

ICSTIS' RESPONSE TO THE ITC CODE OF ADVERTISING STANDARDS CONSULTATION

Executive Summary

ICSTIS is the independent regulator for premium rate services in the UK. ICSTIS supports the simpler approach to standard setting for television advertising proposed in the revised ITC Code of Advertising Standards.

ICSTIS endorses the ITC's aim of maintaining the principles of preventing misleading advertising and offence and harm. ICSTIS itself is committed to implementing the five principles of better regulation as identified by the Better Regulation Task Force. These principles of good regulation are:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

Background To ICSTIS

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 Codes of Practice. It investigates public complaints, monitors services, recommends measures to achieve compliance with the Codes, and publishes information relating to its work. It is a non-profit making organisation, funded by the 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:

- Draw up and enforce effective an 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"

A similar, comprehensive consultation has been carried out by ICSTIS which, following extensive consultation with the telecommunications industry and other interested parties, led to the publication of its Ninth Edition of the Code of Practice. The new ICSTIS Code of Practice and accompanying Guidelines have now been published and come into effect on Monday 25 March 2002¹. The new Code

¹ The Ninth Edition of the Code of Practice and the accompanying Guidelines can be found at www.icstis.org.uk. Until 25 March 2002, the existing Codes of Practice remain effective. The Guidelines supplement the Code of Practice and act as

is a single consolidated Code that has been formally recognised by the Director General of Telecommunications. This recognition extends the definition of “Controlled Premium Rate Services” to cover all services generally regarded as being premium rate.

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.

The Premium Rate Industry

Revised figures detailed in OFTEL’s *Market Information Fixed Update: September 2001* show that the premium rate industry generated an estimated £420 million in revenue in 2000 from fixed telephones alone. Over 2,000 companies currently provide a wide range of entertainment and information services which can be accessed by telephone, fax, PC, mobile or interactive TV. Services range from weather, voting and advice lines to competition, chat and business information services and adult services. The cost of the services currently varies from 10 pence per call to £1.50 per minute. Competition services, in their various guises, are very popular with consumers and are estimated to constitute a substantial portion of the entire premium rate market.

Convergence

Convergence is touched upon briefly, although not directly, in the ITC consultation document. Before providing specific comments to the ITC’s consultation, ICSTIS would like to refer to its recently circulated paper entitled “Communications convergence, content and the consumer”². This paper sought to examine the issues surrounding convergence in the communications field from the perspective of ICSTIS and provided examples of existing services offered across multiple platforms. One of the areas of convergence the paper focused on was the wide use, by broadcasters, of premium rate as a charging mechanism for services on interactive television. For example, Sky’s Playjam games service has 1.3 million registered users, with over 10 million minutes of premium rate charged playing time. There are a growing number of channels built on premium rate revenue – for example The Box and other music channels. At the same time, ICSTIS is aware of new channels based on dating and text chat (channel 841 – the ‘txt me’ channel). The ‘txt me’ is a channel allowing consumers to enter a chatroom which appears on the television. It operates by inviting consumers to use their mobile phones to send text messages, charged at premium rate, to the chatroom. This service is a good example of a cross platform service and raises interesting regulatory issues. For example to which regulator would the consumer complain? Since the service appears on the television, the consumer may approach the ITC. However, if the consumer has been misled as to cost or content, then ICSTIS may be more suited as a regulator to deal with any such complaint. ICSTIS has already begun discussions with the ITC concerning how best to deal with such issues and would welcome further discussions in the future.

aides to better practice for the premium rate industry and show how the ICSTIS Committee will apply the provisions of the Code of Practice to different types of services.

² Please find the ICSTIS paper attached as Annex 1.

Specific Comments to the ITC Advertising Standards Code

Some of the sections in the ITC consultation document requesting comment do not affect the workings of ICSTIS as the proposals fall outside its remit. In such cases, ICSTIS will make general comments where appropriate.

Section 3: Programmes and Advertising

ICSTIS would agree with the ITC that consumers must be clear on whether they are watching a programme or advertising.

Section 4: Unacceptable Products and Services

Rule 4.1(c): Betting and Gaming Advertising Prohibited by Law

ICSTIS would endorse the position taken by the ITC. ICSTIS would point out that, it is entirely feasible, in the future, for the payment mechanism for participating in betting and gaming services on interactive television to be via premium rate. If such a scenario arose, ICSTIS would have serious concerns over the accessibility of the services to children and indeed their excessive use by adults. ICSTIS is currently in discussion with the Gaming Board regarding the recommendations made by the Gambling Review Body. ICSTIS would welcome additional discussion with the ITC.

Rule 4.1(h): Pornography

The current ICSTIS Code of Practice (Ninth Edition) restricts the advertising of premium rate sexual entertainment services to those publications that, because of their sexual content, are commonly found on the top shelf in newsagents (the 'top shelf' rule). On the 29th of October 2001, ICSTIS issued a consultation document³ seeking views on the value of existing rules on where and how it is appropriate for telephone and Internet sexual entertainment services to be advertised when these services are paid for by a premium rate charge via the telephone bill. ICSTIS will shortly circulate the Committee proposals for reforms in this area with a view to obtaining further industry comments.

Consistent with the proposals being put forward ICSTIS would agree with the ITC proposal that 'top shelf' publications should only be permitted to be advertised on encrypted adult entertainment channels.

Section 6: Misleading Advertising

Rule 6.1.1: No advertisement may expressly or by implication mislead about any material characteristic of a product or service.

ICSTIS considers Note 3 to be a useful aide in providing additional guidance on the definition of misleading advertising.

Rule 6.1.2(c): All important limitations are made clear.

ICSTIS would agree with this proposal and Note (1) is clear in its guidance.

³ The consultation document, Adult Services: The 'Top Shelf' Rule is available from the Secretariat or can be downloaded at www.icstis.org.uk.

Paragraph 3.3.1 of the ICSTIS Code of Practice (Ninth Edition) states that:

“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.”*

This is a general Code provision applicable to all types of premium rate services and their promotional material. Service providers are provided with additional guidance by the ICSTIS Guidelines that are generally service specific. In addition, the ICSTIS Code of Practice states, for example for competition services (paragraph 5.2.5), that “Promotional material must clearly state any information which is likely to affect a decision to participate...”

ICSTIS supports the expansion of the characteristics of availability that may render an advertisement misleading.

Rule 6.1.2(d): The identity of the advertiser is made apparent when advertising might otherwise be materially misleading

ICSTIS would endorse this provision. Under the ICSTIS Code of Practice, service providers are obliged to provide identity and contact details.

Paragraph 3.5 of the ICSTIS Code (Ninth Edition) states that:

“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).”*

Rule 6.5 Price Claims

ICSTIS would endorse the Note to Rule 6.5.1 as one that explains succinctly what is required from an advertiser. ICSTIS feels that it is important and proper for consumers to be given full pricing information before making any purchase. The pricing details should include, where appropriate, any additional costs which may be incurred in making a purchase.

Paragraph 3.4.1 of the ICSTIS Code of Practice (Ninth Edition) states that:

“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.”⁴

ICSTIS would like to point out that currently pricing information is a difficult issue for service providers and consumers alike with regard to premium rate numbers. With the wide range of mobile and cable networks currently available, it is not always possible to publish with certainty the price all consumers will pay for a premium rate call. This is because mobile networks and some cable companies levy a charge on consumers for calling premium rate services. Service providers cannot, however, know from which network a consumer may be calling and have no control over the levied charge. The service provider is therefore required to state the ‘likely charge’ to the consumer under the Ninth Edition of the Code of Practice. Later this year, ICSTIS will be issuing a consultation on pricing information and methods of best providing consumers with all relevant and accurate pricing information before engaging in a premium rate service.

Paragraph 3.4.3 of the ICSTIS Code of Practice (Ninth Edition) states that:

“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.”

Section 5.6 of the ICSTIS Code of Practice (Ninth Edition) contains the requirements for pay for product services. ICSTIS Guideline No. 12 gives advice on how various provisions of the Code will be interpreted in respect of such pay for product services⁵.

The relevant provisions of the Code state that:

- 5.6.1** *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.*
- 5.6.2** *Unless permission to do otherwise is specifically granted by ICSTIS, pay for product services must:*
- a not cost more than £20.00, or such other amount as may be published by ICSTIS from time to time in relation to any or all types of pay for product service,*
 - b include an introductory message, giving the likely total cost of the call and a statement to say that the caller will need to complete the entire call in order to obtain the product or service,*
 - c take one call only to enable delivery of the item in question,*
 - d terminate by forced release.*
- 5.6.3** *The promotional material for pay for product services must clearly state :*
- a and give prominence to the likely total cost of the product or service,*

⁴ Additional advice on how the various provisions of the ICSTIS Code will be interpreted in respect of pricing information are contained within Guideline No. 1 attached in Annex 2.

⁵ Please find the Guideline attached in Annex 3.

- b that the caller will need to complete the entire call in order to obtain the product or service, including the number of minutes the caller will need to stay online in order to complete the purchase,*
- c any significant information which is likely to affect a decision to participate, including the main characteristics of the product or service,*
- d any additional costs relating to delivery charges (where applicable),*
- e any details about the arrangements for delivery and/or performance.*

5.6.4 *If a pay for product service can cost more than £5.00 and involves the delivery of tangible goods to a geographical address:*

- a the service provider must keep records of the names and dispatch addresses of callers for a minimum of 6 months, and,*
- b the service must require an active confirmation from the caller that they accept that their personal details and delivery address will be retained and made available in the case of a claim for unauthorised use.*

5.6.5 *Service providers must:*

- a have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,*
- b pay reasonable and valid claims for compensation.*

Rule 6.6 *Use of the Word Free*

ICSTIS endorses this Rule and the explanatory note that accompanies it. ICSTIS has a similar provision in its Code of Practice.

Paragraph 3.9 of the ICSTIS Code of Practice states that:

“No premium rate service may be promoted as being free. No product or service may be promoted as being free, or described in a way that implies it is free (for example, a gift), if the most obvious or practical way of obtaining it is by using a premium rate service except in cases where the cost to the consumer does not exceed the delivery costs of the product and the promotional material states the maximum cost of the call.”

Section 7 Finance and Investment

ICSTIS has taken similar steps to the ITC proposal by not having detailed provisions for financial services, and in particular consumer credit services, in its Code of Practice. This is particularly true of services where equivalent protection is afforded by other statutory or established self-regulatory bodies. The general provisions of the ICSTIS Code of Practice (Ninth Edition) will apply to financial services and Guideline No. 14⁶ provides specific advice to service providers on how the various provisions of the ICSTIS Code will be interpreted in respect of such services.

⁶ Attached in Annex 4

Section 9 Harm and Offence

ICSTIS fully appreciates the difficulties faced by the ITC in attempting to determine taste and decency issues. These are, as the commentary notes state, very subjective concepts over which consumers and regulators alike can have very different views. The guidance notes in Section 9 provide sensible and reasonable advice in helping companies avoid producing advertising that could lead to potential consumer harm. As a concept, harm is, in itself, difficult to quantify. In producing the ‘top shelf’ rule consultation document circulated earlier this year, ICSTIS had to focus itself on the nature of the harm it was trying to address. In that particular case, ICSTIS was attempting to protect minors from unsuitable sexual material and protect parents (or the bill-payer) from costs relating to unauthorised premium rate calls. In addition to these two factors, it appeared to the Committee that harm additionally stemmed from ‘offensive’ advertising or services. ICSTIS appreciates that harm and offence is not just limited to children but can also affect adults – especially if the promotion or service is particularly repulsive or of a horrible nature (not just of a sexual nature). ICSTIS finds the ITC notes pertaining to Rule 9.1 particularly useful in helping to ensure that advertising does not cause serious or widespread offence. Reference to the concept of “community standards” again provides a sensible approach to providing advice. However, ICSTIS notes that such an inclusion incorporates both a contextual and a subjective element to advertising. Since community standards are not static, ICSTIS would like to propose that a joint research with the ITC and subsequently Ofcom into such standards.

The ICSTIS Code of Practice contains comparable ‘harm and offence’ provisions as provided for by Section 9 of the ITC Code in Section 3.2, which states that:

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.”*

These paragraphs of the ICSTIS Code of Practice are complimented by paragraph 3.9, which states that:

“Service providers must use all reasonable endeavours to ensure that promotional material does not reach those for whom it, or the service which it promotes, is likely to be inappropriate. Service providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way.”

Rule 9.2 Violence and Cruelty

The notes to Rule 9.2 seem to be clear and helpful to advertisers.

Section 10 Children and Young Teenagers

The ICSTIS Code of Practice contains specific provisions relating to the provision of premium rate services to children. ICSTIS notes that Rule 10.2.4 of the ITC Code states that “advertisements which offer to sell products or services by mail, telephone, e-mail or Internet should not be aimed at children”. Currently there are a plethora of premium rate services aimed at and used by children. The services themselves can be accessed via fixed line telephones, mobile telephones, interactive television and the Internet. Providing that such premium rate services comply with ICSTIS Code of Practice (see provisions below), such services are permitted to operate. In the absence of any Notes in the ITC Code, it appears that this restriction on direct response services contradicts the ICSTIS Codes of Practice. ICSTIS recommends that ICSTIS and the ITC meet urgently to discuss this apparent discrepancy.

Bearing in mind the above, the ITC and ICSTIS Codes of Practice largely mirror each other in respect of specific provisions relating to children’s services.

The ICSTIS Code of Practice (Ninth Edition) states in relation to children’s services that:

5.1.1 *“Children’s services are those which, either wholly or in part, are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age and references to children in this part of the Code are to persons under 16 years of age.”*

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.”*

5.1.3 *“Children’s services, and any associated promotional material, must not:*

- a contain anything which is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty,*
- b include anything which a reasonable parent would not wish their child to hear or learn about in this way,*
- c involve an invasion of privacy of any child,*
- d make direct appeals to children to buy, unless the product or service is one which they could reasonably be expected to afford for themselves,*
- e encourage children to ring other premium rate services or the same service again.”*

5.1.4 *“Children’s services must:*

- a cost no more than £3.00,*
- b be terminated by forced release,*
- c if the service generally costs more than 50 pence, be prefaced by a short statement that the services should only be used with the permission of the person who pays the bill.”*

As can be seen from the above, ICSTIS imposes, through its Code of Practice, strict requirements on service providers who operate children's services or provide services which would reasonably be expected to be particularly attractive to persons under the age of 16.

ICSTIS particularly found useful the Notes explaining the Rule 10.4 (Use of scheduling restrictions). The advice is clearly written, easy to follow and a useful guide to advertisers.

Section 12 Other Categories

Rule 12.1.3 (premium rate telephone services) of the ITC Advertising Standards Code states that "advertisements for services (excluding live or virtual chat) that normally involve a call of at least five minutes must alert viewers that use of the services might involve a long call." ICSTIS' only comment would be that the provision does not differentiate between the different types of service that are available on premium rate, the different tariffs that they are available on and the platforms which they are available on. As stated in the introduction to this consultation response, premium rate services can be charged between 10p per minute and £1.50 per minute. The effects of the different tariffs will clearly have differing cost implications for consumers over a period of 5 minutes. In addition, different service categories pose different levels of potential consumer harm. The ICSTIS Code of Practice stipulates, on a service type basis, the warnings that must be provided by a service provider before or during they take part in a premium rate service. ICSTIS' opinion is that the provision should be altered to reflect the limits imposed by the ICSTIS Code of Practice or should be deleted since reference is made to advertisers having to abide by ICSTIS' Code of Practice in Rule 12.1.1. ICSTIS welcomes discussion on the matter.

Rule 12.2 Distance Selling

ICSTIS would refer you to our comments made in relation to Rule 6.5 of the Advertising Standards Code. Premium rate pay for product services which cost more than £1.00 are required to conform to the requirements of the Distance Selling Regulations 2000.

Rule 12.2.1

As stated previously, all advertised premium rate services must feature full contact details of the service provider.

It is feasible that pay for product services, where the customer is charged via a premium rate charging mechanism (interactive TV), will become a reality in the near future. For example, pay per view television or movies where a single drop premium rate charge is levied in order for the consumer to watch the programme. ICSTIS feels that this is an area in which discussion between ICSTIS and the ITC would be of benefit to the consumer.

Rule 12.3 Charities

ICSTIS endorses the ITC proposals. ICSTIS has specific provisions relating to fundraising and charitable promotions in its Code of Practice which the ITC may wish to take note of.

Paragraph 5.8 of the Code of Practice states that:

"Guideline No. 13 gives advice on how various provisions of the Code will be interpreted in respect of fundraising and charitable promotions. Service providers should be aware that the scope of such services is limited by the Charities Act 1992 and the regulations issued under

*it.*⁷

5.8.1 *“Promotional material for charitable and fundraising promotions must make clear:*

- a either the total sum per call, or the amount per minute which will be paid to the beneficiary,*
- b the identity of the beneficiary,*
- c any restrictions or conditions attached to the contribution to be made to the beneficiary.”*

Conclusion

ICSTIS commends the approach of the ITC in aiming to create a more user friendly Code. The enhanced clarity and advice offered should prove a useful tool for broadcasters, helping them make informed decisions on the application of the Advertising Standards Code. In this way, a ‘light touch’ approach to regulation is maintained while ensuring protection for viewers. This combination should permit the ITC, like ICSTIS to focus on advertisements that cause serious offence and harm.

ICSTIS already provides supporting Guidelines to its Code of Practice and would be willing to meet with the ITC to discuss any issues the ITC feels may be pertinent to its proposed changes.

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

⁷ The Guideline is attached in Annex 5.

ANNEX 1

COMMUNICATIONS CONVERGENCE, CONTENT AND THE CONSUMER – AN ICSTIS REFLECTION

This paper looks at convergence issues in the communications field from the perspective of ICSTIS, the regulatory body for premium rate services. It gives examples of existing services offered across multiple platforms and looks at some services which are thought likely to develop in coming months and years. The paper seeks to set out the issues and risks from a consumer perspective with some observations on the implications for service providers. It closes with further observations on what these changes might mean for future regulation.

Convergence

Convergence is described in the Communications White Paper as the blurring and eventual disappearance of boundaries between telecommunications companies and broadcasters made possible as technological developments create new markets and broaden access to existing markets. Content might be considered one of, if not the, key driver behind convergence. The traditional telecommunications industry was based heavily on straightforward carriage of calls in various forms. In the broadcasting field, free-to-air and universally- available channels were the norms with commercialisation pretty much limited to advertising revenues. As the White Paper points out, content is the key to the expansion in use of PCs, digital, satellite and cable broadcasting, mobile telephony and other communications devices. If content is a key driver, the ability to charge for this content – to monetise it – is the fuel widely needed to make convergence a reality.

ICSTIS is responsible for regulating premium rate services involving the delivery of some form of content and the sharing of revenue between a telecommunications network operator and a service provider where the charge for the service is to a telephone account. The service could involve entertainment, information or customer support. It could involve the delivery of a physical or electronic product. This form of charging is now being applied widely on the Internet, interactive television and on mobile telephony as well as on conventional fixed line services.

ICSTIS is a regulatory body funded by the industry but independent in its operation. ICSTIS has no trade association role and, as such, is not a self-regulator in the general sense of the term. ICSTIS has statutory underpinning in the form of a condition in network operator licences requiring the existence of a regulator and Code of Practice recognised by the Director General of Telecommunications. This means any network wanting to terminate premium rate calls must contract with ICSTIS. Universal coverage, published Codes, meaningful sanctions, ISO-audited procedures and clear rights of appeal are aspects of the ICSTIS regulatory model, explained more fully at Annex A. If self-regulation and statutory regulation are the traditional options, the ICSTIS co-regulatory and contractual model might be thought of as the “Third Way”.

**The UK
Passport
Hotline is
premium-
rate
funded. So
is the
Battersea
Dogs
Home line.**

Conventional premium rate services based on dial-up on the 090 prefix were worth in excess of £200m in 1999. These services were concentrated in a relatively small number of sectors – chat and dating, competitions, voting, information services (weather, sports, stock market reports, etc). Here premium rate charging was the dominant or sole method of payment, effectively defining a “premium rate industry” when the regulation actually focuses on a payment mechanism linked to telephony billing and to the issues of access and immediacy of use of telephony. In 1999 premium rate turnover was around £250million. This figure appears to have more than doubled in only two years to around £550million in 2001. The industry comprises 35-

**Have you heard the call? Ringtones and logos are a
£150 million business – Spectrum Consulting**

40 network operators, over 2,000 service providers and has more than 20,000 charged services running at any one time. Over a third of the public have used premium rate services, with 15-24 year olds being the principal customers for TV competitions, mobile ringtones and logos, votelines and interactive services.

Mobile Telephony

These 090-dialled premium rate services can be accessed from mobile as well as conventional telephones. Services have also been offered to mobile customers in the form of four-digit short access codes, which, behind the scenes, patch onto 090 numbers – Centrica and RAC Rescue & Assistance services are simple examples.

Things have moved on dramatically in the last year. If e-mail was the “killer application” on the Internet, “SMS” text messaging has taken on a similar mantle in mobile telephony. Around 1 billion messages are sent in the UK every month. The vast majority contain no “value-added” content and

**R U 2 L8 2 txt me Hun? Wot
U doin at home babes?
(PS that cost you £1)**

involve no service provider. But the system is equally capable of delivering relatively basic (160 character) content to 40 million+ mobile phone customers. This new market for permission-based advertising and for premium rate charged content is growing rapidly – tenfold p.a. to quote one mobile network. Text (txt) chat,

competitions, mobile phone logos, ringtones and virtual “pets”, sports results, general and location-based information can all be offered and charged for. After experience with some problematic services and discussions with networks, ICSTIS issued statements confirming its responsibility for regulating these new premium rate services and its plans for working with the industry on guidance on SMS services designed to protect consumers and allow businesses to flourish. The forecasts are that premium rate text messaging could be worth £300million or more in 2002, taking total premium rate business to over £750million within one year.

Today’s services using SMS- and WAP-enabled handsets are just the start. As GPRS and 3G technologies develop, such devices could offer proper Internet access, and live video and music streaming. Hutchison 3G – a successful bidder for a network operator licence for 3rd Generation mobile telephony – has already won a tender for exclusive rights to “broadcast” clips of Premiership goals to mobile handsets...handsets which don’t yet exist. Content companies, such as AOL Time Warner, are challenging networks for improved revenue-share deals.

Mobile phones raise particular issues for ICSTIS. They are widely used by children, and most are pre-paid rather than contract-based, making the identification and control of mischief harder in the absence of billing. They are also open to high-volume, low-cost unsolicited promotions. Technology now allows services to be “reverse-billed” with minimal or no control by the customer over the cost and content of what they receive. And all of these services are offered on totally new numbering structures run by networks collectively – not Oftel. Your premium rate £1 reverse

**Four spam-mailed
services generated
3,000 complaints
to Vodafone and
BT Cellnet in a
single week.**

charge for a chatroom message comes when you send a reply to a simple message such as “U Chat” to a five-digit number such as 64789 (...don’t bother trying that number: its the author’s Co-op number!).

Alongside a host of legitimate services we have seen unsolicited “spam messaging”, tempting consumers into dialling 090 numbers or generating reverse-billed SMS which are designed to deceive...we caught, and stopped overnight, one “service” charging 50p for access to what turned out to be a recording of an engaged tone – clever in the original deception, cunning in inviting re-dials but short-lived thanks to ICSTIS’ “Stop Now” power!

In the Ofcom context, there needs to be clear lines of responsibility, particularly with the Telecommunications Ombudsman, over services which are increasingly likely to involve subscription payment or a network involvement in the marketing of services.

The Internet

Premium rate charging is growing on the Internet – a platform on which consumers have traditionally been reluctant to pay for content. As with conventional telephony, the adult (sex-industry) services were the first in introducing content charging. In the simplest of terms, premium rate charging is introduced when a consumer clicks an acceptance to download a “dialler” which temporarily replaces the regular ISP and re-connects to a site which charges a premium rate of up to £1.50 per minute for access. This charging will then appear on the consumer’s next phone bill, flagged as a premium rate service. The payment method is already being used on thousands of adult websites.

This is not, however, just an adult product. The majority of applicants to ICSTIS for permission to operate such services (72%) were non-adult, offering dating, charity donation, gaming and other entertainment, information and data-capture (voting!) services.

Premium rate revenue in 2001 from Internet likely to have accounted for considerably less total premium rate income. During that same however, Internet services accounted for more

ICSTIS handles over 50,000 calls annually about Internet services.

services is than 10% of period, than 50% of all

enquiries to ICSTIS’ free helpline. Not all calls are complaints. The evidence is that there is a low level of consumer consciousness of Internet charging – even by those who went through some logging-on process. We are not blind to the possibility that some users of adult sites developed selective amnesia when their phone bills arrived. Even so, polling by MORI for ICSTIS showed that only 4% of respondents (after prompting) could accept that premium rate charging was possible on the Internet.

I cannot be premium-charged – I am on Freeserve.”
A young techno-literate Mum at an ICSTIS Focus Group

ICSTIS’ rules seek to address the particular and unique characteristics of the Internet:

- The innocent but general assumption that Internet sites are free with no payments other than any ISP subscription.
- The potential for high bills caused by prolonged time online.
- Charging at a premium rate when the consumer has “surfed off” to a non-premium rate site while still on a high-charge “dialler”.
- The scope for children getting access, at high cost to parents, to very sexually explicit content.
- Diallers, which are intentionally programmed to confuse consumers (hiding the cost or the time spent online) or positively deceive them (by failing to disconnect, permanently replace the ISP dial-up, or locking and charging during access to a service).

Like mobile telephony, the Internet is open to high volume, no-cost spamming of premium rate and other offers of variable honesty. We have closed down services which have failed to offer any signing-on process to premium rate charging and which have instead started to run a premium dialler as soon as the recipient of an e-mail clicks to open the message. This mischief resulted in over 1,000 complaints to ICSTIS within a matter of weeks.

Many services terminating on UK premium rate numbers are hosted overseas. The jurisdiction provisions in the E-Commerce Directive potentially expose UK consumers to fraudulent deception and deeply offensive content hosted in EU countries with ineffective regulation. ICSTIS is looking at the consumer protection implications of potential deals between UK networks and networks in the EU and the US interested in number-swaps or other contractual arrangements which aim to allow UK consumers to charge to their phone bills the cost of access to a far greater volume of international content.

ICSTIS is speaking with networks and service providers about how they might seek to charge for content once broadband access is widespread and “always-on” access exists for a flat monthly subscription. Finally, ICSTIS is having to look at the consumer and child protection issues which arise when Internet content, including explicit material, can be accessed and charged for by means of a credit on a mobile telephone – something mobile networks and ISPs are already looking at in terms of revenue generation and access control technology.

Television

Voting and competition services are now widely used by broadcast companies. Over 16 million votes were cast in the last series of *Big Brother*, with about 8 the programme’s last and decisive night. Premium rate widely used in daytime television and in sports and television. It is fundamental to the economics of such as *Who Wants To Be A Millionaire?*, *Big Brother*, *Survivor* and other participation shows. It is made for interactivity.

Big Brother took 8 million votes worth about £1 million in one night.

million on charging is children’s programmes *Pop Idol*, audience

It is not surprising, therefore, to see premium rate charging being used increasingly on digital interactive services. Premium rate charges, for example, are used for those who wish to take part in a result-forecasting competition on many Sky Sports live broadcasts. Premium rate charging is also used for polling on news programmes. It is reported that the only two non-programme services used by more than 20% of subscribers are Electronic Programme Guides (EPGs) with 73% and game playing with 44%. Various forms of top-up/premium rate critical to BSkyB’s goal of an ARPU (average of £50/month).

Sky’s Playjam games service has 1.3m registered users, with over 10million minutes of premium rate charged playing time. BARB says the service/channel has higher viewer ratings than MTV.

charging appear revenue per unit)

Away from Sky a growing number of cable built, in large part, on premium rate revenue. The Box, MTV and other music channels. We new and prospective channels based on dating often involving existing premium rate new guise as ITC-licensed broadcasters. Premium rate charging on Teletext has been expanded with a live text-chat service.

channels are This is true of know of other and (text) chat “players” in a

The growing significance of premium rate charging is reflected in broadcaster interest in an ICSTIS Forum meeting to understand the rules and look at the further potential for non-statutory solutions to other issues.

Concept-based services, platform-switching and “broadcast boundary” issues

The descriptions above generally involve services similar in nature offered on different platforms. We are now seeing growth in multi-faceted concepts seeking to generate revenue on many different platforms, often, but not always, using premium rate charging at more than one point.

Two years ago *Big Brother* was a TV programme which picked up revenue from viewers voting using a conventional 090 premium rate number. Today it has conventional voting, reverse-path digital handset voting (but still on your phone bill), an Internet site with per view or subscription charging, a text message voting service and a text message update service in association with national newspaper groups and leading mobile phone networks.

In 2001, 20% of all *Big Brother* votes were digitally cast.

In a similar vein, *Who Wants To Be A Millionaire?* is now a game on mobile phones, on the Internet and on Playstations, as well as a top-10 rated programme charging those who compete to participate in the programme itself.

Pop Idol voting was offered on the Internet as well as by phone, as was charitable giving during the BBC's *Children in Need* appeal. Parallel mobile text messaging, ringtones and other promotions are becoming the norm. We are told that premium rate charging will be given royal approval shortly as the BBC plans to use this form of charging for a major ballot for places at the planned Golden Jubilee concerts at Buckingham Palace.

Will Young received more votes on *Pop Idol* on 9 February than the LibDems did at the 2001 General Election

Businesses see particular opportunities in bringing mobile telephony and broadcasting together. There is no reason why this concept should not be used more creatively, perhaps allowing a joined-up service where kids can text homework questions to a database on the way home and pick up answers when they go online when they get there... a live idea with at least one broadcaster.

Game playing is a proven success on interactive television. Closed-group gaming involving friends playing at home, on PCs, TVs or mobile phones, is being developed as a charged product.

Platform-switching describes services that bridge onto new platforms, again generally to monetise an activity. There is no technical barrier to ISPs introducing charging for Internet chat. This has not generally been the practice and ICSTIS has, to date, played a supportive but back-seat role in work led by the Home Office and Internet Watch Foundation on "Chat Dangers" largely thought to revolve around contact and the risk of child abuse. This requires effective collaboration between regulatory bodies, educationalists and others based on a clear understanding of the harms we are seeking to prevent.

The arrival of traditional services on new platforms should have the regulator re-assessing the appropriateness of existing controls. For example, the current ICSTIS Code of Practice states that premium rate telephone chat services cannot be targeted at children on economic and other grounds. However, kids are clearly a major part of the Internet chat and evolving "*txt-chat*" world. Do the economic issues simply "map across" or should the regulations change to allow kids to use such services but with different safeguards which are more focused on the content of conversations and the risks of contact with strangers?

Reversing the Internet example, service providers could want to offer premium rate group telephone chat to users of Internet chat rooms or groups. Text and e-mail communications between a mobile handset and a PC or digital television is already possible and will expand.

Broadcast boundaries may be clear to politicians and communications experts. They are less clear to consumers. It is by no means certain that consumers will recognise the new boundaries of responsibility proposed for Ofcom which seek to limit regulatory responsibility to “broadcast” content.

The Internet can be accessed via a digital television. Digital television coverage is as high as PC coverage at about 35%. At present, only about 5% of web-users online via a digital television, but the “telly” in the corner and in now offer an alternative way into full or “walled garden” Internet. Leading broadcasters are talking with the sex industry about the of offering branded and charged for “walled garden” sex services. Will consumers consider these a television company broadcast or Internet content?

*Cable Cos go
‘top-shelf!’*

currently go
the bedroom
content.
pros and cons

What then of programmes which are broadcast in recorded form but are available uncut through an Internet stream via a digital TV? What of video on demand – will consumers assume there are any regulatory requirements or safeguards relating to content on purchase contracts? Will they be able to go to an Ombudsman over the three-day absence of a phone line but not over any failure to deliver services bought online when payment is through their telephone bill? Much may depend on how much of a link – if any – there is between the phone or cable company and those providing services down those lines.

Might all this fluidity make existing laws foolish or inadequate – is it reasonable to purchase a video-stream of hardcore sexual content, view it on a digital TV and pay for it on your phone bill when the “softer” equivalent can only be bought in a licensed sex shop by a person over 18 if it is a “licensed video work”?

And how should consumer protection apply when all of the competition, chat, sex and other services described are available direct to mobile telephones with GPRS and 3G technology? Let us not kid ourselves that the market-leading applications will all be worthy ones helping us locate public libraries.

**It’s a glamorous
business!**

Hutchison 3G is famously reported to have appointed a “Glamour Manager” – a person responsible for bringing sex content to mobile subscribers. Attendees at an online commerce conference in Madrid were speculating about the potential of text messaging in “getting sex to the youth market”. Some, but not all, of this may be wrong but we must ask how much thought is going into the services, the safeguards and the nature of the content involved. Networks and service providers have a brand to protect but this has not, in the past, been a strong enough driver as it did not turn out to offer protection from rip-offs and ghastly content on telephone and Internet services.

We do not argue that regulation – least of all statutory regulation – be extended wholesale into the Internet or onto new products. What we do see from our own experiences is that consumers take time, and need help, in coming to anything like a proper understanding of what new technologies are capable of – good and bad.

Consumer issues

ICSTIS’ experiences, particularly our early exposure to new platforms and services bridging across platforms, have highlighted a number of issues:

Consumer knowledge is woefully behind product and service development. Consumers often simply do not understand how and when charges are being applied – see above re the 4% recognition of Internet diallers. Could this problem grow if Internet access is via digital TV – “if I see it

on my telly, it's Ofcom's fault"? Industry, regulatory bodies and Government should be seeking to build awareness.

Payment/pricing information has to be more clearly presented. In the premium rate world, Oftel and ICSTIS have pushed recognition of the 090 dialling code as a sign that a premium rate charge applies. Today that number is invisible when it is dialled unseen as a "return-path" digital TV purchase. It is in the background, at best, when you download an Internet dialler and it simply no longer exists when the charge is via a "reverse-billed SMS" where you text out 64789 FLIRT or some equivalent.

Billing mechanisms are increasingly important. Quarterly billing for landline telephony delays identification of problems leaving consumers less able to recall services bought months earlier. Itemisation is increasingly important when a bill carries a range of charges – telephony rental, conventional calls, premium rate and other special calls, cable or other subscriptions, and pay per view services. ICSTIS is worried over the adequacy of information and customer support services for mobile networks as bills expand in their variety of content.

On the other hand, we have pre-paid mobiles with no billing and customers unable to deal with the possibility they have been deceived and "ripped off".

In all of this **children are a particular consideration.** Years back children had no way of making direct purchases. Today they are the most significant users of mobile telephony – especially pre-paid mobiles, interactive TV and the Internet. They are technologically ahead of most parents but are no less exposed to personal harm and commercial exploitation – children may know how to get to inappropriate and costly content but do not necessarily have the maturity and awareness to know that this access is inappropriate and costly. In a broadband and GPRS world of "always-on" access, issues will come up over subscription services and how children access these.

The "first-movers" in new technologies can have a lasting impact. Often they are businesses looking for markets for products they are constrained from selling elsewhere – most obviously the sex industry. This was true of premium rate telephony and of Internet charging; it is true, in part, with interactive TV and seems true again of SMS. As mentioned, it's already part of the business model for 3G. The behaviour of first-movers and the regulatory response will have a significant impact on what follows. There are a host of products and services which could use micro-charging but mainstream players worry over the polluting effect of deceptive and offensive services.

Market entry costs and barriers are falling dramatically. Almost anyone can now be a broadcaster – although finding the channel may be more difficult! Contractual chains with different originating and terminating networks, resellers, gateway companies, service bureaux and information providers anywhere in the world increasingly separate broadcasters and networks from those providing services to, and possibly ripping off, their customers. To be effective, regulatory regimes need to "bite" at "critical control points" – places in the chain where action can be taken efficiently, effectively and at acceptable cost.

Service providers often need little more than a PC and mobile telephony link to market directly and at next to no cost to millions of PC/digital TV and mobile consumers.

Regulatory Issues and Structures

What does all this mean for regulation? We offer the following thoughts:

- **Content, rather than carriage, will grow in significance.** And while we worry, as perhaps only the British can, over the uplifting potential of public sector broadcasting, it is quite possible that regulators will be increasingly drawn into issues of negative content regulation of services – including broadcast services – accessed through a television set.
- **It will be less possible to ring-fence services and identify a single regulatory agency.** Telecommunications and broadcasting are no longer exclusively national products – UK consumers can access and pay for content worldwide. How we implement the E-Commerce Directive may affect our ability to manage this process when dealing with consumer deception and offensive or harmful material.
- **Consumers will be less certain where to go for help.** Ofcom, as proposed, sounds all-encompassing but, at the same time, the Government is rightly encouraging non-statutory solutions in terms of complaint-handling over broadcast content and dispute resolution (the Telecommunications Ombudsman), and has little responsibility for the rapidly growing volume of services bought by premium rate or, allegedly, from the Internet. Certain bodies, such as ICSTIS, need to receive complaints as soon as possible in order to deal swiftly with consumer harm; others dealing with dispute resolution will, reasonably enough, be telling consumers not to come to them until all other avenues have been exhausted.
- **Regulation needs to be more flexible and goal-based** in future. Regulation has to keep pace with or be able to accommodate technological development.
- **Regulation needs to be able to deal quickly with consumer harm** when this can happen overnight and countrywide. Regulatory action has to be effective if consumers are to try new concepts and businesses are to invest with confidence.
- **Regulators have to work more closely with business**, understanding new products and dealing with them in a proportionate way.
- **Regulators need effective systems for understanding and, wherever appropriate, reflecting consumer attitudes and needs.**
- **Non-statutory bodies may be better able to act in a number of areas.** Ofcom should be looking for opportunities to give meaning to the fine words about independent, co- and self-regulation.
- **Regulators need to work together more** – beyond Ofcom. Boundaries and responsibilities need to be agreed to avoid overlap, contradiction, double jeopardy and “regulatory black holes”. There has to be a consistent approach to negative content issues. Non-statutory bodies need to be properly engaged with Ofcom.
- **Communications regulation needs more extensive interfaces with consumer and business protection legislation** – intellectual property is an issue when music and logos can be downloaded as ringtones or for storage and use.
- **Non-statutory bodies need to be accountable and to be capable of meeting the tasks they take on.** Ofcom may need new mechanisms for assessing the adequacy of bodies offering non-statutory solutions.

- **The Government needs to have a more coherent policy on the Internet.** “Tier Zero” and reliance on a body focused on child pornography is a misrepresentation of the multitude of points at which Internet services are regulated (think of distance selling, e-commerce, data protection, intellectual property, defamation and other laws). Even putting these aside, Tier Zero might not be thought an adequate response to commercial and content issues involving children and adults.
- **Consumer education has to be less of an afterthought.** The commercialisation of communications has to be recognised and consumer protection given as much emphasis as issues of broadcast quality.

**George Kidd, ICSTIS
February 2002**

THE ICSTIS REGULATORY MODEL

ICSTIS is responsible for the regulation of premium rate information and entertainment services accessed and paid for by a premium rate charge to a telephone bill. Today they are also widely available on the Internet, on interactive television and on mobile telephones. ICSTIS' regulatory model has the following defining characteristics:

- **Independence** - no member of the ICSTIS Committee can be actively involved in the industry it regulates
- **Regulatory underpinning** - ICSTIS is a co-regulator in respect of live premium rate services underpinned by an Oftel Licence Condition on network operators requiring compliance with a Code and regulatory body approved by the Director General. This under-pinning is about to be extended to nearly all premium rate services
- **Universal support on a contractual basis** - all network companies terminating premium rate services (even those not subject to the requirement above) have agreed to support ICSTIS financially and in its enforcement work
- **A structured funding mechanism** - ICSTIS funding is equitable and is based on the volume of premium rate business conducted by each of the terminating networks who fund the organisation
- **Published Codes and Guidelines** - the ICSTIS Codes of Practice set meaningful requirements on premium rate service providers and spell out their entitlements under our enforcement regime. ICSTIS undertakes meaningful and wide-ranging consultations whenever it considers changes to its Codes of Practice, Guidelines or other policies which may impact upon its stakeholders
- **Meaningful sanctions** - ICSTIS can, in instances of perceived widespread consumer harm, take swift and effective action to suspend services from operating pending further investigation. ICSTIS also has the ability to warn, fine (fines up to £100,000 have been set in individual cases) and bar services where necessary to give consumer protection. Adjudications are published and made widely available
- **Research legal, media and policy capability** - ICSTIS has the resources to carry out research and policy work, manage media enquiries and ensure that its proposals are based in law
- **Sectoral expertise** - in our case ICSTIS has an expertise in regulating business and services offered nationally from single and sometimes "virtual" locations: something which Trading Standard department and others are less familiar with and, perhaps, less comfortable in doing
- **ISO Standard - enquiry, licensing and complaint-handling procedures** - we work to an ISO Handbook and are audited on a regular basis

- **Independent Adjudicator** - ICSTIS provides an Independent Adjudication service to members of the public who receive high telephone bills to Live premium rate services in situations where they claim unauthorised use of their telephone
- **Independent Appeals Body** - all ICSTIS decisions can be appealed to a separate independent body fully compliant with Human Rights Act requirements
- **Staff investment** - ICSTIS is IIP accredited and has a motivated and enthusiastic staff
- **International regulatory connections** - ICSTIS has built a network of contacts with European and other regulators of premium rate services. We have been instrumental in bringing UK content regulators together to work on issues of shared interest

ANNEX 2

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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Annex 3

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 that £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.

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ANNEX 4

ICSTIS Guideline No. 14 Consumer Credit 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.

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Consumer Credit Services: The Need For Prior Permission

ICSTIS, under paragraph 2.3.1 of the Code of Practice, has decided that consumer credit services, both recorded and live, will require prior permission before they can operate.

a) Definition of “consumer credit services”

For ICSTIS’ purposes, “consumer credit services” are defined as services which appear to ICSTIS to offer one or more of the following facilities:

1. consumer credit business
2. consumer hire business
3. credit brokerage
4. debt adjusting and debt counselling
5. credit repair services, giving advice on amending credit records including, for example, the removing of County Court Judgements

Services 1 to 5 correspond with business categories 'A' to 'D' on a Standard Consumer Credit Licence and are to be construed accordingly.

b) Services which are not included in the definition

Services which offer debt collecting or credit reference agency facilities (business categories 'E' and 'F' on a Standard Consumer Credit Licence) are not included in this definition. However, they will still require prior permission if they feature live conversation or operate at a higher tariff. Service providers should also note that the definition of a consumer credit service extends to services for sole traders and partnerships, but not to services exclusively for limited companies.

Advice To Applicants Wishing To Operate Consumer Credit Services

a) Consumer credit and consumer hire businesses

This Guideline sets out in detail how ICSTIS will treat applications for credit brokerage services. However, applicants wishing to operate other types of service for arranging loans or hire purchase agreements should note that their applications will be treated in a similar way.

b) Credit brokerage services

• **Concerns about loan brokerage services**

The Office of Fair Trading (OFT) advises that brokers may not claim that loans are guaranteed. The decision on whether or not a loan application is granted should rest with the lender and should be subject to a proper assessment of the borrower’s creditworthiness and ability to repay. The application may be rejected by the lender, or may be granted in terms other than those sought.

Under the Consumer Credit Act 1974, the borrower is entitled to a refund (less £5.00) of the fee paid to the credit broker if for any reason the borrower does not enter into a loan agreement within six months of an introduction to a source of credit. The Office of Fair Trading has made clear that refunds should be made promptly and without the borrower having to request this. The borrower may, under contract law, be entitled to a full refund if the broker fails to make an introduction at all, or otherwise fails to provide the services offered.

ICSTIS considers that similar principles should apply to the use of premium rate brokerage services, where the cost to the borrower extends beyond the fee paid directly to the credit broker. ICSTIS will therefore generally limit the cost to a caller who does not proceed to take out a loan within six months of the call (or who exercises his or her statutory right to cancel a loan agreement) to £5.00.

Other conditions of operation are likely to be imposed which are designed to give callers information about the service on offer and to dissuade the least creditworthy from calling the service. A list of these conditions is set out below, but other conditions may be imposed on a case-by-case basis.

Information Which Must Be Provided By The Applicant

In order to apply for prior permission to operate a credit brokerage service, the following information should be provided to support the application:

- **Consumer Credit Licence**

- A copy of the broker's Consumer Credit Licence must be provided, containing all necessary permissions to operate. The Licence must state the trading name of the broker.

- **Details of promotion**

- Sample promotional material must be provided. Promotions must comply with the promotional requirements set out below.
- The applicant must provide evidence that the advertisement complies with all relevant legislation and, where appropriate, with the Office of Fair Trading's Guidelines on Non-Status Lending. This could be provided by the applicant's local Trading Standards office, the Finance Industry Standards Association, or by any other third party recognised by ICSTIS as being competent to do this. Applicants should note that a fee might be charged for such a service.

- **Details of loans**

- Details of the proportion of callers predicted to proceed to take out a loan (the "acceptance rate") should be provided. Evidence substantiating this forecast must be subsequently provided.
- Details of the ranges of interest rates available must be provided, together with the 'typical' APR at or below which 50% or more of the business is expected to be provided.
- Details of the lenders with whom the broker expects to place business arising from the calls must be provided, together with evidence of the lenders' consent to the broker operating the premium rate service.

- **Script**

The script to be used by operators must be provided, including any forms to be filled out by operators.

- **Conditions of operation that are likely to be imposed**

- A £5.00 maximum cost for callers who do not proceed to take out loans within six months of the call, or who exercise their statutory right to cancel a loan agreement. A service provider might propose to achieve this by, for example:
 - limiting the cost of calls to £5.00, or
 - implementing a system of refunding callers who do not proceed to take out loans within six months of the call, or who exercise their statutory right to cancel a loan agreement. The refund should not be less than the amount by which the cost of the call to the caller has exceeded £5.00. Furthermore, ICSTIS would expect the availability of such refunds to be promoted both at the beginning of the service and in all promotional material, and it should not be necessary for callers to have to provide a copy of their telephone bill in order to obtain a refund, or
 - structuring the service so that sufficient information is obtained to determine whether or not a caller will proceed to take out a loan before the cost of the call reaches £5.00. However, a similar system to that

described above would need to be implemented for refunding callers who exercise their statutory right to cancel a loan agreement.

- The identity of the lenders with whom the loans have been placed should be identified and the APR given in each case.
 - A 15-minute maximum call duration.
 - If a number of telephone calls to the service are required, the paragraphs above shall refer to the cumulative cost to callers of the telephone calls.
 - Details of the acceptance rate and the number of offers of loans accepted by borrowers must be maintained, and provided to ICSTIS on request, together with substantiating documentation.
 - The promotional requirements (below).
- **Promotional requirements**
 - To avoid being in breach of paragraph 3.3.1 of the Code of Practice, service providers should ensure that:
 - Only one trading name should be used in relation to premium rate services.
 - The trading name should not be misleading.
 - Promotions should not be targeted at non-status borrowers (as defined in the Office of Fair Trading's Non-Status Lending Guidelines), or otherwise at people who have low or impaired credit ratings or who have already been refused loans.
 - Promotions should not suggest, either expressly or by implication, that loans are available regardless of a person's income or other financial circumstances, or their credit rating, or regardless of whether they have been refused a loan.
 - Callers should not be directed to the service from other brokers or lenders where the person has been refused a loan or has a low or impaired credit rating.
 - Promotional material must comply with anything required by law, and where appropriate, the Office of Fair Trading's Guidelines on Non-Status Lending, and must:
 - if an APR is shown, be accurate and representative of the business being advertised,
 - state the trading name of the broker (as it appears on the Consumer Credit Licence),
 - state the total maximum cost of the call in addition to the numeric cost per minute,
 - not contain a statement that loans are guaranteed,
 - not contain a statement emphasising the speed with which loans can be guaranteed,
 - if the service is live, state the full address of the service provider and hours of operation.

Below are examples of statements required in promotional material by law, or under the Office of Fair Trading's Guidelines on Non-Status Lending:

- If secured loans or mortgages are on offer, a prominent statement in the prescribed format that the borrower's home is at risk if they do not keep up repayments on a mortgage or other loan secured on it.
- A statement that written quotations are available on request.
- A statement that the APR is variable (if applicable).
- A statement that the credit broker is a credit broker.
- If the broker is acting for only one lender, the name of that lender.

c) Debt adjusting and debt counselling

Given the potential vulnerability of callers, debt adjusting and counselling services are unlikely to be granted prior permission unless the service provider is a member of a recognised industry self-regulatory body.

d) Credit repair services

Given the potential vulnerability of callers, so-called credit repair services are unlikely to be granted prior permission, although applications will be considered on a case-by-case basis. Any applicant wishing to operate a credit repair service will need to provide full and detailed information about their proposed methods for repairing credit records. ICSTIS will consult with the Registry Trust and other appropriate bodies about any such proposed method's efficacy.

e) Advice to applicants wishing to operate debt collection services

Service providers are strongly advised to seek the Secretariat's advice before setting up services relating to debt collecting. In any event, such services are likely to be in breach of the Code of Practice.

How To Contact ICSTIS

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ANNEX 5

ICSTIS Guideline No. 13 Fundraising And Charitable Promotions (Version 3: 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.

Promotional Material

Paragraph 5.8 of the Code of Practice sets out the requirements for fundraising and charitable promotions.

Service providers should ensure that the following information is clearly stated in the promotional material for such services:

- the name of the beneficiary,
- any restrictions attached to the contribution to be made to the beneficiary.

Where this information is stated, it is unlikely that a breach of paragraph 3.3.1 (misleading) of the Code of Practice will be raised.

Participation In The Service

ICSTIS recommends that no limit is placed on callers' contributions – should these contributions exceed projected targets, the additional amounts should be given to the beneficiary according to the same criteria used for contributions below that level. If additional amounts which might be accrued are not given to the beneficiary, a breach of paragraph 3.3.1 of the Code of Practice may be raised.

Substantiation Of Information

In accordance with paragraph 6.2.3 of the Code of Practice, ICSTIS may request substantiation of the benefit accruing to the beneficiary as a result of the promotion. This information should be made available on request.

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