Senate Legal & Constitutional Affairs Legislation Committee – Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Written response to Questions on Notice – ADMA

1. Anonymity and pseudonymity

ADMA does not have an issue with anonymity, but believes there are insurmountable issues regarding pseudonymity.

It is not possible to adhere to the requirement under APP 10.1 to "maintain accurate, up-to-date and complete records" with pseudonymity in place. Records must be maintained for accuracy, and those records containing pseudonyms may be deemed incorrect, and thus removed. Multiple pseudonyms may result in people receiving multiple communications, which will be annoying for consumers and an added impost for business. The use of pseudonyms could potentially allow people to "game" the system, and receive multiple benefits and rewards.

The use of pseudonyms will make managing opt-outs and other customer preferences extremely difficult where an individual uses different pseudonyms across different databases with one organisation, such as a loyalty program.

Pseudonymity creates conditions where duplicate pseudonyms could represent several people, and also where one person may have multiple records under different pseudonyms. It will be—in some instances—impossible for business to know whether they have duplicate records in their databases. It will be—in some instances—very difficult for people to opt-out, if they have multiple records with a business under various pseudonyms. It is impossible to respect an opt-out request in this environment. If opt-out requests cannot be executed, this will lead to increased frustration and complaints.

Crimes such as hacking and other problematic behaviours—including slanderous and obscene commentary—are related to pseudonymity and anonymity online in general. These conditions are having significant adverse impacts on businesses, as well as negative non-business impacts on the community as a whole.

The ADMA believes that the appropriate balance is to retain the use of anonymity, while removing pseudonymity from the principle. In our view, it is too complicated to determine when, and under what circumstances, it may be appropriate to allow for pseudonymity.

It is in the interests of business and consumers alike that data is as accurate as possible. This far outweighs the intangible and vague advantages to a minority of consumers in allowing pseudonymity in certain situations.

2. Marketing communication through emerging technologies and social media

In the appendix to its submission, ADMA included a suggested re-draft (see proposed APP 7.2 (iii)), to address the issue raised in the Committee's question about regulating social media and online advertising.

A copy is attached and the key recommended amendment provides a solution to how these forms of new media can be regulated. The opt-out option which is most suitable is contained in our proposed new sub-section as follows:

“The organisation provides access to its website or other company online resource which includes a direct link to the organisation's privacy policy, through which the individual can easily make such a request.” That is, to make an opt-out request.

Our position stems from our belief that the legislation needs to be future-proof, and take into account the plethora of emerging technologies which cannot be predicted. The proposed amendment is flexible in this context, will be universally applicable well into the future, but also provides the desired policy solution: simple and intuitive access to an opt-out choice.

This proposal is of greatest benefit to the consumer, because it will create an industry norm. A consistent approach across the industry in providing opt-out through a privacy policy will greatly enhance the ability of individual to know where they can exercise choice. As awareness of this new norm grows, people will develop a greater understanding of the importance of the privacy policy, and the function of the policy as a one-stop-shop for exercising individual choice.

The current drafting is not platform neutral, and takes no account of technologies such as Twitter—for example—which deliberately allows for only a limited number of characters in each communication, making the inclusion of a detailed opt-out option impossible.

ADMA is proposing a uniform standard in which the opt-out will never be more than one click away. Hence even the most restricted social media platform—currently Twitter—can contain a link to the privacy policy with the opt-out option provided, as per the suggested amendment to APP 7.

The Committee may also wish to recommend that following passage of the legislation, the Privacy Commissioner be required to develop codes and guidelines which specify how prominently and in what form the opt-out be included in an organisation's privacy policy.

ADMA believes this will be the best way to ensure that the APPs remain as principles capable of application in future circumstances, with the OAIC codes and guidelines the appropriate mechanism for determining the detailed rules. These will be easier to change in future, applying the best criteria for the media platforms and channels which are then available.

Yours sincerely,

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