

Enforceable undertaking

This enforceable undertaking (**Undertaking**) is given by MYOB Australia E1 Pty Ltd to the Australian Communications and Media Authority, pursuant to section 38 of the *Spam Act 2003* (Cth).

1. Definitions and interpretation

In this Undertaking:

ACMA means the Australian Communications and Media Authority.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne.

Company means MYOB Australia E1 Pty Ltd (ACN 095 868 205) of 12 Wesley Court, Burwood East VIC 3151.

Person means a natural person and any body or entity, whether incorporated or not.

Spam Act means the *Spam Act 2003* (Cth).

Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

A reference to legislation includes any modification or re-enactment of it, and all regulations made under it.

2. Commencement Date

This undertaking commences when:

- a. it has been executed by the Company, and
- b. so executed, it has been accepted by the ACMA and written notification of that acceptance has been given to the Company.

3. Background

The Company was incorporated in South Australia on 12 February 2001, changing its name to Smartyhost Pty Ltd on 24 February 2004. The Company was purchased and became part of the MYOB group in August 2008. The name of the Company was changed to MYOB Australia E1 Pty Ltd on 30 March 2009. Under the SmartyHost brand, the Company provides web hosting and domain name services to its clients.

3.1 The ACMA's investigation

On 3 February 2009 the ACMA commenced an investigation into the Company in relation to complaints about commercial electronic messages alleged to have been sent by the Company (under the SmartyHost brand) to electronic account holders. The complaints alleged that these commercial electronic messages were sent without the account holders' consent, and/or did not contain a functional unsubscribe facility, in contravention of the Spam Act.

The ACMA provided the Company with details of the alleged contraventions of the Spam Act on 26 March 2009. The Company provided a response to the ACMA in relation to the alleged contraventions. That response indicated that upon conducting a review, the Company had found that its unsubscribe facility was not functioning correctly.

On the basis of the documents and information obtained during the course of its investigation, the ACMA is of the view that the Company contravened the Spam Act on a number of occasions.

4. Undertaking to make payment

The Company undertakes to pay to ACMA an amount of \$8,000 in settlement of the alleged contraventions of the Spam Act. The total amount is to be paid no later than 3 Business Days after the Commencement Date.

5. Undertakings regarding conduct

5.1 Training

- a. Within three months after the Commencement Date the Company undertakes to develop and submit to the ACMA for approval a training program outlining the requirements of the Spam Act.
- b. Within two months after receiving notification of the ACMA's approval of the training program, the Company undertakes to provide the approved training program to all its directors, employees and contractors who are involved in sending commercial electronic messages after the Commencement Date.
- c. The Company undertakes to provide the approved training program to any new employees or contractors who are involved in sending commercial electronic messages within two months of that new employee or contractor commencing their duties with the Company.
- d. The training program must include a requirement that all directors, employees and contractors who are involved in sending commercial electronic messages are provided with a copy of this Undertaking.
- e. For a period of 6 months after the date of provision of the first approved training program, the Company must provide to the ACMA a quarterly report which details all training provided to directors, employees and contractors, during the preceding three months. Each report shall be provided to the ACMA no later than 10 Business Days after the end of the applicable reporting period.

5.2 Quality assurance

- a. Within three months after the Commencement Date the Company undertakes to develop and submit to the ACMA for approval quality assurance processes to ensure compliance with sections 16, 17 and 18 of the Spam Act.
- b. Within one month after receiving notification of the ACMA's approval of the Company's proposed quality assurance processes, those processes must be implemented by the Company.
- c. The Company undertakes to provide to the ACMA, within one month after the implementation of the approved quality assurance processes, written confirmation of that implementation.

5.3 Complaints handling

- a. In respect of commercial electronic messages sent after the Commencement Date, the Company undertakes to establish and maintain a complaints handling policy which complies with Australian Standard ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organisations) within two months after the Commencement Date.
- b. For a period of 12 months after the Commencement Date, the Company shall provide to the ACMA a quarterly report which details any complaints received about commercial electronic messages sent after the Commencement Date, and the response to those complaints, during the preceding three months.

- c. The Company undertakes to provide each report to the ACMA no later than 10 Business Days after the end of the applicable reporting period.

5.4 Auditing:

- a. Upon Commencement of this Undertaking, the Company undertakes to audit 10% of commercial electronic messages sent by the Company on a monthly basis for a period of 12 months after the Commencement Date to monitor compliance with sections 16, 17 and 18 of the Spam Act.
- b. For a period of 12 months after the Commencement Date, the Company must provide to the ACMA a quarterly report which details the results of the audit for the preceding three months.
- c. The Company undertakes to provide each report to the ACMA no later than 10 Business Days after the end of the applicable reporting period.

5.5 Unsubscribe Facility

- a. Within one month after the Commencement of this Undertaking, the Company undertakes to take action and implement procedures to ensure that any person who indicates a desire to unsubscribe or otherwise withdraws their consent from receiving commercial electronic message does not receive any further commercial electronic messages from the Company.
- b. Within two months after the Commencement Date the Company undertakes to provide written confirmation to the ACMA setting out the action taken, the procedures implemented and any mechanisms by which those procedures are to be monitored or audited.

5.6 General

In addition to the specific obligations set out in this Undertaking, the Company undertakes to do all things reasonably necessary to give effect to this Undertaking.

6. Expiration of this Undertaking

This Undertaking continues until it is withdrawn or varied by the Company, with the consent of the ACMA, pursuant to section 38(2) of the Spam Act.

7. Acknowledgements by the Company

The Company acknowledges that:

- (a) The ACMA may make this Undertaking available for public inspection; and
- (b) acceptance by the ACMA of this Undertaking does not derogate from any rights and remedies available to any other person arising from the conduct described in this Undertaking.


The Undertaking is signed on behalf of MYOB Australia E1 Pty Ltd by its authorised representative on this 11th day of AUGUST 2009:



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Robert Reside, Director

In the presence of:



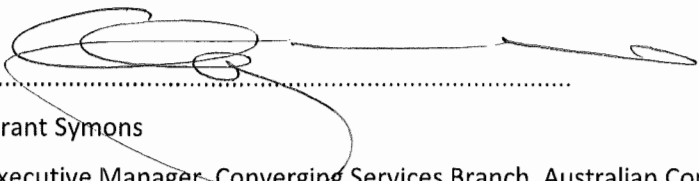
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Signature of witness

IAN BOYLAN

Name of witness (please PRINT)

The Undertaking offered by MYOB Australia E1 Pty Ltd is accepted by the Australian Communications and Media Authority pursuant to section 38 of the *Spam Act 2003* (Cth) on this fourteenth day of August 2009:

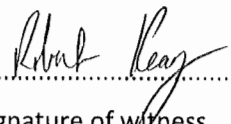


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Grant Symons

Executive Manager, Converging Services Branch, Australian Communications and Media Authority

In the presence of:



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Signature of witness

ROBERT KEAY

Name of witness (please PRINT)