



Australian
Communications
and Media Authority



MEMORANDUM OF UNDERSTANDING

Between the

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

and the

INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

on

**COOPERATION IN THE ENFORCEMENT OF LAWS ON
CERTAIN UNSOLICITED COMMUNICATIONS**

The Australian Communications and Media Authority ("ACMA") and the Info-communication Media Development Authority of Singapore ("IMDA") (collectively, "the Participants"),

RECOGNISING the importance of developing a global and coordinated approach to address unsolicited commercial electronic messaging, unsolicited telemarketing, scam telephone calls and scam short message service ("SMS") and the threats that they pose to consumers and their confidence in critical communication systems;

NOTING that the ACMA is a statutory agency established under Part 6 of the *Australian Communications and Media Authority Act 2005* ("the ACMA Act") and is authorised to:

- disclose information to an institution of the government of a foreign state in specified circumstances and under certain conditions under the ACMA Act; and
- liaise with regulatory bodies overseas about co-operative arrangements for the prohibition or regulation of unsolicited commercial electronic messages, address harvesting software, unsolicited telemarketing calls and unsolicited telemarketing faxes under the *Do Not Call Register Act 2006* ("the DNCR Act") and the *Spam Act 2003*; and

NOTING that the IMDA is established under the *Info-communications Media Development Authority Act 2016* and designated as the Personal Data Protection Commission under the *Personal Data Protection Act 2012*, and is authorised to:

- represent Singapore internationally in matters relating to the information, communications industry and personal data protection; and
- collaborate with other organisations (in or outside Singapore) for the purposes of promoting information and communications services,

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

For the purposes of this Memorandum:

1. "Applicable Law" means the laws and regulations identified in Annex 1 of this Memorandum and such other laws or regulations as the Participants may from time to time jointly decide in writing to be an Applicable Law for the purposes of this Memorandum;
2. "Covered Violation" means practices that would, based on available information, violate or likely violate the Applicable Laws of one Participant's country and that are substantially similar to practices prohibited by any provision of the Applicable Law of the other Participant's country;

3. "Person" means a natural person, a body corporate, an unincorporated association, a partnership, a statutory authority or instrumentality of a government, existing under the laws of Australia or the laws of Singapore;
4. "Memorandum" means this Memorandum of Understanding;
5. "Request" means a request for assistance under this Memorandum;
6. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance; and
7. "Requesting Participant" means the Participant seeking assistance under this Memorandum, or which has received such assistance.

II. Australia-Singapore Digital Economy Agreement

1. This Memorandum has been developed in connection with the Australia-Singapore Digital Economy Agreement, in the context of an understanding between Australia and Singapore to cooperate in cases of mutual concern regarding the regulation of unsolicited commercial electronic messages as provided for under Article 19 (Unsolicited Commercial Electronic Messages) of Chapter 14 (Digital Economy) of the Australia-Singapore Free Trade Agreement. This Memorandum has also been developed in the context of the objective of the 2015 *Joint Declaration by the Prime Ministers of Australia and Singapore on a Comprehensive Strategic Partnership* to deepen bilateral relations and cooperation and enhance the integration of the economies of Australia and Singapore.

III. Objective and Scope

1. This Memorandum sets forth the Participants' intent with regard to strategic engagement, mutual assistance and the exchange of information for the purpose of facilitating the investigation and enforcement proceedings concerning Covered Violations.
2. This Memorandum is a voluntary agreement. It does not create rights or legally binding obligations under international or domestic laws.
3. The Participants understand that it is in their common public interest to:
 - 3.1 cooperate with respect to investigations and enforcement proceedings concerning Covered Violations, including sharing complaints and other relevant information and providing investigative assistance related to unsolicited commercial electronic messaging, unsolicited telemarketing, scam telephone calls and scam SMS;

- 3.2 facilitate research and education related to unsolicited commercial electronic messaging, unsolicited telemarketing, scam telephone calls and scam SMS.
- 3.3 facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges, where opportunities may arise and priorities permit;
- 3.4 promote a better understanding by each Participant of the economic and legal conditions and theories relevant to the enforcement of the Applicable Laws of the other Participant; and
- 3.5 inform each other of developments in their respective countries that relate to this Memorandum in a timely fashion.

Further to these common interests, and subject to Section IV, the Participants intend to use their best efforts to:

- 3.6 disclose information upon request and as permitted by the laws applicable to each Participant, including complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings related to Covered Violations of the Applicable Laws of that Participant's country;
- 3.7 provide investigative assistance in appropriate cases in accordance with the laws applicable to each Participant;
- 3.8 provide other relevant information about matters within the scope of this Memorandum such as information relevant to consumer and business education, government and self-regulatory enforcement solutions, amendments to relevant legislation, and staffing and other resource issues;
- 3.9 explore the feasibility of staff exchanges and joint training programs;
- 3.10 coordinate enforcement against cross-border Covered Violations that are a priority for both Participants;
- 3.11 collaborate on initiatives to promote technical and commercially viable solutions in relation to unsolicited commercial electronic messaging, unsolicited telemarketing, scam telephone calls and scam SMS;
- 3.12 participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation;
- 3.13 provide other appropriate assistance that would aid in compliance activities and/or investigations and enforcement actions related to Covered Violations; and

- 3.14 jointly explore opportunities for senior strategic engagement to facilitate a shared cross-jurisdictional approach and understanding to deal with relevant regulatory issues and consumer protections.

IV. Procedures Relating to Mutual Assistance

1. Each Participant will designate a primary contact for the purposes of requests and other communications under this Memorandum. Notices of these designations and any subsequent changes are to be sent to the IMDA in care of the Director responsible for the relevant IMDA functions and to the ACMA in care of the Executive Level 2 Manager responsible for the relevant ACMA functions.
2. If a Participant requests assistance for matters relating to investigations or enforcement actions in relation to Covered Violations, the Participants understand that:
 - 2.1 requests for assistance must be made in writing and are expected to include sufficient information to enable the Requested Participant to determine whether a request relates to a Covered Violation and to take action in appropriate circumstances. Such information should include:
 - a. a description of the facts underlying the request (including the conduct or suspected conduct which give rise to the request) and the type of assistance sought;
 - b. an indication of any special precautions that should be taken in the course of fulfilling the request;
 - c. the purpose for which the information requested would be used (identifying the provisions of any relevant law or other legal basis for the Requesting Participant seeking the information and the relevant regulatory functions to which the request relates); and
 - d. the suggested time period for reply and, if the request is urgent, the reasons for the urgency.
 - 2.2 In urgent cases, a request for assistance may be made orally provided that the oral request contains the information set out in clause 2.1 of this Section to be followed by a written request containing all the required information within 7 days, if possible.
 - 2.3 Consistent with other provisions of this Memorandum, a request for assistance is expected to include an undertaking by the Requesting Participant to maintain confidentiality of each request for assistance, the existence of any investigation related to the request, all materials

related to each request, and all the information and material provided in response to each request, unless the Participants reach a different understanding in writing.

V. Limitations on Assistance

1. The Requested Participant may exercise its discretion to decline the request for assistance or limit its cooperation. In deciding whether to decline a request, the Requested Participant may take into account whether it is outside the scope of this Memorandum or, whether the provision of the information, documents or assistance would or may:
 - 1.1 be inconsistent with the national or public interest, or with the laws applicable to the Requested Participant, including relevant privacy or data protection laws;
 - 1.2 be beyond the statutory powers of the Requested Participant or involve dealing with the administration of a law that has no parallel within its jurisdiction;
 - 1.3 put the Requested Participant in breach, or at risk of being in breach, of a legal or equitable duty owed to any person (particularly in relation to the treatment of confidential information and personal information, or an obligation to afford procedural fairness);
 - 1.4 expose the Requested Participant to the threat of legal proceedings;
 - 1.5 place a strain on its resources or substantially or unreasonably divert its resources; or
 - 1.6 impact adversely on any enforcement or compliance action being undertaken or contemplated by the Requested Participant.
2. The Participants recognise that it is not feasible for a Participant to offer assistance to the other Participant for every Covered Violation. Accordingly, the Participants intend to use best efforts to seek and provide cooperation focusing on those Covered Violations that are most serious in nature, such as those that cause or are likely to cause injury or harm to a significant number of persons, and those otherwise causing substantial injury or harm.
3. The Requesting Participant may request the reasons for which the Requested Participant declined or limited assistance.
4. The Participants intend to share confidential information pursuant to this Memorandum only to the extent that it is necessary to fulfil the objectives set forth in Section III of this Memorandum, and in a manner consistent with Section VI of this Memorandum.
5. Where the Requested Participant requires the consent of a person or is required to advise a person of the request before it is able to comply with the request, the Requested Participant will advise the Requesting Participant of this fact before contacting that person.

6. The Requested Participant may provide information, documents or assistance to the Requesting Participant subject to any conditions that the Requested Participant considers appropriate, including restrictions or limitations as to the use, access or storage of the requested information or documents. Where the Requested Participant seeks to impose a condition, it must advise the Requesting Participant in writing of that condition prior to providing the information, documents or assistance.

VI. Confidentiality, Privacy and Limitations on the Use of Information Received Under this Memorandum

1. Subject to this Section, each Participant will treat the information received under this Memorandum, the existence of the investigation to which the information relates, and any requests made pursuant to this Memorandum as confidential and will not further disclose or use such information for purposes other than those for which it was originally shared, without the prior written consent of the other Participant.
2. The Participants recognise that material exchanged in connection with investigations and enforcement often contain confidential personally identifiable information. If the Requesting Participant wishes to obtain information that includes confidential personally identifiable information, the Requesting Participant will take additional appropriate measures to safely transmit and safeguard the materials containing such information. Protective measures include, but are not limited to, the following examples and their reasonable equivalents, which can be used separately or combined as appropriate to the circumstances:
 - 2.1 transmitting the material in an encrypted format;
 - 2.2 transmitting the material by a courier with package tracking capabilities;
 - 2.3 maintaining the materials in secure, limited access locations (e.g. password protected files for electronic information and locked storage for hard copy information); and
 - 2.4 if used in a proceeding that may lead to public disclosure, redacting confidential personally identifiable information, as required by law, or filing under seal, as consistent with law.
3. The Requesting Participant will safeguard the confidentiality and security of any information received under this Memorandum and respect any safeguards decided on by the Participants, consistent with applicable laws and associated rules and policies by:
 - a. restricting access to such information to its officers, employees, consultants, contractors, and agents who have a need for such information in the performance of their official duties and, with respect to consultants, contractors and agents, restricting access to those who have entered into appropriate non-disclosure agreements that covers such information, and informing such persons with access of their

responsibilities under the Memorandum except as otherwise provided in writing by the Requested Participant;

- b. establishing appropriate administrative, technical, and physical safeguards to ensure the confidentiality of personally identifiable information and data security and integrity;
- c. complying with applicable breach notification policies and procedures.

4. Nothing in this Memorandum is intended to:

- 4.1 authorise a Participant to withhold information provided pursuant to this Memorandum in response to a formal demand from that Participant's country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by that Participant or its government, or if disclosure is otherwise required by law in that Participant's country; or
- 4.2 prevent material obtained in connection with the investigation or enforcement of criminal laws from being used for the purpose of investigation, prosecution, or prevention of violations of either Participant's country's criminal laws.

- 5. In the event of any unauthorised access or disclosure of the information, the Requesting Participant will take all reasonable steps to remedy the unauthorised access or disclosure and to prevent a recurrence of the event and are to promptly notify the Requested Participant of the occurrence.
- 6. The Participants will oppose, to the fullest extent possible consistent with their country's laws, regulations and policies, any application by a third party for disclosure of confidential information or confidential materials received from a Participant, unless the other Participant consents to its release. The Participant that receives such an application is expected to notify forthwith the Participant that provided it with the confidential information.

VII. Change in Applicable Laws

- 1. In the event of significant modification to the Applicable Laws of a Participant's country that are within the scope of this Memorandum, the Participants intend to consult promptly, and, if possible, prior to the effective date of the enactment of such modifications, to determine whether to modify this Memorandum.

VIII. Retention of Information

- 1. Participants will not retain materials obtained from the other Participant through this Memorandum for longer than is reasonably required to fulfill the purpose for which they were shared or than is required by the other Participant's country's laws.

2. The Participants recognise that in order to fulfil the purpose for which the materials were shared, the Participants typically need to retain the shared materials until the conclusion of the pertinent investigation for which the materials were requested and any related proceedings.

IX. Costs

1. The respective costs for each Participant resulting from the implementation of this Memorandum will be borne solely by each Participant. The Participants will consult each other to ensure this principle is satisfied when the costs of providing or obtaining information under this Memorandum is substantial. The Requested Participant may ask the Requesting Participant to pay those costs as a condition of proceeding with the Request.

X. Duration of Cooperation

1. Cooperation under this Memorandum will commence as of the date of its signing.
2. The assistance provided under this Memorandum may be extended to Covered Violations occurring before as well as after this Memorandum is signed.
3. This Memorandum may be discontinued at any time by either Participant, but a Participant should endeavour to provide 30 days written notice of such discontinuance and use their best efforts to consult with the other Participant prior to providing such notice.
4. The Participants will review the operation of this Memorandum periodically and will consult for the purpose of reviewing this Memorandum at a time mutually agreed between both Participants.
5. Upon the discontinuation of this Memorandum, the Participants are expected to maintain the confidentiality of any information communicated to them by the other Participant under this Memorandum, and return or destroy, consistent with any methods prescribed by the other Participant, information obtained from the other Participant consistent with this Memorandum and as required by the other Participant's country's laws.
6. This Memorandum may be modified by mutual consent of the Participants. Any modifications should be in writing and signed by the appropriate officers of the Participants.

XI. Legal Effect

1. Nothing in this Memorandum is intended to:
 - 1.1 create legally binding rights or obligations, or affect existing rights or obligations, under international or domestic law;
 - 1.2 prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to other agreements, arrangements or practices;
 - 1.3 affect any right of a Participant to seek information on a lawful basis from a person located in the territory of the other Participant's country or preclude any such person from voluntarily providing legally obtained information to a Participant;
 - 1.4 create a commitment that conflicts with or would be inconsistent with either Participant's national laws, court orders, regulations and policies, or any applicable international legal instruments; and
 - 1.5 create expectations of cooperation that would exceed a Participant's jurisdiction.

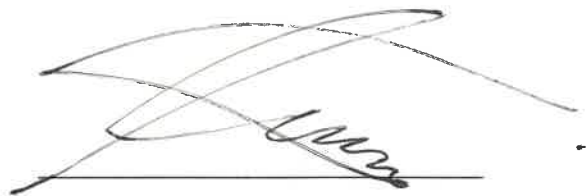
XII. Disputes

1. The Participants will resolve any disputes that may arise under this Memorandum through amicable consultations by the contacts referred to in clause 1 of Section IV and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

Signed in Singapore on 18 July 2022.



Nerida O'Loughlin
Chair and Agency head
Australian Communications and Media
Authority



Mr Lew Chuen Hong
Chief Executive Officer
Info-communications Media
Development Authority Singapore

Annex 1

Applicable Laws

- I. Australian Communications and Media Authority
 - i. *Do Not Call Register Act 2006*
 - ii. *Spam Act 2003*
 - iii. *Telecommunications Act 1997, Part 6*

- II. Info-communications Media Development Authority
 - i. *Spam Control Act 2007*
 - ii. *Telecommunications Act 1999*
 - iii. *Personal Data Protection Act 2012, Parts 9 and 9A*