

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Bayerisches Landesamt für Datenschutzaufsicht (Bavaria DPA) pursuant to Article 77 of the General Data Protection Regulation, concerning Apple Distribution International Limited

Record of Amicable Resolution of the complaint and its consequent withdrawal pursuant to Section 109(3) of the Data Protection Act, 2018

Further to the requirements of EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0 (adopted on 12 May 2022)

**RECORD OF AMICABLE RESOLUTION FOR THE  
PURPOSE OF EDPB GUIDELINES 06/2022 ON THE  
PRACTICAL IMPLEMENTATION OF AMICABLE  
SETTLEMENTS VERSION 2.0  
(ADOPTED ON 12 MAY 2022)**

Dated the 24<sup>th</sup> day of November 2023



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 17 August 2022, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with the Bayerisches Landesamt für Datenschutzaufsicht (“the **Recipient SA**”) concerning Apple Distribution International Limited (“the **Respondent**”).
2. In circumstances where the Data Protection Commission (“the **DPC**”) was deemed to be the competent authority for the purpose of Article 56(1) of the GDPR, the Recipient SA transferred the complaint to the DPC on 27 January 2023.

## The Complaint

3. The details of the complaint were as follows:
  - a. On 7 August 2022, the Data Subject discovered that their account had been taken over by a bad actor, and they had lost control and access to their personal data. Following this, the Data Subject visited the Respondent’s store to regain access to their account. However, the Respondent’s team could only block access to the paid function of the platform and could not verify that the Data Subject was the account owner. As the Data Subject was dissatisfied with the response from the Respondent, they lodged a complaint with the Recipient SA.
  - b. Upon receipt and assessment of the complaint, the DPC wrote to the Data Subject, via the Recipient SA on 16 March 2023 to provide a copy of their GDPR request to the Respondent. On 3 April 2023, the Data Subject contacted the Respondent to request erasure of their personal data, as per Article 17 of the GDPR.
  - c. The Respondent replied on 5 April 2023, providing a link to its self-service portal, advising that the Data Subject could avail of this service to delete their personal data. The Data Subject replied on 19 April 2023, noting their dissatisfaction with the response and re-iterated their erasure request. In its reply of 24 April 2023, the Respondent advised that where a Data Subject is unable to regain access to their account, in order to proceed with the erasure request it would need to verify the Data Subject was the account holder.
  - d. On 2 May 2023, the DPC received a copy of the requested documentation from the Data Subject, in which they noted their dissatisfaction with the responses provided by the Respondent to date and wished to proceed with their complaint.

## Action taken by the DPC

4. The DPC, pursuant to Section 109(4) of the Data Protection Act, 2018 (“the **2018 Act**”), is required, as a preliminary matter, to assess the likelihood of the parties to the complaint reaching, within a reasonable time, an amicable resolution of the subject-matter of the complaint. Where the DPC considers that there is a reasonable likelihood of such an amicable resolution being concluded between the parties, it is empowered, by Section 109(2) of the

2018 Act, to take such steps as it considers appropriate to arrange or facilitate such an amicable resolution.

5. Following a preliminary examination of the material referred to it by the Recipient SA, the DPC considered that there was a reasonable likelihood of the parties concerned reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint. The DPC's experience is that complaints of this nature are particularly suitable for amicable resolution in circumstances where there is an obvious solution to the dispute, if the respondent is willing to engage in the process. In this regard, the DPC had regard to:
  - a. The relationship between the Data Subject and Respondent (being, in this case, an individual consumer and a service provider); and
  - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise their data subject rights).
6. While not relevant to the assessment that the DPC is required to carry out pursuant to Section 109(4) of the 2018 Act, the DPC also had regard to EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0, adopted on 12 May 2022 ("**Document 06/2022**"), and considered that:
  - a. the possible conclusion of the complaint by way of amicable resolution would not hamper the ability of the supervisory authorities to maintain the high level of protection that the GDPR seeks to create; and that
  - b. such a conclusion, in this case, would likely carry advantages for the Data Subject, whose rights under the GDPR would be vindicated swiftly, as well as for the controller, who would be provided the opportunity to bring its behaviour into compliance with the GDPR.

### **Amicable Resolution**

7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject-matter of the complaint. The DPC first contacted the Respondent on 12 May 2023. Further to that engagement, the Respondent informed the DPC that it had conducted an investigation and advised that it was likely that the Data Subject had provided their login details to a bad actor on a phishing website, which led to the bad actor gaining access to the account in August 2022. It also advised that it was the Respondent's security measures which detected suspicious activity on the account. As a result, the Respondent emailed the Data Subject alerting them that the password had been changed and to login to the account if the Data Subject did not make this change. The Respondent clarified that a member of its Support team had disabled the iTunes function associated with the account the day after the Data Subject's account was hacked, but it had no record of the Data Subject requesting erasure of the account at that time.

8. The Respondent clarified that in response to the erasure request on 3 April 2023, it had directed the Data Subject to its Data and Privacy page so that the request would be associated with the account. The Respondent advised that in order for it to comply with the Data Subject's request, it needed to be able to verify that the Data Subject was the owner of the account, without compromising its security measures. In the circumstances, the Respondent informed the DPC that it had exhausted all measures to comply with the erasure request, but confirmed that the Data Subject's account was in a secure locked out state meaning no data could be uploaded or downloaded from the account, or, any purchases made. It advised that should the Data Subject regain access to the account in the future, they would be able to reset their password and make a Data Subject Rights request.
9. On 14 July 2023, the DPC wrote to the Data Subject, via the Recipient SA, with the information provided by the Respondent, confirming that the account was in a secure locked out state, and could not be accessed by a third party. In the circumstances, the DPC requested that the Data Subject notify it, within a specified timeframe, if they were not satisfied with the information provided by the Respondent so that the DPC could take further action. The Recipient SA confirmed that they issued this update to the Data Subject on 7 September 2023.
10. On 25 September 2023, the Recipient SA informed the DPC that the Data Subject had provided a response which noted that while they did not agree with the Respondent's processes in the deletion of personal data, they appreciated the information provided by the Respondent, and, that their personal data associated with the account was secure. The Data Subject thanked the DPC for their assistance and agreed to the amicable resolution of their complaint.
11. On 27 September 2023, and in light of the foregoing, the DPC wrote to the Recipient SA noting that the DPC considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act and that it would conclude the case and inform the Respondent.
12. In circumstances where the subject matter of the complaint has been amicably resolved, in full, the complaint, by virtue of Section 109(3) of the 2018 Act, is deemed to have been withdrawn by the Data Subject.

### **Confirmation of Outcome**

13. For the purpose of Document 06/2022, the DPC confirms that:
  - a. The complaint, in its entirety, has been amicably resolved between the parties concerned;
  - b. The agreed resolution is such that the object of the complaint no longer exists; and
  - c. Having consulted with the supervisory authorities concerned on the information set out above, as required by Document 06/2022 the DPC has now closed off its file in this matter.

14. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, by the Irish High Court, of the process applied by the DPC in the context of the within complaint.

Signed for and on behalf of the DPC:

A handwritten signature in black ink that reads "Tom Delaney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

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Deputy Commissioner  
Data Protection Commission