

Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra
ACT 2600

9th July 2012

For the attention of the Senate Legal & Constitutional Affairs Legislation Committee

Re: Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

The Mailing House (TMH) is writing in support of the submission made by the Australian Direct Marketing Association.

TMH is a supplier of direct mail, electronic communication and fundraising consultancy services to the commercial and not for profit sectors. We use personal information to produce personalised direct marketing collateral and transactional printed materials

We agree to the issues and recommendations outlined in the submission made by the Australian Direct Marketing Association on behalf of the marketing and advertising community. In particular:

- **Prohibition on direct marketing:** We share concern that the inclusion of a “prohibition on direct marketing” will cause considerable confusion with our clients as to whether direct marketing is permitted or not. This will have a direct, financial and reputation effect on our business;

The direct mail industry is a huge industry and directly employs many thousands of Australians and indirectly employs or supports the employment of hundreds of thousands in the paper, print, advertising, membership organisations, charities, Australia Post, mail order, telephone call centers and many more. The direct mail industry is under pressure from many areas including misguided environmental activists, electronic e-alternative communication media, foreign suppliers and simple market pressures in a depressed industry of competition with prices that cannot sustain the sector resulting in limited profit potential and this is best illustrated with the recent placing into Receivership of SEMA, Australia's 3rd largest DM. Add to that the significant financial pressure in the print sector and see articles in industry magazines that forecast more company failures.

Our economy and financial well being of private enterprise is under severe pressure.

Any implication that Direct Marketing is to be 'prohibited' will have a deleterious impact on this already struggling sector.

We therefore support the removal of the term 'prohibition' on direct marketing and agree to ADMA's recommendation that the wording revert to the positive;

- **Using data collected from third parties for marketing and advertising:** We support ADMA's suggested amendments to APP 7.3(d) regarding use of personal information collected from a party other than the individual.

The approach proposed by the Government, requiring an opt-out to be included in all communications to customers and prospects where third party data is used will:

- (i) cause our clients compliance difficulties as it is not possible for them to include this amount of information in all communication channels – e.g. online advertisements, certain social media channels and twitter. Research and results shows that to the New Generation market, short sharp messages have impact when selling Goods and Services. Any requirement to add even limited opt out clauses to e-media channels will reduce the impact and success of these mediums.
- (ii) discourage use services that we recommend such as cleansing and updating services. These are currently used by our clients to maintain the accuracy of their data. However, as the use of such services will, in future, automatically trigger the requirements of APP7.3(d) with regard to customer communications, our clients will be less inclined to perform such operations. One of the environmental initiatives that our sector has been working on for well over 10 years is to reduce the amount of duplicated paper mail (and email) sent to recipients and prospective customers. A lot of time and expense has been invested in the Australia Post Future Post (barcoding) project and DM companies internal or 3rd party software to identify duplicates thus reducing cost to advertisers, annoyance to the public when duplicate messages arrive and the resultant environmental saving of less raw paper product used.

- (iii) impacts on the ability for our clients to communicate effectively with their customers and provide them with best possible products and services for their needs. We support 'opt out' clauses as usually there is little sense in mailing to most consumers who have indicated they wish to 'opt out' of direct marketing approaches but this opt out message has to be simple and limited in wording and space required.
- (iv) degrades the customer experience offered by our clients, which is absolutely critical to their brand reputation and the manner in which they are perceived by consumers in the market.

In this regard we are supportive of ADMA's proposal to ensure our clients always provide direct access to their privacy policy through which our customers and prospects can opt-out of further marketing from us.

- **Anonymity and pseudonymity:** We require that our clients maintain high standards of data accuracy. The provision that requires organisation to offer individuals the right to deal with organisations on an anonymous or pseudonymous basis will impact of our clients ability to maintain accurate records as it will be unclear whether the information we hold is correct or not.

Use of a pseudonym will make it virtually impossible to identify duplicate records and thus the 'problem' of duplicates will increase. This is a totally unrealistic way to undertake business.

We support the notion of anonymity where appropriate but request pseudonymity be removed or strictly confined to limited circumstances so that our clients can continue to comply with our requirements with regard to data accuracy.

- **Transborder disclosure of personal data:** We share concerned regarding the new liability provisions that apply with regard to transborder data disclosure. Our organisation takes significant steps to ensure data that is transferred overseas is protected to the level required by Australian law. However, there are instances where data may be subject to actions or attacks outside of our control such as to operational failure, fraud, sabotage and hacking and these must be taken into consideration before imposing liability. This is a particular concern when using cloud computing.

Despite the best possible security software and intentions, even the best planned and best funded systems can be attacked and hijacked by those

sinister motives. Trying to stay ahead of the criminal and nuisance hackers is another area that requires additional expense and to think that a failure in this challenging task will mean that an Australian company runs the risk of breaching Australian Privacy Legislation is absurd. Even the most sensitive Government systems have been hacked. How can private enterprise be expected to maintain an even higher standard than say Defence or ASIO?

- **Fines and penalties:** We also request clarification around fines and penalties. Being a company that is subject to the Privacy Act it is essential that we have an understanding of the potential extent of fines and penalties for our risk assessment purposes.

If you would like further information or detailed examples of how the new proposed privacy provisions will impact on our customers please do not hesitate to contact me.

Yours sincerely

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