

# **Intext Media (UK) Limited**

**Response to**

**A public consultation seeking comments on the draft**

## **11th Edition of the ICSTIS Code of Practice**

**23<sup>rd</sup> September 2005**

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**Please note**

Our response takes the form of replies to each consultation question on pages 2-5 and notes on the key points in the draft code on pages 6-11.

In our responses to the consultation questions we refer to our notes on the draft Code where relevant.

**Freedom of the Information Act**

As a general point, there are several places in the draft Code where ICSTIS pledges confidentiality. I think that ICSTIS should clarify whether and in what circumstance this can be guaranteed under the terms of the Freedom of the Information Act.

**Consultation Questions**

**Section 1: Question 1**

See comments on Paragraph 1.1.1 and 1.1.3 below.

I think the proposed definition of network operator is very unfriendly indeed. It requires knowledge of the Communications Act 2003 which means that the ICSTIS Code is not a stand-alone document defining the rules for running premium rate in the UK.

**Section 1: Question 2**

I think whether a company signs up to the AIT arrangements should remain a commercial decision for them. There are strong commercial reasons to sign up for this so they probably will but I believe this should be left to market forces rather than becoming a regulatory requirement.

**Section 1: Question 3**

See comments on Paragraph 1.1.1 and 1.1.3 below.

As stated above I would find it helpful to have a definition of network operator that did not require reference to a separate statute.

**Section 1: Question 4**

No opinion.

**Section 1: Question 5**

We welcome ICSTIS's attempt in the new draft to create controls and sanctions for network operators.

**Section 1: Question 6**

In theory, yes, we do believe that premium rate regulation should cease to apply to areas where the risk of consumer harm is relatively low. One way of achieving this is for ICSTIS to draw up a list of categories of services that could be exempted.

**Section 1: Question 7**

No opinion.

## Consultation Questions

### **Section 2: Question 1**

See our comments under Para 2.3.1 b below.

### **Section 2: Question 2**

We believe that your draft should achieve Recommendation 2 of the Ofcom Report.

### **Section 2: Question 4**

No opinion.

### **Section 2: Question 5**

No opinion (we are not a network operator).

### **Section 2: Question 6**

We are supportive of Paragraph 2.5.4 but refer you to our comments on Paragraph 2.3.3 below.

### **Section 2: Question 7**

No opinion.

### **Section 3: Question 1**

No opinion.

### **Section 3: Question 2**

More regular advice from ICSTIS on Code compliance would be helpful. An example would be that about ten months ago we had a caller who complained that our message "**Calls cost 60p from a BT landline; other networks may vary**" was misleading because they had a BT landline but used a carrier pre-select system and were in fact charged 99p for each call. In discussion with ICSTIS we started recommending that clients instead said "**Calls cost 60p with BT; other networks may vary**" but we have had mixed success in enforcing this as ICSTIS has never raised awareness of the problem. It would be helpful if ICSTIS were to send out a monthly email with tips and advice and store these on its website for reference.

### **Section 3: Question 3**

No opinion.

### **Section 3: Question 4**

In relation to this, please see our comments on Paragraph 3.2.7 below.

### **Section 3: Question 5**

No opinion.

### **Section 4: Question 1**

Please see our comments against 8.1.4 below.

## Consultation Questions

### **Section 5: Question 1**

No comment.

### **Section 5: Questions 2, 3, 4, 5**

No opinion.

### **Section 5: Question 7**

Putting all pricing requirements in one place seems logical.

### **Section 5: Question 8**

We believe that it would be impractical to try to enforce a ruling that a price message must be proximal to any promotions for a number as the decision would be subjective not objective. Consumers should be adequately protected by the provision that “[Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination](#)”. This should suffice.

A proximity ruling could also be inappropriate in the context of emerging technologies.

### **Section 5: Question 9**

Provided that the requirement for spoken pricing as well as written only applies where the maximum call cost can exceed £2, then I think the current provisions as drafted in 5.5.3 are fine.

### **Section 5: Question 10**

See notes on 5.6 below.

### **Section 5: Question 11**

No opinion.

### **Section 5: Questions 12, 13, 14**

No opinion.

### **Section 6: Questions 1, 2, 3, 4**

No opinion.

### **Section 7: Questions 1, 2, 3, 4, 5 6, 7, 8**

No opinion.

### **Section 8: Question 1**

Please see our comments against 8.1.4 below.

### **Section 8: Questions 2, 3, 4, 5, 6**

No opinion.

## Consultation Questions

### **Section 9: Question 1**

I believe the procedures to be fair, clear, adequate and proportionate.

### **Section 10: Question 1**

See comment below under Annex 2, Paragraph 8.

**Please also see notes on 8.6.6 e**

## Comments on the Draft 11<sup>th</sup> ICSTIS Code of Practice

### 1.1.1

The new definitions of premium rate and a premium rate service are hard for a non-lawyer to understand and require reading of the Communications Act 2003 which means that the ICSTIS Code is not a stand-alone document defining the rules for running premium rate in the UK. I cannot comment on the need to make reference to this statute but I would welcome a simple description of what is intended here in lay language. E.g. from my reading of this I think it includes 0870, 0871 and 0845 services. If the intention is to cover 090 but not these other tariffs then I think this should be stated.

### 1.1.3

The definition of network operator is likewise not clear to non-lawyers.

### 1.1.4

Ditto – the definition of a service provider.

### 1.1.5

Ditto – the definition of an information provider. The context of the definition should perhaps relate to or at least refer to 4.1 and 4.2 and perhaps also to 8.1.4. This does not make it clear whether it is voluntary that an information provider takes on this role or whether compulsory. Please see comments on 8.1.4.

We would like to see explicit confirmation of what category a reseller falls into. At the recent ICSTIS Workshop the view of our table was that resellers should be covered by the provisions applying to service providers.

### 1.1.17

Typo – should say “...comprising a combination of media” rather than “...comprised of...”  
i.e. “...**comprising** ~~comprised of~~ a combination of media”

### 1.2.3

Confidentiality – can ICSTIS promise this or is ICSTIS subject to the “Freedom of Information Act”? If ICSTIS cannot contract/promise to keep information confidential, this should be stated.

### 2.3.1 b

The requirement of network operators to “[obtain satisfactory evidence that the service provider is solvent and has sufficient resources to discharge its obligations under this Code](#)” may not be a reliable process. A service provider may in particular cease to be solvent if ICSTIS imposes a withhold on their payments...

## Comments on the Draft 11<sup>th</sup> ICSTIS Code of Practice

### 2.3.1 f & g

As a service provider I would find this particularly intrusive and would not welcome any investigations by a network operator as to our provisions. Please bear in mind that many network operators are also service providers and compete directly against us for business. It is one thing to require measures by contract (which is acceptable) but it is unacceptable to have a supplier - who is also a competitor - having an obligation under a regulator's code to investigate ones activities and administrative systems.

### 2.3.3

We believe that network operators should be able to choose to pay sooner than 30 days provided they are prepared to take on full responsibility for any subsequent fine. The amendment to the 10<sup>th</sup> Code and the wording here penalises responsible service providers. (We have already aired this view in the previous consultation).

### 2.5.2

I would like there to be some stipulation here that ICSTIS may only direct a network operator to take such stringent action if and only if ICSTIS has followed its due processes. This may seem obvious but the powers here are draconian and could or would put a service provider out of business and I think it should be made explicitly clear that ICSTIS cannot on a whim direct a network operator to carry out any of the actions covered ion (a) to (f).

### 3.1.2

It is clear from reading Annex 1 that network operators and not service providers fund ICSTIS. The amount may be determined by the volume of service provider business and a network operator may choose to adjust the commercial terms of its service provider in the light of its ICSTIS levy but it is clear that network operators are responsible for funding of ICSTIS.

**“Network operators** ~~service providers~~ **are responsible for funding ICSTIS in accordance with the funding provisions in Annex 1”.**

## Comments on the Draft 11<sup>th</sup> ICSTIS Code of Practice

### **3.2.7**

While we think this is a good idea we think you should make provision in the Code for the scenario where the service provider runs the service for a media client, who may or may not choose to be designated as an Information Provider, but where the client runs the customer service system and manages any refunds. In such circumstances it is often a contract requirement that the service provider does not enter into any discussions with members of the public but passes any enquiries from the public direct to the client for the client to handle. Indeed the chain of responsibility can be greater than this: consider an SP providing service for a TV production company client but where it has been agreed that the broadcaster provides the customer services function.

“Service providers must have in place customer service arrangements which must include a customer service telephone number (which must not itself be a premium rate service) in the UK and an effective mechanism for the consideration of claims for refunds and their payment where justified”. **“Where a service provider’s client or other third party provides such a service for a specific number or numbers, the service provider will be exempt from this provision in relation to such number or numbers.”**

### **5.5.1**

Because pricing is so problematic in a deregulated market I think it is only fair to service and information providers to make it clear that the benchmark for pricing is BT’s landline contract. I think the wording for 5.5.1 should therefore be:

**“5.5.1 The service provider must state clearly in all promotional material the likely BT landline charge for calls to each service. Therefore:...”**

#### **5.5.1 a**

Looking at this with fresh eyes I think it is unhelpful of ICSTIS to stipulate **“When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown”**. When is this “applicable”? How would a service provider know if it is applicable? I think this should probably be deleted so that 5.5.1 a would read:

**“prices must be expressed in the form of a 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.~~

## Comments on the Draft 11<sup>th</sup> ICSTIS Code of Practice

### **5.6**

Semantic point – this heading would more usefully state “Contact Information” rather than “Address Information”.

Contact details for radio and TV may not always be obvious but these media have more limited promotional space/opportunities compared with print media. I would therefore propose that the provision of a website that contains all the ICSTIS required details would be a good solution and that promoting the appropriate URL would meet this requirement.

Also please consider the scenario described under 3.2.7 above where a third party provides customer support.

We would recommend that 5.6 were augmented to read:

**“For any promotion the identity and contact details in the UK of either the service provider or information provider or other entity undertaking the customer services role where not otherwise obvious, must be clearly stated so that customers can contact them directly and without using premium rate services or otherwise having to incur unreasonable expense. For TV and radio it is acceptable to state the URL of a website that contains such contact information”.**

### **8.1.3**

Can ICSTIS be sure that it can enforce confidentiality provisions under the Freedom of Information Act? If not, what provisions are there for protecting commercially confidential information in the context of an investigation?

I would suggest also that 8.1.3 restricts ICSTIS to making “reasonable” requests?

## Comments on the Draft 11<sup>th</sup> ICSTIS Code of Practice

### **8.1.4**

Firstly it is not clear how an Information Provider volunteers to take on the responsibility of being the Information Provider. We have assumed that it is not ICSTIS's intention that Information Providers would be designated as such automatically (and perhaps without being aware of the fact).

The Code needs to describe how an Information Provider becomes appointed as such and what agreements must be in place.

Would the Information Provider then have to comply with the Code as if it were the service provider or would it only have to comply with certain aspects of the Code? We think this needs much more careful thought and planning.

If a service provider has to retain responsibility for compliance and/or payment for any sanction that has been imposed and has to comply with ICSTIS demands, in the scenario where the Information Provider defaults on sanctions, then it is imperative that ICSTIS keeps the service provider involved at every stage of the procedures. It would be unfair not to do so. Otherwise the service provider could find itself suddenly liable for breaches and fines without any advance warning or the ability to defend its position. I would suggest the addition of the following qualifying phrase at the end of 8.1.4:

"8.1.4 Throughout these procedures, ICSTIS will deal direct with service providers and network operators. ICSTIS will also deal with information providers in circumstances where the information provider:

- accepts responsibility for the service and/or its promotion,
- accepts that, in the event that a breach is established and a sanction and/or administrative charge is imposed, it will be responsible for compliance and/or payment,

and where the relevant service provider undertakes that, in the event that the information provider fails to comply with any sanction and/or make any payment due, the service provider will retain responsibility for compliance and/or payment in respect of any sanction and/or administrative charge that has been imposed and will comply on demand from ICSTIS without any entitlement to further process **provided that ICSTIS has involved the service provider throughout the investigation procedures**".

### **8.6.6 e**

Insert the word "reasonable" in last line:

If there is a retention remaining at the end of the three-month period, it must be used to discharge in whole or in part ICSTIS fines and/or administrative charges outstanding and payable by the service provider, and, if a retention remains thereafter, the network operator shall be entitled to deduct from the retention its **"reasonable"** costs and expenses arising from dealing with the refunds.

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### **9.2**

Grammar: delete “less” insert “fewer”

9.2 Oral hearings taking place under this Section shall be heard by a panel of no ~~less~~ **fewer** than two Board members, one of whom shall be appointed as the Chairman.

### **Annex 1, Paragraph 1.1**

As before, can ICSTIS be sure that it can enforce confidentiality provisions under the Freedom of Information Act?

### **Annex 2, Paragraph 8**

It seems wrong to me that the Appeals Tribunal could consider and act upon confidential information without necessarily disclosing the source of the information to an Appellant (whether ICSTIS, an Information Provider, a network operator or a service provider). If the information is admissible then all affected parties should know the nature of information which surely must include its provenance. Otherwise misleading information may not be challenged in an appropriate way.