

**SEOUL-MELBOURNE
MULTILATERAL MEMORANDUM OF
UNDERSTANDING
ON
COOPERATION IN COUNTERING SPAM**

Contents

Clause Number	Heading
----------------------	----------------

A. Preliminary

- | | |
|----|----------------------|
| 1. | Background |
| 2. | Definitions |
| 3. | Focus of Cooperation |
-

B. Cooperation in countering spam

- | | |
|-----|--|
| 4. | Activities subject to the Laws of the Signatories |
| 5. | Purpose and Scope of Cooperation |
| 6. | Forms of Cooperation |
| 7. | Designated Representative |
| 8. | Changes in Anti-Spam Legislation and Signing of Other Agreements |
| 9. | Funding and Resources |
| 10. | Settlement of Disputes |
| 11. | The Chair and Secretariat of the Memorandum |
-

C. Miscellaneous provisions

- | | |
|-----|----------------------------|
| 12. | Joining of New Signatories |
| 13. | Amendment of Memorandum |
| 14. | Duration of Participation |
| 15. | Miscellaneous |
-

Annexure A: Designated Representatives

Annexure B: The Chair and Secretariat of the Memorandum

Annexure C: The Signatories (Organisations)

A. Preliminary

1. Background

The Signatories to this Memorandum of Understanding,

CONSIDERING that the protection of the information economy is a major factor for social, economic and environmental development and for the realisation of productivity and service delivery improvements in the government, business and community sectors of each country/region; and

CONSIDERING ALSO that spam can impair the infrastructure and viability of the information economy;

RECOGNISING the necessity for mutual cooperation for the minimisation of spam originating in and being sent to, or by way of, each country/region;

RECOGNISING ALSO that other organisations may in the future wish to be part of this Memorandum and to jointly combat the spam problem;

HOPING to work together to develop cooperative mechanisms to combat the spam problem, including technical, educational and policy solutions; and

DESIRING to enhance cooperative relations,

HAVE REACHED the following understandings:

2. Definitions

2.1 In this Memorandum, unless the context otherwise requires, the following words have the following meanings:

- a) **Associate Signatory** means a Signatory that is a business in a relevant industry of any country/region;
- b) **Chair and Secretariat** means the Signatory appointed to those roles, from time to time, in accordance with clause 11.1 of this Memorandum;
- c) **Designated Representative** means a person appointed by a Signatory under clause 7 of this Memorandum;
- d) **Full Signatory** means a Signatory that is a Government body, law enforcement body or industry organisation of any country/region;
- e) **Business in relevant industry** means an internet access provider, telecommunications operator, mobile carrier, email service provider, internet hosting service provider, domain accredited registrar or information security business.
- f) **Memorandum** means this Memorandum of Understanding; and
- g) **Signatory** means an organisation participating in this Memorandum.

3. Focus of Cooperation

- 3.1 The purpose of this Memorandum is to encourage close cooperation among the Signatories in minimising spam originating in each country/region, passing through each country/region and being sent to end-users in each country/region.
- 3.2 Acting within the framework of their powers, interests and responsibilities, the Signatories to this Memorandum will collaborate on countering spam (unsolicited commercial electronic messages) and the problems of spam transmitted via botnet or other technical means.
- 3.3 The Signatories will also encourage the exchange of information on technical, educational and policy solutions to the spam problem and the problems of spam transmitted via botnet or other technical means in accordance with the relevant laws and regulations of each country/region and on the basis of equality, reciprocity and mutual benefit.
- 3.4 The Signatories will use their best efforts to assist one another and cooperate in providing or obtaining evidence that could assist in countering spam and the problems of spam transmitted via botnet or other technical means or in exchanging information relevant to an investigation.
- 3.5 No Signatory will disclose or distribute any information that is supplied and marked, or stated to be 'in Confidence' by the originating Signatory, except as, and to the extent authorised, by the originating Signatory, or as required by law.

B. Cooperation in countering spam

4. Activities subject to the Laws of the Signatories

- 4.1 This Memorandum is a voluntary statement of the intent of the Signatories to cooperate with and assist each other, and accordingly does not create any enforceable rights or impose any legally binding obligations on any Signatory.
- 4.2 This Memorandum does not modify or supersede any laws in force applying to any Signatory.
- 4.3 This Memorandum does not affect the right or ability of any Signatory to obtain information from any person in connection with the powers and functions of the Signatory.

- 4.4 All activities implemented pursuant to this Memorandum will be subject to the respective international obligations and domestic laws and regulations of the Signatories cooperating on any issue.

5. Purpose and Scope of Cooperation

- 5.1 The Signatories will promote cooperation in all spheres of activity defined by this Memorandum in order to derive maximum benefits for each of and all Signatories.
- 5.2 Recognising that bilateral and multilateral cooperation can complement areas of mutual interest in reducing the spam problem and the problems of spam transmitted via botnet or other technical means, the Signatories have identified areas of common interest for cooperation including, but not limited to, the encouragement of:
- a. the exchange of information about policies and strategies for establishing and enforcing anti-spam regulatory frameworks;
 - b. the exchange of information relating to technical and educational solutions to the spam problem;
 - c. the exchange of information and strategies about the effective use of regulation policies and in support of enforcement;
 - d. the exchange of intelligence, relating to the other countries/regions, gathered as a result of enforcement;
 - e. the disclosure, provision or exchange of information or evidence in the possession of any Signatory which may assist another Signatory in countering spam or to detect and investigate a spam matter, subject to the relevant laws and regulations of each country/ region; and
 - f. industry collaboration.

6. Forms of Cooperation

- 6.1 Cooperation among the Signatories in the field of countering spam may take the following forms:
- a. establishment of channels for exchange of information on spam, anti-spam measures and emerging issues including an online web forum for the Signatories;
 - b. exchange of delegations and visits as appropriate;
 - c. annual in-person meeting of the Signatories;
 - d. encouragement of liaison between industry and Government organisations to promote areas of interest and cooperation;
 - e. the disclosure, provision or exchange of information for the purpose of law enforcement assistance among the Signatories, subject to the relevant laws and regulations of each country/region;
 - f. recommendations on best practices to be adopted, as far as practicable, by the Signatories; and

- g. other forms of cooperation arranged bilaterally or multilaterally by the Signatories.

7. Designated Representative

- 7.1 In order to coordinate cooperative activities, each Signatory will appoint a Designated Representative who will act as a contact point and who will be responsible for determining the particular directions of cooperation and for ensuring the effectiveness of all cooperative activities.
- 7.2 The Designated Representatives of the Signatories will consult with each other, through the channel specified by the Signatories, to define activities and other related matters.
- 7.3 A Designated Representative may be substituted or replaced by a written notice provided to the Chair and Secretariat by the relevant Signatory.

8. Changes in Anti-Spam Legislation and Signing of Other Agreements

- 8.1 In the event of a significant modification to a Signatory's anti-spam legislation that will impact on the ability of that Signatory to participate in this Memorandum, that Signatory will use its best efforts to inform the other Signatories promptly, either directly or through the Chair and Secretariat.
- 8.2 In the event of a Signatory considering becoming a party to another Agreement that may have implications for the operation of this Memorandum, the Signatory will use their best efforts to inform the other Signatories promptly, either directly or through the Chair and Secretariat.

9. Funding and Resources

- 9.1 The cooperative activities carried out under this Memorandum will be subject to the availability of funds and resources of the Signatories. For those activities carried out under this Memorandum, unless otherwise jointly decided, each Signatory will provide resources adequate to carry out its own commitments in relation to those activities.

10. Settlement of Disputes

- 10.1 Any disputes between any Signatories arising from the interpretation or implementation of this Memorandum will be settled amicably through consultations between the affected Signatories. Should the dispute be of a kind that might warrant a revision of this Memorandum, the parties should advise the Chair and Secretariat so that the matter may be circulated to all the Signatories for comment and consideration.

11. The Chair and Secretariat of the Memorandum

- 11.1 A Signatory will be elected to the role of the Chair and Secretariat of the Memorandum by the Signatories at each annual in-person meeting of the Signatories. The role of the Chair and Secretariat will commence from the next anniversary date of this Memorandum and will last for one year.
 - 11.2 Subject to subclauses 11.7, the Chair and Secretariat are responsible for carrying out all administrative activities and answering all enquiries relating to this Memorandum.
 - 11.3 The Chair and Secretariat will maintain a list of Designated Representatives and their contact details at Annexure A to this Memorandum.
 - 11.4 The Chair and Secretariat will maintain the contact details for the current Chair and Secretariat, along with a description of the role of the Chair and Secretariat, at Annexure B to this Memorandum.
 - 11.5 The Chair and Secretariat will maintain a list of the current Signatories at Annexure C to this Memorandum.
 - 11.6 The Chair and Secretariat will advise all Designated Representatives of any updates or changes to this Memorandum, including the Annexures.
 - 11.7 The Signatory elected will maintain a web page for this Memorandum, which will include an up to date copy of this Memorandum and its Annexures, along with other material as agreed by the Signatories from time to time.
-

C. Miscellaneous provisions

12. Joining of New Signatories

- 12.1 Participation in this Memorandum is open to any bodies. Government bodies, law enforcement bodies or industry organisations of any country/region are eligible to join as Full Signatories whereas businesses in relevant industries of any country/region are eligible to join as Associate Signatories.
- 12.2 New Signatories will become parties to this Memorandum upon acceptance of their credentials by a majority of the current Full Signatories, and will signify their intention to participate by completing the details of the Signatory schedule and sending the schedule by facsimile or similar unalterable form to the Chair and Secretariat. The Current Full Signatories to this Memorandum are listed at Annexure C.
- 12.3 While an Associate Signatory will generally be akin to a Full Signatory, Full Signatories may choose to exclude Associate Signatories for matters relating to the Memorandum where concerns regarding confidentiality arise, and amend this Memorandum upon agreement by a majority of the current Full Signatories.

13. Amendment of Memorandum

- 13.1 The Signatories will keep the operation of this Memorandum under periodic review and will consult with each other 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 the Memorandum.
- 13.2 The Signatories will consult for the purpose of reviewing this Memorandum at a time mutually agreed between all parties.
- 13.3 The Signatories may decide upon agreement in writing by a majority of the current Full Signatories to amend or extend this Memorandum.
- 13.4 Signatures to any amendment or extension to this Memorandum may be circulated by facsimile, and any facsimile signature shall have the same effect as an original.

14. Duration of Participation

- 14.1 Each Signatory's participation in this Memorandum will come into effect on the date of signature by that Signatory. It will remain in effect for a period of three (3) years thereafter unless terminated by the Signatory giving six (6) months prior notice in writing to the other Signatories.
- 14.2 Notwithstanding termination of participation in this Memorandum by any Signatory pursuant to clause 14.1, activities being undertaken pursuant to this Memorandum immediately before its termination will continue to be governed by this Memorandum until their completion, unless the Signatories that are party to the activity mutually determine otherwise.

15. Miscellaneous

- 15.1 This Memorandum was approved by the Signatories listed below on: **this 4th day of May 2010.**