



# **ICSTIS' RESPONSE TO THE PUBLIC CONSULTATION ON THE DRAFT OECD GUIDELINES FOR PROTECTING CONSUMERS ACROSS BORDERS FROM FRAUDULENT AND DECEPTIVE COMMERCIAL PRACTICES**

## **Executive Summary**

ICSTIS welcomes the opportunity to comment on the Guidelines for better consumer protection and co-operation across national boundaries in cases of serious commercial deception. ICSTIS endorses the initiative setting up a common framework to develop closer co-operation among consumer protection enforcement agencies. While there are no cross border premium rate services<sup>1</sup> currently operating in Europe, ICSTIS has extensive experience of dealing with premium rate services that can be operated by service providers based outside the UK but target UK consumers using UK premium rate numbers. As a consequence, and for such cases, ICSTIS has an established, workable, and consistent regulatory regime to deal effectively with such service providers who operate services which can potentially harm or do harm UK consumers. In ensuring that UK consumers are better protected, ICSTIS has had to establish working relationships with fellow regulators in both Member States and International countries.

## **SECTION 1**

### **Background**

Set up in 1986, ICSTIS (the Independent Committee for the Supervision of Standards of Telephone Information Services) is responsible for setting and reviewing the standards relating to the content and promotion of premium rate services through its Code of Practice<sup>2</sup>. It investigates public complaints, monitors services, recommends measures to achieve compliance with the Code and publishes information relating to its work. It is a non-profit making organisation, funded by the telecommunications industry, and consists of nine part-time remunerated Committee members, supported by a full-time Secretariat. ICSTIS' purpose is:

"To establish, maintain and ensure compliance with appropriate standards of protection for users of premium rate information and entertainment services and, in doing so, contribute towards the development of the industry. In seeking to achieve this, ICSTIS will:

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<sup>1</sup> Please note that a consultation document was recently issued by the ETO (acting in its capacity as the administrator of the ENTS) on an application for the opening up of Pan EU 388 PRS numbers in Europe. The consultation can be found at <http://www.eto.dk/ETNS-new-svc-proposal.htm> and our response highlighted serious areas of concern can be found at [www.icstis.org.uk](http://www.icstis.org.uk).

<sup>2</sup> Full details of the Committee, the Code of Practice and the 2001 Activity Report can be found at [www.icstis.org.uk](http://www.icstis.org.uk).

- \* Draw up and enforce an effective Code of Practice.
- \* Ensure that consumers are given adequate information to enable them to take sensible decisions about the use of premium rate services.
- \* Operate in an independent, fair and transparent way.
- \* Reflect its accountability to the public and industry by operating with measurable efficiency and effectiveness.
- \* Be adaptable and responsive to developments within a changing industry environment."

### **What is a premium rate service?**

Premium rate services are charged on a different basis to ordinary telephone calls. They are services where the revenue from the overall charge to customers is shared between the telephone company (for the carriage of the call) and the service provider (payment for the content or resulting product or service to the individual or organisation providing service for the content). Customers pay for premium rate calls through their telephone bills in the normal way. Consumers can obtain services, content and obtain products through the premium rate charging mechanism.

### **The UK Premium Rate Market**

As stated on the previous page, ICSTIS regulates the content and promotion of premium rate services through its Code of Practice. Consumers spent some 772 million minutes on premium rate services in 2001, generating approximate revenue of £580 million<sup>3</sup>. Of these, an estimated 71 million call minutes were made from mobile phones, generating approximate revenue of £55 million. In addition to this, 2001 also saw massive growth in the use and popularity of premium rate SMS and reverse-billed SMS. This growth has continued over 2002 and we are currently in the process of compiling the statistics. Over 3500 companies, ranging from large media-owned organisations to smaller specialist operations, provide a wide range of entertainment and information services, which can be accessed by phone, fax, PC (e-mail, Internet, bulletin board), mobile (SMS/WAP) or interactive TV. It is estimated that, at any one time, there are over 30,000-premium rate services available. Services are usually advertised on 090 dialling codes, although certain services on mobile phones may also use short access codes - typically four or five digit numbers, often followed by a key word describing the service (for example, 87878 VOTE or 62626 CHAT). As a result of OfTel's liberalisation of the Directory Enquiry (DQ) services market in December 2002, ICSTIS also regulates all new DQ services (offered on 118XXX numbers).

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<sup>3</sup> Following the liberalisation of Directory Enquiry services by OFTEL, it is estimated by ICSTIS that, this year, the premium rate industry will be worth over £1 billion in the UK alone.

The ICSTIS help line handled some 150,000 calls during 2002. Calls about premium rate services accessed on interactive TV accounted for about 25% of all calls to the help line. However, the vast majority of these calls are general enquiries relating to the identification of premium rate numbers on telephone bills.

Given the growing number of ways to access premium rate services, the thousands of services available and the millions of calls made each year, the number of complaints received by ICSTIS during 2002 remained relatively low at 12,000.

### **Current situation with regard to accessibility of cross border premium rate services**

Currently, it is possible for a service provider to be based outside the United Kingdom while operating a premium rate service utilising a UK premium rate number and vice versa. At the moment, service providers must adhere to the provisions of the ICSTIS Codes of Practice regardless of which Member State they are based in. In compliance with Article 3 of the E-Commerce Directive, information society services operating in the UK are subject to the country of origin principle. Hence the Member State in which the service provider is based will have initial jurisdiction for investigating the case at hand (more information on jurisdictional issues is provided later).

ICSTIS was instrumental in establishing the International Audiotex Regulators Network (IARN). The group was formed in 1995 and meets twice a year to discuss developments in the international audiotex industry and to exchange information on issues of common concern. The members of IARN have developed a handbook that deals with minimum standards for cross-border services<sup>4</sup>. Since national cultures and codes of practice vary considerably between Member States, cross border premium rate services present new regulatory challenges.

The developments in European cross border premium rate services are relatively new. ICSTIS has always maintained regulatory control over those services which terminate in other international countries such Tuvalu. These services are general sexual entertainment services and are premium rate services operating on international dialling codes and often do not contain the standards of consumer information required under the Code of Practice. In such cases, and following adjudication by the ICSTIS Committee, access to the service is barred.

## **SECTION 2**

### **Answers To The Specific Questions**

*Question 1: Do you agree with the proposed scope of the Guidelines?*

Yes. The proposed scope of the Guideline appears to reflect the ICSTIS Code of Practice in so far as services and their promotional material must be legal, decent and honest and

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<sup>4</sup> The IARN Handbook can be found at [www.iarn.org](http://www.iarn.org)

must not be misleading in nature. These principles (as stated in part B(1) of the Scope and Definitions section of the proposals) are enshrined in the general provisions of the ICSTIS Code of Practice.

The Code states that:

### **3.1 Legality**

*Services and promotional material must comply with the law: they must not contain anything which is in breach of the law, nor omit anything which the law requires. Furthermore, services and promotional material must not facilitate or encourage anything which is in any way unlawful.*

### **3.2 Decency**

3.2.1 *Services and promotional material must not:*

- a contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature,*
- b involve the use of foul language.*

3.2.2 *Services and promotional material must not, or must not be likely to:*

- a result in any unreasonable invasion of privacy,*
- b induce an unacceptable sense of fear or anxiety,*
- c encourage or incite any person to engage in dangerous practices or to use harmful substances,*
- d induce or promote racial disharmony,*
- e cause grave or widespread offence,*
- f debase, degrade or demean,*
- g promote or facilitate prostitution.*

### **3.3 Honesty**

3.3.1 *Services and promotional material must not:*

- a mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,*
- b be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.*

All premium rate services must operate in a transparent manner providing the consumer with all relevant and key information before the consumer begins to engage with the premium rate service. In particular, the Code of Practice states that:

### **3.4 Pricing Information**

*Guideline No. 1 gives advice on how various provisions of the Code will be interpreted in respect of pricing information<sup>5</sup>.*

- 3.4.1 The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.*
- 3.4.2 Textual pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Where services fall within the ambit of the Distance Selling Regulations 2000 (published by and available from the Department of Trade and Industry), service providers must comply with their requirements on pricing prominence.*
- 3.4.3 In the case of promotions transmitted in television programme time, the pricing information must be spoken as well as being visually displayed if the maximum call cost can exceed £2.00.*
- 3.4.4 Direct-dialled services which cost 50 pence or less and are terminated by forced release are exempt from all ICSTIS requirements concerning pricing information.*
- 3.4.5 In cases where it is unlikely that a consumer will have seen or heard any promotion containing pricing information, the service provider must place a short, distinct pricing message at the beginning of the service.*

### **3.5 Address Information**

*For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.*

*The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:*

- a a full postal address including postcode, or*
- b a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or*
- c a telephone helpline number (to be charged at no more than UK national rate).*

In addition to the general provisions of the Code, ICSTIS has specific provisions relating to particular types of services. For example, children's services, competition services, and consumer credit services. ICSTIS currently employs a system of prior permission for some types of premium rate services. These currently include, amongst others, all live

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<sup>5</sup> Guideline 1 is attached in Appendix A.

services, consumer credit services and services known as 'pay for product' services. These types of services have been dealt with in this manner due to the potential for high cost of calls to the services either because of the tariff itself or the attractiveness of the services that could lead to long calls or unauthorised use.

Pay for product services are defined in Paragraph 5.6.1 of the ICSTIS Code of Practice (Ninth Edition) which states that:

*“Pay for product services are those, costing more than £1.00, in which the benefit to the customer is either the delivery during or consequent to the call of a product or service paid for wholly or in part by the customer through a network operator, or is the provision during the call of the electronic data which the customer is able to receive and store. Such services are required to conform to the requirements of the Distance Selling Regulations 2000.”*

In addition to the Code of Practice provisions, ICSTIS has issued a Guideline<sup>6</sup> to aid service providers in ensuring they operate their services in compliance with the Code of Practice. Failure to deliver a product or service as a result of using a premium rate services would constitute a breach of our Code of Practice.

Unauthorised use is a key challenge that ICSTIS has to tackle in trying to deal with preventing harm to consumers. Service providers are not permitted to encourage unauthorised use or repeat use when inviting consumers to take part in the services they offer. For example, paragraph 5.1.2 of the Code deals with children’s services and states that:

**5.1.2 Promotional material for children’s services must clearly state:**

- a the maximum possible cost of the service, and*
- b that the service should only be used with the agreement of the person responsible for paying the telephone bill.*

*Question 2: do you agree with the proposed definition of “consumer protection enforcement agency”?*

While we agree with the proposed definition of a consumer protection agency, we have some concerns with the example you provide of the OFT being the sole designated contact point for the UK. With respect to premium rate services, ICSTIS is the only regulatory body which was specifically set up to deal with consumer harms effectively and quickly. Using any other body to collect and collate complaints relating to consumer harm utilising a premium rate charging mechanism could potentially (and probably) lead to delay and the continuation of the consumer harm. The Code contains provisions allowing ICSTIS to act quickly and effectively when UK consumers are being harmed by premium rate services. If the ICSTIS emergency procedure is invoked, ICSTIS can require that a premium rate service has access terminated to it in a very short period of time – often within an hour. This power is used in cases where there is evidence or serious potential for significant consumer harm. The power is more potent than the Stop Now Order Powers and must not be lost by well meaning intentions to establish routes of communication or singular gathering points for complaints.

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<sup>6</sup> Please find the Guideline attached in Appendix B.

This does not diminish or belittle the vital role that the OFT plays in offering consumer protection. But at the same time, it must be understood that, in the premium rate world, there are some service providers who will intentionally, or through reckless activity, cause consumer harm. When this occurs, it is vital that the most relevant consumer protection enforcement agency has immediate remit.

ICSTIS would welcome more discussion on this point and would welcome a meeting to establish the practicalities of establishing 'clearing house' arrangements.

*Question 3: have you any comments on the draft Guidelines references to information sharing?*

The effective sharing of information can be the cornerstone of ensuring that a harmful service is terminated quickly and efficiently giving little scope for consumer harm. This is particularly true when the company causing the harm is in a different country to that which the regulatory authority with jurisdiction is based.

Clearly, and as recognised by the draft Guidelines, consumer law enforcement authorities face restrictions when investigating a case or complaint. Bearing these restrictions in mind, ICSTIS fully supports the principle of enhanced information sharing as set out in the draft Guidelines. There are however, practical barriers required to be overcome such as different languages, differing national regulatory regimes, differences in ethical and moral perception, ensuring that material sought is provided within a given timescale, the quick identification of those persons engaged in services or practices that are causing consumer harm etc.

ICSTIS commends and approves the initiative to ensure Member countries work together to develop fast, effective and efficient methods for the sharing information and would welcome further discussion on this issue.

### **Issues surrounding jurisdiction**

The Guideline makes no reference to the e-commerce directive. The e-commerce Directive applies to 'information society services' and in those cases, the 'country of origin' principle governs which Member State has jurisdiction. In essence, the Member State in which the service provider is based will have initial jurisdiction even if the consumer being harmed are based in another Member State. This can clearly cause problems. The Directive sets out the procedures that must be followed and ICSTIS was the first regulatory authority in Europe to take direct action against two service providers based outside the UK where the national regulators could not prevent the serious consumer harm taking place to consumers in the UK. This was achieved by invoking derogations permitted in cases which involve the protection of consumers, protection of minors and reasons of public policy. In such cases, the country where the consumer is based can claim jurisdiction. In these instances, and because the service provider is not based in the UK, information exchange with the regulatory authority in the service providers country becomes vitally important. While the Guidelines contain a caveat in V (D), they do not seem to tackle the gravity of potential restrictions when claiming



jurisdiction. The jurisdictional issue is not as straight forward as set out on paragraph V (A) but is touched upon in (C).

*Question 4: what should OECD countries' priorities be in working towards enabling their authorities to act to prevent foreign consumers and to act against foreign businesses?*

The volume and variety of premium rate services varies from country to country. The regulatory bodies are widely differing in size, constitution and on terms of the sectors they regulate. Some are or started out as offshoots of national telephony carriers, others are state bodies (generally from the Telecommunications Authority or Ministry), self-regulatory or independent regulatory bodies. Most members now have regulatory responsibility for premium rate text (SMS/MMS) services in addition to conventional national 090 PRS services. Some regimes are based solely on the relationship between regulatory authorities and national carriers or a national government. These bodies, sometimes operating on a contract basis, have no jurisdiction over services offered on networks other than the national carrier or networks with whom they have a contract.

There are additional problems relating to the prohibition of certain categories of service or product in certain Member States as there are distinct differences between national regimes. The IARN Handbook sets out common principles but does not prescribe on matters of importance to individual member states. There are clearly issues relating to social tolerance (e.g. on sexual entertainment services), to economic issues (e.g. the application of spend limits for various categories of service) and to consumer information, where pricing rules vary enormously – with some countries requiring “accurate” pricing on connection to premium rate services while others accept print or online information. It is not clear from the Guidelines how services could meet differing national requirements or prioritise them in any way if they are restricted by their remit in doing so.

If the remit is clear, and a domestic regulatory authority can act to prevent foreign consumers being harmed, then they must do so with the same priority with which they would if it were their consumers being harmed. ICSTIS sees no difference between the two sets of consumers.

It is much easier (bearing in mind the restrictions stated previously) to act against foreign service providers as compared to attempting to protect consumers based in another country. ICSTIS has, in the past, acted against a company in the USA and in Germany and Spain<sup>7</sup>.

*Question 5: would you support the idea of providing consumer protection enforcement agencies with the appropriate authority to seek redress on behalf of defrauded consumers?*

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<sup>7</sup> Details of these cases appear in Appendix C.

Yes. As stated previously, the Code of Practice contains provisions allowing ICSTIS to act quickly and effectively when UK consumers are being harmed by premium rate services. If the emergency procedure is invoked, ICSTIS can require that a premium rate services have access terminated to it in a very short period of time – often as quickly as an hour. This power is used in cases where there is evidence or serious potential for significant consumer harm.

The ICSTIS Committee also has the ability to apply sanctions in the form of reprimands, barring access to services and fining service providers who breach the Code of Practice. The Code also contains a sanction that permits the Committee, where a service provider repeatedly breaches the Code of Practice, to ‘name’ the individual. This effectively means that no service providers or networks can knowingly engage that ‘associated individual’ in the provision of premium rate services.

In very serious cases the ICSTIS Committee can, at adjudication, impose redress as a sanction. In practice, service providers are often willing to compensate consumers who are not satisfied with either the content or a product delivered whilst calling a premium rate service. ICSTIS has already imposed this remedy on service providers based outside the UK but who were targeting UK consumers with a service which caused serious consumer harm (see previous page).

*Question 6: we welcome comments on the scope of any national or OECD wide study. For example, should an OECD study examine member countries’ arrangements for collective, representative or class action by or for groups of consumers?*

ICSTIS believes that studies of national or OECD wide arrangements would be beneficial overall. It would allow for a greater understanding of the differences in regulation that exist between countries and how best these differences in remit, ability to impose sanctions and better protect consumers can be better brought together. Any studies must not preclude or exclude any consumer surveys which have taken place in the past. ICSTIS has undertaken Mori research which can found at [www.icstis.org.uk](http://www.icstis.org.uk). and is currently undertaking further research.

## **Conclusion**

ICSTIS welcomes the opportunity it has had to respond to the consultation and hopes that its concerns will be addressed. ICSTIS believes that any new proposals must be well thought out, balanced, provide freedom for companies to operate popular services and provide adequate consumer protection measures. To this end, ICSTIS invites a meeting with the DTI to discuss some of the issues raised.

Further information on this submission can be obtained from Suhail Bhat on 020 7940 7412 or by e-mail at [sbhat@icstis.org.uk](mailto:sbhat@icstis.org.uk).

# Appendix A

**ICSTIS Guideline No. 1**  
**Pricing Information**  
**(Version 1: 25 March 2002)**

## **Introduction**

ICSTIS Guidelines are intended to advise the premium rate services industry on how the Committee interprets or applies provisions in the **Ninth Edition** of the ICSTIS Code of Practice. Service providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact the Secretariat **before** starting to operate the service.

A current list of all of the latest versions of ICSTIS Guidelines appears in the *ICSTIS Monthly Report* and on the ICSTIS website. Copies of Guidelines are available, free of charge, from the Secretariat.

## **Price Differentials**

The Committee acknowledges that there are a number of circumstances where the charges for accessing premium rate services can exceed the basic advertised rate. For example, calls made from mobile telephones and local (non-BT) networks can be more expensive than from a BT landline.

It is the Committee's desire that the consumer should have as full an understanding as possible of the likely charge for a call to a premium rate service **before** dialling. The Committee does not expect service providers to indicate all of the possible charge rates in their promotional material, as this is neither practical nor particularly useful for the consumer. However, the Committee firmly believes that a reference to a price per minute charge in the promotional material, together with an indication of the most likely cost to the consumer is still the most effective form of consumer protection. This document is therefore intended to provide guidance to service providers on how Section 3.4 of the Ninth Edition of the ICSTIS Code of Practice will be interpreted.

## **Pricing Information Requirements**

These requirements are set out in paragraph 3.4.1 of the Code of Practice.

- Based on the assumption that the majority of calls are currently made from BT landlines, call cost information should generally be based on the per minute cost of a call from a BT landline.
- The 'likely' charge for calls to each service is considered to be the charge applicable at any point in time and that which a significant proportion of callers are likely to be charged. The Committee will accept the following wording on price differentials in promotional material (please note that this is not a complete list and is subject to change):
  - Calls cost £X per minute; calls from mobiles and some networks may be higher.
  - Calls cost £X per minute; calls from mobiles and some other networks may cost more.
  - Calls cost £X per minute from BT landlines.
- In the event that a significant proportion of callers are unlikely to be charged the advertised rate, for example, mobile phone services targeted at mobile phone users, service providers should aim to ensure that clear and realistic pricing information is stated, including some indication of the likely cost of a call over and above the equivalent cost from a BT landline.

**Please note that the Committee will not accept non-specific descriptions such as 'premium rate charges apply' as being sufficient to meet the requirements of the Code or providing sufficient consumer protection.**

## **Publishers' Price Differential Disclaimers**

The Committee is aware that, in some cases, publishers have established a voluntary practice of placing a general warning about the variability of costs for consumers. If this is the case, service providers may use an unqualified price per minute statement in individual advertisements.

However, service providers should be aware that a general warning statement placed by a publisher, which appears at some distance from a premium rate promotion, for example, at the beginning of a sequence of classified adverts which run across a number of pages, will not be considered acceptable as the consumer is unlikely to associate such a warning with the potential cost of dialling the service.

Service providers are reminded that responsibility for compliance with the Code of Practice rests with them in the event of a publisher failing to publish such a general warning.

## **Pricing Prominence**

The Committee expects service providers to ensure that it is clear to consumers that they will be charged at a premium rate before accessing any service. Guidance is therefore being given in order to assist service providers to achieve this end.

Below are a number of examples of what the Committee recommends in terms of compliance with paragraph 3.4.2 of the Code (please note that this is not a complete list and is subject to change):

- Proportionality and proximity

Pricing information should generally be placed adjacent, or in close proximity, to the premium rate number. An example of a case which is likely to breach paragraph 3.4.2 of the Code is the use of an A4-sized advertisement featuring the premium rate number with great prominence at or towards the top of the page but where pricing information has been given at the very bottom of the page in a considerably smaller font and is likely to involve the consumer searching for pricing information.

- Use of colour in print media

There are a number of instances when the combination of colours used in promotional material affects the clarity of information and the ease with which it can be seen. These combinations include white on black, yellow on red, and yellow on blue. Service providers should therefore ensure that the colour combinations selected do not adversely affect the clarity of the pricing information once the promotional material is published.

- Text-based promotions, for example, mobile phones and e-mails

Service providers should ensure that consumers are not required to search for pricing information where the complete information relating to a promotion may not appear on one screen, for example, scrolling down or across on a computer screen to see pricing information.

- Voice-based promotions

Service providers should ensure that pricing information relating to non-print media promotions, such as voice-based promotions, is stated immediately after the premium rate number is given. Any delay in stating the pricing information after the premium rate number has been given is likely to result in a breach of paragraph 3.4.2 of the Code.

- Pricing information stated in the terms and conditions

Pricing information which is contained as part of the terms and conditions of a service, promotion or product rather than as 'stand-alone' information is unlikely to be acceptable to the Committee. Service providers are also asked to note the specific requirements relating to pricing information which apply to certain categories of service, such as those for online services (Section 5.5 of the Code).

- Services where an '090' number is not directly dialled

It is particularly important that pricing information is clearly stated in cases where consumers are not presented with a recognisable premium rate '090' number or the potential cost implications of other prefixes, such as those used for premium rate reverse-billed SMS (Short Message Services).

### **Copy Advice**

Copy advice is available, free of charge and in writing, from the Secretariat. Service providers are therefore invited to submit their proposals for promotional material. Please note that Secretariat advice is not binding on the Committee, although a record of advice is maintained and taken into account should a service be later found in breach of the Code.

### **How To Contact ICSTIS**

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Web site: [www.icstis.org.uk](http://www.icstis.org.uk)

## Appendix B

# **ICSTIS Guideline No. 12**

## **Pay For Product Services**

### **(Version 5: 25 March 2002)**

#### **Introduction**

ICSTIS Guidelines are intended to advise the premium rate services industry on how the Committee interprets or applies provisions in the **Ninth Edition** of the ICSTIS Code of Practice. Service providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact the Secretariat **before** starting to operate the service.

A current list of all of the latest versions of ICSTIS Guidelines appears in the *ICSTIS Monthly Report* and on the ICSTIS website. Copies of Guidelines are available, free of charge, from the Secretariat.

#### **Definition**

Paragraph 5.6.1 of the of the Code of Practice states that:

“Pay for product services are those, costing more than £1.00, in which the benefit to the customer is either the delivery during or consequent to the call of a product or service paid for wholly or in part by the customer through a network operator, or is the provision during the call of electronic data which the customer is able to receive and store. Such services are required to conform to the requirements of the Distance Selling Regulations 2000”.

For the avoidance of doubt, ICSTIS considers pay for product services to be those where a product or service is delivered either to a geographical address or by electronic means, such as a mobile ringtone download, and for which the call must be completed before the product or service will be delivered.

Oftel's UK National Numbering Conventions require that pay for product services operate on the 0907 prefix. ICSTIS is currently in discussion with Oftel on the requirement for all pay for product services to operate on the 0907 prefix with reference, in particular, to those services which offer items not delivered to a geographical address and where the cost to the consumer does not exceed £5.00. Further guidance will be given once the requirements have been clarified by Oftel.

Please note that the Committee currently expects only those services where a product will be delivered to a geographical address and costs more than £5.00 in total to operate on the 0907 prefix.

Services for products of a sexual nature should operate on the 0909 range designated for adult services and are subject to the related 'top shelf' rules regarding promotions.

#### **Fulfilment And Dispatch Of Products**

Service providers operating pay for product services must comply with the Distance Selling Regulations which include the following requirements:

- The products or services on offer must be capable of fulfilment within 30 days of the call, unless a different time scale has been agreed with the consumer.
- Service providers must, so far as is required by the Distance Selling Regulations, permit consumers the right to give notice to cancel an order within seven working days from the day after the day on which the consumer received the goods. For services, consumers must be permitted the



right to give notice to cancel an order within seven working days after the day on which the trader agreed to carry out the service.

- Service providers must ensure that a product that is delivered to a geographical address is delivered to the address of the telephone bill-payer, or to an address authorised by the bill-payer.

### **Compensation**

Service providers should meet all reasonable and valid claims for compensation, including claims for unauthorised use where the person who ordered the goods or services was not the bill-payer or did not have the bill-payer's permission to make the call. "Compensation", in this context, means the full cost of the call to the consumer, including VAT.

### **How To Contact ICSTIS**

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Web site: [www.icstis.org.uk](http://www.icstis.org.uk)

# Appendix C

## **Niteline Media**

Niteline Media based in New York, which has been the subject of previous actions by the FTC was fined 50K for a service operating at the website [www.free-sex-video.co.uk/](http://www.free-sex-video.co.uk/).

- The promotional material for the service described it as ‘free’.
- The software for the service modified the users homepage, without their authorisation. It is unlawful under Section 3 of the Computer Misuse Act 1990, to modify the contents of a computer without authorisation.
- Pricing information prior to connection lacked prominence.
- There were difficulties in terminating the premium rate call. If the software was closed during modem negotiation, the service would continue to dial and connect even though the caller had attempted to exit the service.
- The service did not contain a walled garden.
- The service did not contain an onscreen clock.

The Committee also took into consideration Niteline Media’s breach history when imposing this fine. The case was referred to the National Hi-tech Crime Unit (NHTCU). Access to the service was also barred. The Niteline case was the result of an industry complaint.

## **Greenock & Premium Call**

Greenock (based in Spain) and Premium Call (based in Germany) were operating services using the same dialler software. Both companies referred to a shared information provider Crosskirk and the services connected through dialler software entitled ‘webdialer’. The software had been programmed to use both Greenock and Premium Call numbers. If one number was engaged the software would automatically begin dialling a second or third number. Therefore both service providers would generate minutes from the same software.

- The number allocated to Greenock did not terminate by forced release. This resulted in very high telephone bills. One complainant received a charge of over £1,000 for a single long duration call. BT issued A1 notices and partially refunded a large number of their own customers.
- One of the numbers allocated to Premium Call disconnected after approximately £40 of call spend. Premium Call had started using a new number prior to the invoking of the emergency procedure and telephone bills supplied by complainants suggest connections to this number did not terminate by forced release.
- The promotional material for one of the websites used by the service provider contained blackened out text, which made repeated references to children in a sexual context. This text may have been created to increase the chances of the website appearing when searches were made using terms related to paedophilia.

- The uninstall option on the dialler did not work correctly making the software difficult to remove. This may also have misled consumers into thinking they had successfully removed the software.
- Pricing information was not clearly worded.
- The onscreen clock did not display cumulative pricing information.
- The services did not warn callers that they should be over 18 and the billpayer.
- At one website software was found to install without the knowledge or consent of the user. This is potentially unlawful under the computer misuse act.

A fine of £75,000 was imposed against Greenock. A fine of £50,000 was imposed against Premium Call GmbH. The services were barred for 2 years. The service providers were instructed to offer redress. I am currently investigating the service providers again, for not offering any compensation to complainants. ICSTIS received 282 complaints against Greenock and 173 complaints against Premium Call.

The case was referred to the NHTCU. Our Spanish and German IARN contacts were made aware of the case before we took action. Detailed information regarding the case has been supplied to the European Commission.

## **FTC**

The Secretariat supplied information to the FTC, when they were investigating BTV industries an information provider of Telepay Ltd. The information supplied related to sites where Telepay operated, our contacts within Telepay and BTV industries and basic information regarding the UK networks used by the companies. The FTC were referred to ICSTIS by the OFT.

The FTC expressed some interest in receiving information from ICSTIS when we investigated misleading services that might also affect American consumers might be affected and information was forwarded to the FTC regarding Trodat Telecom and a service they operated which dialled without authorisation.