

## **Study Group on Countermeasures against Unwanted Junk Mail—3rd Meeting Summary of Minutes**

### 1. Date and Time

September 27, 2007; 10:00–12:10

### 2. Location

Conference Room 1001, 10th floor, Ministry of Internal Affairs and Communications

### 3. Attendees (honorifics omitted)

#### (1) Members

Hiroyasu Asami (alt.: Mamoru Tanabe), Yoshio Igarashi, Hisashi Iguchi, Keigo Inoue, Hisamichi Okamura, Takamasa Kishihara, Hiroyuki Kuwako, Shinichiro Sakata, Osamu Sakuma, Tetsuya Takase, Toru Takahashi, Miki Nagata, Ikufumi Niimi, Takashi Noguchi, Kazushi Hayashi, Naoya Bessho, Takamichi Miyosi, Masafumi Yoshimitsu

#### (2) Observer

Shigeyoshi Wakabayashi

#### (3) MIC Representatives

Terasaki (Director-General, Telecommunications Bureau), Takeuchi (Director-General, Telecommunications Business Department), Ando (Director, General Affairs Division, Telecommunications Bureau), Sato (Director, Telecommunications Consumer Policy Division), Kawauchi (Director, IT Security Office), Yoshida (Senior Planning Officer, Telecommunications Consumer Policy Division), Naito (Deputy Director, Telecommunications Consumer Policy Division), Ogi (Deputy Director, Telecommunications Consumer Policy Division), Oiso (Specialist, Telecommunications Consumer Policy Division)

### 4. Agenda

#### (1) Opening

#### (2) Draft Summary of Minutes of the 2nd meeting

#### (3) Discussion items

- Sending mail as part of marketing activities (including hearing from operators)
- Legislative framework
- Others (Compiling the Interim Report)

#### (4) Closing

### 5 Meeting Proceedings

(1) Opening

(2) Draft Summary of Minutes of the 2nd meeting

Draft Summary of Minutes of the 2nd meeting (Document 1) was approved.

(3) Discussion items

(a) Sending mail as part of marketing activities

- The Secretariat explained Document 2.
- Takamasa Kishihara, Secretary General, Mobile Content Forum, explained Document 3, which concerned the results of the questionnaire on obtaining consent to send advertising mail.
- Naoko Iwase, Business Development Team, Management Planning Office, P-WORLD CORPORATION (Mobile Content Forum member company) explained Document 4 and member Naoya Bessho, Chief Compliance Officer & VP Legal Department, Yahoo! JAPAN Corporation, explained Document 5, which concerned obtaining consent to send advertising mail.

Questions and answers concerning the above are as follows.

- In the presentation of Document 5, it was explained once consent is given the opt-out rate is very low. However, it should be also noted that those receiving mails are distrustful of opt-out offers.
- Responsible advertising companies and agents do not want to damage the medium so they therefore send advertisements only to those who have opted in and then ensure their protection by providing information about opting out. How to eliminate the irresponsible operators will be the important issue.
- It is understandable that users distrust unfamiliar opt-out mails. However, once they opt in, they will not necessarily be concerned about opting out. Whether or not they chose to opt out will largely depend on the credibility of the company.
- The number of those who have not removed the default check marks on the screen may not be necessarily the same number as those who have consciously decided to opt in.
- It will be important to determine how to deal with providing the address to a third party after someone has opted in.
- Provision to third parties is a very important issue that requires careful study. It will also become an issue whether common transmission service agents can be involved.
- With regard to the scope of consent in the questionnaire contained in Document 3, the answers include, "Consent is obtained including related to advertising of services and products of third party advertisers." Is provision to third parties and common use assumed to be included in this consent?  
→ It seems to indicate that, rather than provision to a third party, advertisements of third parties

are included in the advertising of the original advertiser.

(b) Legislative framework

The secretariat explained Document 6, which was followed by questions and answers as below.

- It seems that unwanted junk mail now includes illegal and/or harmful mail, which means there are two layers.
  - Regulation of opt-in should be kept to a minimum.
  - Responsible operators will probably establish and observe voluntary guidelines even if they don't actually specify a method of obtaining consent.
  - I agree that law enforcement should be strengthened. In the cases where confidential communications are involved, can a system be established whereby, for example, the Ministry of Internal Affairs and Communications obtains a warrant from the court to require an ISP to provide information?
  - If administrative disposition is prioritized, it will be necessary to come up with a mechanism that allows administrative disposition even if the party concerned is not identified.
  - Legislation based on the means of its enforcement should be sought.
  - A method of obtaining consent based on the relationship with regulations should also be sought.
  - Is it possible to impose penalties without probation on those who sent advertising mails without consent in order to facilitate investigations?
  - It will be necessary to discuss whether the Act on Regulation of Transmission of Specified Electronic Mail can impose penalties without probation from the perspective of telecommunications.
  - Operators can use filtering to reduce the amount of unwanted junk mail received. Therefore, future discussions should also address filtering.
  - From the perspective of the principle of legality, it should be kept in mind that requirements (such as a method to obtain consent) must be clarified in order to realize penalty without probation (under opt-in regulations).
  - Can Japan introduce regulations similar to those of Australia as countermeasures against unwanted junk mail sent from abroad? For international cooperation, it will be important to strengthen joint efforts undertaken by the private sector as well as those of governmental agencies.
- Whether Japan can introduce something like the Australian link is an issue to be considered. However, in one case Japanese criminal law was applied to indecent material posted on a server abroad. It goes without saying that efforts by the private sector are important.

- Advertising mail sent without users' consent is, in reality, not regulated on either the sender or the receiver side. Therefore, it would be desirable to have an opt-in system because it is completely assured that consent is obtained and this is shown before advertising mail is sent, providing consumers with security.
- The scope of third parties should be clarified regarding obtaining consent.
- With regard to the opinion that opt-out will actually increase the amount of unwanted junk mail, it may be the case of opting out of mail from senders other than the opt-in operators.
- The problem with opt-in is that it allows provision to third parties. It would be good to prohibit provision to third parties. Otherwise a mechanism whereby opt-in operators provide opt-out at their own responsibility will be necessary.
- Under the circumstances where mail addresses are revealed to various operators, making an opt-in operator take responsibility will not be effective in reality.
- Provision to third parties will have to be considered in terms of the Law Concerning the Protection of Personal Information.
- In developing regulations, it is important to address who should be regulated and how. Since illegal operators think nothing of abusing the regulations, this must also be considered in terms of how it can be dealt with.

(c) Others (Compiling the Interim Report)

The secretariat explained Document 7, which was followed by questions and answers as below.

- In the review of the legislative framework to be referred to in the Interim Report, are all issues going to be dealt with by the Act on Regulation of Transmission of Specified Electronic Mail?  
→ In principle, we have it in mind to review the Act on Regulation of Transmission of Specified Electronic Mail. However, there may be some medium- or long-term issues that cannot be addressed by that Act. We hope you discuss this matter with a view to creating a draft Interim Summary.
- If it is difficult to include this matter in the Interim Report, it can be referred to in the Final Report. It may be an idea to include the expected effects of revising the Act and the methods by which the effects will be evaluated.
- Consumer education will be an important comprehensive measure, regardless of whether or not it is included in the Interim Report.
- What kind of effect is expected from each measure, including the introduction of the opt-in system, should be also included.

End