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23 September 2005

ICSTIS PRS Code of Practice

**11th Edition Consultation
September 2005**

1. General

The NOC welcomes the opportunity to comment on the proposed 11th Edition of the ICSTIS Code of Practice for UK Premium Rate Services. It is clear from the tight timescales and delays that this document has involved considerable effort on the part of ICSTIS in an environment of considerable change, as reflected by the release of the Ofcom Memo of Understanding and the acceptance into the ICSTIS Committee/Board of representatives with considerable experience in the UK PRS Industry. NOC welcomes these developments as further evidence of ICSTIS's commitment to work closer with the industry it regulates.

The scale and timing of this review and the resultant problems in achieving a full consultation across our membership suggests the consultation process might itself benefit from a review. Given the developing closer relationship between ICSTIS and Industry we believe more use could be made of a 'pre consultation period' before documentation is formally issued and we would welcome discussions on this.

Overall, the Draft gives an impression of layering ever more administrative and financial overheads of costly bureaucracy upon an industry that depends upon its speed and adaptability in order to 'solve' the problem of the occasional offender. The Ofcom report and now the 11th Code Review are both perhaps missing the point that the PRS industry is fundamentally sound but needs to address the issue of the occasional serious offender. We do not consider it necessary to penalise and constrain the entire industry to achieve this and we believe the current feasibility studies for centralised database information can, if implemented successfully, offer the potential for quality due diligence information that can more effectively protect the industry and its customers in a pro-active manner.

We also feel the Draft does little to address the issue of a perceived lack of pro-active regulation and many of the proposed changes are in reaction to previous problems which have since been addressed.

The NOC would like to have seen more thought directed towards the potential for new problems resulting from new technologies e.g. GPRS and WAP and used to access premium content via Mobile Networks. The Draft appears to be almost entirely devoted to traditional fixed line access for termination of PRS. This serves to highlight another perception of there being two codes of practice for the Premium



Rate Industry, one managed by ICSTIS and the other managed by the Mobile Network Operators.

As a point of administration it is very difficult to compare the previous Code issue with the Draft and some form of colouring or highlighting of proposed changes would have been most useful. We believe there would also be benefit from a final industry discussion on ICSTIS's interpretations and decisions regarding the final Code before its publication.

As a final thought, perhaps an opportunity to simplify the content and presentation of the Code has also been missed on this occasion.

2. Section 1 – Definitions

While we fully understand the rationale behind the attempt to tighten the definition of Network Operator (for the benefit of the Code) there is concern that ICSTIS is straying into statutory territory and in a way that may restrict entry for new players and thereby reduce competition. We are sure this is not the intent, but as written, it is a likely outcome.

NOC Members would also wish to be assured that any information passed to ICSTIS by Network Operators would be regarded and treated as confidential and commercially sensitive and subject to clearly understood restrictions on usage. It is likely that we would press for a signed undertaking from ICSTIS in this respect, which would include commercial liability for proven misuse of such information. The accepted requirement for Network Operators to undertake proper due diligence will be greatly assisted if the NOC proposal for a Service Provider Registration scheme is adopted together with improved access to computer based information. The fundamental issue of how companies become Network Operators and the mandatory requirements needed to preserve confidence in the process is of course an item for Ofcom.

2.1 Section 1 Question 1

What are your views on our proposed definition of NOs? Do you believe that our proposal is workable and will help ensure that only those companies that can fulfil the obligations of a network can be considered a network for the purposes of our Code?

In order to qualify as a Network Operator for the purpose of the COP, and be qualified to offer PRS, the applicant would apparently need to satisfy Condition 11 of the General Conditions of Entitlement as issued by Ofcom, including demonstrating turnover of £40m according to the Draft.

Entrepreneurs will not be able to satisfy this during start-up. What are the implications of this? Will a company be entitled to offer public switched telephony services but be prohibited from PRS below this threshold?

We understand (following a recent meeting with ICSTIS) that this is certainly not the intent but it is the likely outcome as drafted.

The NOC believes that the definition of a Network Operator must be entirely consistent with the Communications Act 2003. We do not wish to see smaller companies prevented from obtaining their own number ranges from Ofcom and prevented from competing with larger, more established, 'traditional' Network Operators.



2.2 Section 1 Question 2

We have stopped short of including a requirement for NOs to become signatories to Artificial Inflation of Traffic (AIT) arrangements. What are your views on ICSTIS requiring AIT arrangements in the Code?

Ofcom has statutory powers over Network Operators and ICSTIS should not assume or be granted any authority to apply signatory requirements to Networks. The authority of ICSTIS should be limited to reporting infringements to Ofcom.

2.3 Section 1 Question 3

What comments do you have on whether there are any other ways for ICSTIS to define a NO for the purposes of the Code?

NOC would suggest that the definition of a Network Operator should be service based and along the lines of 'anyone allocated numbers by Ofcom for the purpose of providing Public Switched Telephony Services'. We would not wish to see ICSTIS involved in the granting of 'permission' to operate as a Network Operator.

2.4 Section 1 Question 4

What views do you hold on whether, through both the definition of a service provider and the new proposed definition of a network operator, we have managed to ensure that a company in the value chain can be easily identified?

The position of the NOC and its Members is clear. We believe a full and formal registration scheme for Service Providers linked to a central database and administered by ICSTIS is a more effective way to provide the required information. The current Draft proposals fall short of what is required to ensure a company in the value chain can be readily identified.

2.5 Paragraph 1.3 – Scope of the Code

NOC believes the format of the Code should evolve to be less prescriptive and hence less complex. In principle the basic requirements for services should be clearly stated (legal, no deception, no misleading and no exploitation of Minors or vulnerable members of the community) – generally satisfying the published NOC ethical requirements for PRS, together with our belief that customers should enjoy freedom of choice in a fully informed environment. Anything else should be in the form of supportive Guidelines.

ICSTIS' reference to their perceived levels of public, media and political unrest and adverse attention regarding PRS is a timely reminder that the regulator shares a responsibility to portray PRS in a positive manner and not to allow the very small minority of irresponsible or unlawful scams to tar the entire industry. This is a sensitive issue since we were uncomfortably aware during 2004 that ICSTIS was vulnerable to accusations of exaggerating the scale of the dialler problem as a defence against critics of ICSTIS' performance.

NOC is also uncomfortable with the fact that regulatory constraints applied after the event merely penalise the honest majority while the offenders have inevitably moved on.

We agree with the comments regarding accelerating technology, which is why we have previously recommended that regulation definitions should focus on service rather than technology.



There is at least one area in the Code (Section 1.5.2) where ICSTIS expresses the right to change the Code without consultation. NOC believes as a matter of principle that this is wrong and that any change must be subject to Consultation with the PRS Industry.

We do not believe the Industry would wish to see a regulator taking arbitrary decisions without due consultation since this could generate a serious lack of confidence and other unwelcome accusations. Any proposed changes must be subject to consultation with the Industry.

There will inevitably be occasions where a 'fast track' approach may be required but this can be achieved through the proposed Industry Committee/Forum where the commercial realities of the proposals can be realised and aired openly.

2.6 Section 1 Question 5

What comments do you have on the scope and application of the PRS regulatory regime?

Regarding the scope and application of the PRS Regulatory regime we would not wish to see ICSTIS assuming powers, as in Network Operator definition, that duplicate the statutory role of Ofcom.

We are also convinced that it is absolutely essential that ICSTIS work closely with the PRS Industry and we are pleased to see evidence of this with more formal and informal contacts coupled with the significant step of including industry experts in the ICSTIS Committee/Board.

The current annual budget of £4 million to operate ICSTIS is significant and we are pleased that ICSTIS have accepted the need to seek improved performance and for giving value for money to the Industry by accepting the Ofcom Memo of Understanding.

2.7 Section 1 Question 6

Do you consider that PRS regulations should formally cease to apply in areas where the risk of consumer harm appears to be relatively low? If so, how could we identify and differentiate those areas within the context of broad definition of PRS?

We prefer to see regulation applied consistently, fairly and transparently across all PRS. We cannot see how this would be achieved where subjective decisions were required on the degree of risk of consumer harm across various services or operators. However, it is apparent there are some areas where the risk of consumer harm is relatively low and we would welcome de-regulation in such areas.

2.8 Section 1 Question 7

Can you comment on whether existing PRS regulations are applied proportionately, with more intrusive measures sufficiently focussed on higher risk activities or providers?

There is a belief among NOC Members that regulations are not applied proportionately and that there would be benefit from the introduction of a tariff schedule listing offences and the range of applicable fines and penalties for repeat offences etc. The publication of a transparent tariff schedule for offences could well serve as a deterrent to potential offenders.



It is also an unfortunate fact that the retrospective nature of current regulation, delayed by the lengthy adjudication process, often impacts and constrains only the vast majority of responsible operators long after the offenders have departed.

3. Section 2 – Administrative Provisions (Network Operators)

While we understand the rationale behind the proposed changes regarding NOs we are concerned that they should not deter entrepreneurs from entering the business. We also regard the ever expanding appetite of ICSTIS for information and evidence from Networks to be bureaucratic, costly and an increasing impediment to business. Clearly ICSTIS needs access to the appropriate information in a timely manner in order to effectively address a Code violation but it should not be necessary for ICSTIS to duplicate information already held by Networks in order to achieve this and it should be possible to access such common information from a central database source.

Much of the information required would be more readily available from a formal registration scheme as proposed by NOC.

3.1 Section 2 Question 1

Can you see any issues or problems with NOs being able to provide ICSTIS with the requisite information on whether they meet the criteria to be recognised as an NO for the purposes of the Code? Please specify any other information you feel should be required.

See comments under Section 1 Question 1.

3.2 Section 2 Question 2

Can you comment on whether or not we have successfully ensured that recommendation 2 of the Ofcom report (which states that NOs must provide ICSTIS with information on the identity of their SPs etc) has been transposed adequately in the draft provision?

The requirement for possibly commercially sensitive information from Networks in the form of details on Service Providers is looking expensive, unnecessary and extremely bureaucratic. It is an established fact that the vast majority of Network/ SP relationships cause no problems at all and this requirement for detail burdens the entire industry with costly overhead in order to address the problems created by the few.

We would prefer a more constructive approach and we urge that the NOC proposal for a Service Provider Registration scheme be pursued as the base component of a central source of information which could readily be accessed by ICSTIS and avoid the costly duplication of records and effort.

To satisfy Recommendation 2 of the Ofcom report it should only be necessary for Networks to supply detailed information in the event of a Code breach. It is the responsibility of the Network to carry out due diligence and it should not be necessary for ICSTIS to duplicate this process.

3.3 Section 2 Question 4 (no question 3)

Can you provide comments on whether, from an enforcement perspective, there is justification for going beyond Ofcom's recommendation 3 relating to number porting?



We agree with the premise that ICSTIS should ideally be aware of the 'ownership' of all active PRS numbers to allow effective enforcement but this will readily be achieved using the proposed central database, possibly enhanced by the NOC proposed SP Registration scheme. ICSTIS actually only need this information when a Code violation is identified and this view is supported by the Ofcom qualifier 'when directed to do so' in their recommendation 3.

There can be no justification for ICSTIS incurring the cost of maintaining an entire, separate and duplicate record of number allocation. These records are already maintained by and available from Ofcom and additionally by BT in order to manage the Routing Plan across its network as part of its Universal Service Obligation.

3.4 Section 2 Question 5

Can you provide comments on whether there are any practical issues or hurdles you can see in relation to number porting that need to be specifically addressed?

NOC can see no justification for ICSTIS to go beyond Recommendation 3 of the Ofcom Report as this would potentially interfere with the operation of the number portability process. ICSTIS only need access to such information when a Code violation has occurred.

3.5 Section 2 Question 6

Do you believe that the proposed provision on network responsibility for shortfalls in fines etc. is clear in its application, effectiveness and proportionality? If not, why not?

While we agree in principle with the provision it is important that it be related only to funds retained by the Network Operator, particularly given the likely increase in maximum fine to £250,000.

3.6 Section 2 Question 7

Can you provide comments on ways in which we might amend or supplement the proposed text on network non-compliance to ensure that our approach meets the key principles of transparency, proportionality and consistency?

ICSTIS' powers regarding Networks should be limited to referrals to Ofcom in the event that Code requirements have not been satisfied.

4. Section 3 – Administrative Provisions (Service Providers)

It is noted that in Draft Code section 3.2.1 the previous requirement for a Service Provider to 'notify' ICSTIS before providing PRS has been amended to a requirement to 'register' using a registration form. This appears to support the NOC proposal for a SP Registration Scheme which could be either contracted out and overseen by ICSTIS or operated as a separate cost centre within ICSTIS to ensure proper management. If so we certainly consider this to be a step in the right direction. NOC would not wish to see ICSTIS attempt the role of 'approving' Service Providers since this is clearly the mandate of the Network Operator through due diligence but anything that ICSTIS can do to aid the NOs in this regard would be welcome and any improvement in the availability of quality due diligence information would also be welcomed.



4.1 Section 3 Question 1

What are your views on how useful you feel the format of ‘help notes’ will be and, in particular, do you have any comments on how to make them more useful to you?

NOC has long been an advocate of the use of Help Notes (Guidelines) in preference to an ever expanding prescriptive Code of Practice. They are flexible, informative and can be amended to stay abreast of market developments without the need for lengthy and costly consultations.

4.2 Section 3 Question 2

What alternatives should we consider in providing the premium rate industry with regular guidance on how to operate premium rate services? For example, would more regular statements on how to comply with the Code provisions be useful?

We believe it would be useful and informative if ICSTIS were able to occasionally publish typical case studies which could highlight common problems. NOC Members would also find it useful if advice could be made freely available on advertising copy, with the advice available within one working day. An online copy advice facility would facilitate an even faster turnaround.

4.3 Section 3 Question 3

How might ICSTIS help industry groups develop their own notes on Code compliance?

Rather than help industry develop their own notes (in what would probably lead to a fragmented approach) it would be more useful if ICSTIS worked closely with the PRS Industry to develop common notes.

4.4 Section 3 Question 4

What are your views on the extent to which you believe the draft provision relating to the requirement for SPs to have in place customer service arrangements reflects the requirements set out in Recommendation 9 of the Ofcom report?

The Ofcom recommendation does not specify that customer service arrangements have to be supplied by the SP. The Code Draft implies that the facilities are the responsibility of the SP but it is possible that Networks may take on the responsibility in some cases.

The administration of Service Providers is an area best left to contractual arrangements between Networks and SPs with Networks accepting responsibility for the relationship and service standards.

While it is acceptable for minimum standards to be listed in the Code it is not within the mandate, or capacity, of ICSTIS to manage this.

4.5 Section 3 Question 5

How useful do you believe it would be to have a specific help note setting out examples of application in addition to the Code provision relating to customer service arrangements?



See previous comments on help notes. Any readily available up to date information which aids the provision of services is welcomed.

5. Section 4 – Information Providers

It should not be necessary for ICSTIS to become involved in any way at Information Provider level. Where Service Providers acquire their base services and components should be of no consequence to ICSTIS and the Code only applies when services are taken to market by a Service Provider.

5.1 Section 4 Question 1

What comments do you have on whether having provisions requiring IPs to comply with the Code are useful, practicable and workable?

If this item is intended to address the problems related to resellers then we would prefer further discussions. It is possible that a formal registration scheme would aid the flow of information and responsibilities to Information Providers.

6. Section 5 – General Provisions Applicable to all PRS Service Providers

The overriding provision for any PRS is that it should be legal and it should not be necessary to establish, and administer, separate content standards for the PRS industry.

NOC believes all PRS should be measured against the right of customers to enjoy freedom of choice in a fully informed environment. We note that the ICSTIS Code makes no reference to any such requirement.

The NOC lists its ethical requirements of members as follows:

- *Members shall maintain fair and professional business practice towards peers and customers at all times.*
- *All services offered by members to customers shall be lawful and freely provide service information in a manner that promotes and preserves the principle of freedom of choice for customers in a fully informed environment.*
- *Members shall not mislead or seek to deceive customers regarding advertising, content, operation or billing of services.*
- *Members shall take all reasonable steps to ensure the protection of minors from exploitation in any manner including exposure to inappropriate service content.*

It should not require 53 pages of Code to achieve this and, in a more inclusive environment, Industry and ICSTIS should co-operate to achieve a more simple, pragmatic and effective Code of Practice at a reasonable price.

6.1 Section 5 Question 1

Do you have views on whether the proposed amendments to the harm and offence provisions are appropriate and will allow services to be judged more easily against generally accepted standards in society? Alternatively, please let us have any alternate wording that you believe we should consider in regard to the harm and offence provisions.



Harm and Offence are preferable benchmarks over Decency and Honesty and much of this subject would probably fall within the scope of the Obscene Publications Act.

6.2 Section 5 Question 2

Do you have any views as to whether you believe the additional protection of requiring the use of age verification for Internet services is necessary?

To our knowledge there are no viable systems available to adequately provide Age Verification at this time so it is not sensible to pursue this route. ICRA Rating, clear labelling and parental control are the only realistic options currently available.

6.3 Section 5 Question 3

Do you have any comments on its practicability and any effects its introduction may have on premium rate service providers?

Because of the recognised impracticability of operating Age Verification over the Internet any unsuccessful attempt, no matter how well meant, would be likely to cause serious damage to many legitimate businesses.

6.4 Section 5 Question 4

Can you offer any views on what you would consider constitute a 'robust' system of age verification for Internet services?

Such a system is not available at this time.

6.5 Section 5 Question 5

Are there other practical and proportionate measures ICSTIS could take specifically in relation to preventing inappropriate access by minors to adult Internet services?

Minors using the Internet to access inappropriate material is not an area within the mandate of ICSTIS. This is an appropriate time to emphasise that there can be no substitution for parental supervision and perhaps education of parents should be high on the list.

6.6 Section 5 Question 7 (no question 6)

Can you comment on whether you believe that listing all the requirements for pricing in one place in the Code is logical and will make finding relevant information easier for service providers?

Anything that makes the Code easier to understand is welcomed. We would also like to see ICSTIS apply the same rules of pricing transparency to Mobile Networks as those applied to Fixed Line Networks.

6.7 Section 5 Question 8

Do you have any comments on whether the inclusion of a pricing proximity requirement in the Code would be practical, enforceable and future proof? Would you consider that a pricing proximity provision would be more effective as a series of prescriptive Code provisions or a generic Code provision supported by help notes?



Only Help Notes can be considered future proof due to their flexibility and Help Notes are the most effective method of communicating this requirement.

6.8 Section 5 Question 9

Do you have views on whether you believe that pricing information should be spoken as well as displayed for television advertising? Do you believe there are alternative ways to provide pricing information to consumers in television promotions which we should explore?

Clearly the spoken word in addition to display is more informative to consumers but obviously this would be unnecessary for small tariffs. Perhaps for charges over an agreed amount (£10?) the two should be used.

6.9 Section 5 Question 10

Do you have any views on whether setting out the general principle of providing address information is better than being prescriptive as we currently are in the Code?

We prefer general principles over prescriptive.

6.10 Section 5 Question 11

Do you have views on the inclusion of a 'buy one get one free' type provision in the Code and do you consider there to be any inherent risks in adopting such a provision which could lead to a greater degree of consumer harm?

Provided the offer is legal, not deceptive, not misleading and is not exploiting minors or the vulnerable then it should not constitute a problem and should not require any additional regulatory effort. BOGOF is a recognised selling and marketing tool across all retail industries in the UK.

6.11 Section 5 Question 12

Can you offer views on whether it is right and necessary to more carefully define what constitutes a children's service? How could this be done?

It should not be necessary to separately define what constitutes a 'children's service'. The Code could adequately protect them through a statement that requires Service Operators to take all reasonable steps to prevent Minors from having access to inappropriate content. It would be for ICSTIS to take a view on what constituted 'inappropriate content' or content likely to cause harm and offence. By trying to be too prescriptive the Code runs the recognised risk of becoming rapidly out of date.

6.12 Section 5 Question 13

Do you have any views on whether the maximum call costs for children's services should remain at £3 or whether it should be varied?

The discussion in the Draft seeks to link the tariff to disposable pocket money available to Minors. Minors do not pay the telephone bills and it would be more sensible to consider these services as any other PRS and not to maintain another category of regulation.



If we have a definition of children's services then perhaps the maximum tariff could regularly be adjusted in line with inflation.

6.13 Section 5 Question 14

What guiding principles do you believe might reasonably be applied if we were to consider an increase to the maximum tariff for children's services and what additional safeguards should be considered in protecting children?

The comments under 6.12 apply. Use of a telephone to access PRS demands that the owner of the telephone service apply sensible supervision and constraints as to its use – the owner is responsible.

What is required is that end users are properly educated in the responsible use of PRS.

7. Section 6 – Provisions Relating Specifically to Live Services

We can see no reason why live services should be treated any differently to any other PRS so long as customers are fully informed on the nature and cost of the service and have the freedom to choose.

7.1 Section 6 Question 1

Do you have any comments or views on our approach in relation to regulating live services?

Of the options presented we prefer option 3 – 'retain the prior permission requirement for all live services, subject to a published list of specified exceptions, e.g. technical support etc.'

7.2 Section 6 Question 2

Are there alternative options that we could consider in reducing the level of regulatory burden in this area while maintaining adequate levels of consumer protection?

The regulatory burden would be considerably diminished if 'live' services were treated as regular PRS.

It would also be useful if the time to obtain service approval was reduced. Members report a typical turnaround time of the order of 3 months and, particularly in a competitive industry, this is too long. It can effectively penalise the responsible provider and encourage the less responsible to seek market advantage by attempting to ignore the approvals process.

7.3 Section 6 Question 3

Do you have any views on whether you consider the draft provisions more clearly set out the regulations governing claims for compensation?

This is an area which requires more detailed discussion. It is illogical that a Service Provider should be held responsible for compensation payments in the event that a service is accessed via unauthorised use of a telephone service.



The Service Provider has no control over the unauthorised origination of a call and this is a matter between the customer and his Network Operator and is not within the remit of ICSTIS.

Strictly speaking unauthorised use amounts to theft and this is adequately addressed by existing law.

Any issues arising between the customer and the Network Operator can be referred to the appropriate ombudsman and ICSTIS should not be duplicating this role.

7.4 Section 6 Question 4

Do you consider the use of a help note in relation to these provisions is better suited than detailed Code provisions in providing examples of how the claims for compensation work in practice? If not, what could you recommend that might better achieve this aim?

As a matter of policy NOC prefers the Help or Guideline route, in association with a basic code of practice, over prescriptive regulation.

8. Section 7 – Additional Provisions relating to Specific Categories of Service (SPs)

This Section contains considerable detail regarding differing types of PRS and comprises no less than eight pages of constraints on how services may or may not be operated. This

should not be the domain of ICSTIS.

The primary requirement of any service is that it should be legal and some areas, competitions for one, are subject to published legal restrictions. It cannot be ICSTIS's role to layer even more restrictions upon a service nor to invent others that apply only to the PRS variant.

8.1 Section 7 Question 1

Can you offer your opinion as to whether you are content with the inclusion of the betting tipster provisions in the Code?

Following from the previous comments it is not within the remit of ICSTIS to administer on how Betting Tipster services should operate. They should, as any other PRS, be legal, not mislead, not deceive and not inappropriately exploit minors or the vulnerable.

8.2 Section 7 Question 2

What views do you hold on our proposals in relation to chat, contact and dating services?

As with other examples the detail related to chat, contact and dating services is intrusive and overly prescriptive. We believe freedom of choice applies as much to the right to select a service as it does to the right to leave it.

8.3 Section 7 Question 3

What views do you hold on whether the proposed provisions are adequate to prevent use of adult chat by younger children?

Preventing the use of adult chat by younger children is a societal issue and not to be addressed solely by ICSTIS. It is a very important social issue that has to be



addressed by parents and by the PRS industry and ICSTIS as an integrated and responsible group, although the primary responsibility for the welfare of minors lies with the parents.

8.4 Section 7 Question 4

Do you have any views on the appropriateness of having specific provisions relating to service providers' responsibility for paying reasonable and valid claims for refunds for chat, contact and dating services given that there is a general duty on service providers to consider claims for compensation for all services?

There will be a wide range of circumstances where Service Providers will give consideration to offering refunds to customers and, quite likely, claims of unauthorised use (due to theft or inadequate supervision) will not be seen as a priority item.

The vast majority of Service Providers are sympathetic to genuine claims for refunds and their records ensure that the same excuse normally only works once.

This is a commercial environment where Service Providers want good relationships with their customers and will act accordingly. It is not an area that needs interference from ICSTIS, well intentioned though it may be, and it should be remembered that there are also customers that abuse Service Providers.

8.5 Section 7 Question 5

Do you have any views on whether you believe that the proposed divisions clearly set out the regulations applicable to DQ services and are proportionate and appropriate?

We assume they must be as we are not aware of any disproportionate balance of complaints towards DQ Services.

8.6 Section 7 Question 5 (second question 5)

What are your views on our approach to pay for product services? Do you believe that the approach will increase clarity? If not, why not? Are there other alternative options you believe we should consider in clarifying the regulations in respect of pay for product services?

There appears to be no purpose in analysing the precise type of service delivered and we wonder whether this should be of any regulatory concern since, as ICSTIS does mention, these services are required to conform to Distance Selling Regulations.

8.7 Section 7 Question 6

Do you have views on whether you consider our approach in respect of the maximum cost for non-live sexual entertainment services fair, proportionate and necessary?

As NOC has mentioned in other submissions the use of the term 'sexual' is not appropriate in the context of PRS and 'erotic' would be a more sensible option since there are many services of a sexual nature which would not fall into the erotic category.

While the £20 limit is a welcome improvement there is something fundamentally wrong with a Regulator preventing customers from spending money on services of



their choice and the issue should perhaps be whether customers are sufficiently well informed to make a responsible choice?

8.8 Section 7 Question 7

What are your views on whether you believe the draft provisions for subscription services will adequately safeguard consumers while, at the same time, allow service providers to continue providing a variety of subscription services?

Again, we have a situation where the issue is whether or not customers have sufficient information to make an informed choice (both to join or to leave a service) coupled with the requirements for eliminating deception etc.

The detail, which is intrusive in the Code, could more usefully and flexibly be the subject of associated Guidelines.

8.9 Section 7 Question 8

Are there other alternative options you believe we should consider in clarifying the regulations in respect of subscription services?

We were not party to any 'extensive pre-consultative discussions which were undertaken with 'stakeholders'' but we are surprised that these 'stakeholders' supported an even more prescriptive approach to that currently employed. Industry is fully aware of the past and potential problems linked with subscription services and ICSTIS should remain informed of developments through regular industry contact.

9. Section 8 – Procedures and Sanctions

NOC Members wish to see an effective regulator equipped and prepared to take timely action to protect both customers and the PRS industry. We believe this will best be achieved in a co-regulatory environment with industry and we are pleased that we appear to be moving in this direction.

9.1 Section 8 Question 1

Could you comment on whether you agree with the proposed model to deal with IPs? Do you consider that it is a working alternative? We welcome comments on whether you can see any other ways in which we can deal with IPs directly.

It should not be necessary for ICSTIS to deal with IPs and this subject requires more and informed discussion with Industry representatives who are very close to this issue.

9.2 Section 8 Question 2

What are your views on the Secretariat being able to invoke the Emergency Procedure in cases that exhibit similar characteristics?

While we support the principle of enabling the Secretariat to be authorised to act quickly to prevent consumer and industry harm we temper this with the realisation that a legitimate business may be at stake. As a first step, and to build confidence, one Board member should be involved in the decision. This need not provoke significant delay.



We also believe that ICSTIS' case officers must have sufficient experience and training to be able to advise and recommend on Emergency Procedure invocation. We currently have examples of Emergency Procedures being issued 3 months after the services have been shut down.

9.3 Section 8 Question 3

Do you have any views on the timescales required for service providers and the Secretariat to be increased?

Timescales for Service Providers to respond on EP and the consequential increase for the Secretariat is acceptable.

9.4 Section 8 Question 4

What are your views on whether we have successfully incorporated the requirements of recommendation 8 relating to refunds in the Code?

The subject of refunds and compensation is a complex one which would benefit from more discussion.

9.5 Section 8 Question 5

Can you provide us with your view on whether you believe that the procedures as set out in the draft provisions in relation to Reviews are clear?

The intent to make more use of Reviews is welcomed and encouraged.

9.6 Section 8 Question 6

What are your views on whether the Chairman of the Hearing should be able to convene a conference for the purpose of providing Directions?

Any improvement to process which might aid a fair and speedy conclusion is supported.

10. Section 9 – Procedures Concerning Network Operators

While we accept the necessity of ICSTIS having the power to ensure the proper co-operation of Network Operators their regulation is a statutory affair through Ofcom and we believe it should remain so.

11. Section 9 Question 1

What comments do you have on whether you believe the procedures as set out in the draft provisions relating to NOs non-compliance are fair, clear, adequate and proportionate?

ICSTIS should not have the powers to impose sanctions directly upon Network Operators and ICSTIS redress in the event of non-compliance should be via referral to Ofcom.

12. Section 10 – Appeals

Nothing to add.



13. Section 10 Question 1

What are your views on whether the proposed amendment relating to the appeals procedures better reflects the purpose of the IAB and the modern public law of England and Wales?

Nothing to add.

14. Closure

Once again we are grateful for the opportunity to offer comments on behalf of our Members who, between them, constitute of the order of 70% of PRS turnover in the United Kingdom. The NOC will continue to work with DTI, Ofcom and ICSTIS in the pursuit of fair, proportionate and effective regulation in addition to providing direct expert assistance for more serious issues.

NOC appreciates the considerable effort that has gone into this Review but we feel that an opportunity has been missed to move towards a simplified Code document. For (or even before) the next Review we would recommend that:

- *The Code be re-written in a greatly simplified form with more use made of Help Notes and,*
- *A Code summary be produced clearly showing the key requirements for Service Providers in an easily understood format. It would be useful if the summary listed any variations between the ICSTIS and Mobile Codes.*

We would also make the following additional observations:

- *The Code would benefit from inclusion in the preface, which outlines the PRS regulatory environment, of reference to the Ofcom MOU, the agreed Key Performance Indicators and the fact that regulation takes place in close co-operation with the PRS Industry.*
- *The ICSTIS Mission Statement should be re-visited and benefit from Industry input.*
- *For any future Reviews or Amendments ICSTIS should make more use of pre-drafting contacts with Industry. This should greatly simplify and shorten the formal Consultation stage.*
- *Given recent and continuing changes to the UK Postal Service the presumption in the Code of delivery by the next working day needs reviewing.*
- *Information obtained by ICSTIS for the purpose of funding (Annex 1) should be transparently available to Ofcom and not subject to ICSTIS' veto. ICSTIS is accountable to Ofcom.*
- *The timetable for annual budgetary and forecasting procedures should be fixed by Ofcom as the approving party and not left to the discretion of ICSTIS. It is essential that stakeholders have sufficient time to properly consider the proposals and comment accordingly.*
- *We would like to see commonality across the regulation of fixed and mobile services and particularly in the areas of pricing transparency and universal access to PRS for all consumers.*



As ever, NOC submits these comments in a spirit of constructive criticism and with a desire to maintain the continuing improvement in the PRS regulatory process that we are currently pleased to participate in. If we can be of any further assistance please be assured the NOC is ready to contribute at any time.

*Neil Penny
Chairman NOC UK*