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Consultation

The new PhonepayPlus Code of Practice

Submission

Association for Interactive Media and Entertainment (AIME)

AIME

AIME is the leading trade body representing the interactive media and entertainment industry in the UK. For more information on AIME see the final section of this response or go to our web site at www.aimelink.org.

Introduction

AIME welcomes the opportunity to respond constructively to this consultation on the new PhonepayPlus (PPP) Code of Practice.

We applaud the main thrust of the new Code and specifically endorse the four major elements we have championed for some time:

- The establishment of a principles-based core Code supported by flexible Guidelines
- Distribution of responsibility for compliance along the value chain
- The commitment to make more use of the Track 1 (informal) procedure in dealing with possible breaches
- The establishment of an Industry Registration Scheme.

We are pleased to see progress in this direction.

Strategic concerns

This is clearly a pivotal moment in the regulation of the PRS industry and many issues are raised in this response, all of which are important while some, AIME believes, are key to the future development and success of PRS and go beyond the specific questions listed in the consultation document. We have taken this opportunity to raise them as essential components or concerns to ensure the success of the new Code and they are outlined below.

1 Coping with Change

AIME has for some time now been calling for the introduction of a more flexible, cost effective, approach to PRS regulation in the form of a principles based Code and applauds this attempt to commence the process of its introduction. However, we are well aware that the basic change of written Code format cannot succeed unless those who administer and use it are also prepared to change the way they interact and co-operate. Key to this change is, we believe, a willingness for industry and regulatory to practice genuine engagement at all stages of the regulatory process and demonstrate a spirit of true co-regulation.

- **Culture Change**

The new Code represents a major change of structure and emphasis and this step-change needs to be recognised and acknowledged. We are pleased to see progress and co-operation here, an example of which is the establishment of a training programme of focused industry training for PPP staff. We would however like to see further evidence of how PPP plans to change the organisation's culture and processes to match the new environment.

- **11th to 12th Code**

We would like to have greater clarity about how Tribunal decisions taken under the 'old' Code (11th edition) will act as precedents under the new principles-based regime. This is particularly important on issues of legality and opt-in procedures and requirements under data protection legislation.

Further consideration should also be given to transitional arrangements between the 11th and 12th Code, including:
- the impact on any open cases
- the willingness for PPP to treat initial cases as trial cases under the new regime
- a sensible period for companies to register with PPP

The new approach to the 12th Code and the associated Registration Scheme represents an opportunity to rebalance the requirements of commercial enterprise against that of the regulatory process in a truly proportionate way. AIME wishes to continue to work with PPP to define and implement a strategy to improve the quality and refine the process of premium rate regulation in the UK in a genuine co-regulatory manner. This will ensure regulation is applied in a transparent and

proportionate way in a co-regulatory environment to give the certainty necessary to support a return to commercial growth.

2 Regulatory Process

It is essential in our view that the PRS industry must have confidence in the regulatory process that sets and applies the rules by which it operates and is occasionally judged.

AIME has taken the initiative and launched a Regulatory Best Practice forum within its membership, to provide ongoing focus on areas of regulatory process that raise concern and may require review. The outcome of such review, revised procedures and restatements of policy will help deliver professional and effective regulatory enforcement giving the certainty necessary to support a return to commercial growth. We are pleased with the constructive way that PPP has responded to this development with several meetings held to date and we look forward to continuing with this process separately to our comments on the 12th Code of Practice.

3 Regulatory Costs

AIME believes it to be sensible that regulatory costs should be more proportionate to industry revenue and should move broadly in line with industry trends. The pattern of costs over the years shows an unfortunate disregard for the administrative and financial burden they place on industry.

As we mention in the detail of the response we welcome the small reduction in PPP budget for the year 2009-10 but this is unfortunately an exception to a steady trend of increasing regulatory costs against an industry which has seen revenues decline significantly over the past few years. AIME wishes to see this opportunity of a new Code approach translate into steadily reducing PPP costs and improved value for money. One area that has the potential to contribute to this goal would be a PPP policy to focus its efforts on issues which are core to its remit while moving to address other, possibly attractive and beneficial, issues through joint projects with industry.

4 Objective Compliance Assessments

- **Compliance Advice**

We are concerned with the proposal that Compliance Advice should not be regarded as binding on decisions by Tribunals as to whether a breach of the Code has occurred.

As a minimum, we would expect any sanction on such a breach to be waived or very substantially mitigated. Where a company has in good faith followed official guidance and specific advice of a regulator it flies in the face of natural justice for the same regulator to hold that its actions are in breach of that regulator's Code.

We are concerned, too, that where providers have in good faith exercised their freedom not to follow Compliance Advice, they have been subject to additional sanctions if subsequently found to be in breach of the Code. This acts as a

perverse disincentive to seeking Advice and is not in the best interests of compliance.

- **Interpretation & Subjectivity**

A principles-based Code necessarily opens up areas of subjectivity and we are keen to see consistency of interpretation. We suggest that the standard test for PPP to employ wherever subjective interpretation is required is that:

The test should be objective and transparent and take into account:

- The nature of the service
- The service mechanic
- The likely interpretation and expectation of the reasonable consumer where that consumer is the anticipated or intended recipient of or audience for that service.

We need clear and consistently applied criteria to determine whether a service is Code-compliant in order to minimise breaches and the potential for unjust outcomes.

Areas where we believe application of these tests is particularly important include:

- Misleading
- Invasion of privacy
- Cause of harm or distress
- Vulnerability.

We are concerned at the absence of proposals for formal procedures to maximise certainty, understanding and consistency of approach between the Executive, Code Compliance Panel (CCP) and the industry. We all need to be on the same side and singing from the same hymn sheet in the same language.

In order for industry to have confidence in the regulatory system it is necessary for that system to be consistent and transparent. This requires the support of clear and objective processes and AIME will be seeking early progress regarding its proposals for a transparent Triage process to be applied to alleged Code infringements.

5 Proportionate Liability

With possible sanctions for Code infringements of £250k per breach it is clear that the potential liability of our members (both corporate and personal) has greatly increased over recent years. The severity of fines has also grown in recent years beyond any measure of the seriousness of breaches. This readily apparent trend has been unaccompanied by any statement of justification or explanation and undermines any attempt to make sense of precedence in Tribunal decisions. We believe this has had an adverse impact on confidence levels within our industry. As a result we can see the levels of investment in the UK market declining and showing little sign of recovering.

In the absence of policy statements about fine levels and escalation of the 'polluter pays' principle, we need to understand the underlying principles involved.

There will be occasions when elements of the value chain will identify situations where genuine errors of judgement or failures of technology have led to unintentional breaches of the PPP Code.

Where promoters, operators or facilitators of services act promptly to mitigate consumer harm, provide mechanisms for refunds and swiftly restore services to compliance while notifying PPP of the circumstances, we would like assurance that PPP will assess all the factors pragmatically including the reporting to PPP and avoid costly and unnecessary investigation and breach process.

6 Due Diligence

It will be useful to bear in mind a broad definition of Due Diligence to be applied to the PRS industry which is suggested below.

> *"An investigation or audit into the financial and commercial activities of a business prior to a potential commercial relationship. This will include the gathering, analysis and interpretation of financial, commercial, legal and marketing information".*

It follows that this will be a variable and subjective exercise resulting in a commercial decision which will be individual to the circumstances pertaining at that time. For this reason there are AIME members who question the need for PPP to be involved in prescribing parameters for Due Diligence and Risk Assessment at all and believe it should be sufficient for the Code to simply state that these should be conducted before PRS services can be contracted.

As mentioned in our response to Question 7 we will refrain from commenting in detail on a Due Diligence Guidance Note at this time but it is important that this requirement is kept in proportion and not allowed to become an onerous and costly barrier to business. The subject of control is also one where a prescriptive approach can easily translate into unnecessary and impractical demands on a service operator when what is actually required is the operation of reasonable standards and precautions.

Responses to questions

For ease of reference we present our overall response as sequential answers to the specific questions posed by the consultation document.

Q1 – Do you agree with the proposals around how Governance arrangements are taken forward? If not, why not?

Yes, but these should also incorporate the Formal Framework Agreement with Ofcom.

Q2 – Do you agree with these proposed terms and definitions? If not, why not?

No. We have major concerns about the proposed definition of Level 2 providers because it arbitrarily shifts regulatory responsibility from Level 1 providers to Level 2 for the operation of a service. This conflicts with reality as a promoter will not always control the technology platform. Examples of this are the STOP command and text spend reminders, which can be the responsibility of Terminating Providers (Level 1) or an application provider not directly connected to a Network Operator.

The current proposal erroneously groups responsibility under Level 2 for 'promotion, operation and content' whereas in reality these are frequently diffuse. For example, several newspapers feature editorially based fantasy football competitions. They are clearly the promoter under this definition but do not typically operate the entry system themselves nor provide the content or intellectual property behind the games.

Similarly, there is genuine uncertainty in the broadcast world about where the delineations of the proposed definitions lie between broadcasters and production companies, particularly where the latter hold the rights and receive the revenue for PRS services.

We believe that in the new code a Merchant Promoter (Level 2) should only be described as the promoter of a PRS service. A promoter may on occasion also have responsibility for the technical operation of the service but that would not be the primary role and is the reason for our proposing in Q3 that it is important to assess each service dynamic in an objective manner.

There may be benefit in PPP compiling maps of the value chains of typical services as a guide to where responsibility lies and in what proportion.

Q3 – Are you aware of any premium rate delivery chains where the proposed distinction between Level 1 and Level 2 providers will be problematic? Are there other factors that we need to consider in relation to the distinction between Level 1 and Level 2 providers in a premium rate delivery chain?

We suggest that responsibility for Level 1 and Level 2 activities needs to be determined on a case-by-case basis to reflect the realities of the service and the contractual relationships between the parties. A 'one size fits all' approach will not work and will give rise to unjust Tribunal outcomes. Level 2 must not become a dumping ground for breach letters.

An illustrative example is the position of chat operators who deliver content but do not promote or operate services at all.

Q4 – Do you agree with the proposal to convert Section 7 of the 11th edition of the Code into Service-Specific Guidance and to allow the creation of new Service-Specific Guidance, subject to appropriate consultation? If not, why not?

Yes, particularly as it is apparently the intention that the new Code should have a much longer shelf life than its predecessors. This longevity and flexibility would also be helped if some of the remaining prescriptive rules, e.g. details on pricing information, were translated into Guidance (see below). AIME believes that it is essential for the new Code and supporting Guidance to be technology neutral.

Q5 – Do you have any comments on the draft Service-Specific Guidance attached at Annex C? Please set out any comments you have and the reasoning behind them.

We would prefer not to clog up the consultative process by commenting in detail at this stage on the eight Service-Specific Guidance notes at Annex C. We will embark on a full internal consideration when drafts are finalised and issued for formal consultation in due course. In the meantime, however, we have flagged up under Strategic Concerns above some general issues about interpretation and subjectivity and examples of where problems may arise and, in principle, all Service Specific Guidance notes should require an objective test:

The test should be objective and transparent and take into account:

- The nature of the service
- The service mechanic
- The likely interpretation and expectation of the reasonable consumer where that consumer is the anticipated or intended recipient of or audience for that service.

Q6 – Do you agree with the proposal to convert Statements of Expectation that support the 11th edition of the Code into General Guidance to industry, and to allow the creation of new General Guidance subject to appropriate consultation? If not, why not?

Yes, on the grounds that Guidance notes can be changed and issued quickly to reflect changing circumstances and that their use should reduce dependency on a prior permissions regime. They should also reduce uncertainty, which is a barrier to innovation and investment.

Again, our suggested objective test should apply to interpretation and, as explained in our Strategic concerns above, we would expect Tribunals not to be able to uphold breaches (or levy sanctions) where they accept that a provider has fully complied with the relevant Guidance or Compliance Advice. Failing that, we would like to see a formal commitment that compliance with Guidance will be an insufficient defence only in exceptional circumstances and subject to full explanation.

In summary, Statements of expectation are useful provided that:

- PPP seek full industry consultation prior to publication and adoption;
- they do not increase the legal requirements relating to services by dictating mandatory technology – for example mandatory (or ‘strongly recommended’) MO opt-in;
- they are objectively prepared taking account the nature of the services, its intended audience, cost and other relevant parameters (see test criteria above);
- they are not used to facilitate ‘policy creep’.

It is important that in order to support the recovery of the industry, the development of new services and investment recovery that there is certainty in the industry.

Q7 – Do you have any comments on the draft General Guidance to industry regarding due diligence, risk assessment and control attached at Annex C? Please set out any comments you have and the reasoning behind them.

We will reserve our main input on this preliminary draft for the formal consultation process later this year, however, in addition to our comments under our earlier Strategic Concerns section, we mention some preliminary items below.

We are very concerned with the new insertion of the provision expecting Level 1 providers to ensure that Level 2 providers have the financial strength to meet potential sanctions. We assume this is a reaction to PPP's concern that fine recovery rates may drop under the new code but it seems to be a way to pass the "back-up" liability back to the Level 1 provider and therefore negate many of the principles of the new code. In any case, it is very unclear how the provision should be interpreted. If, for example, all Level 2 providers are expected to have a £250k credit limit as might be interpreted, this would immediately prevent a significant proportion of the industry from continuing to trade and create an enormous barrier to entry into the market.

We support the approach that a Level 1 provider has obligations in terms of due diligence and control under the new Code. However further clarification is required in terms of what level of evidence a Level 1 provider should be able to show to PPP in relation to any particular case. Given the nature of "reasonable control", it is necessarily the case that not all services will be reviewed regularly as risk-based sampling is the only practical way of exercising ongoing control. Evidence of appropriate procedures should therefore relate to the Level 1 provider's testing and control of all or similar services and not just the service in question.

The Guidance will therefore need to be clear about what broad levels of due diligence and risk assessment will be regarded as reasonable. There also needs to be a balance for Network Operators and Level 1 providers between what can reasonably be undertaken and the onus of compliance that the Guidance places on them.

For smaller Level 2 providers, the most a Level 1 provider can economically do is initial due diligence, seeing the initial promotion, and asking to be informed of any new promotion. Proactive continuous monitoring of the advertising is not realistic, nor, even more onerous, is the commitment to on-going record keeping.

Prevention needs to be proportionate to the risk, as measured by likely consumer spend, type of service, the provider's history, and the extent to which the operation of the service is effectively controlled by the Level 1 provider by being hosted there.

If these provisions are cast as too heavy-handed, intrusive and expensive to administer, the immediate effect will be to act as a barrier to new market entrants and to squeeze out specialist services, innovation and low-volume Level 2 providers.

In view of the central importance of this issue, AIME will continue to work with members to devise an industry-wide best practice standard for due diligence and risk assessment.

Q8 – Do you agree with the proposal to convert the Help Notes and Tribunal notifications that support the 11th edition of the Code into Compliance Advice (or "compliance updates")? If not, why not?

Yes, on the basis that this is a more transparent process. On a point of detail, however, we are concerned that a decision by a provider to change a service to reflect compliance advice should not be regarded by Tribunals (as seems to have been the case in some instances) as an admission of guilt.

We accept that precedent has a role to play in regulation centred on an outcome based Code but we are nervous about the potential here for regulatory creep. Tribunal decisions are necessarily made on the basis of the specific facts of a particular case but there is a danger of injustice if outcomes of individual cases are automatically applied indiscriminately across the board. Each case should be judged on its merits and not by the hidebound straitjacket of precedent.

Q9 – Are there any other areas where Service-Specific Guidance or General Guidance to industry is necessary? Please state any areas you have identified.

General Guidance is needed on the use of the words 'free' and 'bonus' as they continue to give rise to confusion. At one point, the word 'free' was regarded as taboo in PRS promotions even when the content of the offer was beyond doubt. Where Guidance notes are concerned, what the industry seeks is consistency with the regulatory framework operated by the Advertising Standards Authority, the Gambling Commission (where the definition of free prize draws is concerned), and under the Government's *Pricing Practices Guide*. We also refer to the positions held by the Institute of Promotional Marketing and in The Consumer Protection from Unfair Trading Regulations 2008. We do not seek special treatment for – PRS services, merely equality of treatment.

Q10 – Do you agree with the proposals around how responsibility for Part Two of the Code would be applied? If not, why not?

Yes, in principle, but see our response to Q2. The regulatory regime needs to recognise the individual structure of the value chain for each service and identify responsibilities accordingly rather than shoe-horn different processes into standard definitions.

Q11 – Do you agree with the proposed Outcome and supporting Rules around Legality? If not, why not?

No. As a matter of principle the question of legality is a matter for the prosecuting authorities and the courts, not for a PPP Tribunal that can only expect to rule on a service failing to comply with the requirements of the Ofcom approved Code.

Equally important is the CCP/Executives' interpretation of the law with regards to specific services. The evidential burden of proof required to demonstrate legal

compliance is uncertain and in certain examples is higher than required by the law itself or other regulatory environments. A clear example of this is seen regarding the CCP effective requirement that an MO opt-in is required in order for consumers to legitimately receive free marketing material. This is not an express Code requirement but the assumption that anything short of an MO is deemed inadequate, effectively rendering such functionality mandatory. In many services (WAP based, Wifi, Web, print media) there is no opportunity or desire for an MO. In such services other mechanisms are employed such as MSISDN entry on web sites. Simply because there is scope for non-compliance in terms of opting-in does not per se invalidate any given opt-in mechanism, nor does it prove beyond reasonable doubt that a consumer did not opt-in. Nor does it necessarily render a service illegal. The finding should therefore be that a service is 'non-compliant' – not illegal.

We are also concerned that a breach of this provision represents a formal decision by the Tribunal that a Director of a provider has acted illegally and it is wrong to promulgate this without the protection that the law demands. Publishing such a decision also leaves the CCP open to legal challenge and would raise questions pertinent to Human Rights legislation. Legality should remain within the jurisdiction of the Courts.

If, contrary to our advice, the provision remains, there should be much greater clarity about the circumstances in which it will be invoked in preference to specific Code provisions relating to wrong-doing.

Q12 – Do you agree with the proposed Outcome and supporting Rules around Transparency and Pricing? If not, why not?

We believe that the Outcome would be better expressed as follows:

> *"That consumers of premium rate services are fully and clearly informed of ~~all~~ 'any key' information likely to influence the decision to purchase, prior to any commitment to accept a charge." ~~including the cost~~, ~~before any purchase is made~~"*

For 2.2.1 we prefer:

> *"Consumers of premium rate services must be fully and clearly informed of ~~all~~ 'any key' information likely to influence the decision to purchase, ~~including the cost,~~ before any purchase is made."*

The main point here is that escalation of the requirement from 'key' information to 'all' information affecting a decision to participate would make many promotions impracticable. For instance, many newspaper and broadcast promotions are underpinned by lengthy and comprehensive terms and conditions designed to deal with any eventuality, however remote. Most of these are either obvious or of no direct concern to the vast majority of participants, e.g. exclusion of employees, agents and their family; requirement to hold a valid passport to take up a holiday prize; no cash alternative; agreement to participate in publicity; prohibition of cheating, etc. It would be ridiculous and unnecessary to print or broadcast these at point of sale and it is the normal practice to make them available on a website or on request. We contend that this is fair and proportionate and see no need to erect

a higher hurdle. It should also be noted that publication of full terms and conditions would mean so much print that consumers could not see the wood for the trees.

There is also a concern that including all information could make it possible to hide key information e.g. subscription charges from consumers in a proliferation of text.

We have also suggested deletion of 'including the cost' as that is clearly key information.

In any event, what constitutes 'key information' is clearly a matter for a Guidance note.

For 2.2.2 we favour:

> *"Promotional material must contain the name or brand of the Level 2 provider of the relevant premium rate service and the non-premium rate UK contact telephone number of that provider."*

First, there is the vexed issue of who exactly is the Level 2 provider (see above) and we believe that consumers would be better served if the name of either the promoter **or other** Level 2 provider were required. Secondly, in many cases the name of the brand will be much better known and meaningful to consumers than some corporate identity. For instance, Gordon's Gin is instantly recognisable to consumers whereas Diageo will be known only to the financially literate. Thirdly, we regret the omission of the provision 'except where otherwise obvious' that currently applies. A viewer watching a televote on *Strictly Come Dancing* will have no trouble recognising that this is a promotion by the BBC.

The principal meaningful information for consumers in this context is the customer care number, and the PPP registration number will mean nothing to all but the most savvy consumers and could even be interpreted as a PPP Kite Mark. In the broadcast environment it has proved to be confusing to customers to put too much information on screen and moving detail to the Terms and Conditions has been shown to be more acceptable to the end user.

Where SMS marketing is used we would argue that the information required above should be allowed to be abbreviated where limitations on the number of characters make it impractical to render in full. It would then be logical to allow this in promotions in other media to achieve consistency, particularly in the case of small ads. The over-arching requirement is that consumers should be given a clear way of contacting the relevant promoter, and this should not be clouded by extraneous information.

On points of detail, we recognise that brand names and abbreviated names used as above would have to be entered on the number checker for customer care purposes.

On 2.2.4 we request a rewording that makes it clear that what is at issue is the promotion of a PRS service, not the medium of the promotion.

On 2.2.6 we should point out that it is not always possible to show the price together with the promotion, e.g. in games download shopping areas, and

consumers will be adequately protected as long as the price is evident at the point when there is about to be a commitment to pay, for instance through *Payforit.*

More widely, we strongly believe that the proposed new provision for pricing information to be proximate to the access number will heap trouble and alleged breaches on numerous services where pricing is perfectly clear, even if not situated adjacent. There will also be definitional arguments about how proximate is proximate. Will Tribunals resort to measuring equipment? The criteria of 'prominent, clearly legible and visible' have served the industry and its regulator well for many years but if there is a case for change we would favour a provision that pricing information should be:

"…displayed in a way that the average consumer is likely to see together with the call to action."

We recommend that 2.2.7 be omitted as two major applications would fall foul of it: STOP messages and the need for two messages to pay for a £3 service.

On 2.2.8 we believe that the requirement for visual **and** spoken information for services generally exceeding £2 should now be dropped as it is too prescriptive and too woolly a threshold in a multi-price environment.

On Part 2 in general, if the intention is to achieve a shorter Code, 2.2, 2.3 and 2.5 should be rationalised and consolidated into one. At the moment, these rules are mixed, e.g. the subject matter of 2.3.3, 2.3.7, 2.3.8 and 2.3.10 looks more akin to avoidance of harm whereas 2.3.12 looks nearer to price transparency. Consolidation would avoid overlap and give more focus to the key requirements such as those at 2.3.6 and 2.3.12. Moreover, certain aspects such as 2.3.5 are not realistically enforceable.

Q13 – Do you have a view as to whether there is a need to issue Guidance that interprets how Rule 2.2.6 (around pricing proximity to the means of access) is applied where secure mechanisms for phone-payment are used to purchase a PRS?

See above.

Q14 – Do you agree with the proposed Outcome and supporting Rules around Fairness? If not, why not?

AIME agrees with the proposed Outcome subject to the following. The determination of Fairness should be subject to an objective and transparent test.

Such test should take into account:

- the nature of the service;
- the service mechanic;
- the likely interpretation and expectation of the reasonable consumer where that consumer is the anticipated or intended recipient or audience of that service.

On 2.3.2 we refer back to our recommended standard of judgment set out at Q5 above. The key factor is whether a reasonable consumer in the target market would be likely to be misled. The current statement is too bald.

On 2.3.3 we note that consumers may be charged without their consent through unauthorised use, theft or misdialling, none of which are the fault of providers. Beyond this, what is acceptable as evidence of consent and in what circumstances? The evidence test for the opt-in of services or consents must be transparent and must not impose a greater burden on a service provider than in other forms of media. The burden rests with PPP to demonstrate based on the evidence that on the balance of probability opt-ins/consents were not obtained. To this end objective measures should be transparently applied to the facts. Such measures should include but should not be limited to:

- the successful use of service (consumer uptake);
- service ratios of complaints to users;
- the transparency of the service (customer services information, promoter details i.e. routes to complaint resolution/refunds).

On 2.3.4 we advocate the important small amendment below:

> *"Premium rate services must be provided without 'undue' delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged."*

The insertion of 'undue' is to cater for, *inter alia*, novelty alarm services, annual reminder alerts and lottery results.

We regard 2.3.5 as unenforceable and issues of unauthorised use would relate to promotion or security of the telephone line, not the service itself. This requirement should be removed.

On 2.3.6 Excessive use is a subjective matter and this should not be used to restrict consumer freedom. It is again a subjective statement and should be unnecessary given many services are controlled by the spend limits in any event. Bad debt and commercial risk management (against publicity etc) should ensure this is self managed and this should not require regulatory prescription.

We suggest that 2.3.7 – 2.3.12 should be relegated to Guidance notes.

Q15 – Do you agree that the spending caps and thresholds for reminder messages, set out at Rule 2.3.12a-d, are appropriate? If not, then please suggest alternative levels, and please provide the evidence you have to support them.

We are disappointed that the opportunity has not been taken to remove the arbitrary and outdated rule that consumers must be cut off after spending £30 and obliged to reconnect to continue to enjoy a service. It should be enough to advise consumers what they have spent £30 and give them an option to continue (they do, of course, have the option to disconnect at any point).

With the passage of time the compulsory provision for a reminder with each £10 spent seems unnecessary and out of kilter with the over-riding £30 disconnect rule. These provisions are outdated and should be scrapped. Failing that, the opportunity should be taken to rationalise these two rules; we do not need both.

Furthermore, if they remain, the provisions should be relegated to Guidance to achieve flexibility in terms of changing the fixed levels rather than enshrining them in a long shelf-life Code.

Q16 – Do you agree with the proposed Outcome and supporting Rules around Privacy? If not, why not?

We endorse the Outcome but believe that 2.4.2 – 2.4.4 should be omitted as they are covered by the law.

We believe that the STOP command should remain universal, easy to utilise and uncomplicated and that where this is technically not possible there should be available an alternative method that provides the required outcome.

Where the proposal at the fourth bullet point of para 5.74 of the consultation document is concerned, we believe the provision should reference PECR, which permits a mobile number entered on a website to constitute a soft opt-in so long as the user is notified of that opt-in and is given an opportunity to opt-out. It would not be acceptable for PPP to apply restrictions more onerous than current law.

Q17 – Do you agree with our assessment that consumers benefit from being clearly informed that their data may be used for marketing and being given an opportunity to opt in to this? If not, why not?

We do not advocate going beyond anything required by the law in this area. However, we see benefit in referencing the excellent guidance that the ICO provides from its web site for marketers.

Q18 – Will Rules 2.4.4 and 3.6.2 of the proposed new Code deliver clarity to consumers when they opt in to a service? If not, why not?

Again, we prefer to place reliance on the law and note that 2.4.4 is covered by ICO Privacy Notices Code of Practice. We recommend referencing this ICO Code in the PPP Code.

Q19 – Do you agree with the proposed Outcome and supporting Rules around Avoidance of harm? If not, why not?

We suggest amending the Outcome to read:

> *"That premium rate services do not cause a 'significant level of' harm or unreasonable offence to consumers or to the general public."*

Again, we need an objective test and a measure of proportionality, particularly in relation to the intended audience. Lest it be thought that no service should ever be capable of causing harm, we point to the example of betting tipster services. If the prohibition of harm is absolute, such a service is open to complaint under the Code if a customer backs a losing tip. In reality, however, any reasonable consumer in the target area can be expected to know that no tipster can provide 100% success.

2.5.4 should be omitted as prostitution *per se* is not illegal and whatever restrictions apply in this area should be for the law, not the Code.

2.5.6 should be omitted as its meaning is completely opaque (inappropriate to whom?).

On 2.5.7 we suggest the following more realistic redraft:

> *"Level 2 providers must use all reasonable endeavours to ensure that promotional material 'is not targeted at' those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful."*

2.5.9 should be relegated to Guidance.

Q20 – Do you agree with the proposed Outcome and supporting Rules around Complaint handling? If not, why not?

We agree with the Outcome and AIME has been working closely with PPP on best practice in this area.

On 2.6.5 we prefer the following wording as it is more consistent with the Ofcom consultation on complaints handling:

> *"Consumers who 'express dissatisfaction' with the handling of their complaint must be informed that they may 'refer it' to PhonepayPlus and must be provided with its contact details."*

The broadcast arena has concerns over whether they will deal with unresolved complaints via Ofcom, PPP or both and there will be a need for clarification on this.

Q21 – Do you agree with the proposals around the level of responsibility Network operators and Level 1 providers should take in regard to their direct clients' handling of consumer complaints (paragraph 3.1.1d of the draft Code)? If not, why not?

The AIME Best Practice exercise is already looking at this issue and we accept that a Level 2 provider should take responsibility in appropriate circumstances for directing customers to a Level 1 provider or Network Operator if it is unable to resolve the matter. A Network Operator, however, may be unaware of a complaint lower down the chain and should not incur responsibility for ultimate resolution.

On 3.1.5 we request the deletion of the word 'internal' as providers may outsource some elements of their obligations under the Code.

Q22 – Do you agree with the proposals around technical quality? If not, why not?

There is some doubt among our members as to what exactly constitutes technical quality but we accept that this is a desirable aim. The key is that providers are required to use 'all reasonable endeavours' and we would like to see an objective test for this. It does not, of course, equate to a guarantee of technical perfection. We would also expect any sanction under this provision to have due regard to proportionality. A momentary unintentional lapse should not incur a heavy penalty. It should also be borne in mind that providers have a strong commercial incentive

to achieve consistently high technical quality. As an example an unforeseen network congestion situation would generally be beyond the influence or control of Level 1 and/or Level 2 providers.

Q23 – Do you agree with the proposals around internal risk control (paragraph 3.1.5 of the draft Code)? If not, why not?

Internal risk control is a commercial endeavour and expectations must translate into proportionate, scalable and reasonable process and activities. As has been highlighted in a previous consultation the cost of regulation within the industry has grown exponentially whilst the revenues generated have declined significantly. Proportionality in terms of regulatory response remains a concern with several thousands of pounds of administrative cost being incurred in relation to consumer losses of a few hundreds of pounds or less. Several million successful interactions are formally regulated in response to less than 0.01% of complaints. In the absence of proven fraud or deliberate wrong doing, this is disproportionate in any industry. There is a concern that the scope to demand impractical, technically infeasible and disproportionate compliance processes remains.

We note PPP's assertion that service operators fail to learn from previous mistakes and prior publications. However, precedent based Guidance has to date been an uncertain science between regulator and the industry and indeed service changes made in response to such notice have in certain cases acted against companies in that it is interpreted as an admission that the service was flawed. Damned if they do, damned if they don't is often the response. Clarity in regulatory intention is needed and the formalisation of a precedent based system is required if that is what is intended.

Q24 – Do you agree with the proposals in regard to due diligence, risk assessment and control (paragraphs 3.1.1a, 3.1.7 and 3.3.1 of the draft Code)? If not, why not?

The acceptability of these principles will be dependent on how they are interpreted in practice. The assessment of the reasonableness of steps taken by providers must be objectively applied.

The current reference to financial due diligence implies that contracting parties should consider that all parties are capable of meeting a fine for a single breach of up to £250,000. (AIME recognises the scope that actually the total fine levels could conceivably be much higher). In practice to require such a low risk threshold would effectively put the UK market out of business. AIME would welcome greater clarity regarding the exact responsibility of the contracting parties regarding financial due diligence, in particular the degree of subsequent exposure of a Level 1 or Level 2 provider in the event of default on payment of a fine.

Comments regarding monitoring of services are covered elsewhere in this response but expectations must be commercially and technically realistic, objective and reasonable. The difficulties of the current Code have arisen because as a matter of fact certain aspects of the service are practically beyond the control of a given party. The New Code provides the flexibility to attribute fault with the party that is responsible. It is important that in practice this is the finding also.

3.3.1. – what does the word 'thorough' mean in practice and in who's opinion?

3.1.7 – what amounts to 'reasonable' monitoring?

It would be helpful to provide Guidance around these terms.

Q25 – Do you agree with the draft General Guidance around due diligence, risk assessment and control set out at Annex C? If not, why not?

As stated in our response to Question 7 we will reserve our main input on this preliminary draft for the formal consultation process later this year.

Q26 – If you have a preferred option (a, b, or c) in regard to the application of risk assessment and control to Network operators, then please state that preference, along any reasoning you may have.

We favour b.
As with Q23 a proportionate and reasonable requirement is necessary. Most responsible service providers follow a set of standard procedures when contracting and managing clients:

a. Pre-contract due diligence
b. Initial service approval/audit
c. Service testing
d. Sample service testing (at regular intervals e.g. monthly)
e. Mature services are spot checked pro-actively both in terms of the entire service (including promotion through to technical quality, delivery, operation and service messaging) or spot functionality for example STOP command availability.

New services typically repeat b-e.

Q27 – Do you agree with the proposals about Directions? If not, why not?

We believe these proposals would benefit from clarification.

There is also a specific issue relating to refunds from retained revenue. If there is a general instruction to refund all customers the full cost of their call, how is the Network Operator to apportion or ration this where the retained revenue is insufficient?

Q28 – Do you agree with the proposals about Contracts? If not, why not?

Yes.

Q29 – Do you agree with the proposed Code rules around the Registration Scheme? If not, why not?

We broadly support this as it follows the direction of travel of our discussions with PPP on this matter.

Some members, however, have expressed a concern that Directors who have a breach history with one company will carry this forward to a new employer and thus unfairly sully that company's record. It may also be worth considering whether

all Directors of a company should be flagged up as having a breach history when they were not personally involved in the matter, e.g. the HR Director is not responsible for technical breaches. We suggest this area needs further discussion.

Q30 – Do you agree that these are the appropriate risk factors and measures to use when drawing up a framework for assessing which services should be required to register? Do you have any further suggestions on criteria we should consider?

We believe that **all** providers of controlled PRS services should be required to register. If, however, exemptions are to be allowed they should be based on criteria set out in the Framework Analysis included in the final statement of the Ofcom Review of PRS. It would also be necessary to explain the precise basis of exemption to consumers and the industry.

Q31 – Do you agree that 087 services should be exempt from the requirement to register? If not, why not?

As 087 services are controlled PRS their providers should be required to register. If, however, the general principle of exemption is agreed and a process is in place it should be open to all services on the same basis and criteria. There may be room here for a temporary & discretionary exemption where consumer harm is extremely low which can then be rescinded if the situation changes.

Q32 – Have we captured the correct mandatory information to include on the Registration Scheme to meet our regulatory objectives and assist businesses in carrying out due diligence on their contracted partners? Is there other mandatory information we should require registrants to provide?

We believe that the mandatory registration information is inadequate and falls short of AIME's proposals on this matter. See also the AIME Terminating Provider Best Practice Guide for our full requirements.

The information should include passport and bank account numbers (which will be regarded as confidential), and details of any associate companies, not just the partner company.

Our members are also concerned that Level 1 providers may have to rely for due diligence on false or incomplete data input by Level 2 providers. This danger would be reduced if PPP were to undertake spot-check audits on Level 2 registrations.

Q33 – Do you agree that the publication of breaches should be limited by a period of time? Do you agree that three years for a Track 2 breach and five years for an Emergency procedure are appropriate timeframes?

We agree that time limits are appropriate to keep the published information relevant. Only upheld breaches, of course, should be recorded in this way and it matters not whether they are triggered by an Emergency Procedure. For upheld breaches, we suggest a three-year threshold for breaches classed as serious or below and a five-year period for more serious breaches.

Q34 – Do you have a view on whether breaches from the 11th edition of the Code should be matched across to the proposed registration database, and/or how this could be best achieved? If so, please provide it, along with any supporting evidence.

To avoid double standards and avoid confusion there should be a clean sheet under the new Code. Breaches under each edition should be separated and clearly identified according to the applicable Code. Alternatively, there could be a rolling two-year historical record for all breaches but with those falling under the old Code clearly identified as such and supported by a hyperlink to the published adjudication.

Q35 – Do you have a view on whether open investigations against Level 2 providers should be flagged to other parties registered with PhonepayPlus, and/or how this can be best achieved? If so, please provide it, along with any supporting evidence you have.

We support this on the basis that the alleged breach should be flagged from the point when the breach letter is received by the provider. Where a provider is using more than one aggregator, all should be informed directly. We would also want a service level agreement for PPP to remove the flag within one working day if the breach is not upheld. Alleged breaches information should only be flagged to Networks and Level 1 providers and not Level 2.

Q36 – Do you support mandatory registration of all Network operators, Level 1 providers and Level 2 providers of eligible services? If not, why not?

Yes. A supplier in to a value chain who can materially affect the compliance/outcome/technical quality of a service or whose function can affect or cause harm should be required to register e.g. operators to a chat based application provider, should also have to register as Level 2 providers.

There remains the question in the broadcast sphere of who should register as a Level 2 provider: the broadcaster or production company, or both? There are also complications in organisations such as ITV that have a regional structure.

Alternatively, it is arguable that not every party should have to register as long as the contracted company elects to take the regulatory risk. It is also possible that only one member of a group of wholly owned companies need register to avoid complications where different parts of the group operate different elements of a PRS.

Q37 – What do you consider to be an appropriate fee for registration? Do you agree that the Registration Scheme should be funded by fees or should its cost be incorporated into the general industry levy that funds PRS regulation?

We support full funding by cost-based fees (in spite of the administrative costs of collection) as this will make the registration scheme more accountable. A lower annual fee should be paid to cover running costs.

The cost of registration is not, of course, a matter for this consultation, only the principle of whether a fee should be introduced. It is premature to talk of registration costs when no financial model or specification for the database exists.

The specification of the database also needs to take account of whether the information is proactively verified or taken on trust. If PPP undertakes no validation exercise the information is of no additional use to what a Network Operator might obtain via its own due diligence exercise. There should be some added value from PPP.

Q38 – Do you agree with the proposals around registration of service details? If not, why not?

Number Checker should contain minimal data (i.e. contact number and entity name) in order to avoid consumer overload. But where it is helpful it should be possible to indicate a brand or programme name or even alias that would be more helpful to the consumer, e.g. *The Sun* or *The X Factor.* We believe that flexibility is needed to deal with different business models.

As Level 1 providers will be responsible for shared shortcodes, it would be sensible for companies to enter generic names for customer care purposes.

Q39 – Do you agree with the proposals around withhold and retention of payments? If not, why not?

The extension of the 30-day rule throughout the value chain means that Terminating Providers (Level 1) who are now factoring out payments to clients will be prevented from so doing, whereas Merchant Promoters (Level 2 providers) may still be able to secure factoring arrangements. We suggest that it should not be for PPP to regulate on commercial terms. It should be left to a company's commercial judgment if it wants to help finance the growth of a partner's business in this way and hence carry the risk of meeting the cost of any fine.

In this context, we ask for clarity on whether the 30-day withhold is intended to be mandatory or whether it could be satisfied by transfer of risk and responsibility.

We would also like to suggest that PPP consider the possibility of removing the 30 day requirement for certain service categories such as charities where the risk of harm is clearly very low.

Q40 – Do you agree with the proposals around Data Protection? If not, why not?

Companies already have an obligation to abide by the law and PPP shouldn't therefore attempt to rewrite or second guess the law in a sphere beyond its approved remit or responsibility. It should merely be enough that law and data protections are referenced.

Any CCP findings should be that a service is 'non-compliant' with the Code of Practice – not in breach as a matter of law.

Q41 – Do you agree with the proposals around Network operator responsibilities? If not, why not?

Yes.

Q42 – Do you agree with the proposals around Level 1 and Level 2 provider responsibilities? If not, why not?

Yes. We need to make clear that Level 1 providers will often have responsibility for compliance on some aspects of a service and there are examples where a Level 1 provider has responsibility for an entire service.

Q43 – Do you agree with the proposals around Prior Permission? If not, why not?

In principle, yes, but we need clarity on which types of service will need Prior Notification or Prior Consent. We prefer a presumption in favour of the former.

Where Prior Consent is being sought, will the Tribunal examine the applicants' breach history? Surely this element should be left to the decision of the Level 1 provider as part of its due diligence and risk assessment.

Q44 – Do you agree with the proposals around PhonepayPlus' investigations? If not, why not?

Para 7.7 of the consultation document places an absolute duty on providers to provide PPP with any information that might be relevant, whether requested or not. This is excessive and impractical as it will encourage providers to bombard PPP with every piece of information on a service for fear of being held in breach by failure to supply information which PPP might later decide was relevant even though it did not ask for it. The proposal is also at fundamental odds with the right to remain silent.

PPP must establish clearly, transparently and objectively what a Level 1 provider can reasonably be expected to do and establish agreed parameters that in the ordinary course of business would be considered reasonable. Clearly where exceptional circumstances prevail the Level 1 provider, assuming they were on actual notice of such exceptional circumstances, may be reasonably expected to undertake additional measures.

Experience demonstrates that many RFI's submitted by PPP are unnecessarily broad, vague and suffer as result of being deemed by the industry as 'fishing exercises'. The time, resource and expense incurred by industry in responding to RFI's is considerable. There is a need for clarity, certainty and objectivity in the process.

We are pleased, therefore, that the draft Code paragraph 4.2.5 enshrines the current position that information must be requested. We would expect PPP to specifically request the information relevant to a case. We would also suggest that any additional information provided willingly should be considered and the fact of willing disclosure considered as a mitigating factor where appropriate.

Under para 7.12 of the consultation document there needs to be ample time for a provider to respond to additional alleged breaches; they should not simply be crammed into the same deadline as the original alleged breaches.

Q45 – Do you agree with the proposals around the Track 1 procedure? If not, why not?

Yes, in principle, but we need consultation on a transparent triage process, and AIME has started the exercise of reviewing all areas of the regulatory system with PPP including a transparent triage process. There is a deal of concern among members regarding this area and it represents a key issue that AIME will be pursuing in the coming months.

Q46 – Do you agree with the proposals around the Track 2 procedure? If not, why not?

AIME is concerned that the current standard procedure does not afford the Level 2 providers the opportunity to adequately represent themselves in what is in essence a paper procedure. The historical rationale for the process is well understood however in recent years the potential liabilities faced by Level 2 providers are significant - £250,000 and personal barring being the most pertinent.

Whilst there is the opportunity to appeal CCP decisions the administration charges and costs incurred in revisiting the process are both considerable and non refundable – the perception is therefore that PPP has nothing to lose following an adjudication whilst the clients carry the full cost of obtaining justice. This is inequitable.

The paper based system was developed when the maximum jeopardy was £40,000. The gravity of the liabilities has increased significantly whilst the paper process remains the same. In addition the lack of service level agreement between industry and PPP, lack of objective tests for liability, and administrative errors in process gives rise to genuine insecurities regarding the process and fairness. This has had a negative impact on the development and economic recovery of the PRS market in the UK.

It seems sensible that PPP should use the implementation of the New Code as an opportunity to rebalance the liabilities with process, enhance its service commitment to industry and provide objectivity and transparency that will instil confidence in both consumers and the industry a like.

The proposal also states that “When PPP receives or initiates a complaint the Track 2 procedure will **usually be used**” which seems to imply this as the norm and it is suggested that the expression “**may be used”** would be more appropriate.

These procedures will need to be underpinned by Service Level Agreements (SLA) from PPP.

Q47 – Do you agree with the proposals around the Emergency procedure? If not, why not?

No, insofar as we had previously understood from PPP that publication of EPs would be only to registered parties but this seems no longer to be the case. The point here is that an EP is taken against a party who has not yet been found guilty of a breach.

Q48 – Do you agree with the proposals around adjudications? If not, why not?

We repeat the point that Guidance should be binding on Tribunals, i.e. if a provider can establish that it has fully complied with Guidance it should not be open for the Tribunal to find a breach. Or at the very least any sanction should be waived or significantly mitigated.

Factors in mitigation or aggravation should be reported in the adjudication notices in a transparent and objective manner. Broader notification should only be done after notification to the relevant party adjudicated against.

Q49 – Do you agree with the proposals around reviews? If not, why not?

We welcome these in that any party may now seek a review.

We have also been discussing with PPP whether it is appropriate for a Tribunal that can levy fines of up to £250,000 per breach to operate behind closed doors and without provider attendance or representation. We are also concerned that administrative costs are so high and increasing. This means that the more a provider pursues its case, the higher the administrative charge if unsuccessful.

Q50 – Do you have an opinion on what time limit should be imposed (except in exceptional circumstances) for seeking a review after publication of a Tribunal's decision? If so, please state it.

We are content with the 30-day limit.

Q51 – Do you agree with the proposals around sanctions and refunds? If not, why not?

We are very concerned about the proposal for 'automatic' refunds (i.e. to a consumer's telephone account or handset) as in reality the mechanism to achieve these is not universally available. There are important differences between the fixed line and mobile worlds and issues arise from withheld numbers.

We are happy for automatic refunds to be made where practicable, especially as this is the most cost-effective method, but PPP would be unwise to direct actions that cannot be carried out. We also note that the services most likely to give rise to such a direction are those of no intrinsic value and yet these are most likely to be delivered by rogue providers who would be disinclined to comply anyway.

Industry experience in the broadcast medium shows that when consumers are given the option of a refund rarely do they take it up (less than 1%). It is also

calculated that the cost of a refund per consumer is of the order of £2 which signifies the need for a proportionate and pragmatic solution.

We look forward to further positive discussion of this topic.

Q52 – Do you agree with the proposals around the administrative charge? If not, why not?

Yes, and we particularly welcome the proposal to allow a request for review of an administrative charge.

On the general question of the costs of reviews and appeals, we are concerned that they can be prohibitive and a barrier to securing justice. We know that some members have swallowed a questionable decision on the basis that it is not cost-effective to seek a review, especially as the sanction may be increased. We would like to see these issues addressed.

Q53 – Do you agree with the proposals around oral hearings and appeals? If not, why not?

We approve of the proposal to relegate this material to Code Annexes. We would like to use this as an opportunity to enshrine some of the points for which we have already argued separately, e.g. a SLA for oral hearings, right to present a case face-to-face, etc.

Q54 – Do you agree with the proposals around publication of decisions? If not, why not?

Broadly yes, but with the proviso that general notification should only be permitted after notification to the adjudicated party. We are also aware of members' concerns regarding the timing of publication of Tribunal decisions and we will be seeking further discussions on this.

Q55 – Do you agree with the proposals around delegation of powers? If not, why not?

Yes.

Q56 – Do you agree with the proposals around definitions? If not, why not?

No. As already highlighted, 'promotion, operation and content' cannot be lumped together as Level 2 responsibilities and there may be more than one Level 2 provider involved in a single service. And there remains the problem of broadcasters and production companies.

Q57 – Do you agree with the proposals around Annexes? If not, why not?

Yes.

Q58 – Do you agree with this assessment of parts of the 11th edition of the Code that should be withdrawn completely going forward? Please list any

specific provisions that you feel should be preserved in some form, and provide your reasons.

We are happy to see coverage of the word 'free' withdrawn from the Code but need Guidance notes that are consistent with other regulators, as argued above.

The Guidance on live services will need to be clear on the issue of Prior Notification or Consent.

We are content with the withdrawal of the other six sections listed and have no additional comment upon them with the exception of the STOP command which we have discussed under question 16.

Q59 – Do you agree with PhonepayPlus' assessment and proposals around how the new Code will be interpreted in respect of 087 services? If not, why not?

We are content with this for the present but wonder whether the question of whether 087 should be classified as controlled PRS should be revisited.

Q60 – Do you agree with our assessment that now is not the right time to review our funding model? If not, why not?

We agree that now is not the time but we want to establish a timetable for early examination of funding and costs, particularly as a new process and culture should emerge with the new Code. We also expect to see costs falling back into line with industry turnover rather than comprising a growing overhead.

Q61 – Are there any other areas of change within the proposed new Code that carry an impact that you feel we should consider? If so, please provide them, along with any evidence you have of the likely impact.

We suggest that PPP should confer with the Ofcom Broadcast department to ensure that the relevant Codes are aligned in overlapping areas.

We also suggest that the time has come for an examination of the size, proportionality and impact of fines

Q62 – Do you agree with our assessment of the potential impact caused by the proposed new Code? If not, then please provide any areas of consideration you feel we have missed, and any supporting evidence for them.

Yes.

Statement of representation

AIME confirms that this response has been compiled following a process of distribution of the relevant Consultation documentation to all AIME members. A list of AIME members can be found at www.aimelink.org/home/members.aspx

The views expressed in this response are a fair representation of the views held by the participating AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

AIME also co-operates with other industry trade bodies and, while it is submitting its own Consultation response, the Mobile Data Association (MDA) wishes to broadly endorse this consultation response of AIME, and the principles it raises around strategic concerns.

Conclusion

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media and Entertainment services in the UK.

The importance of this Code emphasises the need to have clear understanding between industry and Ofcom/PPP regarding responses. For this reason we believe there would be considerable benefit from Ofcom/PPP conferring a round table summary presentation and discussion for Consultation respondents before any policy decisions are finalised.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson at + 44 1273 685328 or zoe@aimelink.org

AIME Background (www.aimelink.org)

AIME is a UK-based not-for-profit trade association that promotes excellence in the Interactive Media and Entertainment industry.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain which is generally, though not exclusively, supported by Premium Rate Service (PRS) billing facilities. Our membership represents over 90% of annual UK industry revenues, which stood at £0.80bn in 2009 and which, we believe, have the potential to increase to £1.5bn - £2.0bn per annum over the next three years. This assumes we have a healthy balance of self- and formal regulation and that industry is successful in continuing to build consumer trust.

AIME encourages its members to focus on consumer care and to recognise that if there is to be sustainable growth there must be more investment in consumer contact and support as a part of building trust, whether it be dealing with enquiries or complaints. Recent research suggests that there is still a significant portion of the UK population that is reluctant to use premium rate services due to trust issues in the main. It is important that we work towards improving this situation and encourage more consumers to use premium rate services on a regular basis.

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection. It is against this background that we frame our comments in this consultation response.

AIME