



Submission to Standing Senate Committee on
the Environment, Communications and the Arts
on the adequacy of protections
for the privacy of Australians online

August 2010

1. Introduction

The Australian Direct Marketing Association (ADMA) welcomes the opportunity to provide comments to the Standing Senate Committee on the Environment, Communications and the Arts on the important issue of the adequacy of the protections of Australians online.

ADMA notes that the terms of reference for the inquiry are:

- a) privacy protections and data collection on social networking services
- b) data collection activities of private companies
- c) data collection activities of Government agencies
- d) other related issues.

The ADMA submission addresses terms of reference a) and b) above.

ADMA submits that Australians currently enjoy significant privacy protections in the online environment. There are however some limitations which are expected to be addressed through the current review of the Privacy Act.

2. About the Australian Direct Marketing Association

ADMA is the principal industry body for information based marketing in Australia.

ADMA was formed in 1966 and has, during its 44 years of operation, been involved in the formulation of law relevant to the direct marketing industry. Predominantly our focus has been the *Privacy Act 1988*, the *Spam Act 2003*, the *Trade Practices Act 1974* and the *Do Not Call Register Act 2006*.

Direct marketing includes any marketing communication which uses personal information whose objective is to actively solicit and produce a tangible and measurable response. Direct marketing includes any marketing that is directed to an individual at a distance and includes marketing via:

- a) mail
- b) email
- c) telephone call
- d) SMS or MMS
- e) The Internet (including over mobiles)
- f) Social Media Networks

ADMA's primary objective is to help companies achieve better marketing results through the enlightened use of direct marketing. Consistent with this objective, ADMA has been involved in co-regulatory and self-regulatory solutions over many years.

ADMA operates a Direct Marketing Code of Practice which is a self regulatory code. Compliance with the Direct Marketing Code of Practice is a pre-requisite of our membership. The Direct Marketing Code of Practice is overseen by an independent Code Authority which administers consumer complaints.

In addition ADMA also produces best practice guidelines for our members in fulfillment of our primary objective. Our publications include a guideline on online marketing.

ADMA has over 500 member organisations including major financial institutions, telecommunications companies, energy providers, travel service companies, major charities, statutory corporations, educational institutions and specialist suppliers of direct marketing services.

Almost every Australian company and not-for-profit organisation directly markets to its current and potential customers as a normal and legitimate part of its business activities and the ability to continue to conduct this activity underpins a good proportion of Australia's economic activity.

More importantly, a significant and increasing amount of direct marketing is now conducted online and our industry is transforming as a result of this change.

3 Comment on the adequacy of protections of the privacy of Australians online

Australia has in place a robust, meaningful and vibrant privacy regime that provides significant protections to consumers and provides a framework that enables consumers' to assess the privacy practices of businesses before entrusting them with their personal information.

Nonetheless significant changes in technology and the increase in growth in the digital economy means that it is only right that our society should continually assess that Australia's privacy framework is sufficient for the recent advancements in technology.

The process of assessing the adequacy of Australian privacy legislation in light of technological developments has been in train for a number of years. The rigorous and consultative framework brought to bear by the Australian Law Reform Commission has produced 256 recommendations for change across the entire privacy landscape. The responsibility for revising the Privacy Act is now in the hands of the Government and the Senate Committee for Finance and Public Administration.

This review, which will culminate in the revision of the *Privacy Act 1988* (Cth) next year, has taken careful consideration of the full suite of privacy issues including new and developing technology.

The exposure draft of the Australian Privacy Principles represents the careful consideration of these issues and will strengthen the privacy protections for Australian citizens' and permanent residents' online. On the strength of the changes proposed there is significant reason to believe that the revised Australian privacy legislation will ensure that the primary objective of providing a robust and meaningful privacy regime for Australian citizens' and permanent residents' personal information continues to be served in the current and future technological landscape.

In addition to the *Privacy Act 1988* (Cth) there is also other privacy related legislation which provides additional protection including but not limited to:

- a) *Telecommunications Act 1997* (Cth)
- b) *Telecommunications (Interception and Access) Act 1979*
- c) *Spam Act 2003*
- d) *Do Not Call Register Act 2006*

As has been witnessed by recent high profile privacy related events the protections provided by all these pieces of legislation have the ability to bring significant pressure to bear on relevant parties in situations where the privacy of Australians may have been compromised.

ADMA notes that the current privacy laws provided adequate coverage and allowed the Privacy Commissioner to conclude in relation to alleged breaches of the Privacy Act by Google that,

After investigating this matter, the Commissioner concluded that any collection of personal information by Google would have breached the Privacy Act. The Office did not ask for a copy of the data collected – however, in the Commissioner's view, 'Collecting personal information in these circumstances is

a very serious matter. Australians should reasonably expect that private communications remain private."¹

In addition, Google has also undertaken to:

- a) publish an apology
- b) undertake to conduct a Privacy Impact Assessment (PIA) on any new Street view data collection activities in Australia that include personal information
- c) provide a copy of these PIAs to the Office
- d) regularly consult with the Australian Privacy Commissioner about personal data collection activities arising from significant product launches in Australia.

It is fair to say, however, that it is not legislation alone that delivers the significant privacy protections that are in place in Australia. It is all the elements of:

- a) robust and independent media
- b) regulators (such as the Office of the Federal Privacy Commission and the Australian Communications and Media Authority)
- c) Government (including relevant Ministers)
- d) industry (through its significant efforts to comply and exceed privacy obligations, protect its corporate reputation and to promote and build into its products, services and processes sufficient privacy safeguards)
- e) industry associations (whose role it is to promote industry best practice and compliance with respect to privacy and provide guidance and assistance to industry)

that are each pre-requisites to a successful national privacy framework.

The Role of the Australian Direct Marketing Association

One of ADMA's primary responsibilities, as the peak industry body for information based marketing, is to educate and assist the industry to understand and meet its privacy obligations.

To this end, ADMA provides:

- a) free compliance webinars
- b) conducts one day compliance courses primarily focused on privacy
- c) provides a free regulatory consultation service to assist business when they are crafting marketing strategies and executing these strategies
- d) provides a free consumer education service on direct marketing issues specifically focusing on privacy related issues
- e) provision of specific resources to consumers about the additional considerations that apply to children and the internet and cyber-safety in general
- f) provides a complaint handling mechanism by which consumers can lodge and seek to resolve direct marketing, including privacy related, complaints

ADMA has created an e-commerce guideline which provide guidance and best practice to industry when engaged in online commerce. This guideline also gives significant attention to online marketing to children.

¹ Privacy Matters, Volume 4, Issue 4, Winter 2010, page 5

In addition, ADMA's Code of Practice incorporates the National Privacy Principles (NPPs) making compliance with the NPPs an obligation of membership of the Australian Direct Marketing Association.

ADMA sees on a daily basis the efforts that individual industry members put into ensuring compliance with the Australian privacy regime in both the online and offline world.

The Role of Regulators

There are a number of regulators in Australia responsible for the regulation of privacy. These include but are not limited to:

- a) the Office of the Federal Privacy Commissioner
- b) the various State privacy commissioners
- c) the Australian Communications and Media Authority
- d) the Telecommunications Industry Ombudsman

These regulators constantly pursue good privacy outcomes for consumers.

ADMA specifically notes the efforts of the Office of the Federal Privacy Commissioner in seeking to positively engage with industry and its encouragement of industry to promote their privacy and to consider privacy during the design phase of all projects. These are messages that aren't lost on industry.

In addition, Timothy Pilgrim Australia's new Privacy Commissioner had identified that

I see it as integral to my role to work closely with agencies and organisations to help design new and developing technologies in a privacy-enhancing way, and to inform individuals about how privacy-enhancing technologies can be used to protect their privacy.²

Further ADMA notes the diligent and vigorous pursuit of compliance with the *Spam Act 2003* and the *Do Not Call Register Act 2006* by the Australian Communications and Media Authority.

In addition we note significant resources provided on cyber-safety through the Stay Safe Online initiative and the work of CERT Australia which is vitally important now and into the future.

ADMA submits that opportunities for further collaboration between government agencies, including ACMA and CERT Australia, and industry associations to continue to educate industry about online privacy and safety should be earnestly explored.

Into the Future

In addition to the robust Australian privacy framework that is already in place it must also be recognised that there will always be emerging and new challenges to privacy in the online environment.

² Privacy Matters, Volume 4, Issue 4, Winter 2010 page 1

To this end it is recognised that the key focus must be to continue and build upon the education of both consumers and industry.

The new reforms that are expected to result from the revised Privacy Act 1988 should also provide significant additional privacy protections, designed with the current technological landscape in mind, for Australians in the online environment.

Given the significant protections currently afforded to Australian citizens ADMA submits that the new regime will significantly improve on the already substantial protections in place for Australians online.