

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
UNITED STATES FEDERAL TRADE COMMISSION AND THE  
OFFICE OF THE DATA PROTECTION COMMISSIONER OF IRELAND  
ON MUTUAL ASSISTANCE IN THE ENFORCEMENT OF LAWS  
PROTECTING PERSONAL INFORMATION IN THE PRIVATE SECTOR**

The United States Federal Trade Commission ("FTC") and the Office of the Data Protection Commissioner of Ireland (collectively, "the Participants"),

RECOGNIZING the nature of the modern global economy, the increase in the flow of personal information across borders, the increasing complexity and pervasiveness of information technologies, and the resulting need for increased cross-border enforcement cooperation;

RECOGNIZING that both the OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws Protecting Privacy, the Global Privacy Enforcement Network's Action Plan, and the APEC Privacy Framework call for the development of cross-border information sharing mechanisms and enforcement cooperation arrangements and that such information sharing and enforcement cooperation serves an important and substantial public interest;

RECOGNIZING that the U.S. Federal Trade Commission Act, 15 U.S.C. § 41 et seq., as amended by the U.S. SAFE WEB Act, authorizes the FTC to share information with law enforcement authorities from other countries under appropriate circumstances; and

RECOGNIZING that Irish The Data Protection Acts, 1988 and 2003, authorize the Office of the Data Protection Commissioner of Ireland to share information with authorities from other countries that have responsibilities relating to the protection of personal information in the private sector;

HAVE REACHED THE FOLLOWING UNDERSTANDING:

**I. Definitions**

For the purposes of this Memorandum,

A. "Applicable Privacy Law" means the laws and regulations identified in Annex 1, the enforcement of which has the effect of protecting personal information and such other laws or regulations as the Participants may from time to time jointly decide in writing to be an Applicable Privacy Law for purposes of this Memorandum.

B. "Covered Privacy Violation" means practices that would violate the Applicable Privacy Laws of one Participant's country and that are the same or substantially similar to practices prohibited by any provision of the Applicable Privacy Laws of the other Participant's country.

C. "Person" means any natural person or legal entity, including corporations, unincorporated associations, or partnerships, existing under or authorized by the laws of the United States, its States, or its Territories, or the laws of Ireland.

D. "Request" means a request for assistance under this Memorandum.

E. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.

F. "Requesting Participant" means the Participant seeking assistance under this Memorandum, or which has received such assistance.

**II. Objectives and Scope**

A. This Memorandum of Understanding sets forth the Participants' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with Covered Privacy Violations. The Participants do not intend the

provisions of this Memorandum of Understanding to create legally binding obligations under international or domestic laws.

B. The Participants understand that it is in their common interest to:

1. cooperate with respect to the enforcement of the Applicable Privacy Laws, including sharing complaints and other relevant information and providing investigative assistance;
2. facilitate research and education related to the protection of personal information;
3. facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
4. promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Privacy Laws; and
5. inform each other of developments in their respective countries that relate to this Memorandum.

C. In furtherance of these common interests, and subject to Section IV, the Participants intend to use best efforts to:

1. share information, including complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Privacy Violations of the Applicable Privacy Laws of the other Participant's country;
2. provide investigative assistance in appropriate cases, including obtaining evidence on behalf of the other Participant;
3. exchange and provide other relevant information in relation to matters within the scope of this Memorandum, such as information relevant to consumer and business education; government and self-regulatory enforcement solutions;

amendments to relevant legislation; and staffing and resource issues;

4. explore feasibility of staff exchanges and joint training programs;
5. coordinate enforcement against cross-border Covered Privacy Violations that are priority issues for both Participants;
6. participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation; and
7. provide other appropriate assistance that would aid in the enforcement against Covered Privacy Violations.

### **III. Procedures Relating to Mutual Assistance**

A. Each Participant is to designate a primary contact for the purposes of requests for assistance and other communications under this Memorandum.

B. If a Participant requests assistance for matters involved in the enforcement of Applicable Privacy Laws, then Participants understand that:

1. requests for assistance are to include sufficient information to enable the Requested Participant to determine whether a request relates to a Covered Privacy Violation and to take action in appropriate circumstances. Such information may include a description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions that should be taken in the course of fulfilling the request;
2. requests for assistance are to specify the purpose for which the information requested will be used;
3. consistent with Section V.A., a request for assistance certifies that the requester is to maintain the confidentiality of each request for assistance, the existence of any investigation

related to the request, all materials related to each request, and all information and material provided in response to each request, unless otherwise agreed; and,

4. prior to requesting assistance, Participants should perform a preliminary inquiry to ensure that the request is consistent with the scope of this Memorandum and does not impose an excessive burden on the Requested Participant.

C. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum through the contacts designated under Section III.A, and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

#### **IV. Limitations on Assistance**

A. The Requested Participant may exercise its discretion to decline the request for assistance, or limit or condition its cooperation, including, where it is outside the scope of this Memorandum, or more generally, where it would be inconsistent with domestic laws, or important interests or priorities.

B. The Participants recognize that it is not feasible for a Participant to offer assistance to the other Participant for every Covered Privacy Violation. Accordingly, the Participants intend to use best efforts, as outlined in Section II, to seek and provide cooperation focusing on those Covered Privacy Violations most serious in nature, such as those that cause or are likely to cause injury to a significant number of persons, and those otherwise causing substantial injury.

C. The Requesting Participant may request the reasons for which the Requested Participant declined or limited assistance.

D. Participants intend to share confidential information pursuant to this Memorandum only to the extent that it is necessary to fulfill the purposes set forth in Section II.

E. The Participants recognize that confidential material often contains personally identifiable information. If the Requesting

Participant wishes to obtain confidential information that includes personally identifiable information, then the Participants understand that they are to take additional appropriate measures to safely transmit and safeguard the information, including but not limited to transmitting the material in an encrypted format and using passwords to restrict access.

## V. **Confidentiality and Limitations on Use**

A. To the fullest extent possible, and consistent with applicable laws, each Participant certifies the confidentiality of information to be shared under this Memorandum. The certification of confidentiality applies not only to the shared information, but also to the existence of an investigation to which the information relates. The Participants are to treat the shared information, the existence of the investigation to which the information relates, and any requests made pursuant to this Memorandum as confidential, and not further disclose or use this information for purposes other than those for which it was originally shared, without the prior written consent of the Requested Participant.

B. Notwithstanding Section V.A., nothing in this Memorandum is intended to:

1. authorize a Participant to withhold information provided pursuant to this Memorandum in response to a formal demand from a Participant country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government; or
2. prevent material obtained in connection with the investigation or enforcement of criminal laws from being used for the purpose of investigation, prosecution, or prevention of violations of either Participant's country's criminal laws.

C. Each participant is to use best efforts to safeguard the security of any information received under this Memorandum and respect any safeguards agreed on by the Participants. In the event of any unauthorized access or disclosure of the information, the Participants

are to take all reasonable steps to prevent a recurrence of the event and are to promptly notify the other Participant of the occurrence.

D. The Participants are to oppose, to the fullest extent possible consistent with their countries' laws, any application by a third party for disclosure of confidential information or materials received from a Requested Participant, unless the Requested Participant consents to its release. The Participant who receives such an application is to notify forthwith the Participant that provided it with the confidential information.

## **VI. Changes in Applicable Privacy Laws**

In the event of significant modification to the Applicable Privacy Laws of a Participant's country that are within the scope of this Memorandum, the Participants intend to consult promptly, and, if possible, prior to the entry into force of such enactments, to determine whether to modify this Memorandum.

## **VII. Retention of Information**

If Participants wish to obtain materials under this Memorandum, then Participants understand they are not to retain such materials for longer than is reasonably required to fulfill the purpose for which they were shared or than is required by the Requesting Participant's country's laws. The Participants recognize that in order to fulfill the purpose for which the materials were shared, the Participants typically need to retain the shared materials until the conclusion of the pertinent investigation or related proceedings for which the materials were requested. The Participants are to use best efforts to return any materials that are no longer required if the Requested Participant makes a written request that such materials be returned at the time they are shared. If no request for return of the materials is made, then the Requesting Participant may dispose of the materials using methods prescribed by the Requested Participant, or if no such methods have been prescribed, by other secure methods, as soon as practicable after the materials are no longer required.

## **VIII. Costs**

Unless otherwise decided by the Participants, the Requested Participant is expected to pay all costs of executing the Request. When the cost of providing or obtaining information under this Memorandum is substantial, the Requested Participant may ask the Requesting Participant to pay those costs as a condition of proceeding with the Request. In such an event, the Participants should consult on the issue at the request of either Participant.

## **IX. Duration of Cooperation**

A. The Participants intend cooperation in accordance with this Memorandum to become available as of the date it is signed by both Participants.

B. Assistance in accordance with this Memorandum is understood to be available concerning Covered Privacy Violations occurring before as well as after this arrangement is signed.

C. This Memorandum may be discontinued but a Participant should provide 30 days written notice of such discontinuation. However, prior to providing such notice, each Participant should use best efforts to consult with the other Participant.

D. On discontinuation of this Memorandum, the Participants are to, in accordance with Section V, maintain the confidentiality of any information communicated to them by the other Participant in accordance with this Memorandum, and return or destroy, in accordance with the provisions of Section VII, information obtained from the other Participant in accordance with this Memorandum.

**X. Legal Effect**

Nothing in this Memorandum is intended to:

- A. Create binding obligations, or affect existing obligations, under international or domestic law.
- B. Prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to other agreements, arrangements, or practices.
- C. Affect any right of a Participant to seek information on a lawful basis from a Person located in the territory of the other Participant's country, or preclude any such Person from voluntarily providing legally obtained information to a Participant.
- D. Create a commitment that conflicts with either Participant's national laws, court orders, or any applicable international legal instruments
- E. Create expectations of cooperation that would exceed a Participant's jurisdiction.

Signed at Washington, D.C., United States of America,  
and Portarlington, Ireland on June 26, 2013 in duplicate.

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Chairwoman Edith Ramirez  
Federal Trade Commission  
United States of America

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Commissioner Billy Hawkes  
Office of the Data Protection Commissioner  
Ireland

# **Annex 1**

## **Applicable Privacy Laws**

- I. Federal Trade Commission
  - a. Federal Trade Commission Act, 15 U.S.C. §§ 41-58
  - b. Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u
  - c. The Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506
  - d. Gramm-Leach-Bliley Act, codified in relevant part at 15 U.S.C. §§ 6801-6809 and §§ 6821-6827
  
- II. Irish Data Protection Authority
  - a. The Data Protection Acts, 1988 and 2003