

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES FEDERAL TRADE COMMISSION AND THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION ON MUTUAL ASSISTANCE IN THE ENFORCEMENT OF LAWS ON COMMERCIAL EMAIL AND TELEMARKETING

The United States Federal Trade Commission (“FTC”) and the Canadian Radio-television and Telecommunications Commission (“CRTC”) (collectively, “the Participants”),

RECOGNIZING the importance of developing a global and coordinated approach to address unlawful commercial email and telemarketing, and the threats that they pose to consumers and their confidence in these critical communication systems;

RECOGNIZING that the Participants serve together on the Secretariat of the London Action Plan; have worked closely in connection with numerous investigations and enforcement actions relating to unsolicited commercial email (spam) and automated telephone calls (robocalls); have collaborated on promoting technological solutions to robocalls; and have engaged in staff exchanges;

RECOGNIZING that the U.S. Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, as amended by the U.S. SAFE WEB Act, authorizes the FTC to disclose information to law enforcement authorities from other countries under appropriate circumstances; and

RECOGNIZING that an Act known generally as the Canadian Anti-Spam Law (CASL) authorizes the CRTC to disclose information to an institution of the government of a foreign state in specified circumstances and under certain conditions;

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

For the purposes of this Memorandum,

- A. "Applicable Law" means the laws and regulations identified in Annex 1, 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.
- B. "Covered Violation" means practices that would 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.
- C. "Person" means any natural person or legal entity, including corporations, unincorporated associations, or partnerships, existing under or authorized by the laws of the United States, its States, or its Territories, or the laws of Canada.
- D. "Request" means a request for assistance under this Memorandum.
- E. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- F. "Requesting Participant" means the Participant seeking assistance under this Memorandum, or which has received such assistance.

II. Objectives and Scope

- A. This Memorandum of Understanding 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. The Participants do not intend the provisions of this Memorandum of Understanding to create legally binding obligations under international or domestic laws.
- B. The Participants understand that it is in their common public interest to:

1. cooperate with respect to the enforcement against Covered Violations, including sharing complaints and other relevant information and providing investigative assistance;
2. facilitate research and education related to unauthorized telemarketing and unauthorized telephone calls;
3. facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
4. promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Laws; and
5. inform each other of developments in their respective countries that relate to this Memorandum in a timely fashion.

C. In furtherance of these common interests, and subject to Section IV, the Participants intend to use best efforts to:

1. disclose information upon request, 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;
2. provide investigative assistance in appropriate cases in accordance with domestic law;
3. provide other relevant information in relation to 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;
4. explore the feasibility of staff exchanges and joint training programs;

5. coordinate enforcement against cross-border Covered Violations that are a priority for both Participants;
6. collaborate on initiatives to promote technical and commercially viable solutions to unlawful telemarketing and electronic messages;
7. participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation; and
8. provide other appropriate assistance that would aid in the enforcement against Covered Violations.

III. Procedures Relating to Mutual Assistance

A. 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 is to be sent to the CRTC in care of the Chief Compliance and Enforcement Officer and to the FTC in care of the Deputy Director for International Consumer Protection, Office of International Affairs.

B. If a Participant requests assistance for matters involved in the enforcement of Applicable Laws, then Participants understand that:

1. requests for assistance are 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 description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions that should be taken in the course of fulfilling the request;
2. requests for assistance are to specify the purpose for which the information requested would be used;
3. in conformity with CASL Section 60, information disclosed by the CRTC as envisioned by this Memorandum and related requests for assistance are to be used only for the purpose of investigating

possible contraventions of laws that do not have consequences that would be considered penal under Canadian law;

4. civil penalties provided under Applicable Laws are not considered to be penal as that term is used in CASL section 60; and

5. consistent with Section V.A., a request for assistance is to confirm 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.

C. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum through the contacts designated pursuant to Section III.A, and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

IV. Limitations on Assistance

A. The Requested Participant may exercise its discretion to decline the request for assistance, or limit or place conditions on its cooperation, including where it is outside the scope of this Memorandum or, more generally, where it would be inconsistent with domestic laws or important interests or priorities.

B. 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 best 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 to a significant number of persons, and those otherwise causing substantial injury.

C. The Requesting Participant may request the reasons for which the Requested Participant declined or limited assistance.

D. Participants intend to share confidential information pursuant to this Memorandum only to the extent that it is necessary to fulfill the purposes set forth in Section II.

V. Confidentiality, Privacy, and Limitations on Use

A. To the fullest extent possible, and consistent with their respective laws, each Participant certifies the confidentiality of information to be disclosed under this Memorandum, including the existence of an investigation to which the information relates. Subject to Section V.C, 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 this information for purposes other than those for which it was originally shared, without the prior written consent of the Requested Participant.

B. The Participants recognize that material exchanged in connection with investigations and enforcement often contains personally identifiable information. If the Requesting Participant wishes to obtain confidential information that includes personally identifiable information, then the Participants understand that they are to take additional appropriate measures to safely transmit and safeguard the materials containing personally identifiable 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 particular circumstances:

1. transmitting the material in an encrypted format;
2. transmitting the material directly by a courier with package tracking capabilities;
3. transmitting the materials by facsimile rather than non-encrypted email;
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

5. if used in a proceeding that may lead to public disclosure, redacting personally identifiable information or filing under seal.

C. Notwithstanding Section V.A., nothing in this Memorandum is intended to:

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

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.

D. Each Participant is to use best efforts to safeguard the security of any information received under this Memorandum and respect any safeguards decided on by the Participants. In the event of any unauthorized access or disclosure of the information, the Participants are to take all reasonable steps to remedy the unauthorized access or disclosure and to prevent a recurrence of the event and are to promptly notify the other Participant of the occurrence.

E. The Participants are to oppose, to the fullest extent possible consistent with their countries' laws, any application by a third party for disclosure of confidential information or materials received from a Requested Participant, unless the Requested Participant consents to its release. The Participant that receives such an application is to notify forthwith the Participant that provided it with the confidential information.

VI. Changes in Applicable Laws

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 entry

into force of such enactments, to determine whether to modify this Memorandum.

VII. Retention of Information

A. 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.

B. 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

Unless otherwise decided by the Participants, the Requested Participant is expected to pay all costs of executing the Request. 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. In such an event, the Participants should consult on the issue at the request of either Participant.

IX. Duration of Cooperation

A. The Participants intend cooperation in accordance with this Memorandum to become available as of the later on the date it is signed by the Participants.

B. The Participants intend that assistance in accordance with this Memorandum is to be available concerning Covered Violations occurring before as well as after this arrangement is signed.

C. This Memorandum may be discontinued, but a Participant should provide 30 days written notice of such discontinuation. However, prior to providing such notice, each Participant should use best efforts to consult with the other Participant.

D. On discontinuation of this Memorandum, the Participants are to, in accordance with Section V, maintain the confidentiality of any information communicated to them by the other Participant in accordance with this Memorandum, and return or destroy, in accordance with any methods prescribed by the other Participant, information obtained from the other Participant in accordance with this Memorandum.

E. This Memorandum may be modified by mutual consent of the Participants. Any modification is to be in writing and signed by both the FTC and the CRTC.

X. Legal Effect

Nothing in this Memorandum is intended to:

A. Create binding obligations, or affect existing obligations, under international or domestic law.

B. Prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to other agreements, arrangements, or practices.

C. 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.

D. Create a commitment that conflicts with either Participant's national laws, court orders, or any applicable international legal instruments

E. Create expectations of cooperation that would exceed a Participant's jurisdiction.

Signed at Washington, D.C., United States of America, and Ottawa,
Ontario, Canada on March 24, 2016, in duplicate.

Edith Ramirez
Chairwoman
Federal Trade Commission
United States of America

Jean-Pierre Blais
Chairman
Canadian Radio-television and
Telecommunications Commission
Canada

Annex

Applicable Laws

I. Federal Trade Commission

- a. Federal Trade Commission Act, 15 U.S.C. §§ 41-58.
- b. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, (CAN-SPAM Act), 15 U.S.C. §§ 7701-7713
- c. Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108
- d. Telemarketing Sales Rule, 16 CFR Part 310

II. Canadian Radio-television and Telecommunications Commission

- a. An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23
- b. Telecommunications Act, S.C. 1993 as amended