



Memorandum of Understanding

between the

United States Federal Communications Commission

and the

Australian Communications and Media Authority

on

**Mutual Assistance in the Enforcement of Laws
on certain unlawful communications**

The United States Federal Communications Commission ("FCC") and the Australian Communications and Media Authority ("ACMA") (collectively, "the Participants"),

RECOGNIZING the importance of developing a global and coordinated approach to address unlawful automated or prerecorded voice message telephone calls and text messages (also known as robocalls or robotexts), and the unlawful use of inaccurate caller identification (also known as caller ID spoofing or overstepping), and the threats that they pose to consumers and their confidence in critical communication systems;

RECOGNIZING that the Participants serve on the Executive Committee of the Unsolicited Communications Enforcement Network (UCENet, formerly known as the London Action Plan) and are signatories to the associated Memorandum of Understanding Among Public Authorities of the London Action Plan Pertaining to Unlawful Telecommunications and Spam; have worked closely in connection with investigations and enforcement actions relating to unlawful robocalls and caller ID spoofing or overstepping; and have collaborated on promoting technological solutions to robocalls;

RECOGNIZING that the United States *Communications Act of 1934*, as amended 47 U.S.C. § 151 *et seq.* authorizes the FCC to disclose information to law enforcement authorities from other countries under appropriate circumstances; and

RECOGNIZING that the ACMA is authorized to:

- > disclose information to an institution of the government of a foreign state in specified circumstances and under certain conditions under the *Australian Communications and Media Authority Act 2005*; 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 marketing faxes under the *Do Not Call Register Act 2006* and the *Spam Act 2003*.

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

Solely 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 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. "Request" means a request for assistance under this Memorandum.
4. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
5. "Requesting Participant" means the Participant seeking assistance under this Memorandum, or which has received such assistance.

II. Objective and Scope

1. This Memorandum sets forth the Participants' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with Covered Violations.

2. This Memorandum 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 the enforcement against Covered Violations, including sharing complaints and other relevant information and providing investigative assistance;
 - 3.2 facilitate research and education related to unlawful robocalls and caller ID spoofing or overstepping;
 - 3.3 facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
 - 3.4 promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Laws; 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, the Participants intend to use best efforts to:

- 3.6 disclose information upon request and as permitted by law, including complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations of the Applicable Laws of the other Participant's country;
- 3.7 provide investigative assistance in appropriate cases in accordance with their respective domestic laws;
- 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 to unlawful robocalls and caller ID spoofing or overstepping;
- 3.12 participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation; and
- 3.13 provide other appropriate assistance that would aid in the enforcement against Covered Violations.

III. Procedures Relating to Mutual Assistance

1. Each Participant is to designate a primary contact for the purposes of requests and other communications under this Memorandum. Notice of these designations and any subsequent changes should be sent to the ACMA in care of the Executive Level 2 Manager responsible for the relevant ACMA functions, and to the FCC in care of the Chief of the Enforcement Bureau.
2. If a Participant requests assistance for matters involved in the enforcement of Applicable Laws, then Participants understand that:

- 2.1 requests for assistance 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 is expected to include a description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions that are expected to be taken in the course of fulfilling the request;
 - 2.2 requests for assistance are expected to specify the purpose for which the information requested would be used; and
 - 2.3 consistent with other provisions of this Memorandum, a request for assistance is expected to include confirmation that the Requesting Participant is to maintain the confidentiality of each request for assistance, the existence of any investigation related to the request, all materials related to each request, and all information and material provided in response to each request, unless the Participants reach a different understanding.
3. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum through the contacts referred to in Section III of this Memorandum and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

IV. Limitations on Assistance

1. The Participants recognize 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 reasonable efforts to seek and provide cooperation focusing on those Covered Violations 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.
2. The Requesting Participant may request the reasons for which the Requested Participant declined or limited assistance.
3. Participants intend to share confidential information pursuant to this Memorandum only to the extent that it is necessary to fulfill the objectives set forth in Section II of this Memorandum, and in a manner consistent with Section V of this Memorandum.

V. Confidentiality, Privacy, and Limitations on Use

1. Subject to this Section, the Participants plan to treat the shared information, the existence of the investigation to which the information relates, and any requests made pursuant to this Memorandum as confidential, and do not intend to further disclose or use the shared information for purposes other than those for which it was originally shared, without the prior written consent of the Requested Participant.
2. The Participants recognize that material exchanged in connection with investigations and enforcement often contains confidential personally identifiable information. If the Requesting Participant wishes to obtain information that includes confidential personally identifiable information, then the Participant understands that it is to 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 circumstances:
 - 2.1 transmitting the material in an encrypted format;
 - 2.2 transmitting the material directly by a courier with package tracking capabilities;
 - 2.3 transmitting the materials by facsimile rather than non-encrypted email;

- 2.4 maintaining the materials in secure, limited access locations (e.g., password protected files for electronic information and locked storage for hard-copy information); and
 - 2.5 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. Nothing in this Memorandum is intended to:
 - 3.1 authorize a Participant to withhold information provided pursuant to this Memorandum in response to a formal demand from a Participant country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government, or if disclosure is otherwise required by law in the Participant's country; or
 - 3.2 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 country's criminal laws.
4. Each Participant intends to 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 including but not limited to the *Privacy Act of 1974* (5 U.S.C. § 552a), the *Freedom of Information Act* (5 U.S.C. § 552), and the *Privacy Act 1988* (Australia) and associated rules and policies by:
 - 4.1 restricting access to the other Participant's 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, who have entered into an appropriate nondisclosure agreement that covers such information; and informing such persons with access of their responsibilities under the MOU, except as otherwise provided in writing by the other Participant;
 - 4.2 establishing appropriate administrative, technical, and physical safeguards to ensure the confidentiality of personally identifiable information and data security and integrity;
 - 4.3 complying with applicable breach notification policies and procedures; and
 - 4.4 promptly notifying the other Participant if and when inadvertent disclosure of information occurs and making every reasonable effort to correct the inadvertent disclosure promptly.
5. The Participants are expected to oppose, to the fullest extent possible consistent with their countries' laws, regulations and policies, any application by a third party for disclosure of confidential information or confidential materials received from a Requested Participant, unless the Requested 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.

VI. Changes 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 such enactments, to determine whether to modify this Memorandum.

VII. Retention of Information

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

2. The Participants recognize that in order to fulfill 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.

VIII. Costs

1. The respective costs for each Participant resulting from the implementation of this MOU are expected to be borne solely by each Participant. The Participants will consult to ensure this principle is satisfied when the cost 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.

IX. Duration of Cooperation

1. The Participants intend cooperation under this Memorandum to commence as of the date the Memorandum is signed by the latter of the two Participants.
2. The Participants intend that assistance consistent with this Memorandum is to be available concerning Covered Violations occurring before as well as after this arrangement is signed.
3. This Memorandum may be discontinued at any time by either Participant, but a Participant should endeavor to provide 30 days written notice of such discontinuation and use their best efforts to consult with the other Participant prior to providing such notice.
4. On 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.
5. This Memorandum may be modified by mutual consent of the Participants. Any modification should be in writing and signed by an appropriate officer of both the FCC and the ACMA.

X. Legal Effect

1. Nothing in this Memorandum is intended to:
 - 1.1 Create binding obligations, or affect existing obligations, under international or domestic law.
 - 1.2 Prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to agreements, or other 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.
 - 1.5 Create expectations of cooperation that would exceed a Participant's jurisdiction.

Signed at Washington, D.C. and at the ACMA's offices in Australia on the respective dates below.



Jessica Rosenworcel (May 28, 2021 07:17 EDT)

Jessica Rosenworcel
Acting Chairwoman
Federal Communications Commission
United States of America

Date: 28/05/2021



Nerida O'Loughlin (May 26, 2021 12:18 GMT+10)

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

Date: 26/05/2021

Annex 1

Applicable Laws

1. Federal Communications Commission:

1. *Communications Act of 1934*, 47 U.S.C. §§ 151-155, 227
2. *Telephone Consumer Protection Act and the Truth in Caller ID Act*, 47 U.S.C. § 227
3. *Federal Communications Commission Rules*, 47 CFR §§ 0.111(a)(24); 64.1200; 64.1600(e)
4. *The Privacy Act of 1974, as amended*, 5 U.S.C. §552a
5. *The Freedom of Information Act, as amended*, 5 U.S.C. § 552.

2. Australian Communications and Media Authority:

1. *Australian Communications and Media Authority Act 2005*
2. *Do Not Call Register Act 2006*
3. *Spam Act 2003*
4. *Telecommunications Act 1997*