



## **Internet Telephony Services Providers' Association**

### **ITSPA response to the DCMS proposal to lower the legal threshold for enforcement of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR"), for regulations 19-24, to tackle unsolicited direct marketing calls and SMS text messages.**

#### **About ITSPA**

The Internet Telephony Services Providers' Association (ITSPA) is the UK Voice over IP (VoIP) industry's trade body, representing over 80 UK businesses involved with the supply of next generation voice communications services to other communications companies, businesses and residential customers both within the UK and abroad. ITSPA pays close attention to the development of VoIP regulatory frameworks on a worldwide basis in order to ensure that the UK's next generation voice telecommunications industry is as competitive as it can be within international markets.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>

#### **Response**

ITSPA welcomes the opportunity to respond to the Department for Culture Media and Sport's (DCMS) consultation, which proposes to lower the legal threshold for enforcement of the PECR regulations to tackle nuisance calls. Our response follows on from the recent Ofcom consultation regarding the review of persistent misuse powers in relation to silent and abandoned calls, which ITSPA responded to. We intend to respond in broad terms to help inform the debate.

ITSPA fully recognises the problems experienced by the general public and the concerns raised by parliamentarians, regulators as well as consumer and industry groups around the issue of nuisance calls over the last few years. Nuisance calls are a recognised problem within the telecoms industry and one that our members are extremely committed to help reducing in scale. They come in various guises from certain types of unwanted and persistent marketing calls or messages to abandoned, silent and most seriously, malicious calls.



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A key point, ITSPA wish to raise is our concern that the current changes proposed both by the DCMS and Ofcom are failing to deal the main source of nuisance calls; namely, the calls that originate from outside the United Kingdom and in turn, outside the European Union. Whilst we have previously highlighted that prosecution thresholds are too high, which, as a consequence manifests itself as minimal prosecutions, our members are increasingly convinced that this is as a result of calls originating outside of Ofcom and ICO's jurisdiction and lowering the thresholds will only impact the cost of compliance to UK based entities without addressing the root cause or benefitting consumers.

ITSPA members are concerned that the absence of a robust plan to tackle the international aspect will essentially fail to tackle the problem effectively and potentially pile on more regulation and penalties to the companies actually trying to comply with all the necessary rules and regulations. Greater international cooperation is required from respective EU member states and their counterparts outside of the EU to help tackle this problem effectively. On reflection, we believe the lowering of the legal threshold will have a very minor impact on improving compliance with PECR and have little or no affect in the number of nuisance calls.

Additionally, such increased regulation presents a moral hazard to those perpetrating nuisance calls insofar as they are incentivised to engage more in caller line identification spoofing which will frustrate the call tracing initiatives being promoted by Ofcom.

ITSPA believes the lowering of the legal threshold, would likely to increase the resource required on the ICO (and Ofcom) and would question how that resource would be financed. ITSPA would be keen to clarify whether the extra resource required would be self-financed through the fines levied or via a separate funding stream.

1. Question: Do you agree that lowering the legal threshold to remove the need to prove 'substantial damage' or substantial distress', will help improve compliance with PECR?
2. Do you agree with the Government's preferred option (option 3) of removing the need to prove substantial damage or substantial distress and allowing ICO the greatest scope to consider which companies can be issued with a CMP? Please provide your reasoning.
3. 3. Are there any other costs or benefits associated with any of these options that you feel need to be considered before any final decision is taken?