

ICSTIS Consultation on Guideline No. 20: PREMIUM RATE SMS

Introduction

ICSTIS, the Independent Committee for the Supervision of Standards of Telephone Information Services, was set up in 1986 to regulate the content and promotion of premium rate services. It is a non-profit making regulatory body, funded by the industry.

ICSTIS sets and reviews standards relating to the content and promotion of premium rate services through its Code of Practice. It investigates public complaints, monitors services, recommends measures to achieve compliance with the Code of Practice and publishes information relating to its work.

This consultation document seeks your views on proposed changes to ICSTIS Guideline No. 20 which currently relates to Reverse-Billed Premium Rate Services. ICSTIS wants to have the views of all those affected before the Guideline is finalised. The draft revised Guideline includes some specific questions. ICSTIS also would very much welcome general comments and feedback relating to the Guideline.

Why Hold The Review?

The current reverse-billed premium rate SMS Guideline came into effect on 20 May 2002. Since then there have been developments in the industry both in terms of the types of services that are being operated and the manner in which they are being promoted. There are also specific issues that need to be explored in greater detail. These include the sending of unsolicited text messages and the ability of consumers to unsubscribe from services. As a result, the Guideline is in need of revision.

In making the proposed changes, the Committee has taken into account factors such as the types of query we receive, the types of complaints we receive, the types of application we receive and the perceived or actual consumer harm stemming from certain types of service. As always, we have tried to focus on the harms we are attempting to prevent and the methods that can be adopted to achieve this. We have looked carefully at where the Guideline works best and where it is in need of improvement.

Next Steps

Subject to comments received, the Committee intends to finalise the Guideline in late January 2003, with a view to issuing it shortly thereafter.

Comments should be sent to Suhail Bhat at the ICSTIS Secretariat by **17 January 2003**.

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ICSTIS Consultation on Draft Guideline

PREMIUM RATE SMS

(Version 2: December 2002)

Introduction

ICSTIS Guidelines are intended to advise the premium rate services industry on how the Committee interprets or applies provisions in the **Ninth Edition** of the ICSTIS Code of Practice. Service providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact the Secretariat **before** starting to operate the service.

A current list of all of the latest versions of ICSTIS Guidelines appears in the *ICSTIS Monthly Report* and on the ICSTIS website. Copies of Guidelines are available, free of charge, from the Secretariat.

What Are Premium Rate SMS?

Short Message Services (SMS) enable the transmission of alphanumeric messages between mobile subscribers and external systems such as electronic mail, paging and voice mail systems.

Scope of this Guideline

This Guideline covers both reverse-billed SMS and SMS services where the premium rate charge is applied when the consumer *sends* a text message (SMS mobile origination services) and any promotions for both types of service.

Reverse-billed premium rate SMS deliver content to mobile telephone handsets for a charge. Consumers typically subscribe to a service and are then charged a premium for the messages that they receive. At present, charges range from 10p to £1.50 per message received. However, each mobile network operator determines the ultimate tariffs applicable.

This Guideline must be read in conjunction with **Guideline 17**, which deals with unsolicited promotions.

The title of the Guideline has been changed to reflect the different types of services now available. It is now entitled 'Premium Rate SMS'. This change takes into account that the services we are seeing are no longer exclusively reverse-billed. The scope has been clarified to include both reverse-billed and SMS mobile origination services and the promotions for these types of services.

The Guideline does not cover promotional text messages received by consumers for traditional '090' premium rate services. Such promotional services have been moved into Guideline 17.

- Do you agree with this approach? If not, why not?

Responsibility For Services

Paragraph 2.1 of the Code of Practice states that:

“Service providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves or by their information providers) comply with all relevant provisions of this Code.”

The definition of a service provider is contained within Paragraph 1.4.7 of the Code of Practice which states that:

“A ‘service provider’ is an individual, organisation or company that contracts with network operators for facilities enabling the provision of premium rate services.”

In the case of premium rate SMS, the definition is still applicable and the service provider is the company that contracts directly with the mobile network(s) regardless of who the content provider may be. This is the company that ICSTIS will turn to and hold responsible for breaches of the Code of Practice. ICSTIS recognises that breaches can occur as a result of actions taken by third parties (information providers) with whom the service provider may have contracted. In raising any breaches with the service provider, ICSTIS will take all relevant factors into account during the adjudicatory process.

Pricing Information

Paragraph 3.4.1 of the Code of Practice states that:

“The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.”

Paragraph 3.4.1 of the Code of Practice applies to premium rate SMS in so far as the service provider must clearly state in all promotional material the likely charge for receiving or sending a text message.

In accordance with paragraph 3.4.2 of the Code of Practice, the pricing information must be legible, prominent, horizontal and presented in a way that does not require close examination.

The Committee would view it as best practice if the cost to the consumer of sending a text message to initiate or take part in a reverse-billed premium rate SMS is indicated. The Committee expects the cost of sending non premium rate text messages to be factored into the total cost by stating, for example, that ‘standard operator rates apply for SMS messages sent’ or ‘call costs range from x pence to y pence per message depending on network’.

Prior Permission

The majority of premium rate services do not require prior permission from ICSTIS before they can operate. However, under paragraph 2.3.1 of the ICSTIS Code of

Practice, some types of service need to be assessed by the Committee and given prior permission before they commence operating. The following types of reverse-billed premium rate SMS currently require prior permission from ICSTIS before they can operate:

- **Services offering 'text chat' services¹**
- **All SMS contact and dating services**

Please note that services offering 'text chat' services and all SMS contact and dating services which cost less 10p per text or less are excluded from requiring prior permission.

Typical examples of specific conditions which the Committee may impose on such services may include:

- **Call cost warning/Forced release**
After the consumer has spent £10.00, the consumer must be informed of the cost per text message and asked to provide a positive response that they wish to continue participating in the service. If there is no response from the consumer, the Committee would expect the consumer's connection to the service to be terminated.
- **Pricing requirements**
The Committee would not expect the consumer to be charged at a premium for receiving the pricing notification or other instructional messages².

For greater clarity, ICSTIS has added an explanatory note that explains the types of information the Committee consider to be instructional messages. The proposal is that services requesting details from consumers that do not constitute a substantive part of the service should be treated as instructional messages. Hence messages that welcome, explain or provide general or specific information about a premium rate SMS service to consumers would be considered to be instructional. This would include any messages sent to consumers for age confirmation and exit from a service.

- Do you agree with this approach and the definition?
- If not, why not?

- **Age checks**
For 'text chat' services of an adult nature (i.e. sexual entertainment), service providers should ensure that the consumer is over the age of 18 before starting a service. For 'text chat' services of a non-adult nature (i.e. those which can be used by 16 year olds and above) service providers should ensure that the consumer is over the age of 16 before starting a service. The Committee would expect service providers to request the consumer's date of birth to ensure that the consumers are of the right age to take part in the service.

¹ A text chat service is one that involves an exchange of conversational messages whether it be with a monitor, other consumers or using artificial intelligence to generate responses.

² Instructional messages are messages that welcome, explain or provide general or specific information about a premium rate SMS service to consumers but are not a substantive part of the service being promoted. They also include any messages sent to consumers for age confirmation and exit from a service.

Some niche text chat services (such as a cricket chat service or a service unlikely to lead into general chat topics) may be exempt from having the age check requirements subject to consideration by the Committee.

Due to the personal nature of mobile telephones and the fact that services continue to be promoted by unsolicited means, the Committee felt that more stringent requirements needed to be imposed in the Guideline in relation to age verification. The proposal is that service providers must request the consumer's date of birth as proof of age. The Committee does not consider it sufficient for a consumer to be asked to confirm that s/he is over the age of 18 for text chat services of an adult nature.

- Do you consider this approach to be the best way forward?
- Will it cause any technical difficulties?
- Does ICSTIS need to be more prescriptive? Is ICSTIS being tough enough on service providers sending unsolicited text message promotions?
- ICSTIS has seen evidence showing that some service providers 'doctor' the text promotion hiding or preventing the consumer from seeing who sent it. In one case the time that the text message was sent was doctored to appear as though it had been sent later that day. This meant that the consumer saw the promotional text message as the first message in his/her in box. How can this practice be prevented?

- **Group chat text services**

Consumers must be informed before they enter the service of the minimum number of messages (depending on the number of people in the group) they will receive.

If there is a dating element to the 'text chat' service, the Committee may impose the following conditions:

- Service providers should warn callers of the risks involved when telephone numbers are given out to other individuals and give clear advice on sensible precautions to take when meeting people through such services.
- Service providers should ensure that publicly available elements of the service do not contain telephone numbers, addresses or any other means of direct contact.

- **Text chat and the youth market**

The Committee has recognised that, for text chat services, there exists a three-tier marketplace:

- Children's services (under 16s)
- Youth services (16-17 year olds)
- Adult services (over 18s)

Specific conditions are likely to exclude text chat services from being targeted to children (under 16). However, the Committee is likely to permit non-adult (non-sexual entertainment) text chat services being offered to the 16-17 age group on the proviso that the advertising of such services occurs in publications where the target readership is not below 16 years of age.

With respect to other advertising media, equivalent measures should be taken; for example, services should not be advertised on television at times when young children may be watching.

Misleading Promotional Material

Paragraph 3.3.1 of the Code of Practice states that:

“Services and promotional material must not:

- a mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,*
- b be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.”*

The Committee is likely to find a breach of the above paragraph of the Code of Practice if a service provider does not adhere to the following guidance:

- Service providers are advised to ensure that all promotional material, whether in print media, the Internet, television or transmitted via text message, contains adequate instructions on how the premium rate SMS works.
- It should be clear to the customer at the outset what a service is. For example, only services that permit consumers to exchange personal contact details should be described as ‘contact’ services and comply with the contact and dating elements of the Code. If promotional material suggests that people have met after using the service but, in reality, the service does not have a mechanism permitting consumers to exchange details, the services is likely to be in breach of the paragraph 3.3.1 of the Code of Practice.
- Unsubscribing from services: Information on how individuals can cease or exit a service and ensure no further messages are received and/or charged for should be made available by text message before a consumer starts to engage in the service. An opt-out ‘request’ is considered to be an instructional message and, accordingly, should be free. The service provider does not have to provide unsubscription information in the promotional material for the premium rate SMS service. The unsubscription process should require no more than one text message to take effect. Any messages sent to the consumer confirming exit from the service should be free.

ICSTIS continues to receive a steady stream of enquiries and complaints relating to the apparent lack of instruction as to how to exit an SMS service. As a result, it is proposed that service providers should provide consumers with an instructional message, which they should be advised to keep, prior to the consumer engaging in the service. To balance this extra requirement, the Committee is also proposing that service providers no longer need to advertise or provide details on how to unsubscribe on the promotional material for the service.

- Do you agree with this approach?
 - Are there any viable alternatives to this proposal?
 - If so, what are they and how would they work in practice?
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- ICSTIS recognises that different pricing models can be used in operating SMS services (for example where consumers are charged per message they send or

receive or where they are charged £1.50 to receive, say for example, several messages). However, the Committee is likely to find a breach of the above paragraph of the Code of Practice if a service provider attempts to 'lock' the consumer into the service. A service might attempt to do this by making the last message received by the consumer chargeable for the next few messages, effectively meaning that the consumer cannot exit the service.

- Reverse-billed premium rate SMS should not be sent to consumers if they have not requested them. Consumers should not be sent SMS for which they will incur a charge unless they have previously agreed to this.

Address Information

Paragraph 3.5 of the Code of Practice states that:

“For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.

The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:

- a a full postal address including postcode, or*
- b a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or*
- c a telephone helpline number (to be charged at no more than UK national rate).”*

The above information is mandatory for promotions for premium rate SMS, regardless of whether the promotion is advertised in print media, the Internet, television or via promotions sent by text message.

Data Protection

All reverse-billed SMS service providers should ensure that they process any personal data and mobile phone numbers in accordance with the requirements of the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999, and any other relevant legislation. Further information on these requirements can be obtained from the Office of the Information Commissioner and their website: www.dataprotection.gov.uk. In particular, service providers must ensure compliance with paragraph 2.4.3 of the Code of Practice, which states that:

“Services which involve the collection of personal information, such as names, addresses and telephone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to callers the purpose for which the information is required. The service must also identify the data controller (if different from the service provider or information provider) and any different use to which the personal information might be put, and give the caller an opportunity to prevent such usage.”

All text messages sent and received by consumers should be stored by the service provider for a period of at least three months.

Children's Services

All of the children's provisions as stipulated in Section 5.1 of the Code of Practice apply to reverse-billed premium rate SMS.

The Committee is likely to find a breach of these provisions if a service provider promotes reverse-billed premium rate SMS chat to persons under the age of 16.

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