

## ERGO

*Analysing developments impacting business*

### COUNTERATTACK ON SPAM: TRAI DIRECTS TELECOM LICENSEES TO CURB NON-COMPLIANCE WITH TELEMARKETING REGULATIONS

22 February 2023

#### *Introduction*

In India, pesky 'spam' calls and messages are an increasing menace. According to various news reports and surveys, a significant portion of users in India are vulnerable to such telemarketing activities on a daily basis. With the rising concern of fraudulent activities such as phishing calls, the Telecom Regulatory Authority of India (**TRAI**) and DoT have been taking proactive steps including setting up of a 'Do Not Disturb' app / registry, overhauling and replacing the erstwhile telemarketing regulations with the robust Telecom Commercial Communications Customer Preference Regulations 2018 (**TCPR**), issuing a slew of press releases mandating message 'scrubbing' and calling out defaulting entities, proposed measures for setting up of 'Central Telcom Subscriber Database' to detect any suspicious telecom connections and an analytics portal for detection of fraudulent activities through telecom resources, etc.

Although the TCPR is ambitious in its goals, the enforcement has been rather lukewarm and generally ineffective to achieve the intended objectives of this framework. This has become a critical concern as financial frauds are becoming imminent with bleak oversight by the concerned authorities and entities in this ecosystem. With a view to strengthen enforcement of this regime, TRAI has issued another press release on 16 February 2023 (**Press Release**) to *inter alia* curb unauthorized promotions using telecom resources under TCPR.

#### *Key features of the telemarketing regulations*

TCPR aims to combat '*unsolicited commercial communications*' (**UCC**) through, *inter alia*, registration of entities sending commercial communication (eg, promotional calls or messages), ensuring consumer consent, registration of 'headers' or sender IDs, registration of content / message templates, etc.

In this regard, telecom service providers (**TSPs**) play a pivotal role under TCPR for efficient control of commercial communications over telecom resources, since such communications traverse over the TSPs' networks where they can exercise oversight. Such entities have been authorized to investigate complaints and take action against defaulters.

One way of regulating UCCs as envisaged by TCPR is the process of 'scrubbing' where non-compliant communications are filtered by TSPs and not delivered to the intended recipients. This is done to encourage entities to strictly comply with the prescribed requirements under TCPR to ensure delivery of their commercial communications. However, scrubbing may not be effective if other compliances are not met, as relevant

/ *bona fide* messages may get scrubbed inadvertently (which has been the case in the past).

## **Press releases by TRAI - Time to take action**

In early 2021, TRAI sought to address the issue of non-compliance by senders and telemarketers in a series of press releases where TRAI released a list of defaulting senders and telemarketers with a warning to ensure compliance with the TCPR, failing which their commercial communications may get scrubbed. Yet, entities continue to flout these norms which is leading to a surge in consumer complaints relating to spam calls / messaging, fraudulent loan offers and banking alerts, sharing of web-links with viruses and malware, etc.

In another attempt to address these issues, the Press Release focuses on the following:

- Misuse of headers / sender IDs and message templates: The Press Release highlights that headers / sender IDs and message templates of sender entities are being misused by telemarketers. In this regard, it notes that TSPs have been directed to do the following:
  - reverify all registered headers / sender IDs and messages templates on the centralized TSPs' DLT platform and block all unverified headers / sender IDs and messages templates within 30 (thirty) and 60 (sixty) days respectively;
  - ensure that temporary headers / sender IDs are deactivated immediately after the time duration for which such headers / sender IDs were created;
  - ensure that content variables in message templates do not have flexibility to insert undesired contents. Entities involved in message transmission should be clearly identifiable and tracked, if required; and
  - remove confusion among recipients of message and prevent their misuse. No look-alike headers / sender IDs (eg, fraudulent entities have often used headers similar to leading banks and other organizations by virtue of combination of same / similar small case or large case letters) are to be registered by TSPs in names of different sender entities.
- Action against defaulting unauthorised or unregistered telemarketers: Additionally, the Press Release directs TSPs to: (i) bar all telemarketers, who are not registered on the DLT platform for handling the message template scrubbing and delivery of messages to recipients through TSPs' network; (ii) ensure that promotional messages are not transmitted by unregistered telemarketers or telemarketers using telephone numbers (ie, 10 digit numbers); and (iii) take action against all such erring telemarketers as per the provisions of the regulations and also initiate actions as per relevant legal laws. TSPs have also been directed to notify details of such telemarketers to other TSPs who in turn can bar these entities from sending any kind of commercial communications through their networks.

## **Comment**

Unauthorized telemarketing activities and phishing scams have been a serious problem for the past several years. Aggrieved customers often resort to third-party caller ID identification applications or rely on the 'block' feature on their phones to avoid unwanted spam calls. Many users in India are also not aware of TRAI's initiatives such

as 'Do Not Disturb' app / registry and complaint mechanisms. Due to factors like low consumer awareness and bleak enforcement and scrubbing by TSPs, many fraudulent UCCs often pass through telecom networks.

It appears that the Government is cognizant of these issues and is gearing up to adopt more stringent measures to ensure that this framework is implemented effectively. Reportedly, TRAI may also implement its own caller ID presentation service. It is critical for entities involved with telemarketing activities to review and assess their compliance with TCPA, which is important not only from a legal and regulatory perspective, but also for the overall reputation of the businesses.

- Harsh Walia (Partner), Shobhit Chandra (Counsel) and Tanya Varshney (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

*We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).*