

ICSTIS' WRITTEN EVIDENCE TO THE JOINT COMMITTEE ON THE DRAFT COMMUNICATIONS BILL

ICSTIS is the independent regulatory body responsible for premium rate charged telecommunications services in the United Kingdom. The organisation is 'underpinned' by an Ofcom/DTI Licence Condition attached to UK network operator licences. As a co-regulatory body, ICSTIS is regarded as an emanation of the state in implementing provisions for the E-Commerce Directive. We are speaking with the Ofcom and DTI on the case for seeking appointment as a "designated entity" under the terms of the Injunctions Directive and the Enterprise Bill.

Premium rate charging is now widely used across the communications field – on the Internet, on interactive television and through 'reverse-billed SMS' (text messaging), as well as in conventional and mobile telephony. We have seen traditional premium rate competitions, information and voting services operating in parallel with new premium rate charged broadcast and mobile services, involving ICSTIS in the practical consumer implications of convergence.

These new services and platforms – ringtones, interactive TV games, SMS text chat and concept programmes like *Pop Idol* – have more than doubled premium rate turnover within a year to £600 million, with further dramatic growth expected as mobile networks and other businesses across the communications field seek new revenue streams.

A brief background to premium rate services and their regulation can be found at Annex A. It contains our assessment of the key consumer issues coming out of convergence: of broadcasting, telecommunications and the general desire to 'monetise' all content.

In responding to the consultation, ICSTIS has restricted its comments to issues concerning the regulatory relationship between Ofcom and non-statutory bodies.

NON-STATUTORY APPROACHES AND THE REQUIRED COMPETENCIES

We believe the deregulatory approach proposed by the Government is the right one. In an increasingly convergent and competitive world it is not possible or necessary to apply a broad and prescriptive approach to content regulation or to operate economic regulation on the scale necessary in the 1980s. This is not to say that action to protect consumers is not necessary. We believe the

Government is right to be looking at where non-statutory solutions are likely to work more effectively, protecting consumers in a fast-moving world. This has been the approach with premium rate regulation for 16 years and the UK is seen as the largest, most varied and most stable market in the world for such services. ICSTIS is one model of what can be achieved by an independent regulator with universal coverage, published Codes, effective sanctions, ISO standard procedures and a high degree of accountability.

If responsibilities are to move from the statutory sector to independent or self-regulatory bodies, the Government needs to give thought to the criteria to be applied. Arrangements which are not accountable or transparent, or which are disproportionate or applied inconsistently, or which are ineffective expose the Government and Ofcom to criticism and the consumer to harm.

ICSTIS AS A CO-REGULATORY BODY

ICSTIS operates on a co-regulatory basis, underpinned by network operator licence conditions. This co-regulatory relationship ensures effective regulatory coverage and enables action to be taken by the statutory body as a last resort in the event of problems with the independent regulatory regime. **We believe that it is essential that this relationship be maintained as the Government implements the Authorisations Directive.**

The intention is to address this in the General Conditions of Entitlement recently published in draft by Oftel. We welcome the intention and understand that it is thought possible to achieve this goal without provision in the Communications Bill. **We would wish to revert to the idea of a specific provision if it becomes clear that the assurance of existing consumer protection measures cannot be delivered by the means proposed.**

FUNDING ARRANGEMENTS FOR CO-REGULATORS

Our co-regulatory relationship is based on formal decisions by the Director General of Telecommunications to recognise a Code of Practice and a regulatory body. Part of the Director General's assessment has to be over the adequacy of funding for the regulatory body. This is something addressed in the draft provisions relating to the Telecommunications Ombudsman. It is preferable to keep non-statutory arrangements at arm's length but **Oftel should consider with ICSTIS the adequacy of existing wording on funding and be open to statutory provision if this seems necessary on effectiveness and consumer protection grounds.** There is a general issue here as the Government seeks non-statutory solutions.

REGULATORY STRUCTURES – RELATIONS WITH NON-STATUTORY BODIES

There is something of a paradox in drawing all statutory regulators together while inviting the creation of a number of new and separate non-statutory structures. In addition to ICSTIS, the Internet Watch Foundation (IWF) and the Advertising Standards Authority (ASA), there are plans for an independent Telecommunications Ombudsman, more self-regulation by broadcasters and arrangements for consumer protection in the video-on-demand sector.

The Government and Ofcom need to be clear with external bodies on their respective responsibilities, on how consumer enquiries and complaints are to be handled without delay, and on duplication on regulatory ‘black holes’. The ASA has a broad remit outside of the communications field but there will be a need for a review of the existing and proposed matrix of bodies over time as convergence increases.

The public is likely to expect common principles and practices in the field of content regulation. **ICSTIS believes that the Content Board should have interests beyond broadcast quality issues.** There is certainly a need for logic, if not pure consistency, in the approaches bodies will need to take in relation to negative content issues on licensed television, on mobile telephony, on the Internet, with video-on-demand, in film classification and, arguably, in the print media. Consideration should be given to involving external bodies such as ICSTIS on the Content Board or through some broader forum in which common interests can be discussed.

ICSTIS shares the IWF’s view that **the increasing focus with negative content should be on access control mechanisms against a backdrop of regulatory prohibitions.** It is over-simplistic and, at one level, wrong to say that “you cannot regulate the Internet”. Statutory controls may be impossible with a worldwide product but Internet Service Providers (ISPs), broadcasters, mobile networks and others have an increasing technical ability to offer customers access control tools, most obviously rating and filtering services. This requires collaboration between all of the key bodies and general consistency of approach.

MEDIA LITERACY – A BROAD AND SHARED APPROACH TO CONSUMER EDUCATION

Media literacy is equally important given the host of new services we will see in coming years. Our experience of Internet, broadcast and mobile services is clear evidence of how technology gets ahead of consumer understanding. **Ofcom’s work on media literacy should not be restricted to licensed broadcast content. It should address Internet use and mobile telephony – a platform that will be offering “mobile Internet” by the time the Communications Act is on the statute book. With charged content on offer across every platform, consumer education has to address commercial as well as content issues.**

We believe that Ofcom should collaborate with non-statutory bodies. There will be generational, socio-economic, language and cultural considerations. We would argue for new innovative approaches to education which involve community, broadcasting and other commercial stakeholders; something at the back-end of the National Curriculum and costly advertising on the BSC/ITC model seems dated and limited.

A simple explanation of the ICSTIS regulatory model can be found at Annex B. Full information on ICSTIS, including our Code of Practice, adjudications, Committee membership, Appeals Body arrangements and *2001 Activity Report*, can be found at www.icstis.org.uk.

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ANNEX A – PREMIUM RATE SERVICES AND CONSUMER ISSUES

Premium rate charging is now widely used across the communications field – on the Internet, on interactive television and through ‘reverse-billed SMS’ (text messaging), as well as in conventional and mobile telephony. Premium rate charging has more than doubled in turnover within a year to £600 million.

The drivers include:

- mobile services (offering ringtones and logos, and now text chat and gaming)
- mainstream and interactive TV (32 million votes were cast at premium rate during *Pop Idol*, while new channels – such as PlayJam, Yo Yo and the Dating Channel – are dedicated to premium rate charged dating, text chat and games)
- the Internet (offering premium rate content ranging from Children in Need and cancer charity sites to advice services and sex websites).

The confident assumption is that premium rate charging will be a £1 billion business within a year. It is now seen as an integral part of the funding of all broadcast networks. Charged content will be even more important for the mobile networks as they seek to offer 3G services and recover licence costs. Two networks with 3G licences have already talked about how they intend to package adult (sexual) services for handsets, effectively giving mobile access to the Internet

ICSTIS has provided the Scrutiny Committee with a paper on the implications of convergence in the communications sector as seen by the regulatory body with, arguably, the most exposure to date to the practical consumer issues coming out of charged content provision on multiple platforms.

There are particular issues around telephony as a method of micro-payment. Charging the extra ‘premium rate’ cost of a TV chat or gaming channel, an interactive vote, time online on the Internet, or SMS (text) dating or sports service to a telephone account is far easier and more attractive than cheques, credit cards or even postal orders! This ability to transact, if trusted, is as applicable to the Passport Agency and Battersea Dogs Home as it is to entertainment-based services.

Telephones, particularly mobile telephones, are everywhere and are easily accessed by children and others who may not have authorisation to incur costs. The distant nature of the transaction and the immediacy of payment have attracted those who would wish to profit from consumer deception, inappropriate and unsolicited promotions, and the provision of inadequate information over the service or its costs.

From our experience of convergence to date, it is possible to identify a number of key worries and consumer issues that need to be addressed:

- There is limited technical understanding by consumers of charging for digital/interactive TV and mobile telephony services. Our particular concern is over how this sits alongside a desire by broadcasters, network operators and service providers to maximise revenues across the communications field.
- There is a clear lack of understanding over the cost of services and how they are billed. With charging now widespread, the historic 'phone chat' problems of unauthorised use may recur. MORI found that only 4 per cent of Internet users understood that it was technically possible to pay a premium rate charge for content and for this charge to appear to their phone bills.

Up to 300,000 consumers seek to reach the ICSTIS helpline annually. Analysis shows that about 30 per cent of these want advice on phone bills on which interactive TV charges have appeared as premium rate calls.

- There are concerns over controlling access to sexual and other content inappropriate for some consumers. Interactive TV, Internet content and next generation mobile phones have, or are developing, the ability to deliver a host of broadcast quality content.

It is far less clear that work is in hand to develop the rating, filter and other access control tools that will allow parents and others to exercise discretion over access to inappropriate content. Our concern is over the associated costs and consumer deception, as well as over the appropriateness of the content.

- There are concerns over the possible intrusiveness of services on new platforms, particularly text messaging to mobile phones and spam e-mailing of services. These ploys seem particularly attractive to those who set out to mislead and deceive consumers. These new forms of marketing often have little regard for the audience – and, in particular, whether they are getting through to children.

The potential, and apparent, consequence of this is an apparent lack of trust in purchasing services and goods on 'new media', particularly the Internet. This leaves consumers frustrated, and broadcasters, network operators, broadband providers and others without the content and commerce necessary to sustain their activities.

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ANNEX B – THE ICSTIS MODEL OF REGULATION

Our system of regulation is based on providing clear information to help consumers help themselves and was cited in the Communications White Paper as an example of good non-statutory practice. Our model has a number of characteristics that are key to its continued effectiveness:

- **Independence:**
No member of our Committee can be actively involved in the industry which it regulates.
- **Regulatory underpinning and universal support:**
Our co-regulation is underpinned by an Ofcom licence condition on network operators requiring compliance with our Code of Practice. All network operators terminating premium rate services support us financially and in our enforcement work.
- **A structured funding mechanism:**
Our funding basis is equitable and is based on the volume of premium rate business conducted by each of the terminating network operators.
- **A published Code of Practice and effective sanctions:**
Our Code of Practice sets meaningful requirements on service providers and spells out clearly their responsibilities and entitlements. In instances of perceived widespread consumer harm, we can take swift action to suspend services pending further investigation. We also have the power to impose fines and bar access to services.
- **Research, policy, media and legal capabilities:**
We have the resources to carry out research and policy work, manage media enquiries and ensure that our proposals are based in law.
- **Regulatory connections:**
We have built a network of contacts with our counterparts abroad, and have been instrumental in bringing UK content regulators together to work on issues of shared interest.
- **Independent Adjudicator:**
We provide an independent adjudication service for members of the public who receive high telephone bills as a result of unauthorised calls to live premium rate services.
- **Independent Appeals Body:**
All of our decisions can be the subject of appeal to a separate Independent Appeals Body which is fully compliant with the Human Rights Act 1998.
- **ISO-compliant:**
Our processes are carried out according to ISO requirements and we are audited on a regular basis.