

MEMORANDUM OF UNDERSTANDING ON MUTUAL
ENFORCEMENT ASSISTANCE IN COMMERCIAL EMAIL
MATTERS BETWEEN THE FEDERAL TRADE COMMISSION
OF THE UNITED STATES OF AMERICA AND THE AGENCIA ESPANOLA DE
PROTECCION DE DATOS

The U.S. Federal Trade Commission (“FTC”) and the Agencia Española de Protección de Datos (“AEPD”) (“the Participants”):

RECOGNIZING that the convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial email, which often contains deceptive content or material that many recipients may consider offensive in nature;

RECOGNIZING the challenges posed by the proliferation of commercial email in each Participant’s country in various languages, including English and Spanish, and desiring to improve the effectiveness of the enforcement of certain provisions of the Commercial Email Laws of both countries while also recognizing the importance of freedom of expression;

RECOGNIZING that the Commercial Email Laws and the methods of investigating and enforcing such laws differ substantially as between the Participants’ two countries,

RECOGNIZING that the laws of both countries contain certain restrictions on international law enforcement assistance, including information disclosure;

RECOGNIZING that the Participants desire to build on their already developing cooperation on spam and other privacy-related issues, including: a staff exchange where an AEPD official visited the FTC to study spam and privacy enforcement, and to explain AEPD initiatives, in May 2004; FTC participation in a spam discussion at the 3rd Iberoamerican Privacy Meeting in Cartagena de Indias, Columbia, in May 2004; the Participants’ involvement in spam sessions at a Buenos Aires, Argentina, meeting on Consumer Protection and Electronic Commerce co-sponsored by the Forum of Latin-American Consumer Protection Agencies; and the Participants’ involvement in the London Action Plan for Spam Enforcement Cooperation;

RECOGNIZING the need for effective enforcement which, in the case of enforcement of Commercial Email Laws, requires cross-border cooperation; and

- F. “Requested Participant” means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- G. “Requesting Participant” means the Participant seeking or receiving assistance under this Memorandum.
- H. “Spam Violations” means conduct prohibited by the Commercial Email Laws of one Participant’s country that is substantially similar to conduct prohibited by Commercial Email Laws of the other Participant’s country, including, but not necessarily limited to:

nature of the Spanish-language spam problem; and to consult regarding the dimensions of the Spanish-language spam problem in other countries.

- E. Subject to Section IV, the Participants intend to use best efforts to assist one another and to cooperate on a reciprocal basis against Spam Violations occurring or originating in the territory of the other Participant, or that affect users, commerce or markets in the territory of the other Participant. Participants intend to use best efforts to:

1. to involve other enforcement agencies in their respective countries with jurisdiction to deal with such deception; and
 2. to assist each other in working across borders with such enforcement agencies.
- H. The Participants recognize that it is not feasible for a Participant to offer assistance to the other Participant for every Spam Violation. Accordingly, the Participants intend to use best efforts, subject to Section IV, to seek and provide cooperation focusing on those Spam Violations most serious

- C. The Requesting Participant should oppose, to the fullest extent possible consistent with its laws, any application by a third party for disclosure of such confidential information, subject to consultation with the Requested Participant.
- D. Consultations pursuant to Sections II and III of this Memorandum and other communications between the Participants in relation thereto should be deemed to be confidential, unless otherwise decided by the Participants.
- E. Nothing in this Memorandum prevents disclosure to third parties if such disclosure is required by the law of the Requesting Participant. The Requesting Participant should use its best efforts to notify the Requested Participant at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given, then as promptly as possible.

VI: Changes in Commercial Email Laws

In the event of a significant modification to the Commercial Email Laws of a Participant's country, the Participants should use their best efforts to consult promptly, and, if possible, prior to the entry into force of such enactments, to determine whether this Memorandum should be amended.

VII: Return of Evidence

The Requesting Participant should use its best efforts to keep shared Evidence 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 Participant makes a written request for the retention and return of such Evidence at the time the Evidence is shared.

VIII: Costs

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

IX: Duration of Cooperation

- A. This Memorandum will come into effect on the date of signature.
- B. Assistance under this Memorandum should be available in investigations or proceedings concerning Spam Violations occurring before as well as after this Memorandum takes effect.
- C. A Participant should endeavor to provide the other Participant with 30 days written notice before ending its cooperation under this Memorandum. However, prior to ending this Memorandum, each Participant should use its best efforts to consult with the other Participant.
- D. On cessation of this Memorandum, the Participants should use their best efforts, in accordance with Paragraph V, to maintain the confidentiality of any Request and Evidence communicated to them in confidence by the other Participant under this Memorandum prior to its termination; and to return, in accordance with the provisions of Paragraph VII, any Evidence obtained from the other Participant under this Memorandum.

X: Review of Memorandum

The Participants intend to consult and review the Memorandum on an annual basis regarding the cooperation, coordination and enforcement assistance undertaken between the Participants for the prior 12-month period.

XI: Legal Effect

Nothing in this Memorandum is intended to:

- A. Create binding obligations under international law or under the domestic laws of the Participants.
- B. Prevent a Participant from seeking assistance from or providing assistance to another Participant pursuant to other agreements, treaties, arrangements,

- E. Affect any right of a Participant to seek Evidence on a lawful basis from a Person located in the territory of the other Participant, nor is it intended to preclude any such Person from voluntarily providing legally obtained Evidence to a Participant.

Approved on this _____ day of _____ 2005, in duplicate

Deborah P. Majoras
Chairman
U.S. Federal Trade Commission

Jose Luis Piñar Mañas
Director
Agencia Española de Protección de
Datos