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Acting Chair
ACMA

By email:info@acma.gov.au

RE: De-registration of Calling Number Display Code puts lives at risk

We are very alarmed to hear that ACMA has de-registered the Calling Number Display (CND) Code effective 13 October 2016. Some interested parties (not including ourselves) were only advised 'after the event' by letter dated 21 October, thereby denying anyone the opportunity to make last minute submissions to prevent this extremely damaging decision.

Relaxation of the binding requirements to notify consumers about CND, its privacy implications and protective measures will mean that thousands of people whose safety could be at risk from disclosure of their telephone number may no longer receive the information that they need in order to safeguard themselves. Those placed at potential risk include victims of domestic violence, women's refuges, family law lawyers, psychiatrists, and people involved in disputes of any kind. Moreover, there is no longer any guarantee that telecommunications service providers will continue to provide consumers with the tools they need to block transmission of CND information, which can be a vital safety measure.

We call for immediate steps to re-introduce binding requirements relating to provision of CND services.

The entire process leading to this de-registration, initiated by Communications Alliance in 2015, has been largely opaque, with no consultation with interested parties other than ACCAN, the Privacy Commissioner and the TIO. These parties have made their objections to de-registration very clear – on the basis that the Code contains binding requirements that are not replicated either in the Privacy Act or in the TCP Code.

Privacy advocates were closely involved in the development by the Australian Communications Industry Forum (ACIF) of the original CND Code (C522: 2000) and subsequent amendments, and

have consistently had to defend the rights of telecommunications customers to be made aware of CND and its implications against industry attempts to weaken the requirements.

In early 2015, Communications Alliance, the successor to ACIF, commenced a process to unilaterally 'downgrade' the CND Code to a non-binding Guideline. They had to be reminded that de-registration of the Code by the ACMA would be a pre-requisite, and in July 2015 deferred the process of developing a Guideline.

In May 2016 Communications Alliance indicated to ACCAN that it was proceeding with development of a Guideline and was applying to ACMA to de-register the Code.
Ever since Communications Alliance replaced the former Australian Communications Industry Forum (ACIF) in 2006 direct consultation ceased with the APF and other public interest groups, leaving ACCAN (formerly CTN) as the only 'consumer' organisation to be routinely consulted by CA. Because of CA's unwillingness to engage directly with APF and other public interest groups, privacy advocates have had to rely on ACCAN as the only channel by which concerns could be raised.

In a letter to ACMA dated 13 July 2016, ACCAN re-iterated serious concerns already raised in its 2015 submission, and we understand that the Privacy Commissioner and the Telecommunications Industry Ombudsman (TIO) have also repeated their 2015 concerns.

The ACMA letter of 21 October lists three 'considerations' it must take into account in Code registration/de-registration decisions – these go to the process and content of consultation. Despite the first consideration being public consultation, the ACMA does not address it – had it done so it would have been clear that there has been no effective 'public' consultation on the proposed de-registration – only belated, limited and sporadic consultation with ACCAN.

We note that The Telecommunications Act 1997 does not require consultation for deregistration (s.122A) in the way that it does for registration (s.117) – this is an unfortunate anomaly that should be rectified by legislative amendment. Notwithstanding the lack of a requirement, we note that CA did consult with a selected number of interested parties (the OAIC, TIO and ACCAN), but not with other 'known' interested parties or the general public.

The ACMA letter claims that it has given careful consideration to concerns raised by ACCAN, the Privacy Commissioner and the TIO, but effectively dismisses them without any argument or justification. After its own 'desktop research' (no details given) and consultation with CA, the ACMA appears to have concluded that the concerns are either unfounded (but no explanation given) or that they can be satisfied by monitoring of de-regulated CND practices by CA and ACMA (this is however time limited to 12-18 months). It is suggested that 'in the event that problems are identified', provisions could be included in other Codes.

Leaving aside the very real prospect of safety risks to consumers while the new regime is being 'monitored' the ACMA appears to have completely overlooked the importance of the mandatory awareness provisions of the Code, which will become purely advisory in a Guideline.

The ACMA appears to place great faith in the provision of easy means of CND blocking continuing on a voluntary basis, and on voluntary provision of information. CA's undertaking to:

> 'Develop information materials targeting consumers in vulnerable circumstances, to engage with relevant consumer bodies to develop these materials, and to circulate them among relevant parties'

together with the residual *recommendations* in section 4 of the Guideline, is in our view not an adequate substitute for the *requirements* for provision of information to customers in the now de-registered Code (section 4).

In summary, we strongly object to the removal of important privacy safeguards through a flawed process, without adequate consultation, and in flagrant disregard for the significant concerns expressed by ACCAN, the Privacy Commissioner and the TIO.

The safeguards in the former Code must be re-introduced without delay, either by re-registration of the Code or in other binding instruments. In the absence of these safeguards, there is a very real risk of telecommunications customers, particularly vulnerable consumers, being harmed by the unintended disclosure of telephone numbers.

If you have any questions please do not hesitate to contact the writer.

Yours sincerely

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