Section 8 of Telecommunication Ordinance requires any person to hold a licence if he establishes or maintains a means of telecommunication including the operation of a telephone or a fax ' machine. An exemption order is made under Telecommunication Ordinance to exempt from the licensing requirement in case a person use telecommunications apparatus at home or in office for access to service provided by telecommunications operators which are issued licence for providing public telecommunications services. However, the person is not covered by the exemption order if he is reselling the service to third parties.

10. In case of junk fax senders, if their unsolicited fax messages contain information relating to themselves, they are covered by the exemption order. For those who provide a junk fax service to a third party, to a certain extent, these so-called "junk fax" companies are providing a public telecommunications services and hence may require a licence under section 8 of Telecommunication Ordinance. Nevertheless, applying this section to such companies and junk fax senders will have grave implications on certain business such as secretarial service companies, i.e. such companies in Hong Kong need to obtain a telecommunication licence. It should however be noted that this kind of "catch-all" legislative measure may

possibly include certain business not in accordance with the policy intent, creating unnecessary inconvenience to their normal course of business.

(b) Summary Offence Ordinance (Cap 228)

11. Section 20 of Summary Offences Ordinance stipulates that "Any person who

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- (a) sends any message by telegraph, telephone, wireless telegraphy or wireless telephony which is grossly offensive or of an indecent, obscene or menacing character; or
- (b) sends by any such means any message, which he knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to any person; or
- (c) persistently makes telephone calls without reasonable cause and for any such purpose as aforesaid,

shall be liable to a fine of \$1,000 and to imprisonment for 2 months."

12. The above provision does not specifically cover fax messages. Even if it is to be amended to include all telecommunications messages, it is doubtful whether this provision can provide an effective legislative tool against unsolicited advertising type of junk fax.

(c) Personal Data (Privacy) Ordinance (Cap 486-)

13. Section 34 of Personal Data (Privacy) Ordinance stipulates that -

"A data user who uses the data for direct marketing purposes, including the advertising of the availability of goods, facilities or services by means of information sent by facsimile, shall

- (a) the first time he so uses those data, inform the data subject that the data user is required, without charge to the data subject, to cease to so use those data if the data subjects so requests;
- (b) if the data subject so requests, cease to use those data without charge to the data subject."

14. According to the Office of the Privacy Commissioner, the above provision can only be used against junk fax message directing at a particular person. It cannot apply to situation where the junk fax message is not targeting at a specific person e.g. in unsolicited fax advertising.

### **Administrative measures**

15. At present, HKTC's General Conditions of Service (clause 3.4) include the following -

"The Customer undertakes not to use the Services -

(a) for any illegal or improper purpose or for the purpose of sending unsolicited advertising message...."

16. The company maintains a complaint database to keep a register of its customers who have been complained against sending junk fax complaints over a 2-year period. The company reviews the database twice a month, and takes action against those being complained in accordance with the following -

(a) First warning letter issued to the sender in case 5 or more junk fax complaints are received. (sample a Annex A)

(b) Final warning letter issued to the sender if he continues to attract 5 or more complaints during the 2-year period. (Sample at Annex B)

(c) Temporary Out of Service letter issued upon receipt of a further 10 or more junk fax complaints against the sender i.e. 15-20 complaints in two years' time. (sample at Annex C)

After the issue of temporary out of service letter is issued, the sender can apply for line reconnection, subject to a fee of \$170 and his consent to not sending junk fax again.

17. In case the fax numbers are not shown, HKTC will contact the parties concerned, who may not be the junk fax sender, using the contact details (usually mobile phone and pager numbers) provided in the junk fax message by phone or in writing. After that no further action will be taken. Nevertheless, the company can monitor the line of the complainant, subject to the written consent of the latter, to find out the identity of the junk fax senders and effect line termination immediately without giving any warning letters if the complaint is substantiated. This kind of line monitoring is free of charge. Over the past two years, only a few complainants

have requested for line monitoring, possibly because they have to do some sorting of all the fax messages they received and the fax journals in order to help HKTC identify the junk fax sender from HKTC's network information.

18. With a flat-rate local telephone tariffing structure in Hong Kong, the only cost of sending junk fax is the \$530 line connection charge. Alternatively, some junk fax senders have chosen to change their fax number, which only costs \$50, every time they receive HKTC's first warning letter.

## **OVERSEAS EXPERIENCE**

19. OFTA has written to a number of overseas regulatory agencies and network operators seeking information on how they handle the junk fax problem. Responses from 6 countries were received, details of which are at Annex D.

20. The measures taken by the responding countries can be summarised as follows -

### **Legislation**

- Prohibition of unsolicited advertising fax messages.
- General competition laws - unsolicited fax is anti-competitive in nature.
- Class Licensing - this is similar to the existing exemption order on home and office fax equipment for private use. The only difference is that the TA can include a condition in the class licence which prohibits the sending of unsolicited advertising fax messages, thereby providing a legal means to take action against junk fax senders.
- Requiring the fax sender to show his identity and fax number in all fax message.
- Providing victims with a private right of action.

### **Administrative measures**

- more stringent measures adopted by HKTC (e.g. line termination upon receipt of 5 or more substantiated complaints; refusal to request for line re-connection).
- Requiring the fax sender to show his identity and fax number in all or unsolicited advertising fax message.
- restriction on the timing allowed for unsolicited fax advertisements.

- the establishment of a "do-not-call" database, which in effect means that the sender has to obtain prior consent of the fax message recipient.

21. The following observations can also be made from the overseas experience at Annex D -

- junk fax is a common problem in advanced society;
- legal means is not the only effective tool; other administrative and industry self-regulatory measures are often used, some of which may be as effective as legislation.

## **OPTIONS TO HONG KONG**

22. Before considering the most appropriate measures against the junk fax problem in Hong Kong, it should be noted that upon request of OFTA in the early 1990s, HKTC has made strenuous efforts to establishing the administrative system described in paragraphs 15 and 16 above, and to enforcing the system. The main reasons behind the persistence of the junk fax problem in Hong Kong are essentially beyond the control of HKTC. Hence consideration should be given to introducing additional legal and/or administrative measures to strengthen the mechanism which HKTC has established over the years in tackling the junk fax problem.

23. It has also been suggested by some Members that a code of practice on handling junk fax complaints be drawn up and apply to all FTNS operators. Consideration could be given to setting up a Junk Fax Advisory Committee along the line of the Complaints Advisory Committee on Pay-per-call Recorded Information Services.

24. As stated in the earlier part of this paper, the junk fax problem in Hong Kong can be seen largely as part of unsolicited advertising activities, excluding of course those junk taxes which are of a malicious intent, a more offensive nature such as those with indecent and threatening content. (The latter should better be tackled by the Police and other law enforcement agencies.)

25. The following questions warrant careful consideration before deciding on which of the measures stated in paragraph 20 above should be adopted in Hong Kong -

- What is the definition of junk fax?
- Will a strict prohibition of junk fax by laws catch those who are not creating any nuisance to recipients? Does this pose an unnecessarily constraint on normal business activities? Where should be the balance between freedom of information and protection of people from the nuisance due to junk fax?
- Hong Kong does not yet have its own general competition laws. Is it appropriate to employ anti-competitive provisions in tackling junk fax?
- From the privacy protection point of view,, is it reasonable to require all fax messages to contain the telephone line from which the fax is sent and/or identity of the sender?
- From the angle of universal service obligation, could HKTC refuse line reconnection from someone who is a frequent target of junk fax complaint?

## **ADVICE SOUGHT**

26. Members are invited to give his views on the possible administrative and the legislative measures to tackle the junk fax problem in Hong Kong.

*Office of the Telecommunications Authority*  
*3 June 1997*



**Sample of 2nd warning letter to other junk fax senders**

Dear Customer,

**Unsolicited Fax Advertising**

Further to our letter to you on dd/mm/yy, we continue receiving complaints of your unsolicited fax advertising.

I must draw your attention again that, under Hongkong Telecom's Conditions of Service, customers are not permitted to use the telephone network for the distribution of unsolicited fax advertising. We would be very appreciated on your compliance with our Conditions of Services and stop sending unsolicited fax advertising. Otherwise, we have no alternative but to disconnect your telephone/fax line number 2XXX XXXX.

We understand this would cause inconvenience to your business, please do cooperate with us in this matter.

For any queries or if you need any further assistance, please [            ] at [            ]. Thank you for your attention.

Yours sincerely,

Customer Satisfaction

**Sample of TOS letter to junk fax senders who are suspected of sending fax advertising**

Dear Customer

**Termination of Telephone/Fax service**

Further to our letter dated dd/mm/yy, we continue receiving complaints about your junk fax messages. In accordance with Hongkong Telecom's Conditions of Service, we have no alternative but to terminate your telephone/faxline no. 2XXX XXXX with effect from dd/mm/yy.

This action is taken reluctantly in the interests of other customers who abide by our stated Service Conditions.

Please contact [            ] at [            ] if you have any queries.

Yours sincerely

Customer Satisfaction

**Sample of TOS letter to other junk fax senders**

Dear Customer

**Termination of Telephone/Fax service**

Further to our letter dated dd/mm/yy, we continue receiving complaints about your junk fax messages. In accordance With Hongkong Telecom's Conditions of Service, we have no alternative but to terminate your telephone/faxline no. 2XXX XXXX with effect from dd/mm/yy.

This action is taken reluctantly in the interests of other customers who abide by our stated Service Conditions.

Please contact [ ] at [ ] if you wish to discuss this matter.

Yours sincerely

Customer Satisfaction

**OVERSEAS EXPERIENCE IN  
TACKLING THE JUNK FAX PROBLEM**

**Canada**

According to the Office of Consumer Affairs of Industry Canada, control of junk fax/unsolicited fax calls comes under the general tariff conditions of individual network operators. For example, Bell Canada's general tariff conditions (Item 1800) include the following -

- (a) Person placing unsolicited live voice or fax calls to solicit are to ensure that a customer's request not to be called again is respected and that the customer's name and telephone number are removed from calling lists within 7 days of the request for unsolicited fax calls ... A customer's "do not call" request is to remain active for 3 years.
- (b) Persons placing unsolicited fax calls to solicit are to identify the person on behalf of whom the call is made as well as the caller's telephone number, fax number and the name and address of a responsible party to whom the called party can write.
- (c) Unless otherwise provided by law unsolicited fax calls may only be placed between 9:00 a.m. and 9:30 p.m. Monday to Friday and between 10:00 a.m. and 6:00 p.m. on Saturday and Sunday. The permitted calling hours identified are those of the called party.
- (d) Unsolicited ... fax calls to solicit must display the originating calling number or an alternate number at which the call originator can be reached, except where number display is unavailable for technical reason.
- (e) Sequential dialling for unsolicited ... fax calls for the purpose of solicitation is prohibited.
- (f) Persons who resell Centrex service must make all reasonable efforts to ensure that the end-user does not employ the service to transmit unsolicited ... fax calls for the purpose of solicitation.

Should any of the above conditions be contravened, the telephone services to all lines used in connection with the placing of calls may be suspended or terminate 2 business days after notice from Bell Canada.

While the above measures are implemented by the network operators concerned,, the Canadian Radio-television and Telecommunications Commission (i.e. the regulatory) approved the inclusion of the relevant requirements in the operators' tariff conditions.

## **Germany**

In Germany, junk fax is controlled by means of general laws on competition, rather than telecommunications laws and regulations. Telefaxes can only be used for advertising media within the framework of business relations and unsolicited fax advertising is regarded as unfair competition.

According to the German Ministry of Posts and Telecommunications (MPT), section 1 of the Act against Unfair Competition stipulates that -

"Any person who, in the course of business activity for purposes of competition, commits acts contrary to honest practices, may be joined from doing these acts and held liable for damages."

The protection therefore covers the public, apart from the business community, whenever a person disapproves an act and considers it intolerable. The German jurisdiction has for a long time considered unsolicited fax message as contrary to competition.

The Deutsche Telekom also responded to OFTA in respect of the problem of unsolicited fax advertising. Under the Act against Unfair Competition, the German court has adopted the view that unsolicited fax message is anti-competitive and a person can pursue civil actions against sender of unsolicited fax advertising and this has proved to be effective in curbing such a problem in Germany.

In addition, the Deutsche Telekom requires its customers not to misuse their telephone lines and in case of violation of such requirement, the company can bar outgoing calls of the sender or have his lines terminated. Such measures however are seldom used.

## **France**

In France, the laws provide that societies or private persons who do not want to receive unsolicited advertisements by fax may ask to be registered to a list under the responsibility of France Telecom. The list is public in that marketing departments are informed of people or societies registered.

Registration with the list is free of charge for private persons and charged for societies.

## **Japan**

According to the Office of Consumers' Affairs in Telecommunications under the MPT of Japan, unsolicited telephone calls including fax is regulated by "Door to Door Sales, etc. Law" In Japan but there is no legislation targeting at junk fax.

In December 1995, the Study Group for Legislation on Telephone Solicitation under the MPT of Japan released its report, recommending legal control over telephone solicitation activities, such as -

- (a) The caller should not send a document intended for promotion by fax .... message without the explicit prior consent of the call's receiver.
- (b) The caller must prepare and maintain a list of telephone subscribers who do not wish to receive promotional materials.
- (c) Carriers should be obliged to make it possible for their systems to provide services that enable user refusal of unwanted soliciting telephone calls.

## **United Kingdom (UK)**

In the UK, the Telecommunications Act 1984 provides a licensing regime governing anyone running a telecommunications system including home and office telephones by means of class licence, i.e. users are not required to apply for a licence or pay a fee but are obliged to meet the licence conditions. One of the conditions concerns unsolicited survey or sales calls by telephone or fax and the licensees should cease to make any unsolicited sales calls upon request of the recipient. OFTEL will revoke the licence to operate the telephone system should the licensee ignore the request of the recipient i.e. disconnection of lines.

On another front, the telecommunications and telephone selling industries in the UK established the Telephone Preference Service (TPS) and more recently, the Fax Preference Service (FPS). These initiatives are voluntary schemes in nature, and provide participating companies a list of the telephone/fax numbers of those who do not wish to receive any unsolicited calls. In other words, those who do not wish to receive such unsolicited calls should register with the TPS/FPS. Under the FPS, the sender is required to provide in the fax message his identity to those who have not registered with the FPS. Furthermore, the recipient should be given the information on how he or she could remove his fax number from the sender's database.

It is understood that the EC is considering the implementation of a Distance Contract Directive by the year 2000 which institutes an opt-in arrangement requiring the sender of any fax advertisement to obtain the prior consent of the recipient (but not applying to business to business solicitation).

### **United States (US)**

The US Telephone Consumer Protection Act 1991 prohibits, inter alia, the use of telephone fax machines to send unsolicited advertisements. The Restrictions on Telephone Solicitation under the Code of Federal Regulations stipulates that -

- (a) no person may use a telephone fax machine ... to send unsolicited advertisements to a telephone fax machine
- (b) The first page or each page of a transmission to a fax machine must include identifying information.

Consumers are provided with a private right of action for violation of this prohibition.

Instead of establishing a national database, the FCC requires "fax advertising" companies to maintain their own "do-not-call" lists. Individual persons have to request for his fax telephone and fax numbers to be included in the "do-not-call" list of individual companies if the former do not wish to receive unsolicited advertising messages. The request will be valid for 10 years.

**Draft Code of Practice**

**Procedures for Handling Complaints against  
Senders of Unsolicited Fax Advertisements**

**Preamble**

This Code of Practice provides for a set of standard procedures for Fixed Telecommunication Network Services (FTNS) operators to follow in handling complaints against senders of unsolicited fax advertisements.

For the avoidance of doubt, nothing in this Code absolves any FTNS operators from operating in accordance with the terms of its licence and legislation currently in force in Hong Kong.

“Unsolicited fax advertisements” are messages promoting goods or services sent to a recipient not at the request, or with the agreement, of that recipient, from someone who does not have an established business relationship with the recipient.

**Procedures for handling complaints against “junk fax” senders**

- Complainants should be allowed to lodge complaints, verbally or by fax, through a general enquiry number or another special number designated for such purpose by an FTNS operator.
- The FTNS operator should carry out prompt investigation and issue a warning letter to the “junk fax” sender within a reasonable time when a genuine case is established. The warning letter should warn the “offender” that his line will be temporarily suspended/terminated if complaints against him reach a certain limit: 5 for service suspension and 10 for termination of service.

(Note : Complaints against fax advertisements sent in one single batch are counted as one single complaint)

- Services to a “junk fax” sender will be temporarily suspended for a period of 14 days if more than 5 complaints have been received. Service will be terminated and the line be disconnected if more than 10 complaints are received.

- In some cases, the “offender” may try to avoid service suspension or termination by changing the name of the registered user of a line after certain number of complaints against him has been reached. In such a case, if there is sufficient evidence showing that the offender has tried to bypass the rule, the FTNS operator, after consulting OFTA or an independent Complaint Committee to be formed in future, may suspend or terminate service based on the above-mentioned criteria as if there is no change of subscriber name .
- FTNS operators should set up and maintain a “not-to-call” list. The “not-to-call” list maintained by an FTNS operator should include the fax numbers whose subscribers have indicated their unwillingness of receiving unsolicited fax advertisements. For example, the FTNS operator will add the fax numbers of those who have lodged complaints for receiving unsolicited fax advertisements in this “not-to-call” list. The FTNS operators should exchange data among themselves to maintain a unified centralized “not-to-call” list for Hong Kong. The list should be made available for inspection by the public so that an advertising agency or a fax advertisement sender can delete from its circulation list those numbers which have been put on the “not-to-call” list.

### **Enforcement**

The Code is voluntarily in nature. FTNS operators, however, have the responsibility to protect the interest of users of telecommunication services and to educate them on the proper and acceptable way to use fax transmission for advertising purpose. The Telecommunications Authority considers this as a part of good customer service.

### **Change to the Code**

The Telecommunications Authority reserves the right to amend and approve modifications to the Code, as and when necessary.

**Office of the Telecommunications Authority**

17 July 1998

**Draft Code of Practice  
Guidelines for Senders of Fax Advertisements**

**Introduction**

From time to time, OFTA received complaints from recipients of unsolicited fax advertisements (or called “junk fax”). Recipients of “junk fax” complain that such messages block their fax machines from receiving important messages from their customers and consumes their fax paper. These cause inconvenience and financial loss to them. The Telecommunications Authority considers this is a legitimate concern of the consumers. He understands, however, that fax has been a very common and effective means of communication in Hong Kong and some of the recipients may find the fax advertisement a piece of useful information. As such, the Telecommunications Authority has no intention to prohibit the use of fax transmission for sending advertising material provided that the senders of such fax messages comply with the guidelines below.

**Rules to be observed by senders of fax advertisements**

A fax line subscriber who has used his fax line for sending unsolicited advertisements/messages for his own business or a third party should:

- print in Chinese and English on the first page of the message the sender’s name, telephone or fax number and include a message along the following lines:

“If you do not wish to receive such messages from us, please call us on telephone [    ] or fax [    ] so that we can stop sending you our messages in the future.”

- place such fax calls outside office hours as far as possible
- restrict the number and length of such messages for a single recipient to a small number and short length, say, less than 2 pages per day

- maintain a list of those who have filed a request for not receiving similar fax calls in future (a “not-to-call” list) and to cease sending such fax to those whose names have been included in the list. The “not-to-call” list shall include
  - ◇ entries in a centralized “not-to-call” list obtained from the FTNS operators; and
  - ◇ numbers fax lines users who have contacted the sender for inclusion on the “not-to-call” list.

### **Enforcement**

The Code is voluntarily in nature. It would help both the sender of fax advertising messages and those recipients of such messages who consider them as “unwanted messages” or “junk faxes”. If all senders observe the above rules, inconvenience to those recipients who consider such messages “junk fax” will be minimized and be limited to a possibly “acceptable” level. Failure to observe the code would upset the recipient (and therefore the advertisements would not achieve the desired effect) and the sender of the messages may run the risk of having the lines disconnected for sending “junk faxes”.

### **Change to the Code**

The Telecommunications Authority reserves the right to amend and approve modifications to the Code, as and when necessary.

**Office of the Telecommunications Authority**  
17 July 1998

**Draft Consumer Education Leaflet on  
Dealing with Unsolicited Advertisements by Fax**

**What is meant by “unsolicited fax advertisements”?**

“Unsolicited fax advertisements” are messages promoting goods or services sent to you not at your request or with your agreement from someone who does not have an established business relationship with you.

**Is the sending of “unsolicited fax advertisements” illegal?**

At present, there is no law prohibiting the sending of “unsolicited fax advertisements”, but the senders of such advertisements may be in breach of the service contract with their fax line suppliers. The fixed network operators may disconnect the fax lines used for the sending of unsolicited fax advertisements.

**Are all forms of “unsolicited fax advertisements” unacceptable?**

Guidelines issued by the Office of the Telecommunications Authority require the sender of fax advertisements to

- print in Chinese and English on the first page of the message the sender’s name, telephone or fax number and include a message along the following lines:

“If you do not wish to receive such messages from us, please call us on telephone [    ] or fax [    ] so that we can stop sending you our messages in the future.”

- maintain a “not-to-call” list and refrain from sending messages to those fax numbers on the “not-to-call” list.

“Unsolicited fax advertisements” sent in compliance with the Guidelines may be tolerated.

## **What should I do if I do not wish to receive “unsolicited fax advertisements”?**

If you receive a fax advertisement with the above message and you do not wish to receive further advertisements from that sender, contact the sender and ask for your fax number be removed from sender’s distribution list.

If you receive a fax advertisement without the message or receive fax advertisement from a sender despite your request for removal from the sender’s distribution list, make a complaint to the fixed network operator which supplies your fax line. The numbers to contact are:

	Phone	Fax
Hong Kong Telecom		
Hutchison Telecom		
New T & T Hong Kong		
New World Telephone		

## **What will happen after my complaint?**

The fixed network operators will carry out investigations and trace the senders of the fax advertisements being complained against. The fixed network operators will issue warning to the senders. If the number of warnings reach a certain level, the fixed network operators will suspend or disconnect the fax lines concerned.

## **Can I check the “not-to-call” lists?**

You can check your information on the “not-to-call” list maintained by the fixed network operators. You also have the right to check the information concerning yourself on the “not-to-call” lists maintained by the fax advertisement senders.

### **What about non advertising messages?**

The above arrangements do not apply to unsolicited non-advertising messages sent over fax. If you receive grossly offensive, indecent or obscene messages over fax and you consider that the sender of the messages might have committed a criminal offence, make your report to the police.

### **Whom should I contact for further information?**

Office of the Telecommunications Authority  
29/F, Wu Chung House  
213, Queen's Road East,  
Wanchai  
Hong Kong

Telephone:

Facsimile:

E-mail:

You can also contact your fax line supplier.

**Office of the Telecommunications Authority**

17 July 1998