

**AGREEMENT BETWEEN THE FEDERAL TRADE COMMISSION OF THE  
UNITED STATES OF AMERICA AND THE AUSTRALIAN COMPETITION &  
CONSUMER COMMISSION ON THE MUTUAL ENFORCEMENT  
ASSISTANCE IN CONSUMER PROTECTION MATTERS**

The Australian Competition and Consumer Commission ("ACCC") and the U.S. Federal Trade Commission ("FTC"), recognising the challenges posed by cross-border Internet fraud and deception, and desiring to improve the effectiveness of the enforcement of the Consumer Protection Laws of both countries, hereby agree as follows:

**ARTICLE I: Definitions**

*Consumer Protection Laws* - refers,

(a) in the case of the United States, to "unfair or deceptive acts or practices" under Section 5 of the Federal Trade Commission Act, and,

(b) in the case of Australia, to Parts IVA, V, and Section 75AYA of the Trade Practices Act of 1974;

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "Consumer Protection Law" for purposes of this Agreement. Each Party shall promptly notify the other of any amendments to its Consumer Protection Laws.

*Evidence* - refers to information, testimony, statements, documents or copies thereof, or other things that are obtained in anticipation of or during the course of an investigation or proceeding under the Parties' respective Consumer Protection Laws.

*Person or Persons* - refers to any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorised by the laws of either the United States, its States, or its Territories, the laws of Australia, its States, or its Territories, or the laws of other sovereign states.

*Request* - refers to a request for assistance under this Agreement.

*Requested Party* - refers to the Party from which assistance is sought under this Agreement, or which has provided such assistance.

*Requesting Party* - refers to the Party seeking or receiving assistance under this Agreement.

**ARTICLE II: Object and Scope of Assistance**

A. The Parties agree that it is in their common interests to share Evidence that will: facilitate effective enforcement of their respective Consumer Protection Laws; avoid

unnecessary duplication; facilitate coordinated investigations, research and education; promote a better understanding by each of economic and legal conditions and theories relevant to their respective consumer protection law enforcement and related activities; and keep each other informed of developments in their respective countries or companies based in that country.

B. In furtherance of this common interest, subject to Article IV, staff of the Parties will use best efforts to exchange and provide appropriate information in relation to: investigations and research; speeches, research papers, journal articles, etc.; compliance education programs; amendments to relevant legislation; and staffing and resource issues.

C. Subject to Article IV, the Parties intend to assist one another and to cooperate on a reciprocal basis in providing or obtaining Evidence that could assist in determining whether a person has violated or is about to violate their respective Consumer Protection Laws, or in facilitating the administration or enforcement of such Consumer Protection Laws.

D. Subject to Article IV, staff of the Parties shall use their best efforts, to the extent compatible with the Parties' laws, enforcement policies and other important interests, to inform each other as soon as practicable about violations of Consumer Protection Laws occurring or originating in the territory of the other Party, or that affect consumers or markets in the territory of the other Party.

E. Subject to Article IV, assistance contemplated by this Agreement includes, but is not limited to:

1. disclosing, providing, exchanging, or discussing Evidence in the possession of either Party;
2. using best efforts to cooperate in the detection and investigation of violations of the Parties' Consumer Protection Laws;
3. using best efforts to obtain Evidence at the request of a Party, including
  - a. taking the testimony or statements of persons or otherwise obtaining information from persons;
  - b. obtaining documents, records or other forms of documentary Evidence; or
  - c. locating or identifying persons or things;
4. using best efforts to assist in execution of service of process;
5. using best efforts to work towards the routinized, electronic sharing of appropriate consumer complaint information; and

6. in appropriate cases, coordinating enforcement against transborder violations of the Parties' respective Consumer Protection Laws.

F. Nothing in this Agreement should prevent a Party from seeking assistance from or providing assistance to the other Party pursuant to other agreements, treaties, arrangements, or practices.

G. This Agreement should be used solely for the purpose of law enforcement assistance between the Parties. The provisions of this Agreement do not give rise to a right on the part of any private person to obtain, suppress, or exclude any Evidence, or to impede the execution of a Request made pursuant to this Agreement.

H. Nothing in this Agreement compels a person to provide Evidence in violation of any legally applicable right, privilege or restriction.

I. Nothing in this Agreement affects the right of a Party to seek Evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing Evidence to a Party.

### **ARTICLE III: Requests for Assistance**

A. Requests for assistance under this Agreement by the ACCC should be addressed to: Associate Director, Division of Planning and Information, FTC. Requests for assistance under this Agreement by the FTC should be addressed to: Chief Executive Officer, ACCC.

B. Requests should include:

1. identification of the persons subject to the investigation or proceeding;
2. a general description of the subject matter and nature of the investigation or proceeding to which the Request relates;
3. where applicable, a description of the Evidence sought;
4. where applicable, the identity and location of any person who is to be served with process;
5. where applicable, a description of the action that the Requesting Party is requesting that the Requested Party take;
6. where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Party desires the Request to be executed;
7. requests, if any, for confidential treatment of the Request or its contents; and

8. any other information that the Requesting Party believes would be helpful in facilitating review or execution of a Request.

C. Staff of the Parties should consult with each other regarding a Request in order to work out details regarding the manner and timing of executing the Request.

#### **ARTICLE IV: Limitations on Assistance**

A. Notwithstanding any other provision of this Agreement, neither Party should communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

B. Consistent with its domestic law and interests, a Party should use its best efforts to provide assistance in response to a Request. The Requested Party may decline to provide assistance.

C. Before denying a Request, the Requested Party should consult with the Requesting Party to determine whether assistance may be given in part, subject to specified terms and conditions. If a Request is denied, the Requested Party should provide the Requesting Party with a written explanation of the basis for denial.

D. The determination as to whether to grant a Request in whole or in part rests with the Associate Director, Division of Planning and Information, in the case of the FTC, and with the Chief Executive Officer in the case of the ACCC.

#### **ARTICLE V: Confidentiality**

A. Unless otherwise agreed by the Parties, each Party should, to the fullest extent possible and consistent with its laws, use its best efforts to maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. The receiving Party may, however, subject to Article IV, communicate such confidential information to other law enforcement agencies for the purpose of Consumer Protection Law enforcement, unless agreed otherwise by the Parties.

B. Each Party should use its best efforts to oppose, to the fullest extent possible consistent with its laws, any application by a third party for disclosure of such confidential information.

C. Unless otherwise agreed by the Parties, notifications and consultations pursuant to Articles II and III of this Agreement and other communications between the Parties in relation thereto should be deemed to be confidential.

D. Nothing in this Agreement should prevent disclosure to third parties if such disclosure is required by the law of the Party. The Requesting Party should use its best efforts to

notify the Requested Party at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

#### **ARTICLE VI: Changes in Applicable Law**

A. The Parties should use their best efforts to provide to each other prompt written notice of any changes to the Party's Consumer Protection Laws.

B. In the event of a significant modification to a Party's Consumer Protection Laws, the Parties should use their best efforts to consult promptly to determine whether this Agreement should be amended.

#### **ARTICLE VII: Return of Evidence**

The Requesting Party should use its best efforts to keep Evidence shared until the conclusion of the investigation or proceeding specified in the Request and should use its best efforts to return such Evidence at that time if the Requested Party makes a written request for the retention and return of such Evidence at the time the Evidence is shared; provided, however, that Evidence that has properly entered the public domain pursuant to this agreement is not subject to this Article.

#### **ARTICLE VIII: Costs**

Unless otherwise agreed, the Requested Party should pay all costs of executing a Request.

#### **ARTICLE IX: Entry into Force and Termination**

A. This Agreement will come into effect on the date of signature.

B. Assistance under this Agreement should be available in investigations or proceedings under the Parties' Consumer Protection Laws concerning conduct or transactions occurring before as well as after this Agreement enters into force.

C. Each party can terminate this Agreement with 30 days written notice. However, prior to terminating this agreement, each Party shall use its best efforts to consult with the other Party.

D. On termination of this Agreement, the Parties will use their best efforts, in accordance with Article V, to maintain the confidentiality of any Request and Evidence communicated to them in confidence by the other Party under this Agreement prior to its termination; and to return, in accordance with the terms of Article VIII, any Evidence obtained from the other Party under this Agreement.

#### **ARTICLE X: Review of Agreement**

A. Staff of the Parties shall consult and review the Agreement on an annual basis

regarding the cooperation, coordination and enforcement assistance undertaken between the Parties for each 12 month period.

Agreed on this \_\_\_\_\_ day of \_\_\_\_\_ 2000, in duplicate, in the English language.

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Robert Pitofsky  
Chairman  
Federal Trade Commission

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Professor Allan Fels  
Chairman  
Australian Competition & Consumer  
Commission