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**THUS Response to the ICSTIS Consultation:
Introducing Prior Permission For Premium Rate Services Used
In Television And Radio Programmes**

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Introduction

THUS plc is a leading provider of Internet, data and telecoms services in the United Kingdom. We deliver fixed line telecommunication services to large business customers and public sector organisations, while tailoring services to small and mid-sized businesses under the Demon brand. As part of our telecoms services we provide Premium Rate Services (PRS) which are utilised by our customers in a number of ways including “red button” television services, for participation TV, competitions and informational services.

We welcome this opportunity to comment on ICSTIS’s consultation on a prior permission scheme for broadcast PRS. We have some general comments which we set out below along with our responses to the questions posed.

General Comments

As noted in the consultation document, Ofcom are currently carrying out an internal inquiry into how PRS is used in broadcasting, more from a broadcasting point of view than a PRS one. Although, we can see that it may be ICSTIS’s intentions to feed the responses to this consultation into this inquiry, we believe it would have been better, certainly in terms of timing and effort, for ICSTIS to have waited for the outcome of Ofcom’s review before embarking on this consultation. An alternative could have been to allow for a much longer consultation period. A lot of industry time and effort goes into collecting views and responding to consultations and it would be a shame for this effort to have been a waste of time if the inquiry decides on an alternative course of action.

THUS recognises the difficulty ICSTIS faces in regulating in this area. Not only does it need to contend with various stakeholders involved in a single programme (network operators, service providers, production companies and broadcasters) but it must find a balance between consumer harm because of a PRS number (e.g. leaving a PRS line open after a vote has finished) and consumers being misled (e.g. the Blue Peter case) as well as technical issues. For these reasons, we believe it would be much simpler to address the problems on a case by case basis, backed up by a Best Practice Guide or Statement of Expectation (as with Call TV Quiz) of what is expected from the services. This will in turn be of course supported and enforced by the Code of Practice. We strongly feel that the content of the prior permission scheme sits better as a Statement of Expectations for service providers, production companies and broadcasters to apply accordingly. This will cut out the need to consider who needs to attain prior permission as well as deal with the confusion between the types of “abuse” that have been widely reported (some of which aren’t inherent PRS abuses).

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In terms of responding to the questions in the consultation, we have only responded to the questions where we feel we are in a position to respond.

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

It is clear that the intention is to have a definition that captures the use of PRS on TV and radio, but we are not sure that it is specifically needed, but if so in such a detailed way.

Ultimately the 11th Code of Practice sets out a definition for PRS, so perhaps for the purposes of the prior permission process and for this and future consultations, it would be more apt to refer to Broadcast Premium Rate Services simply as “the use of premium rate numbers within TV and Radio programming”, rather than set out a new specific definition.

We have one concern though. By aiming regulation at a specific sector, as in this case, the result is that similar services not broadcast on TV or radio do not face the same scrutiny or require prior permission. For example, competitions where a PRS number is only used for the purpose of entering a competition occur in various media: on TV, on the radio, in magazines, on the back of cereal packets. It would seem that by singling out “broadcast PRS” ICSTIS are only concerned with competitions on TV, not in any other media.

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?

The conditions set out in the consultation seem more like those of best practice, things that should be done rather than issues that service providers should be confirming they do as part of signing up to a prior permission scheme.

Plus, we are not convinced that applying these to a service provider would work as these are conditions that the service provider may not have immediate control over.

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?

Again, we are not convinced that all these conditions sit properly within prior permission.

Condition 3 should be expanded to include “... unless the repeat is within the timeframe that the lines are open”.

Condition 4 should reflect more clearly that sometimes programmes are pre-recorded and only the PRS element is live.

It seems inappropriate for ICSTIS to dictate via Condition 5, 6 and 7 how competition operators should run their competitions. Where applicable this is a matter for the Gambling Commission, but generally not a PRS issue.

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?

We see little point in including what, as acknowledged in the consultation, are conditions set out in the PRS Code of Practice and will be enforced that way.

If these conditions are to remain within a prior permission scheme then Condition 2 should make reference to the appropriate Help Note, which sets out the issues with pricing information for different networks and suggests appropriate wording.

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?

Conditions 1 to 4 are more “best practice” than “prior permission”. As we don’t operate in the areas set out by this set of conditions it is difficult for us to take a view on whether these conditions are reasonable or not, although we are not convinced that “all” staff need to be trained.

Furthermore, we do not believe that the last condition constitutes prior permission – it seems to give powers to ICSTIS to view records pertaining to the service; it is our belief that this access should be covered by the powers in the Code of Practice and if not, then ICSTIS should not be granted them. It is totally inappropriate for ICSTIS to have powers which are comparable to those of law enforcement who have to go through proper and legal processes to gain access to documentation and records – surely ICSTIS should not be granted such powers without consent from the service provider or without proper judicial process.

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?

As already stated we think the “statement of expectations” or “best practice guide” is preferable to introducing a new prior permission scheme. The requirements set out of Call TV Quiz Services and other “broadcast PRS” fit better in a statement of expectation (or a suite of them for the Call TV Quiz statement to remain standalone).

As with Q6, we do not believe ICSTIS should have the powers to view records pertaining to the service without proper judicial process.

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?

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?

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?

We believe that such services would benefit from a statement of expectations rather than having to seek prior permissions.

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?

Yes, we agree that chat services on TV are already covered by an existing prior permission.

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?

We believe that (as we have already set out above) if ICSTIS utilise a “best practice” or “statement of expectation” approach and keeps a definition for the purpose of this statement to simply relate to “the use of premium rate numbers within TV and Radio programming” there will be no need to be concerned about other types of service whether now or in the future.

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?

Premium rate services no longer just involve a network, service provider and consumer (perhaps with an information provider providing the content). Broadcast PRS is just one example of where the value chain is much larger.

If the reports of the recent problems with broadcast PRS are to be believed various problems occurred at different levels within the broadcast chain. It is difficult therefore for us to agree that prior permission should be on service providers alone.

ICSTIS should continue to enforce the PRS Code of Practice where applicable, and Ofcom should enforce the broadcasting Code (which may need updating to reflect the responsibilities of broadcasters who use PRS in their programmes). ICSTIS can lead in any investigation but if it is found that the broadcaster was to blame then that becomes a matter for Ofcom.

ICSTIS can work with Ofcom to come up with a generic “statement of expectation” which can address the different issues across the various companies in the supply chain.

Conclusions

THUS is not convinced that a prior permission regime is the correct way forward. A Statement of Expectation that works in conjunction with Ofcom’s broadcasting regulations would be a much simpler and effective way of dealing with the problem.

This view worries us given that ICSTIS have already announced the plan to introduce a licensing scheme and may not feel in a position to change their minds on this. We hope that even if the common consensus is that something akin to a Statement of Expectation is probably better,

ICSTIS will be able to concede and not insist that a licensing scheme is necessary because it was formerly announced (albeit without proper consultation).