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Consultation on
Regulation of Anonymous SMS
Messaging Services
NOC UK Response

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate profitable enterprise in interactive Telemedia markets around the world. The NOC is uniquely qualified to reflect the views of the UK Premium Interactive Media market as its membership spans the entire value chain and is involved in the vast majority of premium value transactions. We welcome this opportunity to comment constructively on the captioned document.

It is the NOC philosophy that interactive media consumers who are accurately and openly informed at the point of sale of the cost and content of participation in an interactive experience are perfectly placed to exercise their freedom of informed choice and therefore enjoy the most effective form of consumer protection.

There will always be a minority of consumers who, for whatever reason, demand, and should receive, a higher level of protection but, as a minority, the level of protection offered must be sensible, evidence led and must not have a disproportionate or distortional effect on the majority market. It is also a noteworthy requirement of the 2003 Communications Act that Industry should, as a matter of process, be given the opportunity to address service problems before regulatory action is considered.

General

Anonymous SMS represents a low revenue niche and specialist market in the text messaging sector but it is recognised that if it is mismanaged it does have the potential to attract a disproportionate level of adverse publicity for the industry as a whole. The malicious or irresponsible use of text messaging cannot be entirely controlled through ICSTIS regulation since ICSTIS can only influence messaging where Premium Charges are raised.

In the absence of any evidence of serious problems to date on this front, we would normally recommend a light touch watching brief initially that could readily be intensified if need arises. However, considering the potential risk of offence and anxiety this service may cause we support the ICSTIS review of Anonymous SMS (using PRS), through consultation with industry.

We have responded to each of the questions below, and in certain instances recommend safeguards for the operation of services over and above those recommended by ICSTIS.

Consultation Questions

Question 1

Do you agree with the ICSTIS definition of Anonymous SMS? If not then why not?

Answer 1

A variant of the Vodafone definition from their CoP is shorter and more simple – “A service that enables users to send SMS text to recipients from a website without using their own MSISDN”.

It must be pointed out that this definition does not indicate that Anonymous SMS activities fall entirely under the remit of ICSTIS. Messages with no Premium call Charge associated, e.g. marketing promotions, would remain under the jurisdiction of the MNO CoPS, Ofcom, ICO and ASA.

Question 2

Do you agree with the ICSTIS assessment of the risk caused by having no clear information and complaints mechanism? If not then why not?

Answer 2

Agreed.

Question 3

Do you agree with the proposed conditions i) and ii). If not then why not?

Answer 3

We agree that in item i) it appears reasonable to state that the SMS is from an anonymous third party and provide a non-PRS number for further information.

However, the option to provide a follow up free of charge SMS “immediately” after the original message would be impossible to guarantee due to the store and forward nature of the technology employed. It would also be entirely possible for the two messages to be received out of sequence and render the SMS pointless, thus destroying the key feature of the service. At the very least if a follow up message is used it should be linked to/reference with the initial message.

In item ii) it should not be necessary to attempt to define precisely how the Service Operator should deal with calls to the non-PRS number. It is sufficient to state that the number be provided to provide further information on the nature of the call and the quality of the facility can be assessed by occasional monitoring.

Question 4

Do you agree with the ICSTIS assessment of the risk caused by having no return path? If not then why not?

Answer 4

We agree that end users should have the facility to return a STOP command and absence of this facility could carry significant adverse risk. However, connecting it to the “follow up” message would require careful consideration due to the potential call receipt timing problem identified in Answer 3. If the 2nd message is employed it should come from a shortcode allowing STOP command.

Question 5

Do you agree with the ICSTIS proposals not to require a return path as long as a satisfactory information and complaints mechanism is available? If not then why not?

Answer 5

If it was a requirement that a non-PRS number be available for information and complaints then this could be utilised as a method of requesting a STOP to the service. This is a subject that requires more detailed discussion with Service Operators and MNOs.

Question 6

Do you agree with the ICSTIS assessment of the risk caused by the lack of moderation and monitoring? If not then why not?

Answer 6

Yes, we agree with the risk assessment. It cannot be acceptable for Service Operators to deny any responsibility for the content of messages.

Question 7

Do you agree with the proposed conditions iii) and iv) ? If not then why not?

Answer 7

We agree with item iii) that records of service transactions should be kept and that these records should be made available to ICSTIS or other valid investigation bodies on request. A period for record retention needs to be defined and we would suggest 6 months to be a reasonable time for any complaint to materialise.

We also agree with item iv) that the promoting websites should be required to display the fact that service transaction records are kept and that action will be taken against malicious or otherwise offensive use of the service.

Question 8

Do you agree with the ICSTIS recommendation of Option C as the appropriate model for regulation? If not please give your reasons and state your preferred option.

Answer 8

Given the potential risk of offence and anxiety this service may cause we agree it is necessary to impose Prior Permission. We would also recommend that application for Prior Permission and any Prior Permission certificate is made direct with the service promoter/content provider, rather than SP/aggregator. If this is not possible we would suggest that the Prior Permission names the content provider/service promoter.

We feel any Prior Permission conditions should go further, to cover:

- manual moderation
- word filters
- recipient is given the opportunity to decline message and not be billed

If Anonymous SMS should cause significant concern by accumulating end user complaints at some time in the future the situation should be reassessed immediately and consideration given to move to Option D.

Question 9

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

Answer 9

We understand and accept the existence of potential risks posed to children from inappropriate use by adults targeting children and from children targeting their peers. We regard this as more a matter for law enforcement than for regulatory restrictions and proper and responsible monitoring and prompt reaction to complaints should be the sensible response to this threat.

Question 10

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.

Answer 10

Surely, it is only when premium charges are raised that ICSTIS can have an interest in Anonymous SMS services? Where services carry no premium charge they do not fall within the remit of ICSTIS.

Summary

It is certainly timely that we all take a look at this service variant of SMS since it does have the potential for serious misuse and consequential unwelcome publicity for the Industry in general.

We support ICSTIS' position to ensure full communication with the relative industry sectors and raising awareness of concerns and requesting some minimum service standards.

Statement of Representation

The NOC confirm that this response has been compiled following a process of distribution of the relevant Consultation documentation to all NOC members. A list of NOC members may be found at www.noconline.org/currentmembers.aspx .

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

We look forward to your response and assure you that, as ever, our comments are made constructively and with a view to achieving an effective, fair and proportional regulatory regime for Premium Interactive Media services in the UK.

If we can be of further help or if you require clarification on any points made please contact us via zoe@noconline.org or call 08707 327327.

Sincerely

Toby Padgham
General Secretary

Cc Ofcom
 BERR
 ILP
 NOC Excom