

# **A Brief Guide for Schools on Unsolicited Electronic Messages Ordinance (Chapter 593) and Unsolicited Electronic Messages Regulations**

## **Background**

- To contain the problem of unsolicited electronic messages, the Unsolicited Electronic Messages Ordinance (UEMO) and the Unsolicited Electronic Messages Regulations (UEMR) have been enacted in 2007.
- Namely, the UEMO regulates the sending of Commercial Electronic Messages (CEMs) with a “Hong Kong link” and the UEMR prescribes detailed requirements relating to “sender information”, “unsubscribe facility”, and “unsubscribe facility statement” to be included in messages.

## **Applications to Schools**

- As the UEMO and UEMR have already taken effect since June and December 2007 respectively, schools should observe and comply with the relevant provisions under the UEMO and UEMR.
- The following criteria help schools assess whether they are involved in sending CEMs with a Hong Kong link as defined under UEMO:

### ***Criterion 1 –message type***

The UEMO covers all types of electronic messages, i.e. messages in any form sent over a public telecommunications service to an electronic address, including:

- pre-recorded voice/video messages sent to telephones (but interactive person-to-person calls are exempted);
- short messages sent to fixed line or mobile phones or MMS messages;
- faxes; and
- emails.

Public telecommunications service means a telecommunications service which is offered for use to the general public. As such, messages that are sent within the intranet are not regulated under the UEMO.

### ***Criterion 2 – message content***

The UEMO covers CEMs which is defined as an electronic message with a purpose to

- offer to supply, or to advertise or promote, goods, services, facilities, land or an interest in land; or

- advertise or promote a supplier or prospective supplier of goods, services, facilities, land or an interest in land,  
in the course of or in the furtherance of any business.

### ***Criterion 3 – message connection with Hong Kong***

The UEMO regulates the sending of CEMs (e.g. fax, emails, SMS and pre-recorded messages) with a “Hong Kong link”. The CEM has a Hong Kong link if it:

- originates in Hong Kong;
  - is sent to Hong Kong; or
  - is sent to a Hong Kong telephone<sup>1</sup> or fax number.
- When sending CEMs with a Hong Kong link, senders should ensure that:
    - (a) accurate sender information is included in the message (section 8 of the UEMO);
    - (b) unsubscribe facility and unsubscribe facility statement are included in the message (section 9 of the UEMO);
    - (c) unsubscribe requests are honoured within ten working days after the request has been sent (section 10 of the UEMO);
    - (d) the CEMs are not sent to any telephone or fax number listed in the do-not-call registers<sup>2</sup> starting from the tenth working day of users’ registration, unless consent has been given by the registered user of the relevant telephone or fax number (section 11 of the UEMO);
    - (e) email messages are not sent with misleading subject headings (section 12 of the UEMO);  
and
    - (f) calling line identification information is not hidden when sending messages to telephone or fax numbers (section 13 of the UEMO).

### **Actions required**

- **Schools should assess whether their existing communication/correspondences with parents, students, alumni, various service suppliers etc, fall within the ambit of CEMs under UEMO with reference to the three criteria mentioned above.** A list of examples of documents/messages usually issued by schools is attached at the [Appendix 1](#) for schools’ easy reference.

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<sup>1</sup> The UEMO will protect a recipient no matter where he/she receives CEMs provided that his/her mobile number is a Hong Kong mobile number.

<sup>2</sup> The Telecommunications Authority is empowered under section 31 of the UEMO to establish and keep do-not-call registers to provide registered users of electronic addresses with a convenient means to notify senders of CEMs that they do not wish to receive such messages at the electronic addresses listed on a do-not-call register, and to provide senders of CEMs with a convenient means by which they may ascertain whether a registered user of an electronic address does not wish to receive unsolicited commercial electronic messages at that electronic address. The do-not-call registers only covers use of fax, short messages and pre-recorded telephone messages. Do-not-call register for email messages will not be set up.

- **With a recipient’s consent, the sender of CEMs can be exempted from observing rule (d), i.e. vetting the sending list against the do-not-call registers. However, it should be noted that a recipient’s consent will *NOT* absolve a sender from complying with the UEMO. In other words, the sender is still required to comply with rules (a) to (c), (e) and (f) specified above.** For procedures related to obtaining the recipients’ consent, schools may refer to the sample letter prepared at Appendix 2.
- Schools may further refer to procedures as laid down in the Sample Checklist for Compliance with UEMO and UEMR in “An Industry Guide to the Unsolicited Electronic Messages Ordinance” issued by the Office of the Telecommunications Authority (OFTA) extracted at Appendix 3. For the full text of the UEMO, UEMR as well as the frequently asked questions prepared by the OFTA, schools may visit the OFTA’s website at <http://www.ofta.gov.hk>.

### **Remarks**

- This Guide serves as general reference only and schools should refer to the provisions of the UEMO and UEMR for a complete and definitive statement of law.
- For further information on the UEMO, the UEMR, the Code of Practice, the Industry Guide as well as the do-not-call registers, please visit the [OFTA’s website](#) or contact OFTA at 2961 6333.

School Administration and Support Division  
Education Bureau  
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**Examples of Electronic Documents/Messages issued by schools<sup>1</sup>**

Types of Electronic Documents/Messages issued by schools	Within the scope of Commercial Electronic Messages (CEMs) under UEMO?
Circulars/letters/notices informing details of school events (such as examination arrangement), seeking parents' consent for students' participation in school activities (e.g. Sports Day) and announcing school's policy, special arrangements, etc.	<b>Not considered as CEM under UEMO.</b> Such messages are directly related to routine students' affairs (e.g. school term dates, holiday arrangement, examination timetable, administrative matters and related information) which do not have any promotional element.
Invitation to other schools on professional sharing/seminars/workshops, e.g. good practices on school administration matters, learning and teaching and student support, etc.	<b>Yes, considered as CEMs and be regulated under the UEMO.</b> As the messages aim at promoting sharing sessions, seminars and workshops, they are considered as promotion of "services" of schools.
Invitation for tendering/quotation for goods and services, e.g. tuckshop operations, school bus services, uniform suppliers, school cleaning services, etc.	<b>Yes, considered as CEMs and be regulated under the UEMO.</b> These messages are considered as offering business opportunities and commercial in nature.
Invitation/electronic publication to parents/alumni/other schools/members of the community to fund-raising activities, open days, school concerts, irrespective of the activities are free of charge or not.	<b>Yes, considered as CEMs and be regulated under the UEMO.</b> The messages/publications are considered as having a promotional nature.
Invitation to parents to activities organized by/co-organized with outside bodies e.g. Seminars on Child Development, irrespective of the activities are free of charge or not.	<b>Yes, considered as CEMs and be regulated under the UEMO.</b> The invitational messages are considered as promoting the services of the outside bodies and the school concerned.

<sup>1</sup> Examples provided in this document are for general reference only. Each case has to be considered in its own circumstances and its own merits. Please refer to the provisions of the UEMO and the UEMR for a complete and definitive statement of the law.

**Sample Letter for Seeking Consent from Recipients**

Date

Dear Sir/ Madam,

**Consent on Sending Commercial Electronic Messages as Defined in  
Unsolicited Electronic Messages Ordinance (UEMO) (Chapter 593)**

The Unsolicited Electronic Messages Ordinance (UEMO) and the Unsolicited Electronic Messages Regulation have been enacted in 2007. The UEMR prescribes detailed requirements relating to sender information and unsubscribe requests to be included in the Commercial Electronic Messages (CEMs) under regulation.

At present, our school has, from time to time, sent you faxes, emails or other types of electronic messages for \_\_\_\_\_ (purpose)  
These faxes or emails would fall within the category of CEMs as defined in Section 2 (extract at **Annex A**) of UEMO and be regulated under this ordinance, i.e. your consent is required for us to send to you the aforesaid faxes or emails.

I am therefore writing to advise you that if you would like to continue to receive from our school the aforesaid information and other similar information by fax or email in future, please provide us with your consent under Section 5 of the UEMO (extract at **Annex A**) by completing the proforma at **Annex B** and return it by fax to me **on or before** \_\_\_\_\_ (date). You may wish to note that you could at any time withdraw this consent by expressly advising our school. If you do not give us consent under Section 5 of the UEMO, we will have to cease to fax or email you the aforesaid information and other similar information in future.

For any enquiry, please feel free to contact (person) at (Contact Tel. No.).

Yours faithfully,

\_\_\_\_\_  
(Name of person and school)

## Unsolicited Electronic Messages Ordinance (UEMO) (Chapter 593)

### Section 2: Interpretation

“commercial electronic message” (商業電子訊息) means an electronic message the purpose, or one of the purposes, of which is—

- (a) to offer to supply goods, services, facilities, land or an interest in land;
- (b) to offer to provide a business opportunity or an investment opportunity;
- (c) to advertise or promote goods, services, facilities, land or an interest in land;
- (d) to advertise or promote a business opportunity or an investment opportunity;
- (e) to advertise or promote a supplier, or a prospective supplier, of goods, services, facilities, land or an interest in land; or
- (f) to advertise or promote a provider, or a prospective provider, of a business opportunity or an investment opportunity, in the course of or in the furtherance of any business;

### Section 5: Meaning of “consent” and related matters

(1) For the purposes of this Ordinance—

“consent” (同意), in relation to the sending of a commercial electronic message, means—

- (a) express consent; or
- (b) consent that can reasonably be inferred from the conduct of the individual or organization concerned;

“withdraw” (撤回), in relation to consent, means to expressly withdraw that consent.

(2) For the purposes of this Ordinance, consent to the sending of a commercial electronic message may be given, and such consent may be withdrawn, by means of an electronic message or in any other manner.

(3) For the purposes of this Ordinance, the registered user of an electronic address shall be treated as having given his consent to the sending of a commercial electronic message to that electronic address if the registered user or a person on his behalf—

- (a) has, either in response to a clear and conspicuous request for consent or at his own initiative, given his consent to the sending of the message; and
- (b) has not, within a reasonable period of time prior to the sending of the message, withdrawn that consent.

(4) For the purposes of this Ordinance (including subsection (3)), if a person other than the registered user of an electronic address uses the relevant account to send an electronic message about—

- (a) consent; or
- (b) withdrawal of consent,

that person shall be treated as having been authorized to send that message on behalf of the registered user.

(5) Subsection (4) shall not be construed as limiting the circumstances in which a person other than the registered user of an electronic address may—

(a) consent; or

(b) withdraw consent,

on behalf of the registered user.

(6) For the avoidance of doubt, the registered user of an electronic address may at any time withdraw any consent given by him to the sending of a commercial electronic message.

\_\_\_\_\_  
[Name of School (Sender)]  
(Fax No.: \_\_\_\_\_)

**Consents for Sending Commercial Electronic Messages  
as Defined in Unsolicited Electronic Messages Ordinance (Cap. 593)  
by \_\_\_\_\_ [Name of School (Sender)]**

I refer to your letter of \_\_\_\_\_.

As the registered user of the following electronic address(es).

1. \_\_\_\_\_ (fax number)
2. \_\_\_\_\_ (email address)
3. \_\_\_\_\_ (other types, if any)

- I **hereby give consent** to \_\_\_\_\_ under Section 5 of the Unsolicited Electronic Messages Ordinance (Cap. 593) for receiving electronic messages falling within the definition of commercial electronic messages from \_\_\_\_\_ with immediate effect.
- I **would not give consent** to \_\_\_\_\_ under Section 5 of the Unsolicited Electronic Messages Ordinance (Cap. 593) for receiving electronic messages falling within the definition of commercial electronic messages from \_\_\_\_\_ with immediate effect.

*(please tick in the appropriate box)*

I understand that I may withdraw this consent at any time by expressly advising \_\_\_\_\_ [Name of School (Sender)].

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Date: \_\_\_\_\_  
Contact Tel. No.: \_\_\_\_\_

Important Notice: This checklist is for general reference only and does not purport to represent all the statutory requirements set out in the UEMO and the UEMR. Readers should refer to the detailed provisions in the UEMO and the UEMR to ensure compliance with the law, and may consider seek legal advice on their specific circumstances as necessary. Senders may also develop alternative or more detailed instructions having regard to their specific circumstances or mode of operation of sending commercial electronic messages.

**Preparation Stage**

**Step 1: Prepare the target address list**

If you are building the list:

- Don't use any address harvesting software; and
- Don't use automated means to obtain electronic addresses.

If you are obtaining or leasing a list from a third party:

- Ensure that it is not a harvested address list; and
- Don't use any harvested address list.

**Step 2: Cleanse the target address list**

- Ensure that telephone / fax numbers contained in the applicable DNCs are removed from the target address list (unless consent has been obtained from the recipient). The downloading of DNC, the cleansing of sending lists and the sending out of messages should be completed within 9 working days.
- Ensure that electronic addresses for which unsubscribe requests have been received are removed from the target address list (unless the recipient has subsequently withdrawn his unsubscribe request or given his consent to the sending of message.).

**Step 3: Prepare the content of the message**

- Include the sender name, address and contact telephone number<sup>1</sup> and an unsubscribe facility statement in both Chinese **and** English, unless the recipient of the message has indicated to the sender that the information and statement may be given in one language only. Include contact email address if the message is an email
- Make sure that the sender information would be valid for at least 30 days after the messages are sent.

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- Provide an unsubscribe facility<sup>2</sup> that
  - ◆ can reasonably receive unsubscribe requests at all times for at least 30 days after the message is sent;
  - ◆ can be used by the recipient free of any charge;
  - ◆ does not contain any promotional or marketing message; and
  - ◆ is a Hong Kong number, if the unsubscribe facility is a telephone or fax number.
- If the message is a pre-recorded voice or video message sent to a telephone number, the order of presentation of sender information and unsubscribe facility statement in the message must meet the requirements set out in section 8 of the UEMR.
- If the message is an email, the subject heading should not mislead the recipient about the content or subject matter of the message.

**Sending Stage**

**Step 4: Arrange for the electronic address from which messages are to be sent**

- Don't use automated means to create multiple email accounts for sending multiple messages.
- Don't register for multiple email addresses or domain names using falsified information.
- Don't falsely represent to be the registrant of multiple email addresses or domain names.

**Step 5: Prepare the technical infrastructure**

- Don't conceal the calling line identification information ("CLI") when sending messages from a telephone or fax number.
- Don't use automated means to generate electronic addresses to which messages are sent.
- Don't use open relay/proxy to relay or retransmit multiple messages.

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- Don't access a telecommunications device without authorisation to send multiple messages
- Don't send multiple messages from a telecommunications device without authorisation with a view to deceiving or misleading recipients about the source.
- Don't falsify header information in multiple messages.

**Response Management Stage**

**Step 6: Post-sending arrangements**

- Arrangement should be made to retain unsubscribe requests received for at least 3 years after their receipt.
- Target address list should be updated as soon as such unsubscribe requests are received to ensure that an unsubscribe request could take effect within 10 working days from the day on which it is sent.
- Information obtained from unsubscribe requests or do-not-call registers should not be used for purposes other than for compliance with the statutory requirement not to send further messages.

[END]

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1. If the message is an SMS message, the sender may choose:
    - a) not to include the physical address in the SMS message itself, provided that such address can be obtained by calling the contact telephone number set out in the SMS message; and/or
    - b) not to include the contact telephone number in the main text of the SMS message, but rather in the address field of the SMS message. Please see the definitions of "commercial electronic message" and "SMS message" in section 3 of the UEMR when applying section 5(5) of the UEMR to commercial electronic messages sent as SMS messages
  2. The unsubscribe facility should be capable of receiving an unsubscribe request transmitted from the same telecommunications device that received the message. For further guidance on the type of unsubscribe facility to be provided in different types of messages, please refer to the CoP. Having said that, the UEMR has specifically mentioned that if the message is an SMS message, the unsubscribe facility must be a Hong Kong telephone number capable of receiving unsubscribe requests made orally or by entering key inputs.