



Mobile Phone-paid Services and their Marketing

Zamano Ltd Response to PhonepayPlus Review and Consultation document

September 2008

Bedford Chambers, Covent Garden, London, WC2E 8HA, United Kingdom
Phone: +44 (0) 20 7240 1690 Fax: +44 (0) 20 7240 6644 Email: sales@zamano.com Web: www.zamano.com
zamano Limited. t/a zamano | Registered in England & Wales No. 03948948

1. Comments in relation to PPP questions 1-26

Q 5: Our understanding is that PPP are referring to 'All You Can Eat' services, where consumers are sent promo message with a link to wap site, which, upon clicking on link, they are charged after certain period of time – unless they send stop. We would appreciate PPP's view on premium wap pushes being sent to subscribers, containing links to content?

Q9: We have no problem with PPP providing a statement of expectation in areas where there maybe some confusion (as with this question). However we are of the strong opinion that clear and unambiguous information for opting out is sufficient in the promotional text.

Q10: We feel it is perfectly acceptable to provide clear and unambiguous details for opting out (i.e. option b). It will only serve to confuse the user who would, in the event of a shared 'stop' shortcode, be required to also include a keyword. Additionally it goes against PPP's view that 'Stop means Stop all' (unless user clarifies otherwise).

Q12: We feel there is no need to preface promotional message with 'promo or advert' because users have opted into receiving promotional messages already and therefore should have an expectation of receiving same.

Q13: It is not the SP's responsibility to verify the validity of our clients' databases. The responsibility lies with the Netops to make available recycled msisdn to SPs who can then activate a black list. Once a fresh MO is received, this msisdn would be removed from black list.

Q14: We believe that Data Providers should have to provide Opt-in confirmation with every msisdn, which would radically change their 'rental model' into more of a purchase model. The methods of opt-in should be limited only to third party confirmation (e.g. Payforit, MO...), If it transpires that opt-in info is invalid, suitable sanctions should be levied on the Data Provider.

Q15: Two weeks will lead to a load of rushed, inappropriate promotions – just to ensure validation of msisdn for future marketing campaigns. We would suggest that within one mth, either a marketing message or a reminder message is sent.

Q16: User is advised that it may be some time (in the event of seasonal services) before they receive a promotional message.

Q17: We believe that PPP's consultation document is not dealing with the problem of subscription sign up on the web but, rather, marketing opt-ins. On page 62, they clearly state that in the case of website signup, clicking 'confirm' to the Terms and Conditions is sufficient.

Additionally we believe that, other than Payforit, there are ways of providing third party confirmation (for instance, pin registration where a third party handles the pin delivery). We understand that under separate cover, the Mobile Broadband Group are submitting a methodology in which SPs are responsible for pin message and also host pin landing page. Additionally, they are required to store an image of this page (and any subsequent changes with date stamps) with a third party. We support this methodology. One final point is that the pin registration message should not include any reference to original website, in order to avoid potential spamming issues.

Regarding our view on subscription opt-in off the page, please see part 2.

Q18: We are of the strong opinion that an MO should not be the only acceptable method, as users may be charged and therefore this does seriously affect uptake. This can be proven following recent test marketing:

	Pin	MO
Total Number of pin requests_AUGUST	8648	14229
Subsequent Registration	6063	5152
	70%	36%

Q19: There has not been a general failure but, rather a small number IP who consistently breach regulations and we would be in favour of a homogenous approach to dealing with these errant IPs. Additionally, as a minimum, all IPs should be required to register with PPP – with any relevant adjudication's against that IP noted.

Q20 & Q21: Prior permission is not necessary provided PPP police services that do not adhere to the current code with regard to clarity on pricing.

Q22: We have a zero level of complaints from our chat services – some of which enter realm of fantasy.

Q.23. We do not wholly agree with the PPP assessment regarding phone-paid services using subscription billing in that this largely relates to a few rogue services which should be dealt with through existing regulation and sanctions. However, if Prior Permission is introduced it should be at an IP/Promoter level and not SP level.

Q24. Subscription competition services may be another area to consider.

Q25. We agree that any subscription service facilitated through Payfortit should be exempt from any prior permission requirements.

Q26. PPP do not appear to have factored in the potential loss of additional consumers who are put off by additional MT.

2. Additional Comments relating to Regulatory Impact Assessment

Double Opt In – Relates to Calls To Action Off Page

As outlined in section 8.6 XII of the Review document it is being suggested that once a consumer has texted in a keyword they must be immediately sent a free MT requesting another MO to affirm their intention to enter into the service.

We believe that the current regulations are sufficient to ensure that there is no consumer harm. While we appreciate that the current regulations take a significant amount of policing on PPP's behalf to ensure that the regulations are upheld by all IPs we don't see how the supervision workload will decrease if a double opt in was put in place. The requirement for stringent monitoring of advertising will still exist and if the proposed double-opt in is added it will also have to be monitored closely. While we understand that the aim of the Review document is to minimise consumer harm we believe that the current regulations, if adhered to, are sufficient to achieve this.

We further feel that the double opt-in step is unnecessary for the following reasons:

- The required regulatory information would be clear and prominent in the advertisement
- This information is repeated in the Terms and conditions at the footer of all advertisements
- The customer will receive a FREE welcome message after sign up that reminds them of the following detail: pricing, frequency of charge, customer care number and how to STOP
- The regulatory information would be in close proximity to the main call to action on the advertisement

- The regulatory information would be at least 50% the size and in the same font as the main call to action on the advertisement
- The regulatory information featured in the advert would contain details on pricing, frequency of charge, how to unsubscribe from the service, customer care details
- The additional MO would serve to confuse customers who might think they are making a second order by sending a second MO
- We believe asking the customer to submit a second MO will confuse and irritate customers as they are making an impulsive purchase and expect immediate gratification.
- With this in mind, we discussed our experience in the US, where a double opt in system is already in place. Our experience in that market confirms our belief that customers are often deterred by submitting a second MO for the following reasons:
 - Over complicated message
 - Next step for customer is buried in the message and is not clear enough e.g. Text Y/AGREE is not 1st part of the message
 - Customer sees only the 'join' and 'pricing' information and do not realise they must send another MO to complete their order
 - They believe they have completed their order and await their content not realising they must submit a second MO

Importantly, we believe the reasons above are the main factors for not sending a second MO. Customer behaviour in the US market demonstrates this point. When launching our subscription service we returned the following opt in message to customers:

“Welcome 2 club28282. 5 downloads each month. Reply with Y to access loads of great tones at just 9.99 a month. Txt stop to end. More info www.club28282.com”

While using this message, just 12% of customers who sent 1st MO returned a second MO and were subscribed. If double opt-in is to be considered then the outgoing MT should be changed so that the call to action is at the start of the message rather than the back, for instance:

Good Choice! Reply with Y now to <shortcode> to receive your content. You will have access to [service description] for [cost of service in £] per [billing frequency]. Helpline [UK standard rate or free helpline number]

Double Opt In – All Services

If the double opt is mandated we believe the message format should be changed from the suggested text in the Review document;

- The current text is confusing as it tells them that they are subscribed even though they are not subscribed.
- The current text prompts customer to send STOP to unsubscribe, the customer is not subscribed or receiving charges so the message is misleading
- The text should focus on a positive affirmation of their choice and also reiterate the charge
- The command 'AGREE' is not user friendly. For e.g. we do not carry text commands with more than 4 characters in our marketing material therefore we do not believe it is reasonable to expect customers to submit the text AGREE. A simply Y or YES should be sufficient.

Current Text:

U have joined/subscribed to [name of service and optional description] for [cost of service in £] per [billing frequency] until you send STOP to [originating service shortcode]. Helpline [UK standard rate or free helpline number]. To confirm text AGREE to this message/shortcode xxxxx.

Suggested Text:

Good Choice! Reply with Y now to <shortcode> to receive your content. You will have access to [service description] for [cost of service in £] per [billing frequency]. Helpline [UK standard rate or free helpline number].

** We have not included STOP as the customer is not subscribed or receiving MT billed message therefore prompting the customer to send STOP will cause confusion. If the customer does send STOP we will return a free message confirming they are not subscribed.*

Cooling Off Period

If PPP feel it necessary to amend the current regulations we believe that a cooling off period would be a better alternative to the double opt in process. As we see it there are two options for the cooling off period.

1. Free Welcome Message delivered as per regulations with the added point that their content will be delivered in 10 minutes. If they decided that they no longer want the content on seeing the pricing information it gives them plenty of time to send stop and prevent the billed messages being delivered.
2. Free Welcome Message and WAP push that gives them access to their content delivered and after a reasonable period of time the billed messages are delivered. This option would put IPs at a greater exposure as there's a risk that consumers would download their content and then send stop.

In both cases we believe that this creates a positive experience for the customer and would give immediate gratification if the cooling off period was limited to 10 minutes. The customer has a reasonable amount of time to digest the necessary information which we have already outlined in the marketing material. With the regulatory information included in the marketing material and sent via text before any charges are incurred, we believe the customer has a fair and reasonable opportunity to ensure they are happy with the terms of the service.

We are in full support of the enforcement of regulations and believe that points A and B below will ensure the customer is fully informed and there is clarity on the pricing, frequency and STOP information relating to the service:

- A) Ensuring advertisements include the regulatory details in a prominent and clear manner
- B) Customers receive a FREE message reiterating the regulatory information AND are given a reasonable time period to send STOP if they wish to

3. Additional Comments relating at Annex A, B and C**Annex A – Promotional SMS Messages / Marketing**

Our view is that SPs do not compile nor own the MSISDN Databases and so to impose an obligation on them is incorrect. Netopss can and should take greater responsibility for making information available on recycled MSISDN's so that SP's and IP's can clean their databases regularly – An introduction of a mobile version of the TPS would be a good starting point

The prohibition of sales of marketing lists could be viewed as a restriction on movement and free trade which is enshrined in EU Law. Once again however to impose such conditions on the SP would be inaccurate.

With regard to the marketing of related services, we would ask that PPP try to be more definitive (as opposed to prescriptive) regarding the marketing of related products to existing users. The view being that cross promotion is ok apart from:

- Non Adult to Adult – i.e. only market adult services to users who have previously purchased adult products
- Kids to Non Adult

Annex B – Prior Permissions Notice

No additional comments – already covered off in response to Questions 20 – 24.

Annex C – Stop Failure

Stop

We feel that the decision regarding Stops on multiple subscriptions as detailed in Annex C is an unnecessary and potentially confusing amendment to the guidelines. It's our opinion that instead of removing customers from all subscriptions if they do not respond to the Stop message within 24hrs that they should remain on their other subscriptions unless they affirm that they want to be removed from all services. We suggest that the text of the Free Message be amended for those on multiple subscriptions informing them to text "Stop All" should they wish to be removed from them.

Removing customers from a subscription without them doing anything could potentially cause as many complaints as leaving them on the subscription as people who find value in these services could find that they are no longer receiving messages for a service they wished to remain on.

An additional problem is with shared shortcodes and msisdns that are signed up to more than one service (through separate IPs). A solution would be for all IPs to have dedicated shortcode and PPP have agreed to discuss this with NetOps. PPP have also indicated they would reconsider the message text to include 'if no response within 24 hrs, all services will be stopped', if they continue down the route proposed.

Re-Subscribe

In terms of re-subscribing customers to our services we would suggest that a more user friendly keyword is used instead of "RE-SUBSCRIBE". As it's a hyphenated and quite a long word we felt that customers are more likely to misspell especially since it won't appear in predictive text. We'd appreciate it if a shorter, easier to spell trigger was mandated for this task.

Use of words similar to Free

It is our view that most words (with the possible exception of free/free of charge/no charge) should be acceptable provided they are in context, prominent (relative to rest of promotion) and consistent. For instance: Bonus and Complimentary are both acceptable (as they imply 'additional'), provided its part of same sentence to which it refers. In a similar vain, 'Free' as part of 'Buy one and get one free' should remain acceptable.

Ported Databases

It is our view that any SP taking on an existing subscribed database for future billing must send sample list of misdns to each Netop to validate opt-in status.

4. Conclusions

In the current climate it appears that PPP's view is that the point of regulation rests with the SP which is ineffective and inappropriate. The current model implies that the SP has editorial, management control over services being provided is not correct. It has financial control but only because it is a conduit between the payment from the consumer to the service promoter. Furthermore, out of all the agencies involved in the mobile premium text market, it is the SP that receives the smallest share of the revenue generated.

One way to address this would be to make the IP directly liable to code requirements and not the SP, In practice it will mean a lot of work for PPP to address to get it right and this piece of work is not without precedent as last year Ofcom made the broadcaster directly accountable and liable in relation to premium quizzes, so we see no reason why PPP cannot do the same for content and service promoters.

We agree that Payforit will address many of the concerns raised and therefore any services that use the Payforit mechanism should not be subject to any of the conditions discussed in the consultation document.

In summary we believe that any changes made to the Code should be geared to supporting SPs, and make the IPs liable directly. There is probably sufficient regulation in place already – It just needs to be better enforced.

Finally, regarding the ongoing conflict between PPP and Network Operators (especially in relation to the two codes of practice), whilst it is understood PPP's CoP takes precedence in areas where there is a disconnect, this conflict continues to instil confusion in the SP community, especially in relation to policing services and taking a homogenous approach to errant IPs