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## Consultation

# Guidance on Application-Based Payment in support of the PhonepayPlus Code of Practice

***Submission by***

**Association for Interactive Media and Entertainment**

**(AIME)**

**AIME** ([www.aimelink.org](http://www.aimelink.org))

AIME is the UK based trade organisation representing the commercial interests of member companies involved in the interactive media and entertainment Industry - where consumers interact or engage with services across converged media platforms, and pay for those services or content using a variety of micropayment technologies.

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 supported by Premium Rate Service (PRS) billing facilities, and our membership represents in excess of 90% of annual industry revenues which stood at £0.8bn in 2010 within the UK and which, we believe, has the potential to increase to £1.5bn - £2.0bn per annum over the next three years assuming we have a healthy balance of self and



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formal regulation and that industry is successful in continuing to build consumer trust.

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.

## **General**

PhonepayPlus is seeking to implement Guidance on the interpretation of the 12<sup>th</sup> Code of Practice in respect to PRS billing through the application based environment. In response to this AIME has conducted a survey of Members and obtained their initial thoughts.

Application based billing employs a wide range of micropayment mechanisms for the billing of content and it is therefore particularly important to ensure that the Code and associated Guidance doesn't place PRS transactions at a competitive disadvantage to those alternatives. We are encouraged that the Guidance proposed appears mindful of this fact.

Throughout the documents we have noted some areas where we differ not with PhonepayPlus on the desired outcome, but on what we believe to be the most practical method to achieve that outcome. This is particularly the case around proposals to inform consumers of handset compatibility, where we feel it to be unviable for a Provider to have knowledge of all incompatible devices, considering a handset market which is growing exponentially, though more reasonable to provide consumers with a list of known compatible devices. Whichever method is eventually preferred, the Guidance appears silent as to where in the payment flow this information should reasonably be placed and we would advocate that it is preferable to be placed within the application description rather than elongate the payment checkout process.

Despite assurances that Providers are free to deviate from Guidance, if in doing so they can maintain Code principles, we would caution that there remains a wide spread industry concern that Guidance may assume a status tantamount to rules. For this reason we believe the inclusion of additional best practice advice within Guidance should be minimised. We would encourage the removal of paragraph 33 which advocates discretionary refunds and we would also question the need for requirements such as 28.d on choice of payment mechanism, which we feel is a matter of only commercial significance.

## **Questions**

### **Q1. Do you agree with this definition? If not, why not?**

Having considered the proposed definition, AIME is concerned that the current wording may be too broad for the purpose of defining the environment we believe PhonepayPlus is seeking to cover through this Guidance.

AIME proposes the following definition, which we feel more accurately defines the application environment.

*"A premium rate payment that is initiated as a result of a software application resident on a PC, mobile phone or other device."*

**Q2. Do you agree with the diagram which sets out different developer payment options at paragraph 2 of the proposed Guidance? If not, why not?**

We view the payment map to be a broadly accurate reflection of the available payment options.

The diagram could be improved in its presentation of payments for Virtual Currencies, so as to acknowledge that a consumer's Virtual Currency balance may at any given time be made up of currency purchased through a variety of different payment methods. This environment is distinct from the other products where the transaction is likely to have resulted from a single payment flow for each separate product.

**Q3. Are there any other areas of risk that you feel this Guidance should identify and address? If so, then please suggest them, and provide any supporting evidence you have as to the risk they pose and how to resolve it.**

We note that the consultation narrative makes reference to the 'STOP' command to exit services, though this has not found its way into the Guidance Note text. We believe that the Guidance would benefit either from a direct reference to how to exit services, or, as a minimum, a cross reference to the other Guidance available in this area. In addition the application environment provides a number of other methods for preventing further billing, such as in many cases simple discontinuing use by closing the application.

The document also makes reference to the risk posed by 'Malware'. The industry is mindful of the reputational risk to the sector, as well as the consumer harm potential, where an application is programmed to instigate PRS charging without the user's authorisation. The examples given, however, require elucidation and a firmer definition of what is constituted as 'malware'.

The dialling of a PRS number without the consumer's express knowledge, in itself, is not malicious, as this has been the foundation of the Sky 'Red Button' service which has functioned legitimately for many years. Equally, diverting a call to an alternative (cheaper) number may benefit the caller in some service dynamics. The guidance therefore needs to be careful to set a 'malware' definition which is based upon the intention rather than the dynamics of the service. i.e. *"a software application that incurs a premium rate charge without the user's knowledge or consent"*

**Q4. Do you agree with our proposed expectations around key information where a service can be accessed on more than one device? If not, why not?**

We concur that it is a relevant concern if consumers are purposely misled into purchasing an application under the mistaken belief that it can be used on multiple devices, when this is not the case. However, we are not aware of any widespread issues in this regard and we would be interested to better understand the source of these concerns, i.e. are there documented examples where the consumer has bought for one device and expected it to work on another?



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There are environments where application migration might be more readily expected, such as between iPhone and iPad devices. Conversely, in other environments there is unlikely to be an automatic assumption, i.e. applications bought on a Mobile would not by default be expected to work on a PC.

As the presumption towards whether an application is accessible on multiple or single device(s) is not universal, we view that there is unlikely to be a pressing need for regulatory intervention, unless a Provider sets out to purposely mislead.

Generally, it should be sufficient to state what device an application works **WITH**, not what it doesn't work **with OR** a minimum spec.

**Q5. Do you agree with our proposed expectations around application-based payment services using a 'freemium' model? If not, why not?**

There is no requirement in other industry sectors to remind consumers at the end of a trial period before billing commences. We are pleased to see that Guidance has now been brought into line with these standard retail models.

**Q6. Do you agree with our proposed expectations around pricing and key information for 'in-app' purchases? If not, why not?**

AIME is in general agreement with this section of the Guidance.

We record in addition our view that the requirement to provide a receipt may be in a form other than a SMS, where this is practical, for instance within an easy accessible purchase record within the application architecture, or delivered by email.

Providing receipts are delivered in a timely manner, we are also of the view that receipts need not be delivered immediately where this might detract from the user experience, for instance interrupting the flow of a game. In these circumstances it should be permissible for receipts to be delivered at the conclusion of the gaming experience.

**Q7. Do you agree with our proposals around virtual currency? If not, why not?**

AIME agrees with the assessment made that the regulatory remit of PhonepayPlus extends only to the purchase of the virtual currency and does not extend to subsequent purchases made using the virtual currency.

It is indeed important that consumers are made aware of key information, such as the exchange rate, prior to purchase and we believe the proposal in this respect to be sound, though the wording of the Guidance could be made clearer, in particular the drafting of section 27 (e). We thus propose that this section is replaced with the following wording:

*"It would be considered good practice if, prior to purchasing virtual currency, the price of any services which can subsequently be bought are clearly available and / or proximate to the method of consent to purchase. A failure to do so could be considered misleading by a consumer, where consumers have purchased the virtual currency using PRS as a billing mechanic. Where the range of items that can be bought using a virtual currency is extensive, we would suggest the cost of a sample of typical items which can*



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*be bought using virtual currency is made clear to the consumer prior to purchase."*

It is our view that consumers of virtual currency are likely to have a fair idea of the market in which a currency can subsequently be spent, as this knowledge will have likely formed the motivation for the currency purchase. Therefore the examples provided at the point that the currency is bought need not necessarily be extensive and in some cases may be easily discerned from the general environment in which the payment is housed.

We would also note that whilst an exchange rate should be accurate in all cases, there may be legitimate situations where the buying power of a particular currency may fluctuate leading to slight variations in the product examples. An example might be a user driven market were the cost of a farm animal within a game might be driven up or down by user demand, or the case of a virtual stock market.

#### **Q8. Do you agree with our proposals around password protection? If not, why not?**

AIME feels that the suggested requirement that a password is entered each time an application is launched is unnecessary and would detract from the consumer experience, thus impacting the continued usage of the application. We believe that the requirement for password protection should instead be linked to the process for authorising payments within the application.

To improve the payment flow we would also advocate that once a password has been entered to unlock the billing functionality that this authentication is then sufficient for subsequent purchases made within a reasonable period of time. This suggestion of course would not replace the need to adequately inform the consumer prior to subsequent purchases in line with the principles set out in paragraphs 19-23 of the Guidance.

We feel that a greater emphasis should be placed on the user and parental responsibility to prevent unauthorised access by using the security features built into phone handsets. AIME is of the opinion that PhonepayPlus should not be advocating refunds within the Guidance, as this risks setting precedents and encouraging consumer abuse. The decision as to whether a refund is justified should be left to the exclusive discretion of the Provider. We note that there is already a wide spread culture of Providers making refunds for legitimate claims.

#### **Q9. Do you agree with our proposals around technical quality? If not, why not?**

AIME supports the principle that consumers should not be misled into purchasing applications that are knowingly incompatible with their device and more generally that applications are of adequate technical quality for the stated purpose.

This proposal must however be balanced with the reality that new devices are continually being added to the market and thus Providers, despite best endeavours, will not always be able to provide a complete list of devices with which an application may work. Likewise marketing is often device agnostic and it may not always be possible to restrict marketing based on compatibility.

We feel instead it would be more pragmatic for Providers to include, in an accessible place, details of those handsets and or operating environments that have been



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compatibility tested, or details of minimum specification requirements to run a given application. This would ensure consumers are fully informed prior to purchase and thus be able to make an informed choice.

**Q10. Is there any consideration or evidence, especially around other methods of exiting or suspending PRS charging on an application-based service, that we should be aware of before we make changes to existing guidance in respect of methods of exit from application-based services? Please supply any evidence you have.**

The 'STOP' command is likely to be an appropriate backstop method for exiting services running on a subscription model, though the application architecture might also provide more transparent methods such as an unsubscribe link, or tick box, which may be more easily discernible to the user. Indeed simply closing the application (including exiting in background mode) in some instances may be an appropriate form of exit from further billing, where this is made known to the consumer.

In many cases application billing may take the form of a one off purchase for the application or a per item purchase within the application. These methods needn't require exit, as billing will naturally discontinue when the user ceases engagement with the service.

## Conclusion

AIME is in general support of the broad thrust of the Guidance, though has made a number of drafting suggestions, which we feel would improve the clarity of the document without changing the principle of the intended outcome.

The consultation document as a whole provides a reasonably complete explanation, both of the desired outcome and the reasoning behind the suggestions made in the Guidance. We believe the final Guidance may be benefitted by the inclusion of some of the background reasoning to aid Provider interpretation of their responsibilities.

The application environment is a particularly fast moving and innovative section of the industry and it is important that both the drafting and interpretation of Guidance is mindful of the practical limitations Providers are subject to when informing consumers.

## Statement of Representation

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant Consultation documentation to all AIME members. A list of members can be found at <http://www.aimelink.com/home/members.aspx>

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



**Close**

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.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson at + 44 (0)1273 685328 or [zoe@aimelink.org](mailto:zoe@aimelink.org)

Sincerely  
AIME