

## **Introducing Prior Permission - ICSTIS Consultation Response**

**12 June 2007**



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# 1 Introduction

Siren World Wide Limited ("Siren") is pleased to submit this document in response to the public consultation document, "Introducing Prior Permission For Premium Rate Services Used In Television And Radio Programmes" issued by ICSTIS on 15<sup>th</sup> May 2007. These responses are submitted in good faith, in confidence and are restricted to the consultation process unless specifically agreed by Siren; however we do accept that they may be published as part of the consultation process.

# 2 About Siren

Siren has been operating as a Service Provider in the UK for the past five years and is currently engaged with MTV Networks Europe, in the provision of certain SMS TV Services, and with Five, Setanta Sports, Sky One and Virgin Media TV as a general Broadcast PRS service provider.

Siren spent three years managing all of ITV's Broadcast PRS services from 2003 until the end of 2006, working closely with ITV's operations, commissioning and production partners and managing Eckoh Technologies for fixed line and Mobile Interactive Group for SMS, in the role of lead service provider. Through that time we have experienced every type of Broadcast PRS service imaginable and gained invaluable insight into the issues and pressures involved in providing and managing such services and this forms the basis of a number of the responses included herein.

As a general point, however, whilst we fully support the notion of a more regulated service provider community, our view is that more responsibility must rest with the broadcaster, acting as promoter of the services and who have historically found it too easy to hand over the responsibility and liability for the services whilst often failing to deliver the necessary mandate to ensure the service provider can execute its responsibilities fully.

Siren hopes that the upcoming Ofcom review, referenced in the ICSTIS consultation document, can go a long way to addressing this fundamental issue. Siren would like to see each broadcaster obliged to publish a "viewers' charter" whereby it accepts its role as the ultimate promoter of the services and makes certain best practice commitments to its viewers and participants.



### **3 Response to the Consultation Document**

We have followed the numbering scheme used in the document. Further explanation or detail on our responses is available on request.

#### **3.1 Section 3 - Definition Of Premium Rate Services Used In Broadcasting And The Risks Associated With Such Services**

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

Yes. The definition might benefit from the inclusion of a statement making it clear that this is not advertising airtime:

"...premium rate services which are promoted on television or radio **as part of editorial airtime** and which provide..."

Additional thought: Is there anything to be gained from making this scheme apply only to services that are of a particular scale? Some Broadcast PRS services have a very low number of responses and are used for editorial rather than commercial purposes, e.g. a poll on a regional news service might elicit less than a hundred responses. This could be dealt with by reach, i.e. the prior permission is only applicable to services with a reach in excess of say 100,000 audience?

**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?**



Anecdotal evidence suggests that this happens routinely. Recent disclaimers on air on certain shows actually admit to this. In terms of fixed line services, this is extremely easy to implement. Telephony platforms are available that offer the ability to play out a free of charge network message whilst the premium lines are closed and a different message can be played out before the service is brought live and after the service has been closed. An example of such a platform is STORM from Redwood Technologies Ltd.

With SMS, the situation is a little more complex. We support the policies of the leading SMS aggregators, especially Mobile Interactive Group, who are proposing a 'latency window' of 4 to 10 mins to allow SMS messages to get through the network and once that window is closed, the return message will inform entrants that the service is closed. Given that the network operators and aggregators generally agree that the billing should be on the in-bound SMS (MO leg), it is not possible to return a free of charge message but network operators (currently with the exception only of T-Mobile) have a published refund policy that will allow viewers who receive a 'sorry service is closed' message to be given a refund if they so choose.

**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?**

Yes. There is a clear requirement for all entries to be collected before a result announced, irrespective of the platform chosen by the participant. In the case of SMS and Red Button entries, additional time may be required to allow messages to get through the system. This might mean allowing the SMS entry route to stay open a few minutes after the fixed lines have been closed and the red button page has been changed. This time delay will vary depending on the time of day and volume of expected interactions and would be agreed with the broadcaster in consultation with the mobile networks via the appointed SMS aggregator before the programme is aired and would be included in the terms and conditions for the service.

A single interface, managed by the production team or appointed service provider, is required that ensures all the parameters & timings for each platform are entered once and that all services can be closed by a single button press, to ensure all platforms and associated entries are handled exactly as they have been designed and agreed with the producers & broadcaster at the planning stage. This will reduce the risk of production staff making mistakes or forgetting to close services, for example in the heat of a live show. Such systems (including Siren's Integrate platform) are commercially available and can be deployed to manage this process, subject to broadcasters willingness to make sufficient budget available.



**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?**

Siren agrees with everything suggested in respect of the question relating to conduct, with the one exception being the mandatory inclusion of third party verification for each competition service where more than £5,000 is available as a prize. Our view is that the winner picking system that is proposed (by the service provider) should be verified externally and that so long as a verified system is deployed for a specific competition or voting service, an external verifier is not automatically required.

It should also be made clear that this is ultimately the broadcaster's responsibility, as the promoter of the competition, and they have the obligation to ensure this is conducted properly. ICSTIS should have the ability to make random checks on a competition (or any other premium service) to ensure it is being conducted correctly, which means access to production documents and the broadcaster's records.

**Q5. 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?**

Agreed on all points. Additional thought should be given to the excess charging by mobile operators when calling premium fixed line numbers. This is really a matter for Ofcom to take up with the operators as the level of excess charging can be extreme and in the meantime, viewers should be warned more strongly.

**Q6. 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?**

Agreed on all points. ICSTIS should have access to broadcaster and producer documents and processes, not just access to service provider premises & records.



### **3.2 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?**

Agreed on all points.

**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?**

Agreed on all points.

**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?**

Agreed on all points.

**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?**

Agreed on all points.



**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?**

Agreed on all points. Additionally, it may be worth considering further requirements such as where a particular request is in the queue and an estimate of how long before the request will come to air displayed on screen, based on the number of requests in the queue – similar to the additional requirements imposed on Call TV Quiz Services in respect of the odds being displayed on screen.

**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?**

Agreed on all points.

**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?**

Agreed on all points.

**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?**

As discussed earlier, our view is that there should be some sort of cut-off related to scale. Some services elicit a very low number of responses and whilst that must adhere to the general Code, could be excluded from the Broadcast PRS prior permission category.



### **3.3 Section 5 - The Prior Permission Process**

**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?**

In principal yes, however there is a caveat to this. One of the issues we have experienced is that broadcasters have been guilty of pushing all the liabilities for compliance onto the Service Provider with extremely tough and punitive commercial terms in their contracts with service providers. There is a risk that the prior permission scheme will encourage broadcasters to take less responsibility for the management of Broadcast PRS services.

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

Siren would like to see Ofcom and ICSTIS collaborating on this area to ensure that broadcasters retain the liabilities in respect of compliance with the relevant codes and there is clear guidance on where the responsibilities lie. Our view is that it makes sense for service providers to be subject to a prior permission scheme, giving confidence to producers and broadcasters that services will be managed in a professional manner but that broadcasters need to be formally identified as the Promoter of the services, and as such the ultimate responsible party.

It would be helpful if Ofcom were to introduce the notion of a broadcaster acting as a Promoter of Broadcaster PRS services with specific obligations attached and a clear distinction between those obligations and those of the service provider. We would also like to see the Promoter (broadcaster) required to publicise its Code of Practice (effectively a viewers' charter) as part of its Ofcom licence in respect of use of promotional airtime.



**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?**

Agreed, as in the answer to Q16 above – requires a definition of Promoter in a Broadcast PRS scheme with specific conditions and requirements attached.

