

ATTACHMENT A



MEMORANDUM OF UNDERSTANDING

AMONG

PUBLIC AUTHORITIES OF THE UNSOLICITED
COMMUNICATIONS ENFORCEMENT NETWORK
PERTAINING TO UNLAWFUL TELECOMMUNICATIONS
AND SPAM

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A. Preliminary

1. Background

RECOGNISING certain electronic messages including unlawful telemarketing calls, SMS spam, and email spam, and the use of these communication methods by fraudulent marketers, pose challenges to consumers including online fraud and deception, phishing, and dissemination of viruses and malware;

RECOGNISING the desirability of enhancing consumer confidence in electronic messaging and preserving its critical role in modern communications;

RECOGNISING the increased cross border impact of unlawful electronic messaging and the desirability of effective multi-jurisdictional enforcement of laws and regulations restricting such messaging;

RECOGNISING that public authorities, with appropriate private sector entities, formed the Unsolicited Communications Enforcement Network (UCENet) (originally known as the London Action Plan, until 9 September 2016) to develop and foster coordinated approaches to unlawful electronic messages;

RECOGNISING that one critical approach to unlawful electronic messaging is to enhance information and intelligence sharing, investigative assistance and cooperative enforcement among enforcement and regulatory agencies; and

RECOGNISING that the signatories already work together to combat unlawful electronic messaging through the Unsolicited Communications Enforcement Network's Enforcement Subgroup, governmental UCENet members who are responsible for ensuring compliance with laws pertaining to electronic messages including telemarketing and spam within their respective jurisdictions, the signatories

HAVE REACHED THE FOLLOWING UNDERSTANDING:

2. Definitions

2.1 In this Memorandum the following words have the following meanings:

- (a) **Confidential Information** means information held by a Member in circumstances where the Member is subject to a duty of confidentiality, whether arising by the application of statute, regulation, common law or equity, or has requested confidentiality;
- (b) **Group** means the Unsolicited Communications Enforcement Network Enforcement Subgroup;

- (c) **Memorandum** means this Memorandum of Understanding;
 - (d) **Member** means a UCENet organisation that is specified in Annexure A of the Memorandum;
 - (e) **Person** includes an individual, a natural person, a body corporate, an unincorporated association, a partnership, a government or political subdivision, a statutory authority or instrumentality of a government;
 - (f) **Provider** means a Member that provides documents or information to another Member in accordance with this Memorandum;
 - (g) **Recipient** means a Member that receives documents or information from another Member in accordance with this Memorandum; and
 - (h) **Unlawful electronic message** means a communication sent or made in violation of a Member's laws and regulations.
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3. Purpose and Scope

- 3.1 The purpose of this Memorandum is to promote cross border cooperation among the Members, and to assist the Members in the performance of their regulatory and/or enforcement responsibilities with respect to unlawful electronic messages. The Memorandum seeks to encourage a framework to facilitate cross jurisdictional cooperation, international strategic and operational engagement, and the exchange of information between the Members while recognising the legal, policy, and administrative limits on the authority and jurisdiction of each Member to disclose such information.
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B. Provision of information and documents

4. Statement of Intent

- 4.1 All Members intend to participate in regular meetings of the Group, whether by teleconference or in person.
- 4.2 At Group meetings, in person and through electronic means, each Member may, to the extent provided by the laws of their respective jurisdictions, share information with the Group or any member of the Group regarding current and emerging issues related to unlawful electronic messages, to the extent that those issues are, or may be, relevant to the functions of other Members or to the Group generally.
- 4.3 This Memorandum is a voluntary statement of the intent of the Members to cooperate with and assist each other, and to undertake senior strategic and

operational engagement, accordingly it does not create any legally enforceable rights or impose legally binding obligations on any Member.

- 4.4 This Memorandum does not modify or supersede any laws in force applying to any Member.
- 4.5 This Memorandum does not affect the rights or abilities of any Member to obtain information from any other Member in connection with the authorities, jurisdiction and functions of either Member.
- 4.6 This Memorandum does not prevent a Member from seeking assistance from or providing assistance to the other Member(s) pursuant to other agreements, arrangements, or practices.
- 4.7 This Memorandum does not affect any right or ability of a Member to seek information on a lawful basis from a person located in the territory of any other Member's jurisdiction, or preclude any such person from voluntarily providing legally obtained information to a Member.
- 4.8 This Memorandum does not create expectations of cooperation that would exceed a Member's legal authority.
- 4.9 The Members will use their best efforts to comply with the terms of this Memorandum.
- 4.10 The Members acknowledge that they may need to enter into further agreements with other Members before sharing any data containing personal or otherwise sensitive information, according to each Member's legal obligations and requirements.
- 4.11 Information received under this Memorandum will not be retained for longer than is required to fulfill the purpose for which it was shared or than is required by the laws applicable in the Recipient's jurisdiction
- 4.12 Where a Member is prohibited by the laws of its jurisdiction from entering into an arrangement in respect of contraventions of the laws of a foreign state that would be considered penal in nature, nothing in this Memorandum is to be interpreted as permitting or requiring such a Member to provide assistance or information in respect of such contraventions.

5. Provision of information and documents

- 5.1 A Member may, at its discretion and where permitted by the laws of its jurisdiction, provide information or documents to the Group, or to particular Members, relevant to the authorities and functions of the Member or Members receiving the information or documents.
- 5.2 A Recipient will use and disclose any information or documents provided by another Member only:

- (a) in a manner that maintains confidentiality in the information or documents, subject to clause 6;
- (b) in accordance with any conditions specified by the Provider pursuant to clause 7; and
- (c) for the permissible uses specified by the Provider pursuant to clause 8.

6. Confidentiality of information and documents

- 6.1 A Recipient, subject to legal obligations requiring the disclosure or production in the recipient's jurisdiction, will maintain the confidentiality of the information or documents supplied by a Provider under this Memorandum.
- 6.2 In exchanging confidential information, the Members acknowledge the confidentiality requirements of the laws and regulations that apply to each respective Member. The Recipients certify that they will comply with all confidentiality conditions, including any additional conditions applied by a Provider, and shall not, subject to clause 6.3, release or disclose information or documents supplied to it under this Memorandum to any other party, including a signatory to this Memorandum, without the prior express written consent of the Provider or as specified in the request, except where required to do so by law.
- 6.3 Wherever feasible, the Recipient(s) shall promptly notify the Provider of any legally enforceable demand for disclosure of the confidential information or documents supplied under this Memorandum before complying with the demand and shall assert such appropriate legal exemptions or privileges with respect to such information as the Recipient considers appropriate.
- 6.4 If a Recipient becomes aware of any unauthorised use or disclosure of information or documents received from a Provider, either by that Recipient or a third party to which the Recipient has provided the information or documents, in accordance with any conditions it has been provided under, the Recipient will notify the Provider as soon as possible, or as permitted by law.

7. Information and documents may be provided subject to conditions

- 7.1 A Provider may provide information, documents or assistance to a Recipient subject to any conditions that the Provider considers appropriate, including, but not limited to:
 - (a) written restrictions or limitations as to the use, access or storage of the requested information or documents;
 - (b) confidentiality requirements relating to the information or documents provided.

- 7.2 Where the Provider seeks to impose a condition on the use of any information, documents or assistance, it shall advise the prospective Recipient of that condition prior to providing the information, documents or assistance.
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8. Permissible use and disclosure of information and documents

- 8.1 The Recipient must not use information or the contents of any documents provided pursuant to this Memorandum for any purpose other than the purposes stated by a Provider, if any, unless:
- (a) it has asked the Provider for its consent to use the information or documents for the other purpose; and
 - (b) the Provider has indicated its consent in writing to such use.
- 8.2 The Recipient must not disclose information or the contents of any documents provided pursuant to this Memorandum, unless:
- (a) it has asked the Provider for its consent to disclose the information or documents; and
 - (b) the Provider has indicated its consent in writing to such disclosure.
- 8.3 Notwithstanding clauses 6, 8.1 and 8.2, it is understood that:
- (a) a Recipient may disclose information or the contents of documents provided pursuant to this Memorandum in response to a formal request from a legislative body of that Recipient's country or an order issued from a court with proper jurisdiction in an action commenced by the Recipient or its government; and
 - (b) information and documents obtained in connection with the investigation or enforcement of criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of the criminal laws of a Member's country.
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C. Miscellaneous provisions

9. Contact points

- 9.1 So far as is practicable, all communications between the Members regarding the Memorandum should be between the principal points of contact as set out in Annexure A. This Annexure may be amended by written notice provided by a Member to the other Members from time to time.

10. Strategic engagement and new members

- 10.1 Members will develop and identify opportunities to engage in senior-level strategic forums and operational activities to aid collaboration and the aims of Members in relation to what is a cross-jurisdictional issue, including via UCENet conferences, working groups and bi-lateral meetings.
- 10.2 Requests to join this Memorandum from new Members from the Group may be received at any time. Requests will only be considered from Members of the Group with responsibilities for ensuring compliance with laws pertaining to electronic messages including telemarketing and spam.
- 10.3 Requests to join this Memorandum require the approval by a majority of existing signatories.

11. Term of Memorandum

- 11.1 This Memorandum will be ongoing unless terminated in accordance with clause 14.

12. Effective date

- 12.1 This Memorandum will be effective from the date of signature by at least two of the Members.

13. Review of Memorandum

- 13.1 The Members will keep the operation of this Memorandum under periodic review and will consult with a view to improving its operation and resolving any matters or differences that may arise as a result of the interpretation, construction, or operation of this Memorandum.
 - 13.2 The Members will also formally review the operation of this Memorandum every 3 years at a time and in a manner mutually agreed among the Members.
 - 13.3 Any term of this Memorandum may be amended or waived by the Members' mutual consent in writing.
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14. Termination of, or withdrawal of a Member from, the Memorandum

- 14.1 A Member may withdraw from this Memorandum by giving 30 days' written notice to the other Members that remain a party to the Memorandum.
- 14.2 The Members may, by mutual consent of all Members in writing, decide to terminate the Memorandum.
- 14.3 In the event that this Memorandum is terminated, or a Member withdraws, this Memorandum shall continue to have effect with respect to all requests for information or documents that were fulfilled before the date of such notice of termination or withdrawal, as the case maybe, and with respect to the confidentiality of all documents and information supplied under this Memorandum.