



**Regulation of Anonymous SMS:  
A Statement by PhonepayPlus following  
its consultation on the Regulation of  
Anonymous SMS Messaging Services  
published on 30 July 2007**

**Issued by PhonepayPlus on 25 October 2007**

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## Executive Summary

PhonepayPlus issued its consultation document on the regulation necessary for Anonymous SMS services on 30 July 2007, with a short timeline for responding. The closing date was 7 September 2007.

The consultation document set out to define the risks associated with Anonymous SMS services, where the identity of the sender and author of the text is withheld from the recipient, and sought the views of interested parties on the form of regulation appropriate and possible for an entertainment service which has the potential to cause consumer distress or annoyance.

The consultation document set out a range of options for regulation, including a “Do Nothing” option, and invited respondents to comment on the premise that the most appropriate solution was a prior permissions regime with the following Conditions:

- The requirement to make recipients aware that the text they have received is an Anonymous SMS, either within the original SMS or in an almost instantaneous follow-up SMS.
- The requirement to provide recipients of Anonymous SMS services with a non-PRS number to call to register a complaint or ask that future messages to them be blocked.
- The requirement to record the content of all Anonymous SMS services relayed, and the telephone number of the author, and to make this available to PhonepayPlus upon request.
- The requirement to make users of Anonymous SMS services aware that offensive or threatening SMS messages will not be tolerated, and that all messages are recorded.

Based on the feedback we received, PhonepayPlus has concluded that a prior permissions regime is the most appropriate method of regulation for Anonymous SMS services. A Prior Permissions Notice is attached at **Appendix B** which requires all providers of Anonymous SMS services to obtain a licence from PhonepayPlus by **Friday 11 January 2008** if they wish to continue to operate them.

## Section 1 Background

While PhonepayPlus has so far received only one formal complaint about Anonymous SMS services, subsequent monitoring and research by PhonepayPlus and mobile operators showed that the practice of using Anonymous SMS services to send offensive or distressing messages is more widespread than first believed. This evidence was presented along with the consultation proposals.

Based on an assessment of evidence submitted as part of the consultation process, and extensive pre-consultation with various parties, PhonepayPlus did not propose Conditions requiring a return path for recipients to reply to an Anonymous SMS, or the requirement to filter and block inappropriate messages.

Responses were received from 19 individuals and organisations. Their details are listed at **Appendix A** and all non-confidential responses to the consultation have been published on our website at [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk).

The relatively low number of responses may reflect the specialist nature of this service with the consequence that fewer service providers have a direct interest in the subject and any potential regulation that arises. In addition, PhonepayPlus sought opinions from many of the relevant stakeholders (including child protection groups) during the pre-consultation period, which may have meant that some stakeholders felt no need to also formally reply to the final consultation.

The consultation document received a higher than usual focus of attention from telephony publications and websites. Some websites went so far as to facilitate discussion forums and consequently PhonepayPlus received around 10 responses from members of the public. Some of these responses were based on a misunderstanding that PhonepayPlus was consulting in order to facilitate the introduction of Anonymous SMS services. Nevertheless, consumers did provide some useful feedback.

## Section 2

### Summary of Responses

#### **Q1 Do you agree with PhonepayPlus' definition of Anonymous SMS? If not, why not?**

PhonepayPlus had proposed the following definition as part of the consultation document:

*"An SMS text message sent to a communications device where the identity of the sender of the text message, or if content is sent by any other person via the sender of the text message, the identity of that other person, is withheld from the recipient of that text message."*

While all respondents agreed that Anonymous SMS services should be defined, there was a general feeling that the proposed PhonepayPlus definition was too complex.

Alternative definitions were suggested as follows:

Premium Rate Association: *"An SMS sent to a communications device where the identity of the author of the message's content is withheld from the recipient."*

Network for Online Commerce: *"A service that enables users to send SMS text to recipients from a website without using their own MSISDN."*

BT: *"An SMS text message sent to a communications device where the identity of the sender of the text message is withheld, or similarly where the content of the message is provided by a person other than the sender the content provider's identity is withheld."*

PNC: *"An SMS sent to a communications device where the identity of the individual who writes the message and selects the recipient is withheld from that recipient."*

Having considered these responses, PhonepayPlus has simplified the definition while maintaining the distinction we require between the sender of the message (i.e. the Anonymous SMS provider) and the author of any content contained in the message (which will often be the user who generates the content of the messages they send). The definition PhonepayPlus intends to use is as follows:

***"An SMS message sent to a recipient's communications device where either the identity of the message sender, or the identity of the message content provider or author, is withheld from the recipient."***

Other respondents were keen that PhonepayPlus draws a distinction between Anonymous SMS and Mailbox Dating Services, where each user is allocated a mailbox number and can receive anonymous communications from other users but have the option to block any communications from a specified mailbox. The main distinction is that all users of Mailbox Dating Services must be subscribers and therefore accept that they will receive communications from other users which they can then accept or reject.

On these grounds, PhonepayPlus can confirm that it sees Mailbox Dating Services as distinct from Anonymous SMS ones for the purposes of this consultation.

**Q2 Do you agree with PhonepayPlus' assessment of the risk caused by having no clear information and complaints mechanism? If not, why not?**

**Q3 Do you agree with the proposed conditions i) and ii)? If not, why not?**

PhonepayPlus proposed the following conditions to cover the risk of there being no clear information and complaints mechanism for an Anonymous SMS service:

- i) That each Anonymous SMS message contains the statement that it is an Anonymous SMS from a third party, and provides a non-PRS number for recipients to call for further information. **Or** that for each Anonymous SMS sent, the recipient is sent a second, free-of-charge message immediately after the original message. This second message should state that the original message is an Anonymous SMS from a third party, and provide a non-PRS number for recipients to call for further information.
- ii) That recipients who call the non-PRS number provided should get through to an operator or IVR explaining the name of the service provider, the nature of the service, and the procedure for making a complaint to the service provider and/or PhonepayPlus upon request. Where an answerphone is used to collect complaints, this must be checked on a regular (i.e. hourly during business hours and first thing each morning) basis and complainants contacted without delay.

Respondents universally agreed with PhonepayPlus' assessment of the risk of prolonged distress or offence to recipients of Anonymous SMS but there were a number of comments on the details of the proposed conditions.

**Use of "Follow-up" SMS**

A number of service providers felt that an instantaneous "follow-up" SMS would be difficult to guarantee due to the "store and forward" nature of SMS carriage. In some cases this could lead to the follow-up SMS arriving before the original and, in other cases, the follow-up message being delayed longer than the "immediate" requirement PhonepayPlus suggests. Because of this, many service providers expressed the belief that the option of a statement and non-PRS number in the original SMS would be preferred by most providers of these services.

Conversely, some other respondents suggested that the "follow-up" SMS option would be preferred, on the grounds that informing the recipient in the first message would make the service pointless.

**Distinction for "Practical Joke Services"**

Some service providers and a network operator felt that there was a clear distinction between services which invited users to pick from a list of pre-determined joke messages and services which allow users to create their own content from scratch. In the case of the former, the feeling was that there was little need to require an avenue for complaint.

**Number for further information and complaint**

While one service provider objected to the use of a non-PRS number, preferring instead a return path through which the recipient can send a STOP command and block future messages, the majority of respondents were content with this approach.

Respondents also stressed the need for any final conditions to clarify what further information a service provider is allowed to give to recipients who call their non-PRS number, especially the requirement not to give out the name or phone number of any message authors.

## **Q2 & 3 Conclusions**

In light of these comments, PhonepayPlus takes the view that recipients of Anonymous SMS messages should be informed that the message is a withheld text, with a non-PRS number to call if recipients wish to seek further information or complain. PhonepayPlus is confident the two options presented to service providers to accomplish this (either in the text of the original message or in a follow-up SMS) are sufficient.

PhonepayPlus is aware of the risk that a follow-up text may not arrive immediately after the Anonymous SMS message to which it relates, or even be significantly delayed, because of the nature of SMS carriage through networks. In the case of a follow-up message being delayed, considerable distress could be caused to the recipient of an Anonymous SMS. However, we are advised that such instances are rare and that the majority of SMS messages will be delivered almost instantaneously to the recipient. With this in mind, PhonepayPlus will allow the option of a follow-up SMS, with the caveat that this option will be reconsidered if it is later found to increase undue distress or offence.

PhonepayPlus agrees that for services where users pick from a pre-determined list of joke messages, there is less risk of real offence or distress, provided the recipient is informed that the message is a joke quickly enough to appreciate its humorous intent. With that condition in mind, PhonepayPlus is content not to require a non-PRS number for further information or complaint where Anonymous SMS services do not allow users to generate their own content.

PhonepayPlus also agrees that the use of "further information", as set out at the proposed condition i), could be ambiguous. We would therefore propose to make it clear that service providers cannot give out the names or contact details of other users where a message recipient calls to complain.

### ***Q4 Do you agree with PhonepayPlus' assessment of the risk caused by having no return path? If not, why not?***

### ***Q5 Do you agree with PhonepayPlus' proposals not to require a return path as long as a satisfactory information and complaints mechanism is available? If not, why not?***

The majority of respondents, with the exception of the service provider who preferred a return path to the non-PRS number and complaints mechanism at Question 2/3, were content for there to be no return path provided there was a robust mechanism for recipients to complain and opt out of future anonymous messages.

Other respondents suggested that, where a "follow-up" SMS was employed to tell recipients a message was an Anonymous SMS, it could display a short code with a facility to relay a STOP command. Also suggested was a form of preference service for recipients who did not wish to receive further messages, which the respondent considered to be especially useful in cases where the anonymous messages concerned were unwanted romantic advances.

It is clear that the majority of respondents were content for a return path not to be included in anonymous messages, provided a robust complaints mechanism was in place through the use of a non-PRS number. While many recipients of inappropriate material may just wish the messages to stop, the real risk to the consumer comes from messages which have far more offensive or disturbing content, and may well require further action on the part of PhonepayPlus or even the police.

## **Q4 & 5 Conclusions**

Taking into account these responses, PhonepayPlus remains of the opinion that a non-PRS number is necessary. Should service providers wish to offer a return path or preference service to deal with simple barring requests, they could do so, but a non-PRS number is still required in order to deal with more serious complaints. Callers to a non-PRS number could request that no further messages are delivered to them where no return path exists.

***Q6 Do you agree with PhonepayPlus' assessment of the risk caused by lack of moderation and monitoring? If not, why not?***

***Q7 Do you agree with the proposed conditions iii) & iv)? If not, why not?***

PhonepayPlus proposed the following conditions to cover the risk caused by lack of moderation and monitoring:

- iii) That service providers record the content of all messages they relay, and keep records of this content, and the telephone number of the author, in accordance with the Data Protection Act. These records should be made available to PhonepayPlus or other investigation bodies upon request.
- iv) That service providers prominently display on their websites that they keep records of all the messages they relay, and that they will act on all serious complaints and forward details to the police if necessary.

### **Moderation**

Respondents universally agreed the need for monitoring, with most content with PhonepayPlus' assessment that language moderation of each message would prove too costly and difficult.

Two respondents, one service provider and one network, stated their preference for either "live" moderation by service provider staff or by a tailored computer programme. However, this would seem a significant financial burden to place on service providers in light of the relatively small number of offensive messages, especially if messages that might seem threatening or offensive to a monitor would actually be acceptable or agreeable to the recipient.

### **Use of Data Protection Act**

One respondent cautioned that, in certain circumstances where service provider records are passed to the police, the Regulation of Investigatory Powers Act 2004 (RIPA) would have to be invoked. If the consent of the sender (who would accept records being passed to the police as a condition of sending) and the recipient (who would be asked for their consent if they made a complaint) are obtained, there is no problem. If not, the police would have to use RIPA to obtain the records.

PhonepayPlus has checked this with the Home Office, who have confirmed this position. In light of this, it seems unlikely that the police would be required to use a RIPA request except where a service provider proposed to pass them the content of a message without the recipient's consent.

### **User acknowledgement of service provider record-keeping**

The fourth proposed condition in PhonepayPlus' consultation document concerns the information given to users of Anonymous SMS services prior to them sending any message. It reads as follows:

*“That service providers prominently display on their websites that they keep records of all the messages they relay, and that they will act on all serious complaints and forward details to the police if necessary.”*

One respondent suggested that the service provider’s website should make this statement part of the Terms and Conditions of Use, with the requirement that a potential user should tick a box confirming they have read, and understood, them before being allowed to draft a message.

### **Q6 & 7 Conclusions**

In light of these comments, PhonepayPlus remains of the opinion that live moderation or moderation using a specially-tailored computer programme would be disproportionate where there is an appropriate avenue for complaint (in this case, a non-PRS number given to recipients of Anonymous SMS messages).

We also agree that potential users of Anonymous SMS services should be required to self-certify they have understood conditions before sending a message.

### **Q8 Do you agree with PhonepayPlus’ recommendation of Option C as the appropriate model for regulation? If not, please give your reasons and state your preferred option.**

Almost all respondents agreed that Option C, the establishment of a prior permissions regime, would be the most suitable of the four options. One respondent, a network, felt that Option C went too far and that Option B, the issue of a Statement of Expectation, would be more suited to the level of consumer harm. Other respondents cautioned PhonepayPlus to closely monitor any prior permissions regime and to make the move to Option D, an outright ban, if necessary in the future.

Among the specific points made about Option C were as follows:

- The prior permission licence should either sit with the service provider/information provider, or name them.
- A prior permission licence should be obtained for each service, not as a blanket licence for each service provider.
- Existing providers of Anonymous SMS services should be exempted from requiring a prior permissions licence.
- Prior permissions certificates should state that PhonepayPlus prior permission does not confer automatic right of access to a network.

### **Q8 Conclusions**

In light of the views expressed, PhonepayPlus agrees that the introduction of a prior permissions licensing regime is the proportionate regulatory solution.

To require a prior permission licence for each service would create some extra cost for the service providers involved, although we are aware that this cost would most likely be passed on to the information provider. PhonepayPlus is aware that much of the risk inherent in Anonymous SMS services would fall on the information provider to control and be beyond the day-to-day control of the service provider who may provide it. In this circumstance, we understand the wishes of some service providers to transfer a higher level of acknowledged responsibility to the information provider in the event of a breach, by virtue of the prior permission applying directly to their service rather than to the service provider alone.

This stated, PhonepayPlus is still of the opinion that the service provider is responsible for the operation of services through its arrangements with the terminating communications provider. The facility exists within the 11th Edition of the PhonepayPlus Code of Practice for

PhonepayPlus to deal directly with the information provider where they are obviously the culpable party. But ultimately, any service provider involved in multiple breaches for any kind of service may have its permission to run such services reconsidered by the PhonepayPlus Adjudications Panel, regardless of the level of day-to-day control they have.

PhonepayPlus proposes to require only one prior permissions licence for each service provider, with the proviso that the details of each provider of Anonymous SMS services that they contract with must be provided to PhonepayPlus. This would facilitate PhonepayPlus dealing directly with the information provider in breaches where they are the culpable party, while not abrogating any responsibility on the part of the service provider to ensure that lessons are learned from previous adjudications.

Prior permissions regimes do not usually exempt existing services or service providers from the obligation to obtain a licence. We see no compelling reason to make an exception for Anonymous SMS services, especially in light of the fact that the risks highlighted by PhonepayPlus and O2's monitoring come from existing Anonymous SMS services.

The granting of prior permission by PhonepayPlus does not confer any obligation on a mobile network to accept any service and we are happy to reflect this in the final prior permissions document for Anonymous SMS services.

***Q9 Do you agree with PhonepayPlus' assessment of the potential risk to children caused by Anonymous SMS services? If not, please state areas of consideration we have missed.***

Respondents were universally in agreement with PhonepayPlus that Anonymous SMS services were not specifically aimed or targeted at children. While there was no response from Childnet or the NCH, both these organisations had provided us with their views during pre-consultation.

One suggestion, from a respondent to the consultation, was that users are required to confirm that they, and the recipient, are over 16 prior to being allowed to send any messages. While there is evidence that some Anonymous SMS services allow free messaging, and that this provides a risk of peer-to-peer bullying, the consultation provided no further evidence that Anonymous SMS services using PRS are a risk to children. Because of this, PhonepayPlus is not minded to include that recommendation at the present time. However, should a risk to children become evident, this suggestion can be reconsidered.

***Q10 Should tighter rules and standards apply to Anonymous SMS activity where it is part of a PRS-charged Anonymous SMS service? Please give your reasons.***

Opinion was slightly split, with some respondents even suggesting that PhonepayPlus should regulate all Anonymous SMS services, whether PRS or not. But the majority of respondents expressed the view that PhonepayPlus should not seek to expand its regulatory remit beyond premium rate services.

This was not PhonepayPlus' intention, but the same potential exists for recipients of Anonymous SMS messages to suffer distress or offence whether the service is PRS-billed or not. Many respondents agreed that this is the case. Once a prior permissions regime is established for Anonymous SMS services in the PRS arena, PhonepayPlus intends to contact other relevant bodies, with the recommendation that they consider the potential for offence or distress in the wider telecoms arena.

## **Section 3**

### **Next Steps**

The new prior permissions regime is set out in the Prior Permissions Notice at **Appendix B** of this document. The document takes effect **12 weeks** from the date of its publication. This is in order to allow service providers time to make the necessary application for licences and to allow information providers time to make any necessary changes to their systems and procedures in light of the enhanced consumer protection requirements.

We will continue to keep Anonymous SMS services under review, especially over the coming weeks and months. This will include random monitoring to ensure compliance with the PhonepayPlus Code of Practice and individual conditions in permission certificates.

## **Appendix A**

### **List of Respondents**

#### **Service providers**

2 Ergo  
Euro Digital  
mBlox  
MX Telecom

#### **Networks**

BT  
Mobile Broadband Group (3, O2, Orange, T-Mobile, Virgin and Vodafone)  
PNC

#### **Trade bodies**

Direct Marketing Association  
NOC  
PRA  
TUFF

#### **Members of the public**

Mr Jus B (full name not supplied)  
Mr Paul Holman  
Mr Guy Middleton  
Mr David J Ruck  
Mr Rajni Shah  
Mr Barrie Shepherd  
Mr Dave Tate  
Dr Mike Ward

## Appendix B

### Prior Permissions Notice



## PRIOR PERMISSIONS NOTICE

Issued on 25 October 2007

### FOR THE ATTENTION OF ALL SERVICE PROVIDERS OPERATING ANONYMOUS SMS SERVICES

This Notice is being issued to inform all service providers who provide Anonymous SMS Services that, from **Friday 11 January 2008**, no premium rate Anonymous SMS service may be provided without PhonepayPlus' prior permission. Service providers are therefore required to apply for a prior permission licence to operate Anonymous SMS services. Services operating without a licence after this date will be considered to be in breach of the 11th Edition of the PhonepayPlus Code of Practice.

For the avoidance of doubt, an Anonymous SMS is defined as follows:

*"An SMS message sent to a recipient's communications device where either the identity of the message sender, or the identity of the message content provider or author, is withheld from the recipient."*

This definition is not intended to cover Mailbox Dating Services where:

- subscribers have positively opted in, and
- receive a personalised mailbox number through which they can send and receive SMS messages.

PhonepayPlus considers that these messages are not anonymous, as recipients receive the sender's mailbox number which is the sender's identity and can use that to block future messages.

#### General Conditions

- All provisions of the PhonepayPlus Code (as far as they are applicable) apply to the service.
- PhonepayPlus may impose such further conditions as it may deem necessary upon reasonable notice.

- This permissions certificate may be revoked without notice by PhonepayPlus if any condition is breached.
- PhonepayPlus may revoke this permission certificate for any other reason after giving reasonable notice.
- This permission is granted to the service provider and relates only to it (and, for the avoidance of doubt, does not relate to any subsidiary or associated company or any other company) and may not be assigned or otherwise transferred in any way.
- The service provider will notify PhonepayPlus of the applicable telephone number(s) or access code(s) when the service commences and, once notified, the telephone number(s) or access code(s) of the service may not be changed without the prior written consent of PhonepayPlus. If, for any reason the service fails to commence within six months from the date of this permission certificate, or having commenced does not operate for any continuous period of six months, this permission certificate (in either case) will immediately cease to be in force.

### **Specific Conditions**

- That the nature and content of the service (including price and name) provided are as described in the "Other Services" application form, copies of which can be found on the PhonepayPlus website.
- That the names of each Anonymous SMS information provider with whom service providers contract, and the names of their services, are provided to PhonepayPlus.
- That the following additional conditions imposed by the Board are complied with:

#### **Conditions applicable to services where message content is entirely user-generated**

- i. That each Anonymous SMS message contains the statement that it is an Anonymous SMS from a third party and provides a non-PRS number for recipients to call for further information. **Or** that for each Anonymous SMS sent, the recipient is sent a second, free-of-charge message immediately. This second message should state that the original message is an Anonymous SMS from a third party, and provide a non-PRS number for recipients to call for further information.
- ii. That recipients who call the non-PRS number provided should get through to an operator or IVR explaining the name of the service provider, the nature of the service, and the procedures to block future messages to their phone and make a complaint to the service provider and/or PhonepayPlus. Where an answerphone is used to collect complaints, this must be checked on a regular (e.g. twice daily) basis and complainants contacted without delay. Complainants must not be provided with any details about the authors of messages.
- iii. That service providers prominently display text on their websites stating that they keep records of all the messages they relay, and that they will act on all serious complaints and forward details to the police if necessary. Users should be required to self-certify that they have read and understood these conditions of use before they are allowed to send a message, and records of their consent must be retained.
- iv. That service providers record the content of all messages they relay and user acceptance of the text at condition number iii (above), and keep records of this content and the telephone number of the author in accordance with the Data Protection Act. These records should be retained for 12 months, during which they should be made available to PhonepayPlus or other investigation bodies upon request under the appropriate legislation.

**Conditions applicable to services where message content is chosen from a pre-determined list**

- i. That each Anonymous SMS message contains the statement that it is an Anonymous SMS from a third party. **Or** that for each Anonymous SMS sent, the recipient is sent a second, free-of-charge message immediately. This second message should state that the original message is an Anonymous SMS from a third party.
- ii. That the messages in the pre-determined list are vetted to ensure that they do not, at any time, contravene the requirements on harm and offence at paragraph 5.3.1 of the PhonepayPlus Code of Practice.
- iii. That service providers prominently display text on their websites, on the same page as the pre-provided list of messages, stating that they keep records of all the messages they relay, and that they will act on all serious complaints and forward details to the police if necessary. Users should be required to self-certify that they have read and understood these conditions of use before they are allowed to send a message, and records of their consent must be retained.
- iv. That service providers record the content of all messages they relay and user acceptance of the text at condition number iii (above), and keep records of this content and the telephone number of the author in accordance with the Data Protection Act. These records should be retained for 12 months, during which they should be made available to PhonepayPlus or other investigation bodies upon request under the appropriate legislation.

PhonepayPlus recommends that service providers who already provide Anonymous SMS services submit their applications by **Friday 7 December 2007** in order to expedite our internal administration processes. However, due to the nature of the process by which prior permissions licences are granted, we cannot guarantee that applications received by that date will be fully processed before 11 January 2008, and service providers will wish to submit their applications as soon as possible.

Service providers are reminded that the granting of a prior permissions licence by PhonepayPlus to operate Anonymous SMS services does not serve as an obligation to any network operator to provide connection or carriage for such services.