



**Intext Media Response to
ICSTIS Consultation on
Introducing Prior Permission
For Premium Rate Services Used
In Television And Radio Programmes**



A PUBLIC CONSULTATION
Issued by ICSTIS on 15 May 2007
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**Response from Intext Media (UK) Limited
To ICSTIS Consultation:**

**“Introducing Prior Permission for Premium rate Services used in Television
and Radio Programmes”
Issued by ICSTIS 15th May 2007**

Definition

ICSTIS has proposed a definition of broadcast premium rate services as follows:
"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, why not and what would you propose instead?

Intext Media response:

Yes, we agree with this.

Connectivity and Capacity

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

Intext Media response:

Intext Media has always run very precise systems. We are not aware of problems caused by calls being received outside the legitimate entry period for shows we support. We believe that this issue can be managed by the show giving very clear on-air instructions about when viewers can respond.

For IVR we can and do switch lines to closed (with or without charging the caller) after the competition has ended and with few exceptions have always done so.

We do not do this when the service is a competition with the format that calls made after a particular competition has closed go in to the next competition. We believe that ICSTIS should continue to permit this as it is an established and recognised method of entry. The call to action in this case is a call to take part and may not be specifically related to a particular challenge.

It is important to test lines fully before every show and so lines must be open at some stage beforehand.

Number checking Having run services for many years, we believe that people dial premium rate numbers that they do not readily recognise when they receive phone bills as an easy way of checking what the number is/was used for. The current move to switch

to NU or a generic closed message when lines are closed, may lead to more calls to ICSTIS to check what numbers were/are used for.

There are difficulties, however, for response media that are not real-time, in particular when working with SMS. IVR is real-time (if you can't get through you get the busy tone or NU and you are not charged but if you get through you are "in" the competition or the vote is counted). Web entry is also near real-time¹. However SMS is imperfect. The mobile networks will not guarantee 100% delivery within an acceptable time frame of a few seconds and, without this, the medium is unpredictable and unreliable.

There are two ways of addressing this SMS problem.

- One is to ban use of SMS until the mobile networks start giving a near real-time service guaranteed for all texts. In support of this, we understand that the BBC rarely, if ever, uses SMS for live high profile vote shows and Channel 4 has dropped SMS voting for the current Big Brother series.
- If this is viewed as too draconian, ICSTIS could insist that MO (mobile originated) premium billing is banned. By working only with MT (mobile terminated or reverse billed) billing, a viewer would not pay until an acknowledgement is sent back out. This means that the viewer is only billed once their competition entry or vote has been received. However the SMS industry has demonstrated that there are benefits of MO billing: it reduces bad debt, helps prevent some forms of fraud by viewers and also some mobile networks let customers block MT billing so the customer could avoid paying even though their vote or competition entry had been counted. Our view is that if ICSTIS is going to permit the use of SMS it should ban MO billing.

Should ICSTIS get involved in vetting technical solutions?

Your document states:

"It is also necessary to distinguish between the risk of a total network failure that could affect all calls and texts to the programme, and a failure that is specific to the premium rate calls and texting arrangements put in place for the service in question.

The former is something wholly beyond the control of those in the value chain. However, those seeking prior permission should have arrangements to minimise risks of the latter through arrangements to satisfy themselves that services are run so that votes or entries can be received, counted or considered in line with the call to action. The service provider will need to show that any general network limitations are properly considered and factored into the design of the service."

There can be catastrophic far-reaching technical failures in systems but in our experience good design and planning can ensure recovery of systems or near-instantaneous implementation of alternatives so that the service to viewers is uninterrupted.

ICSTIS states that *"The service provider will need to show that any general network limitations are properly considered and factored into the design of the service."*

Does ICSTIS have sufficient technical knowledge to make this judgement? It is important that ICSTIS does not expose itself by directly or indirectly endorsing a technology solution that is subsequently proven to be flawed.

¹ Near real-time is almost real-time. It usually demonstrates slippage of 1-5 seconds.

Is It Ever Right to Charge Callers for Responding at the Wrong Time?

Your document states:

“However, we believe it is not easily justified to have lines open with premium rate costs to callers when the calls in question have no actual value to the caller, especially in the absence of clear warnings to viewers or listeners about opening and closing times. Our understanding is that it is easy to close landlines and revert to a ‘dead tone’ but this appears to be less straightforward with a mobile shortcode, although again not impossible.”

We believe that if a viewer decides to ring at a time when it is has been made totally apparent that the service is no longer active/valid, then the viewer has to take responsibility for this.

Connectivity and Capacity

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

Intext Media response:

ICSTIS Recommendation	Intext Media Comments
<p>There must be sufficient time for all valid responses sent by viewers or listeners to be considered and reflected in any outcome of the event (where there is one) which may then be reported on air.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> We believe it is a vague concept to say that there must be “sufficient time” for responses to be considered. For a live medium (broadcast) a real-time response medium should be used. This includes IVR and web but excludes SMS and red button. <input type="checkbox"/> If SMS is to be permitted it should only be with MT billing. (As explained previously). <input type="checkbox"/> For IVR, calls should be counted from <u>inception, not termination</u>. This means that, provided the call has connected, the response is counted (either as a vote or competition entry). In our view, this should be an ICSTIS prior permission requirement. <input type="checkbox"/> ICSTIS should be aware of the impact of “batching” of data. When pooled data is needed e.g. for compiling votes (adding IVR, SMS, web, red button) some shows use systems for adding the data from the different sources in an automated way. When this is done the data has to be packaged into batches from the different sources and delivered by FTP/XML to the system that aggregates the data. While this can be designed to stream each individual data record across as it arrives (which adds a delay of only 1-5 seconds depending on prevailing internet latency) for large-scale response shows this becomes unviable because of the volume of data concerned. Data is more conventionally gathered in a database and packaged and sent every “x” seconds and ICSTIS should review what the delay imposed by this is. The same principles exist when entries from a range of sources are considered for a competition.

	<ul style="list-style-type: none"> <input type="checkbox"/> At Intext Media we have always been very wary indeed of using batching techniques and we believe that this should be considered in detail by ICSTIS as part of its prior permission procedure. Indeed, we have refused to run batched systems in the past on the grounds that they introduced unfairness between different entry media even though a client has specifically requested that we did so. <input type="checkbox"/> There is latency in the broadcast stream. Digital delivery mechanisms such as satellite and cable (Sky and Virgin (Telewest/NTL)) take longer to reach viewers. ICSTIS should ensure as part of its prior permission that the people taking decisions about when the lines open or close prompted by on-air announcements take account of the delays in viewers <u>receiving</u> such information.
<p>Where arrangements exist for the handling of excess peak traffic by additional parties, these arrangements must ensure that all valid votes and entries so handled are treated equally with those received by the primary party.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> ICSTIS seems here to be acknowledging the need for a diverse network plan for IVR but does not address whether this should be a requirement. Intext Media has on many occasions judged that it is an essential part of the design of a resilient call-handling network to have diverse answering points on <u>different terminating networks</u> to ensure that calls get through even when there are major network switch or interconnect failures between some of the parties. <input type="checkbox"/> Where we are retained to provide live support for a live show (as opposed to providing self-op systems), we always have a 2nd person on duty to monitor the network and detect any defects within seconds and arrange network re-routing to address this. We don't provide this if a client specifically instructs us <u>not</u> to as a cost-saving measure though this is generally <u>against</u> our professional advice and judgement and we dislike not providing this level of care. <input type="checkbox"/> As stated previously ICSTIS should think carefully about its position where it may appear to be endorsing a technical design that may subsequently prove to be flawed.
<p>Red button interactive calls made prior to the time announced for line closure must complete the relevant competition entry/vote count process.</p>	<p>We are not very experienced in red button but we believe this not to be a real-time technology and so it should be used with care and possibly banned as an interactive viewer mechanism.</p>

Conduct

Intext Media's comments on your notes:

IVR is real-time so many problems that you are concerned about do not apply.

Lines Closing

Your notes do not seem to be consistent. You state:

“For this reason, we are proposing to bring forward conditions as part of the prior permission application process which will ensure deadlines for announcing the outcomes of viewer participation allow sufficient time for all entries to be processed and taken into account whether they come via voice calls or SMS texts.”

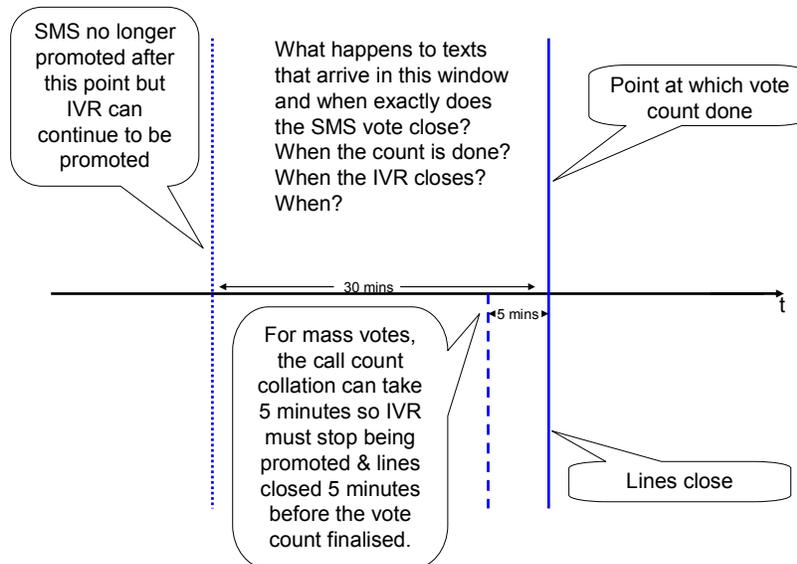
Whereas your proposed conditions state:

“After an announcement that the lines have been closed has been made, the lines must be closed.”

In our view, an entry method should either be open or closed. All entries made while it is open should be counted. All entries made or received after it has closed should not be counted. Once closed no one should be able to send any further entries.

Your notes seem to straddle two different camps. One hand you refer to “allow sufficient time for all entries to be processed” suggesting that you might allow a window for text messages to arrive but your proposed conditions state unequivocally that once lines close, they close.

This schematic shows the system commonly used now for votes.



Are the text voting lines “open” or not in the 30 minute window? Is or can anyone check when the text is sent?

This system still does not guarantee that all texts made before the first guillotine arrive in time. This topic is a muddle that can only be sorted out by banning SMS.

Selecting Winners

We agree that ICSTIS should certainly insist that technology providers can prove that they run systems that ensure that all correct entries stand the same chance of success in a competition.

However we would go further. It is good practice to use systems that generate an audit trail with every winner selection that proves how each selection was generated and we recommend that there should be a periodic data download of every entry received with meta data to show whether the entry was chosen as a winner or not.

This is perfectly possible.

You recommend that, as a minimum, records and evidence of winners (their name, address, phone number and prize awarded), together with material relating to the selection process, such as copies of timed and dated notifications of winners and the names of staff making the random selection, should be kept for a period of 12 months from announcement of the winners. **We believe that in many instances, businesses are required to keep commercially important records for six years and we believe that this same time period should apply here.**

You state:

“Insofar as the outcomes of competitions have potentially major implications for contestants, we would welcome views on the case for introducing a requirement that they make use of independent third party verification and supervision for competitions where the prize is worth £5,000 or more. This is already widespread practice in the field of sales promotion. We invite views on making this norm a requirement for Broadcast PRS. We set out below the proposed conditions for conduct.”

Until recently we would have thought that this requirement was entirely unnecessary. However if recent press reports are true they demonstrate widespread institutionalised mismanagement and the presence of independent adjudicators might restore consumer confidence and help keep broadcasters and production companies in line.

Conduct

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

Intext Media response:

We agree with most of your suggestions but we would like to raise the following:

ICSTIS Recommendation	Intext Media Comments
<p>Calls and SMS entries must not be accepted before lines have been announced as opened or continue to be accepted after an announcement that lines are closed has been made. After an announcement that the lines have been closed has been made, the lines must be closed.</p>	<p>We have described previously some formats where the call to action invites viewers to take part and may not be specifically linked to a particular challenge or competition. In these cases and where late callers are included in the next selection we don't think that entries should be prevented from arriving after a selection has been made.</p> <p>For mass response televotes we think there is a strong case to ban the use of SMS altogether. We would urge the use only of real-time media.</p>
<p>Terms and conditions must be Comprehensive, clear and up-to-date, and all amendments made during the service must be appropriately publicised. It must be clear whether and, in which case, how amendments during the course of the service may be made. No amendments should be made retrospectively if they affect the position of existing entrants, including their decision to participate at all.</p>	<p>AGREED</p>
<p>Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.</p>	<p>AGREED except when the competition is also repeated so that the prize is also provided and won by entrants from the second audience. Although rare, I have known this done previously.</p> <p>When you come to drafting this requirement your wording should allow the quite common scenario where a broadcaster transmits a pre-recorded show with a premium rate competition where lines close at, say, midnight at different times on the same day in different regions.</p>
<p>Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.</p>	<p>We do not agree with this.</p> <p>This seems to be a far-reaching restriction introduced presumably to tackle a very specific problem.</p> <p>There are many instances of pre-recorded shows containing premium rate promotions that do not harm viewers but where viewers may not be aware that the show is</p>

	<p>recorded. Provided the interactivity is run ethically and responsibly this should not be banned.</p> <p>Some specific anomalies – if an insert tape is run during a “live” show, is this live or not? If the live show is broadcast with a 10 second delay, is it live or not?</p> <p>We would like to see ICSTIS reviewing what problem it is trying to check and seeing if it could address the specific problem rather than introducing such a sweeping rule.</p>
Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie-breaker or totally skill-based outcome.	AGREED and we believe you should go further and stipulate that an audit trail is auto-generated proving selections and winners. If an IVR winner is selected then their audio should be retained.
In any competition where a prize is worth £5,000 or more, there must be independent third party verification of the fairness of winner selection.	AGREED
Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.	AGREED
OTHER	We would also like to ensure that ICSTIS would continue to permit the following. A winner is selected properly and fairly and their name and town announced but before the winner has been called back to check that they conform with the T&Cs. Such checks usually involve ensuring that they are not under age etc. It is conceivable that the winner could fail the checks and a second winner be selected from the list. Etc.
In respect of competition services, records and evidence of winners and the distribution of prizes must be maintained for a minimum period of 12 months from closure of the competition.	We would make this <u>6 years</u> and it should include the winner selection audit trail and, if an IVR winner is selected, their audio should be retained.
Customer service arrangements for handling participant enquiries should be in place.	AGREED

OTHER	<p>We believe that under gaming laws there is a requirement to have separate entities selecting winners and distributing the prizes (money). We think that ICSTIS should examine this idea to see if there should be similar rules applied to premium rate broadcast competitions.</p> <p>When we have carried out prize administration on behalf of clients we have been surprised by the lack of scrutiny of our systems.</p> <p>ICSTIS has proposed having an independent scrutineer present at the moment of the winner selection (when prizes of £5,000 and above).</p> <p>However we think that there should be scrutiny of the wider process to guarantee that the winner is issued the prize and when cheques are issued that they are presented and clear.</p>
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Cost and Conditions

You state:

“This is an area where the prior permission conditions we propose are generally re-affirmation of Code requirements, rather than them being unique to Broadcast PRS. These include the requirement that pricing is presented in a way that ensures the costs are clear, prominent, and easy to identify and understand. We expect service providers to have procedures in place that ensure they look in each case at the nature of the service/broadcast and ensure that the way costs are presented matches the character of the service and anticipated viewer or listener understanding of it.”

While we provide clients with guidance as to how price messages should be conveyed graphically and spoken, we also require our clients contractually to comply with the ICSTIS Code in all matters under their control. Your notes seem to suggest that the service provider should have access to and rights of control over the programmes graphics. If you make this a ruling, it would give service provider powers to view and vet this and we would welcome this. Until now it has been immensely hard to see graphics before a show is broadcast.

You state:

“Services which raise money for charity need to comply with the relevant sections of the 11th Edition of the Code of Practice (and by extension relevant legislation) in respect of the presentation of information on the charity and the amount of the proceeds from the service going to good causes.”

We think you should also review the rules relating to services run under External Lottery Manager’s licences etc as we believe these will become more prevalent in future.

ICSTIS Recommendation	Intext Media Comments
Pricing information must be displayed in a way that is prominent, clear and accurate.	<p align="center">AGREED</p> <p>It would be helpful to make it a Code requirement that the service provider (if culpable under the ICSTIS Code) must view and vet the graphics</p>
It must be made clear that the cost of calling from different networks may vary including, where relevant, from fixed line operators who can and do charge ‘set-up fees’ for some premium rate services.	<p>We urge ICSTIS to be more specific here as we understand that BT levies a surcharge for dialling pence per minute premium rate numbers. As <u>no network operator seems to have to conform to any pricing rules, how can service providers devise a sensible message? If service providers get this wrong, we face a Code breach & fine. ICSTIS should give us the correct wording.</u></p>
Services involving a charitable donation must make clear how much of the call cost will go to charity and must otherwise accord with charity law.	We recommend that other laws should be complied with too here including the rules relating to services run under an External Lottery Manager licence.

Coherence

You state:

“Services generally rely on arrangements involving a number of parties in a value chain including network operators (landline and mobile), premium rate service providers, production companies, agencies and broadcasters. It is important that those seeking general prior permission to run such services can demonstrate they understand the inter-relationships between the various parties, and have contracts and arrangements for inter-business dealings that ensure coherence. This is to prevent, in particular, the risks that exist in managing text and call-handling and programme content in ‘real time’.”

We recommend that a greater distinction is drawn between originating and terminating network operators. They carry out distinctly different tasks and we believe this is important.

ICSTIS Recommendation	Intext Media Comments
Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for the performance or management of each activity associated with the service.	We would recommend further that there should be an overriding right of any party in the chain of responsibilities to be able to refuse to continue if they feel that inappropriate requests are being made of them. This would have more power if the party were also required to alert ICSTIS if this happens. There is an economic imbalance in the relationships in this market and power must be given to any party in the chain that feels that improper activities could result.
There must be no amendments to operational systems or procedures relating to the service without senior management authorisation.	ICSTIS should specify which/whose senior management... There are many companies in the chain as ICSTIS has pointed out.
All staff, whether internal or employed by contractual partners, must have the ICSTIS Code of Practice drawn to their attention and have suitable training.	What exactly is “suitable training”? ICSTIS should clarify this if it is to be a prior permission requirement.
Procedures must exist for the back-up of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS.	AGREED but as stated previously it could be risky for ICSTIS to appear to endorse certain technology solutions in case they are later shown to be flawed.
Subject to reasonable notice from ICSTIS, service providers must make provision for Executive staff of ICSTIS and/or its agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.	We believe that for this to be effective ICSTIS should be able to undertake such visits with no warning . Otherwise you may not pick up on slack practices...

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything critical to considering risk?

Intext Media response:

See comments above.

Section 4
Broadcast Premium Rate Services Requiring
Permission And Proposals For Exemptions

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

Intext Media response:

Yes.

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Intext Media response:

Yes.

Call TV Quiz Services

Q9. Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

Intext Media response:

We agree subject to the caveats repeated below and which we have raised earlier in this response.

Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.

Unless the competition is repeated in the repeated programme with the same prizes still available.

Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for performance or management of each activity associated with the service. And any of the parties should have a right to refuse to continue if they feel inappropriate requests are being made of them and in these circumstances they should be required to alert ICSTIS to the fact.

Subject to reasonable notice from ICSTIS, service providers must make provision for Executive staff of ICSTIS and/or their agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.

We believe that to be effective ICSTIS should be able to do this spontaneously and without making prior arrangements.

Auction services

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not? Music channels where viewers or listeners use premium rate to select video or songs to be played on air

Intext Media response:
No opinion.

Music channels where viewers or listeners use premium rate to select video or songs to be played on air

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission? If not, why not?

Intext Media response:
No opinion.

Participation services with a charitable element

Q12. Do you agree with our analysis that premium rate services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

Intext Media response:
No opinion.

Chat services

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

Intext Media response:
No opinion.

Other services

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

Intext Media response:
We are not aware of any.

Section 5
The Prior Permission Process

ICSTIS Recommendation	Intext Media Comments
We are proposing a prior permission regime based on applicant service providers seeking permission to provide Broadcast PRS regardless of how many such services they may operate.	We support this approach.
We propose, therefore, that service providers who have previously provided Broadcast PRS and in respect of which ICSTIS is not aware of any breaches of the Code being under investigation or having occurred relating to the provision of Broadcast PRS, ICSTIS would be willing to accept assurances that responsibilities to deal with the different conditions set out in Annex 2 are understood and that the role of the different parties in relation to each of the conditions is clear.	We support this approach. (But we have made some comments on suggested additions and variations to the Annex 2 conditions)
If a service provider has not previously provided Broadcast PRS, ICSTIS is willing to accept adequate assurances in respect of new documentation which is to be used in the establishment of arrangements between the parties. ICSTIS intends that such assurances should be provided by a suitably-qualified person and would expect that such a person would be a qualified solicitor, barrister or accountant. Alternatively, ICSTIS will consider the documentation itself but this will involve additional charges for the prior permission to defray the direct expenses that ICSTIS incurs in carrying out that task.	We support this approach.

ICSTIS Recommendation	Intext Media Comments
Once permission has been granted for a service provider to provide services with a particular information provider, the permission would cover any services provided by that service provider for that information provider. Where there is a different information provider, however, the documentation in relation to the arrangements with that information provider would also need to be certified.	There is a risk here that once a broadcaster (or production company) has identified a service provider that has permission to work with it, it will be disinclined to procure services from other providers and so <u>this move could be very anti-competitive.</u> I have heard anecdotally that some of the media businesses in the spotlight recently felt that single supplier agreements weakened their corporate ability to keep suppliers on their toes and led to a less vigilant approach generally. A move by the regulator that leads to single supplier arrangements becoming common practice cannot be a good one. We wonder if ICSTIS has made this suggestion because of its subsequent proposal to make it compulsory for the media partner to be volunteered as the information provider. If so, we believe it would be fairer to give blanket prior permission to an SP on the condition that it would only apply to a service run with a media partner where the media partner has been identified and agreed in advance to be the information provider? This would get around the restrictiveness of an SP's consent being linked to named parties.

ICSTIS Recommendation	Intext Media Comments
<p>While ICSTIS identifies information providers in its Code and imposes a general duty to comply, it regulates them directly only in limited circumstances. Within the processes set out in Part 8 of the Code, a mechanism is set out where ICSTIS can deal directly with information providers where they accept responsibility for the service and/or its promotion and undertake that, if a breach is established and a sanction or administrative charge is imposed, they will be responsible for compliance and/or payment. Should the information provider fail to discharge any such obligations, the service provider remains responsible. This is set out in paragraphs 8.1.4 and 8.5 of the Code.</p> <p>The cases may only proceed against information providers if ICSTIS accepts that the cases are ones where it is appropriate for it to deal with the information provider. In addition, if ICSTIS identifies the case at any time as one which ought to be dealt with directly by the service provider (typically, in a case where investigation reveals that the fault lay with the service provider rather than the information provider), ICSTIS may require the service provider to answer directly.</p> <p>In the light of these provisions, which came into existence only with the coming into force of the 11th edition of the Code, there is a route under which it would be possible to take a different course in respect of the regulation of Broadcast PRS. It would be possible to require that, as part of the requirements that would have to be fulfilled to obtain prior permission, service providers could be required to provide an undertaking given by the broadcaster or production company, as information provider, which would accept that it would step forward to deal directly with ICSTIS in respect of breaches of the Code or of the conditions. It would apply where that broadcaster or production company, as information provider, had apparently been responsible for a breach of the Code or of the relevant conditions. If no such undertaking was provided, permission would be declined and that broadcaster or production company would not have access to premium rate facilities.</p>	<p>We support this approach and believe that ICSTIS should stipulate as a condition of prior permission that the broadcaster or production company is designated as the information provider.</p> <p>However we believe there to be a flaw in the way that the 11th ICSTIS Code is written as the service provider is liable for fines if the information provider defaults so the service provider is always ultimately in the firing line.</p> <p>Where the information provider is a broadcaster could ICSTIS pursue any unpaid fines via the authority of Ofcom?</p>
<p>It has to be recognised of course that, while broadcasters are obliged to comply with the Code, whether as information providers or under the terms of the Ofcom Broadcasting Code (to which they are subject), ICSTIS does not regulate broadcasters directly unless they happen to be service providers themselves. Accordingly, there could be risks of non-compliance arising both under the ICSTIS Code of Practice or the prior permission conditions on the one hand and the Ofcom Code on the other if this suggestion was to be pursued. Accordingly, any risk of double jeopardy to broadcasters would have to be acknowledged and robust arrangements would need to be in place to deal with that risk.</p>	<p style="text-align: center;">AGREED</p>

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

Intext Media response:

Please see our comments provided above.

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