

27 April 2018

Factsheet

PDPC PROPOSES COMBINED REGIME TO REGULATE TELEMARKETING AND SPAM MESSAGES AND ENHANCED GUIDANCE TO PROVIDE REGULATORY CERTAINTY

The Personal Data Protection Commission (PDPC) is reviewing the Personal Data Protection Act (PDPA) to ensure that the law stays relevant with technological developments and changes in business practices so as to better protect consumers from telemarketing and spam messages (collectively referred to as “unsolicited commercial messages”)¹.

2 The PDPC is seeking views on its proposals through a public consultation to be held from 27 April to 7 June 2018 in two key areas. First, the merger of the Do Not Call Provisions of the PDPA and the Spam Control Act under a single Act governing unsolicited commercial messages. Second, the PDPC seeks to provide greater clarity and certainty for organisations in complying with the PDPA while supporting innovation through the introduction of Enhanced Practical Guidance under the PDPA.

Do Not Call (DNC) Provisions and Spam Control Act (SCA)

3 The PDPC is proposing to merge the DNC and Spam Control Provisions under a new Act governing unsolicited commercial messages, following similar approaches in other jurisdictions, such as Hong Kong and United Kingdom². The proposed changes will provide greater protection to individuals from unsolicited commercial messages and reduce ambiguity for organisations in complying with differing requirements when sending commercial messages.

¹ Commercial messages include marketing messages and messages relating to dishonest gains or deception.

² Hong Kong’s Unsolicited Electronic Messages Ordinance and UK’s Privacy and Electronic Communications (EC Directive) Regulations 2003 provide rules on electronic communications that complement their existing data protection regimes.

4 Requirements that the PDPC is proposing to streamline include:

- **Providing a shorter withdrawal of consent period for consumers**

Individuals can expect their withdrawal of consent under the DNC Provisions to take effect within 10 business days, instead of the current 30 calendar days. This is in line with the withdrawal period provided under the SCA. Streamlining the withdrawal period will also minimise potential confusion for organisations complying with both DNC and Spam Control Provisions as well as enable consumers to stop receiving unsolicited marketing messages more quickly.

- **Regulating unsolicited commercial messages sent in bulk via Instant Messaging (IM) platforms**

The Spam Control Provisions will be extended to cover messages sent in bulk via IM identifiers (e.g. account or login ID created by the user) under the new Act. Individuals will be able to better manage such messages sent using their IM identifiers with spam control requirements, for example, organisations sending unsolicited commercial messages via IM platforms will have to ensure that they have a fully functioning ‘unsubscribe’ facility. The proposed approach is aligned with approaches adopted by other jurisdictions, where text messages sent using IM identifiers are addressed under their spam legislation³.

- **Prohibiting the use of dictionary attacks⁴ and address harvesting software⁵**

The use of random number generators or address harvesting software to generate telephone numbers, IM identifiers or email addresses for sending commercial messages (including robocalls⁶) will be prohibited under the new Act. This will help ensure Singapore does not become a haven for spammers using such technologies to send unsolicited commercial messages to a large number of recipients.

³ For example, Australia’s Spam Act 2003, Canada’s Anti-Spam Legislation and Hong Kong’s Unsolicited Electronic Messages Ordinance.

⁴ Under the SCA, dictionary attack means the method by which the electronic address of a recipient is obtained using an automated means that generates possible electronic addresses by combining names, letters, numbers, punctuation marks or symbols into numerous permutations.

⁵ Under the SCA, address harvesting software means software that is specifically designed or marketed for use for (i) searching the Internet for electronic addresses; and (ii) collecting, compiling, capturing or otherwise harvesting those electronic addresses.

⁶ Robocalls refer to phone calls that use a computerised auto-dialler to deliver pre-recorded messages.



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5 Additionally, the PDPC is proposing for infringements of the DNC Provisions under the new Act to be enforced under an administrative regime similar to the PDPA. This will allow for prompt action to be taken in cases investigated by the PDPC which will be empowered to issue directions, including financial penalties, for infringements of the DNC Provisions under the New Act.

6 The proposals also seek comments on changes that affect organisations. With more organisations relying on third-party DNC checkers, new legal obligations are proposed to ensure that they accurately communicate the results of their DNC Registry checks and prohibit their resale. Additionally, the PDPC seeks comments on whether the DNC Provisions should be extended to cover business-to-business (B2B) telemarketing messages.

Enhanced Practical Guidance (EPG)

7 The PDPC currently provides Practical Guidance to organisations seeking clarity on the application of the PDPA. Recognising the immense opportunities for innovations around the use of data in the Digital Economy, the PDPC is proposing to introduce an Enhanced Practical Guidance (EPG) Framework under the PDPA that will allow the PDPC to provide guidance as to whether a proposed use of personal data complies with the PDPA.

8 The EPG would provide regulatory certainty to organisations. Overseas jurisdictions⁷ have provided for similar frameworks, where the data protection authority is able to issue guidance to organisations that are legally binding.

For full details of the public consultation, visit www.pdpc.gov.sg/consultations.

ISSUED BY THE PERSONAL DATA PROTECTION COMMISSION

About Personal Data Protection Commission

The PDPC administers the Personal Data Protection Act 2012 (PDPA) in Singapore, which aims to safeguard individuals' personal data against misuse and promote proper management of personal data in organisations. The PDPA enhances Singapore's competitiveness and strengthens our position as a trusted business hub, putting

⁷ For instance, the Office of the Information and Privacy Commissioner ("OIPC") for British Columbia and the Office of the Commissioner for Privacy and Data Protection ("CPDP") in Victoria may issue legally-binding decisions.

Singapore on par with the growing list of countries with data protection laws. For more information, please visit www.pdpc.gov.sg.

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