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**ICSTIS Consultation on**  
**Introducing Prior Permission for**  
**Premium Rate Services Used In Television**  
**and Radio Programmes**  
  
**NOC Submission**

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate successful 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 consultation regarding the use of Premium Rate Telephony and Premium Text Messaging as revenue sources for Television and Radio programmes. Collectively we refer to these services as Premium Rate Services (PRS).

**Comments on Executive Summary**

The problems displayed in the media early this year regarding interactive TV programmes have indeed been extremely damaging to the PRS industry and have certainly eroded consumer trust in interactive TV and radio programmes and the wider PRS industry in general.

Before any proposals for change to the regulatory environment are considered however, it is essential that the problems and their causes be properly understood.



It is our firm belief that none of the alleged and admitted problems that have come to light are the result of any deliberate intent to flout the rules or applicable Codes of Practice.

What we have seen is the manifestation of a series of underlying problems that both Industry and Regulatory Bodies failed to spot and resolve and we list them below.

- Broadcasters and Programme Producers' lack of understanding and experience of the PRS industry and its Codes of Practice. This was an extremely attractive alternate revenue stream for them but they failed to understand the medium and put proper management process in place.
- Very tight margins in a competitive PRS industry which resulted in unrealistic pressures being placed upon, and accepted by, the Service Providers (facilitators) and supporting networks. The Broadcasters' lack of understanding of the PRS industry created an environment wherein programme preferences and demands were not sensibly related to technical reality. The extremely competitive market resulted in Service Providers accepting unrealistic demands in order to preserve contracts.
- The situation whereby the current ICSTIS Code insists that the Service Provider (facilitator) shoulders the burden for Code compliance while the customer interface (Broadcaster) has no obvious Code responsibilities. This contributed to the Broadcaster and the Programme Producers having minimum awareness of Code compliance responsibilities.
- A lack of early regulatory and industry engagement which allowed the media to dominate the headlines and encourage political pressure to develop. We are aware that pressure and criticism was applied from Westminster which resulted in ICSTIS press announcements which were, understandably, geared more to public relations than genuine attempts to assist the PRS industry in resolving its temporary problems.
- The absence of a genuinely pro-active regulatory regime which might have sensibly cast a timely eye over the fastest growing sector of the PRS market to ensure standards were being observed and maintained.

The ICSTIS industry meeting on 08 March 2007 contained selected attendees focussed heavily upon broadcast and production companies and was not therefore totally representative of the PRS industry as claimed. It was regrettable that trade bodies were deliberately excluded and denied the opportunity to contribute their experience and contacts to effectively addressing a serious threat to the entire PRS value chain.

It was also regrettable that ICSTIS chose not to involve the Industry Liaison Panel (ILP) as a matter of urgency since the ILP, by definition, represents the very value chain that needed, and had the capacity, to address industry problems and assist ICSTIS in a co-operative and controlled manner.



It is also our understanding that at the 08 March meeting general agreement on Prior Permission was not actually obtained as stated and there were in fact reservations expressed regarding the ICSTIS proposal for blanket prior permissions (licensing) for broadcast services utilising PRS.

It does not appear thus far that the PRS industry has been given a fair opportunity to address its problems without the need for additional formal regulation. We made the point in the earlier Consultation on Quiz TV that interactive TV is a new and developing genre and that it is normal for new services to experience teething troubles, particularly in an area of such popularity and rapid growth.

It should not be necessary to embark on additional, costly, formal regulatory constraints before the PRS industry has been given every opportunity to resolve its own problems. We also believe any Consultation proposals for additional formal regulation to be premature until such time as the Ofcom (Richard Ayre) enquiry into the use of PRS in television programmes is completed and industry has had the opportunity to discuss its findings.

We do not believe there is a need for a separate definition for PRS used in association with broadcast TV or radio programmes. The definition of PRS in the approved Code is clear and it should not be necessary to produce a separate PRS definition for each and every service variant. What we are dealing with here is simply PRS (basic definition) being used in an interactive environment for broadcast TV and Radio programmes. The Code is already, in our view, overly complex and prescriptive and pursuing this route can only make things worse.

The value chain in the Broadcast medium is no more complex than most other media and it is the ICSTIS Code definition for Service Provider that has caused, and continues to cause, problems with allocation of responsibilities. The NOC has raised this issue before and the insistence on the Code holding facilitators, who have little or no customer contact, responsible for service promotion issues should be revisited without delay. This problem is not, as implied, peculiar to the Broadcast arena alone and has been a contentious issue for some time for many PRS activities and the NOC raised the matter again last year over the well publicised Big Brother incident. It is gratifying that ICSTIS have now accepted this as a problem to be addressed and we would like to see close co-operation between industry and ICSTIS to find an early and acceptable solution in advance of any formal Code changes.

## **Background**

For the benefit of accuracy we are obliged to point out that, while ICSTIS refers to itself as “the premium rate services regulator” (press release 08 March 2007), it is actually the current Appointed Enforcement Agency, appointed by Ofcom to apply the Ofcom approved Code of Practice, which is itself not an exclusive Code. This is an important distinction as Ofcom is the statutory regulator for communication



services in the UK, including premium rate, and all responsibility for policy decisions regarding premium rate resides in Ofcom.

It is a regrettable failure of both industry and ICSTIS that we had to rely on the tabloid media to highlight the problems within the Interactive Broadcast services sector utilising PRS. It was also unfortunate that, following the revelations, the industry was not given the opportunity to resolve its own problems without formal regulatory interference (as required by the Communications Act 2003). As a trade body we fully understand and appreciate the political pressures applied to ICSTIS (and Ofcom) and the perceived need to be seen to be acting in a positive manner, but the PRS industry and Broadcasters at the time were already rapidly responding to and resolving problems. The role of ICSTIS would perhaps have been more effective as a co-ordinator and participant in the self regulatory process rather than as a driver for premature additional formal regulation.

It is still our belief that the problems had no malicious origin but arose as a result of management and process failures. We also believe it probable that had a Registration Scheme been in place for Service Promoters, as recommended by the NOC and currently under consideration by Ofcom, this situation might well have been avoided and Broadcasters would have been well aware of their responsibilities.

### **Section 3**

#### ***Question 1***

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

#### **Answer 1**

While we recognise the obvious convenience of referring to “Broadcast PRS” for PRS used in a Broadcast environment we do not see the need for a separate definition. If the intent is, as stated, for the definition to be broad and future proof then it should be sufficient to use the current ICSTIS Code definition for PRS. We should not need a fresh definition for every service variant of PRS and such a policy would not help reduce the complexity of the current Code.

It should also not be necessary to apply a blanket requirement for prior permission for all Broadcast PRS to achieve Code compliance and this could perhaps be viewed as an over reaction to the media and political criticism of the current regulatory order. Broadcasters and, by association, programme producers are already well advanced in adjusting their organisations to ensure compliance with advertising, broadcast and PRS regulatory requirements.

## *Question 2*

*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?*

## Answer 2

We have no firm evidence as to the scale or seriousness of the problem described hence we can have no rational assessment of what degree of effort or cost would be justifiable to “solve” the assumed problem. We are aware however that these specific issues are being actively, and it appears successfully, addressed in programmes currently being broadcast.

The circumstances associated with connecting callers to individual services and ensuring their call guarantees participation are dynamic, complex and obviously vary according to the nature of the service addressed. However any perceived problems are not likely to be insoluble and we can see evidence today that programmes are already adapting to the new order without the need for additional formal regulation.

## Connectivity & Capacity

There is indeed a wide variety of call connection and call processing requirements for the equally wide range of programming content existing today and likely tomorrow. It is an error in our view for ICSTIS to attempt to become involved in the technology of call management and we believe it is more important to focus on ensuring that customers are fully informed and given the freedom of choice. It cannot be sensible or practicable for ICSTIS to incur the costs of being technically competent to assess the needs and capabilities of various programme connection, capacity and processing requirements.

Clearly it is necessary that network and call processing arrangements are fit for purpose and customers should not be paying for services they believe they are enjoying but are not receiving. However, it is possible for customers to legitimately pay for a service they have not received when they have been clearly informed of the fact. There are currently several programmes that announce “Voting is now closed and calls placed will be charged but not counted”. Similarly, customers who call lines unsolicited before any announcement that “lines are open for voting” can have no grounds for complaint and again there is evidence that programmes are covering this situation with suitable announcements.

Technology will never be infallible and there will be occasions when technical problems will occur and it should be sufficient that processes exist to deal with affected customers and ensure they ultimately receive a satisfactory service experience.



We agree with the assumption that simply closing numbers and returning a “dead tone” will likely create additional problems as many callers will assume they dialled incorrectly and dial again. It will also generate an unknown number of complaints to network operators that numbers are not working properly.

The best “solution” is to ensure that consumers are always fully informed on costs and when lines are open or closed. Connectivity can be checked by random quality checks on the numbers promoted and, where problems do occur, adequate customer support and refund processes are in place.

***Question 3***

***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?***

**Answer 3**

While the conditions appear rational and reasonable the fact that they would be applied to the Service Provider under the current Code would be quite unacceptable since they fall beyond the Service Provider’s control. These are design factors totally under the control of the Service Promoter – the Broadcaster in this instance.

We do not believe it to be fair, necessary or proportional to seek to apply prior permission constraints to connectivity and connection (capacity) issues and it would be even more unjust if the sole responsibility for this were to be placed upon the Service Provider as currently defined.

***Question 4***

***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?***

**Answer 4**

We believe it is desirable that announcements are programmed to ensure, as far as is practical and reasonable, sufficient time for all valid entries to be processed and that all entries be given equal opportunity of success. However it is not necessary to apply a prior permission regime to achieve this nor the other items mentioned since they can simply be included in a statement of expectation where they can be readily understood and amended to suit changing circumstances.

Since many Broadcasters are either in the process of introducing or have already introduced audit procedures it would not be difficult to apply a requirement for third party audit verification for prizes above a sensible and agreed level. Again, we would not need a prior permission regime to achieve this.

ICSTIS should be aware that provided consumers are fully informed it is possible for PRS numbers to be active on repeat programmes where competitions may still be open. Nor is it strictly accurate to use the term “live” on many occasions since a



significant number of programmes are pre recorded and only the interactive PRS element will be live.

**Question 5**

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

**Answer 5**

Since, as stated, these items are generally a re-affirmation of current ICSTIS Code requirements there appears to be little justification in raising them as specific to Broadcast programming nor making them conditions for prior permission. It is surely sufficient that the PRS Code of Practice applies.

It is our understanding that calls from mobile operators may, and usually do, involve charges over and above the published PRS tariff and not fixed line operators as stated who are obliged to abide by Ofcom approved tariffs.

The subject of transparent call costs would benefit from a cross industry discussion given that the currently used term “costs may vary depending on network” for mobile callers is less than satisfactory for end users.

**Question 6**

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

**Answer 6**

We do not agree that ICSTIS should involve itself in contract details negotiated between partners within the value chain, nor can we agree that ICSTIS should have powers to enter premises to inspect and monitor and sequester records and documentation. This would effectively grant ICSTIS powers as a law enforcement agency on a par with our statutory law enforcement bodies and this is not within the current and agreed mandate for ICSTIS as the Ofcom Appointed Enforcement Agency for application of the approved PRS Code.

Coherence and communication down the value chain would be greatly improved if the current Service Provider Code definition was amended to place responsibility with the Service Promoter as previously suggested. We do not need an additional prior permission regime to achieve this.

**Question 7**

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

**Answer 7**

We can only agree with this on the basis of probability since we have no information or evidence of problems or consumer harm in this sector.

**Question 8**

***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?***

Answer 8

We agree that Radio Broadcasts should abide by the same rules as Broadcast TV. However, we repeat our comment in Answer 7 that we are not aware of and therefore have no evidence of problems in this sector. Since, as stated in the document, the radio sector is already moving to ensure compliance there can be no justification in introducing an unnecessary prior permission regime when self regulation appears to be well advanced in addressing any potential problems.

**Question 9**

***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?***

Answer 9

We do not agree that it is necessary to apply even more regulatory overhead to Quiz TV than that currently employed and several of the prior permission requirements merely replicate conditions already contained in the current PRS Code. ICSTIS need to be aware that the terms Call TV, Quiz TV and Broadcast PRS are potentially confusing for the layman.

As with item 6 we particularly do not agree that ICSTIS be granted statutory law enforcement powers to enter premises and sequester records and documentation.

**Question 10**

***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?***

Answer 10

While it appears sensible to include auctions within the Broadcast TV sector (although, again, we are not aware of any evidence of problems in this sector) it is not necessary in our view to apply a prior permission regime to ensure compliance. It is perfectly adequate to ensure that all parts of the value chain are fully aware of the obligation to comply with the current ICSTIS Code for PRS.

**Question 11**

***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?***

Answer 11

This is a simple voting system that does not need the heavy handed approach of prior permission to ensure compliance and this is certainly one sector where we have no knowledge of any consumer complaint, consumer harm nor media or political interest. Application of the current PRS Code should be sufficient to ensure compliance.

**Question 12**

***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?***

Answer 12

It should not be necessary to introduce prior permission for such services and it should be a simple matter for ICSTIS to ensure compliance with existing Code requirements.

**Question 13**

***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?***

Answer 13

We agree. We assume this includes SMS chat services.

**Question 14**

***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?***

Answer 14

No we do not.

**Question 15**

***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?***

Answer 15

We would prefer that the proposals to greatly extend the application of prior permission across Broadcast PRS were not introduced at all and we certainly cannot agree that the focus of this costly overhead and responsibility should be the Service Provider as defined in the current ICSTIS Code. It should not require a blanket prior permission regime to achieve Code compliance in the Broadcast sector. We have said for quite some time that definitions in the Code should be revisited and we have regularly offered our assistance to ICSTIS in this task. Some of the problem definitions we list below.



- **Service Provider (SP)**  
The SP, as defined in the current Code, does not provide a service to consumers and normally has no direct contact with consumers. The SP provides a service to the organisation managing the point of sale or customer interface – the Service Promoter. The SP is actually a technical resource which links customers to the service via the Service Promoter – a facilitator.
- **Information Provider (IP)**  
The IP is mentioned but not defined in the Code but is generally accepted as being something between a provider of content and a Service Promoter. It is not a useful term since a Service Promoter may often use multiple IPs as inputs to a total package offered to consumers.
- **Service Promoter**  
The Code currently has no definition for the important Point of Sale contact with consumers for promotion and fulfilment and we prefer to call this the Service Promoter. The Service Promoter carries out the following functions:
  - design and construction of service packages (often via a production company)
  - media promotion of services and PRS number
  - prime contact for customer service

The definition of Service Promoter needs to be included in the ICSTIS PRS Code and responsibilities should be more accurately divided between Service Provider (facilitator) and Service Promoter.

We would expect the issue of definitions to be addressed in the Ofcom Scope Review and it would be sensible in our view to completely reconsider all definitions at this time, or earlier if possible. Again we offer our unqualified assistance in this important exercise and we believe there would be benefit in industry and ICSTIS co-operating to find an early and acceptable solution in advance of any formal Code changes.

We believe that had a definition of Service Promoter been a component of the 11<sup>th</sup> Code as suggested by the NOC, Broadcasters would have more clearly understood their responsibilities in the PRS value chain and many of the problems exacerbated by the media might well have been avoided.

#### ***Question 16***

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

Answer 16

Since we do not believe it to be necessary or proportional to introduce additional and costly prior permission requirements in order to achieve Code compliance for Broadcast PRS we would prefer this route is not pursued.

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However, given that premature public announcements have been made (Press Release 08 March 2007 and Which Magazine May 2007 issue) regarding the introduction of a “licensing scheme” it appears possible that a perceived commitment will be difficult to avoid. In this event we would suggest that any additional prior permission requirements be accompanied by industry agreed Service Level Agreements on the processing of applications by ICSTIS.

### **Question 17**

*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?*

### **Answer 17**

The way forward is clearly an educational one whereby Broadcasters, and their respective production companies, are made aware of their responsibilities under the appropriate Codes for advertising, broadcasting and the use of PRS.

Currently Service Providers (facilitators) are directly answerable for ICSTIS Code and Condition breaches when they have no direct control over the activities of the Service Promoter. This is ineffective and unjust as Service Providers only provide technological support to the organisation managing the consumer point of sale or consumer interface and it is at the point of sale that responsibility for compliance with ICSTIS Code and Condition requirements should be placed.

We would suggest a Code amendment to adjust current applicable definitions and introduce the role of Service Promoter with responsibility for PRS Code compliance at the point of sale. In the sector discussed in this document that would place responsibility regarding Broadcast PRS with the Broadcaster where it clearly belongs. We appreciate that formal changes to the Code can be a lengthy process but it should be possible in the short term for ICSTIS to engage more effectively with industry and apply agreed informal changes within the value chain to the benefit of all.

### **Impact Assessment**

We do not have sufficient information in the time available to accurately assess the cost to Industry of these additional regulatory measures. Bureaucratic overhead always represents significant costs in our view and in this instance we believe these costs to be unnecessary, avoidable and disproportionate.

We do not believe that the prior permission measures will contribute noticeably to any improvement in consumer confidence and trust in the manner suggested. This will be achieved by improving the quality and integrity of programmes over time in a manner compliant with existing Code requirements and through improved communications



within the value chain. ICSTIS is a part of the PRS value chain and needs to engage more effectively with the PRS industry to promote and ensure compliance with the PRS Code.

## **Close**

It is unfortunate, even unacceptable, that ICSTIS, somewhat prematurely, announced the introduction of a prior permission regime (Licensing System) in their press release of 08 March 2007 and in a Consumer Association Which Magazine issue of May 2007. This was in our view an over reaction to a sensationalist press campaign which had identified anomalies in the costs and effectiveness of calls to interactive TV programmes. This was a situation that required a calm and considered response in support of an industry that had accepted there were problems to be addressed and that was in fact taking immediate and responsible actions to address them.

This represented an opportunity for ICSTIS and Industry to engage and co-operate in the best interests of all concerned. There is room for improvement here and the NOC would like to see the ILP used more effectively as the industry/regulatory interface in future.

As previously mentioned in this response we believe it to be important that the ICSTIS Code definitions applied to elements in the PRS value chain be revisited at the earliest opportunity, and the Service Provider definition in particular, to clearly identify responsibilities at the important consumer interface or point of sale. If this could be linked to the introduction of a Service Promoter Registration scheme as recommended by the NOC then we can see benefits all round. Informal changes to practices within the value chain in advance of formal Code changes should also be possible with improved engagement between ICSTIS and Industry.

We see no need for additional, costly and disproportionate formal regulation to this sector in the form of prior permission overhead, unfairly focussed on the Service Provider, which would have a negative impact on a market that is clearly suffering from a lack of confidence and new investment. There is clear evidence that both TV and Radio Broadcasters are addressing issues of compliance and value chain communications both urgently and effectively in a spirit of co-operation and self regulation and this should be encouraged as the preferred way forward.

There is also an inherent risk that by focussing specifically on TV and Radio broadcast technologies the wider spectrum of broadcast services using alternative and converging technologies e.g. internet, web radio, web TV and others yet to be defined will be missed. As we have mentioned before in many of our Consultation responses it is essential that regulation be focussed on services rather than technology.



## Statement of Representation

The NOC confirms that this response has been compiled following a process of circulation of the relevant Consultation documentation to all NOC members. A list of NOC members may be found at [www.noonline.org/currentmembers.aspx](http://www.noonline.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 the aim of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media services in the UK using the PRS billing model.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson 08707 327 327 or [zoe@noonline.org](mailto:zoe@noonline.org) .

Sincerely

Toby Padgham

NOC General Secretary