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## **ICSTIS PRS CoP 11<sup>th</sup> Edition Consultation**

Dear Suhail

No doubt your intray has just increased by a factor of X200 so I will attempt to keep to the point and not over burden you. My overall impression of the draft 11<sup>th</sup> code is that it is overly complex and long and that a chance to simplify has been missed. In order to protect the public and regulate an industry it is necessary for people in the industry and coming into the industry to understand what is required of them in the way they conduct their business. My fear is that someone picking up the code is not necessarily going to be able to use the document to find what is exactly required of them. The other area of concern is that with regard to mobile services by making the code so specific that you will find yourself out of date very quickly. The MNO's react contractually to an evolving market and your code falls out of line with their contractual position and you are going to be continually playing catch up, a more generalised position on Mobile allowing you to update help notes for interpretation would have been preferable.

Regards

Robert Johnson

### **1. Section 1 – Definitions**

Definition of Network Operator (for the benefit of the Code) although understanding what you are trying to achieve I am told that the definition clashes with that of the Communications Act and therefore I draw it to your attention as no doubt others have. If you are requiring the provision of all this information from the TNO's I feel you have a duty to. 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 proposals 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.

#### **1.1 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?*

Your definition needs to be balanced

#### **1.2 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?*

Contractual AIT definitions are difficult enough to interpret without ICSTIS also trying to interpret a set of words I think this is an area outside of your remit and best kept so.

#### **1.3 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?*

No comment

#### **1.4 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?*

No comment.

#### **1.5 Section 1 Question 5 Scope of the Code**

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

In the 90's the ASA went from having a very detailed specific code to more of a legal decent and honest approach with evolving case law on the fly approach, I feel that this approach could have been more productive long term in the PRS regulation environment.

#### **1.6 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?*

How does the crystal ball work on this industry, when something new comes into a market applying a different billing model and it blows up in your face, however there is a case of rolling back restrictive requirements in non-contentious arenas

**1.7 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?***

The appeals procedure should be the pressure valve to allow injustice and lack of proportionality to be redressed – I think a less formal process for appeal could be useful introduced to allow a balance other industries are increasingly using arbitration to address such disputes.

**1.8 Section 2 Question 1 – Administrative Provisions (Network Operators)**

***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.***

The information you are requiring is essential to effective regulation the argument is who should provide it and how and what is done with it once provided. If all this information sits in a filing cabinet and is not accessible to stakeholders and consumers in one form or another this will be disastrous. The principle is good the practice needs to be very carefully thought about.

**1.9 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?***

As above.

**1.10 Section 2 Question 4 (no question 3)**

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

No Comment

**1.11 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?***

No Comment

**1.12 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?***

Within reason it would be proportionate however a N.O. should not find itself in a situation of being hit for fines by ICSTIS when it has itself been defrauded by the SP, balances need to be in place for that eventuality.

**1.13 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?*

The wording needs legal advice to provide balance

## **2. Section 3 – Administrative Provisions (Service Providers)**

### **2.1 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?*

I welcome the use of help notes as a means to react to the market quickly and to help service providers to greater understanding

### **2.2 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?*

Engaging publishers who contract with the PRS industry to give them better information on what is required of their advertisers would be helpful also the recently revised formats of the forums have been very useful in getting information out to a larger number of stakeholders.

### **2.3 Section 3 Question 3**

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

Industry involvement in the process must help to disseminate such information.

### **2.4 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 draft provision is adequate

### **2.5 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?*

I am in favour of the use of well drafted help notes

## **3. Section 4 – Information Providers**

### **3.1 Section 4 Question 1**

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

I am unsure as to what this will allow ICSTIS to do in the future that they could not do in the past and where this is likely to lead.

#### **4. Section 5 – General Provisions Applicable to all PRS Service Providers**

##### **4.1 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.*

I welcome the change in definition as “Decency” is a very difficult legal phrase to interpret “Harm and Offence” are preferable.

##### **4.2 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?*

I am aghast that you are bringing this back to the table, if you are seriously contemplating introducing such measures you might as well just say “no PRS charging for internet services” This was subject to a meeting at ICSTIS offices by stakeholders who to a person said that it was unworkable as there was no adequate AVS systems in place and that pseudo systems that called them selves AVS were no better than Credit Card based systems that do not convert to PRS. This area of the industry has been completely devastated by events of the past 18 months and to add this burden without showing any real benefit to the consumer is unacceptable. I feel that the industry is a soft target for some pressure groups with other agendas that are making no progress with ISP’s and search engines who allow images and videos to be readily accessible to children with limited amounts of tools for protection. In the absence of any progress in the other arenas they knock on ICSTIS door looking for some PR to add to their machine before moving onto other pastures.

##### **4.3 Section 5 Question 3**

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

Despite what the Equifax’s and other credit check agencies might tell people there is a no effective working AVS solution on the market and contemplation of introduction of such provisions into the code should be only contemplated if the industry is content with such systems

##### **4.4 Section 5 Question 4**

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

The only effective AVS is parental control and common sense in the home. I note that there is no evidence submitted that children are viewing unsuitable material via PRS – they don’t have to they can get it for free from Google and Yahoo and 100’s of others – therefore why legislate for a problem that is not the PRS industries.

##### **4.5 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?*

Current provisions are adequate; the industry is being suckered into a debate that is not based on any evidence of abuse by minors.

**4.6 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?*

Simple approach is welcomed

**4.7 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?*

Help notes please.

**4.8 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?*

No comment

**4.9 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?*

Our preference is for general principles and help notes.

**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?*

Undoubtedly European law is influencing factor on such offers which are widely accepted in the high street – the word FREE has been widely misused in promotions so anything providing clarity is welcomed. I am not sure this delivers that clarity.

**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?*

No comment

**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?*

No specific comment - other than any part of the code that fixes pricing should be able to be regularly reviewed and not necessarily require code rewrite to alter and in areas of non contention some sort of indexing to inflation would be welcomed.

#### **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?*

No comment

### **5. Section 6 – Provisions Relating Specifically to Live Services**

#### **5.1 Section 6 Question 1**

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

Option 3 – ‘retain the prior permission requirement for all live services, subject to a published list of specified exceptions, e.g. technical support etc.’ this allows flexibility

#### **5.2 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.

#### **5.3 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?*

Without more facts concerning compensation claims I find it impossible to comment – this would seem to need further debate.

#### **5.4 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?*

No comment

### **6. Section 7 – Additional Provisions relating to Specific Categories of Service (SPs)**

I found this section particularly difficult we seem to have gone down a route of “this is what you can’t do” rather than “this is how you should do” approach

#### **6.1 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?*

No comment

**6.2 Section 7 Question 2**

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

Chat should be taken out of the need for Prior Permission and simply regulated as a normal form of service with PRS billing (of whatever type) as the key factor. Also the need for stop should be removed if there is no subscription element to the service as it is confusing to the consumer.

**6.3 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?*

I would throw this back with a request for evidence of underage use of chat services to identify if there is a real problem or a perceived problem?

**6.4 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?*

General duty is sufficient.

**6.5 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?*

No comment

**6.6 Section 7 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?*

This is very much a moving target and thought should be given to the fact that the MNO operators have moved ahead on this area and the fixed line floundered in confusion on this issue and therefore a light touch is required in a developing market. I feel the draft code has tried to do too much and a general provision with dynamic help notes as the market starts to move would be of more use.

**6.7 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?*

Inflationary indexing on pricing ceilings to be applied please.

**6.8 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?*

This really reflects the current contractual situation with regard to the MNO's – the only problem is there was a threat of one MNO changing their position if the others follow then the code is meaningless. This is the wrong approach to regulation and far too specific, yes the provisions are adequate for the current market but what happens next?

#### **6.9 Section 7 Question 8**

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

This time last year subscription billing model was not contentious and something else will have taken its place the code needs to be able to move with the times. Does this format allow that – I am not sure?

### **7. Section 8 – Procedures and Sanctions**

#### **7.1 Section 8 Question 1**

*Could you comment on whether you agree with the proposed model to deal with Imps? 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 Imps directly.*

Reseller issues have been to the fore over the last couple of years with a lot of “why should I pay it was not me it was him” I think what you propose is worth a trial and then evaluation.

#### **7.2 Section 8 Question 2**

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

I think it is always necessary for at least one board member to give the nod, case officers should not be given these powers as it is potentially interfering with someone's livelihood on a Friday afternoon and mistakes do get made.

#### **7.3 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.

#### **7.4 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?*

What about the originating network and the VAT man? The SP or NO's are expected to refund the lot when they only receive part, SP's should be able to demonstrate a clear refund policy. However I agree with refund as a better term than redress.

#### **7.5 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?***

This is especially welcomed – a lot of other industries have benefited from such changes – well done

**7.6 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.

**8. Section 9 – Procedures Concerning Network Operators**

No comment

**9. 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?***

No Comment

**10. Section 10 – Appeals**

Nothing to add.

**11. 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?***

No comment

