

Section One - Introduction

About IARN

1.1 The International Audiotex Regulators' Network (IARN) was set up in 1995 as a forum for exchanging information and good practice among its members.

1.2 At the time of publication, the following countries are members of IARN: Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Malaysia, the Netherlands, Norway, Poland, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, and the UK. IARN actively encourages contact and the development of closer ties with other countries where Phone-paid Services are consumed.

1.3 IARN members are involved in the regulation of, and/or setting standards for, the content and promotion of Phone-paid services in their own countries. Members of IARN meet twice a year with two basic objectives:

- To exchange information, experiences, and to discuss shared concerns
- To develop a set of agreed regulatory principles and enforcement practices which provide consistent, cross-border protection to consumers

About Phone-paid Services

1.4 Phone-paid Services are most commonly known as "Premium Rate Services" or "Value Added Services" in IARN member countries. Phone-paid Services can also describe other types of telephone service such as "shared cost" or Directory Enquiry services, which are regulated by some IARN Members. Phone-paid Services can be recognized by the following general characteristics:

- Phone-paid Services derive payment through an electronic communications network. The definition of phone-paid calls can extend to voice calls or text messages made through a mobile telephone network, either from or to a consumer's handset, where the call or text message carries a premium charge.
- Phone-paid calls, texts or other methods of purchase cost more than standard priced "carriage" calls or texts, and provide an added value in the form of goods or services. These goods and services are most often digital, but the purchase of non-digital goods (e.g. CDs, books) and services (e.g. car parking payment, concert tickets) using phone-payment is growing.
- The additional Premium Rate value, or Value Add, is provided by a "service provider", an individual, organisation or company that contracts with telephone network operators for facilities enabling the provision of Premium Rate Services.
- Service providers may, in turn, sub-contract the provision and/or promotion of the Phone-paid Service to other parties. These are known as "information providers" or "content providers". The service provider continues to be responsible to regulators for all aspects of the Phone-paid Service, except in some territories

where the regulator will consider holding the content provider responsible in appropriate cases.

- The consumer's telephone network charges them for any Phone-paid Services as part of a bill for a telecommunications service (such as phone, internet, or digital television). Once collected from the consumer, an agreed percentage of the revenue is passed onto the service provider. This is known as "revenue sharing".

1.5 In some IARN member countries telephone networks provide their own Phone-paid Services, direct to the consumer. This is most common in the mobile sector where these are known as "on-portal" services. Some IARN members choose not to regulate them on the basis that there is no revenue share with a third party provider. Other members, particularly those who have statutory regulation, cover these services for the following reasons:

- they are premium-charged
- they are potentially identical to phone-paid services offered by third parties
- they generally raise the same consumer protection issues as other phone-paid services.

About the Handbook

1.6 This Handbook is intended to serve three purposes:

- To inform consumers and others about the general principles which provide effective consumer protection, and which create a market in which businesses can innovate and invest
- To serve as a reference point for existing IARN members
- To guide countries with an emerging phone-paid market as to the appropriate requirements to ensure consumer confidence, and the different models for regulation they might consider

Section Two – Reasons for Regulation and the Different Models

The Development of Phone-paid Services

2.1 Since the introduction of Phone-payment in the 1980s, several key developments in technology have developed the sector to a point where Phone-paid Services are accessed and delivered across a range of platforms. These include traditional voice networks; SMS shortcodes, and websites delivered on mobile handsets; the internet and internet telephone networks; and interactive television. It is no longer possible to describe Phone-paid Services as a "sector". Phone-payment has become a payment mechanism which organisations use to generate profit or cover costs in a wide range of markets.

2.2 As Phone-paid services converge with other media, innovation shows little sign of slowing. Telephony, and mobile telephony in particular, is a form of payment that is always close to hand, easy to use and available to most people. Phone payment has been particularly popular and widely used to participate on television or radio, for social

networking and contact services, and to purchase mobile handset personalisation such as ringtones or wallpaper.

2.3 As the diversity and scale of the Phone-paid sector has increased, so has the potential for consumer harm. Consumer harm have arisen involving mass-market misleading promotions for competitions and award schemes, internet diallers with premium payment for access to web content, and mobile subscription services. The search for new revenue streams is constant and it is IARN's experience that, whilst the majority of the sector aims for compliance, not everyone will act with an appropriate level of diligence or honesty.

The Advantages of Phone-paid Services

2.4 The advantages of phone payment, and the reason why it is attractive to consumers, can be summarized as follows:

Ubiquity

- The percentage of the global population that has access to a fixed or mobile handset, interactive television, or internet is already large, and increasing. This makes Phone-paid Services easily accessible, especially in countries where most people own a mobile handset.

Accessibility

- Phone-paid Services can be purchased by those with no alternative credit facility. There is also no other credit device that can be used in so many remote locations.

Familiarity and Ease of Use

- The purchase of Phone-paid Services is now an activity which many people in IARN member countries are familiar with. In many cases purchases can be made simply and in very little time. This makes the payment mechanism very easy to link to broadcast services and other activities that encourage an instant purchase.

Why Regulate?

2.5 The examples of consumer harm referred to above are clear evidence of a need for action, but they are not, in themselves, evidence of the need for regulatory action. The need for regulation is determined not just by the existence of consumer harm, but also the conditions of the market in which it takes place. If a market has characteristics so that companies can deal effectively with consumer harm, and have incentives to do so, then there is little case for an external regulatory framework.

2.6 It is the belief of IARN members that services which make use of phone payment mechanisms have a level of risk that cannot be handled without a set of agreed principles. They believe risk is created by the following characteristics:

- A complex variety of billing and delivery mechanisms that constantly adapts to innovation. This makes it difficult for consumers to make a fully informed decision prior to purchase.
- A high percentage of mobile consumers who have “pay-as-you-go” contracts, and so have reduced, or no, billing record. This may reduce their proof that they have suffered consumer harm.
- A technology that allows almost immediate access to millions of potential consumers, and that makes cross-border selling relatively easy. This provides each consumer with a form of instant payment, which potentially reduces the time consumers take to consider purchases.
- This same technology gives a dishonest enterprise the ability to cause consumer harm quickly and widely, or to market immediately and directly to a consumer in a way that invades their privacy. Both these actions can be carried out over any distance, with few resources, and are likely to lower consumer confidence in the whole Phone-paid Services sector.
- A fragmented supply chain, any part of which can be the cause of consumer harm, and where the sharing of revenue between the different parts can create conflicting incentives that act against consumer protection. An example is Phone-paid Services as used in TV votes or competitions where in a number of separate cases the incentive to maximise revenue led to phone lines being kept open until the last possible moment, leading to instances where the results of voting could not be counted quickly enough for broadcast, leading in turn to consumers’ votes not being counted.
- The majority of the products on offer being services rather than physical goods, which provide instant enjoyment with little or no retained value. So a consumer may not wish the vendor to market to them for a prolonged period.
- The nature of some of the services provided – e.g. sexual entertainment, tarot, counselling, Quiz TV – which may disincline consumers to actively seek redress due to embarrassment over their actions.
- A relatively low cost for individual Phone-paid transactions. Again, this may disincline consumers from seeking refunds because it is easier to “absorb” the financial loss. This in turn means that consumer dissatisfaction may not act as a disincentive to irresponsibility on the part of suppliers.
- A high risk to vulnerable sections of society such as children, the elderly, or those with learning difficulties. This risk is created by a combination of almost universal accessibility, and the opportunities for instant consumption and immediate payment.
- A risk that financial detriment or serious offence can be caused to someone other than the consumer.

2.7 Phone-based services have a high degree of mobility. Services can be operated across the world from a single location. Services can also be promoted widely at a minimal cost, and potentially delivered to millions of consumers within hours.

2.8 For these reasons IARN members think there is value to traders, consumers, regulators and Governments in having a common set of robust regulatory principles that can be applied nationally and, where possible and necessary, across borders.. It is important that these principles apply to everyone in a market. If coverage is incomplete and voluntary there is a major risk that parties

who do not conform to the principles will continue to cause serious consumer harm. This also harms consumer trust in phone-paid services generally..

Different Models for Regulation

2.8 All IARN member countries think it is essential to have an organization to ensure protection for consumers of Phone-paid Services, which carries out its work with independence and transparency. Where a need for independent regulation is identified, then the model for regulation must possess the following characteristics:

- Fairness to all parties involved, both consumers and suppliers
- A framework which is proportionate to the actual and potential levels of consumer harm in the country concerned
- A robust Code of Practice for industry, either as part of law, or underpinned by legal statute or by the agreement of all suppliers of Phone-paid Services.
- Mechanisms to deal with reported consumer harm; to monitor compliance with the rules; to investigate alleged consumer harm; to independently judge whether the rules have been broken, and; appropriate sanctions and other measures to prevent further rule breaking.

2.9 Whilst each country within IARN has its own regulatory model, the existing models can be grouped into three categories:

1. Government regulation
2. Co-regulation
3. Self-regulation

Government Regulation

2.10 IARN defines government regulation as existing where the rules governing Phone-payment are set out in legislation. The provisions of regulation are also enshrined in law, and interpretation of that law,, enforcement, and supervision of adjudication processes are carried out by a government agency or department. The cost of this agency or department is met from government funds or by a levy on the industry which the government determines..

2.11 In a market environment where businesses take a short-term view of the factors influencing their existence, and do not invest in the development of their reputations, government regulation can make industry focus on consumer protection and longer-term considerations.

2.12 However the Phone-paid Services sector is fast paced, and regulatory models need the flexibility to adapt to new products and the risk that arise from them. Countries with an emerging Phone-paid Services market will wish to ensure that their legal framework has the flexibility necessary to change existing provisions quickly if required.

2.13 Government regulation may come with a high level of authority and might well allow for criminal as well as other sanctions. It is likely that these powers will be vested in a Department or Agency with responsibilities that range wider than phone-payment. This situation has the potential to throw up advantages and disadvantages.

Co-regulation

2.14 IARN defines co-regulation as existing where the requirement for regulation is set out in legislation, but policy making and enforcement are delegated by the government to an outside organisation. This organisation is independent of the industry in its operation and adjudications. The co-regulator would be responsible for developing and maintaining a Code of Practice which is approved by the government department responsible.

2.15 Investigations are adjudicated by a panel wholly independent of the mobile phone-paid industry. Given the delegated authorities on which co-regulation is based it is likely that any co-regulator would be obliged to create appropriate appeal mechanisms to ensure processes are compliant with Human rights law.

2.16 Co-regulators will need to satisfy the government of their country that they have adequate funding to carry out the delegated duties. One way of ensuring this is by means of a levy on all Phone-paid transactions where revenue is shared between more than one part of the value chain, but countries with emerging Phone-paid Services markets will wish to consider all funding methods before making a decision.

2.17 Co-regulation provides a flexible framework with a legislative backstop as default. So it can work well in a market where there is high variety in terms of the services offered, where some businesses do not accept the need to protect the long-term reputation of the sector, and where the need to adapt regulations and work closely with the industry is high. Co-regulation is more likely to involve an organisation dedicated to managing a phone-payment market and with the associate specialist skills

2.18 However a co-regulatory body is still dependent on the support of a government department, and the speed at which that support is provided. In addition a co-regulatory organisation may be susceptible to political influence, or to the opposite concern that it favours businesses over consumers. Countries with an emerging Phone-paid Services market will wish to ensure that their legal framework provides appropriate independence, and that the government department concerned can provide quick, flexible support, when considering a Co-Regulation model.

Self-regulation

2.19 IARN defines self-regulation as being where there is no specific requirement for Phone-based payment regulation in law. Instead the Phone-paid Services sector of that country sets policy, administers and funds its own regulatory organisation without participation from the government. This organisation may involve representation from each part of the sector. It sets specific provisions out in a Code of Practice, which is agreed by the industry but does not require approval from the government. Whilst there may be general articles of law which govern the practices of Phone-paid services and service providers, there is no definite legal backstop to act as the ultimate guarantor of enforcement.

2.20 In a market where businesses recognize that their future existence depends on their relationship with their customers and society at large, rather than just their

shareholders, and where businesses collectively acknowledge the need to reduce consumer harm and promote consumer trust, then self-regulation is more likely to be effective. Because there is no need for specific legislation to underpin it, it is also likely that a self-regulatory model can be established quickly in comparison to other models.

2.21 However effective self-regulation arises from a cohesive, active sector, where businesses are prepared to commit resources to fund good regulation, consult with stakeholders, and monitor how effective the regulation is. In a market where service providers do not communicate with each other and/or have less resource to commit, self-regulation may not prove an adequate solution.

2.22 In addition self-regulation will be ineffective in a market where “rogue” service providers refuse to sign up to regulatory principles. Countries with an emerging Phone-paid Services market will wish to ensure their premium rate providers have the necessary cohesion and resources, and appropriate sanctions, when considering a Self-Regulation model.

2.23 IARN would advise countries with emerging Phone-paid Service markets to consider each of the categories above, before deciding on a model for regulation which is appropriate to their legal framework, public expectations, commercial practices, and levels of consumer risk arising from Phone-paid Services. Further advice is available on the IARN website, or individual IARN members can provide advice about their regulatory models upon request.

Section Three - Principles of Regulation

3.1 This section details the principles generally adopted by IARN members as part of their Codes of Practice or articles of law governing Phone-paid Services. These principles would normally represent a minimum standard of protection for consumers, which may be superseded or exceeded in some IARN member countries. None of the principles set out below are binding on any national Phone-paid Services regulator.

Responsibility and Identification

3.2 As part of their legal framework or Code of Practice, regulators must identify which parties are ultimately responsible for ensuring compliance with any conditions applying to the provision and promotion of Phone-paid Services. There are a multitude of parties who are involved at some stage during the promotion, operation, or delivery of Phone-paid Services. These include broadcasters; publishers; advertising or marketing agencies; and originating networks who provide carriage but do not receive revenue share. However there are three parties in the premium rate value chain who are generally considered responsible for each of the principles set out in this section. They are:

- Telecommunications Networks (which receive revenue share)
- Service Providers
- Content (or Information) Providers

3.3 In deciding which of the above should be considered responsible for each of the following principles, new regulators should consider the following factors:

- What tasks or duties must be done to prove responsibility?
- Who in the value chain is best placed to do these tasks?
- Where in the value chain will enforcement be most effective to encourage compliance? For example, is it appropriate for more than one party in the value chain to share responsibility for a compliance failure?
- Where in the value chain will enforcement be easiest? – especially to suspend a service or the payments derived from it.

3.4 The critical point in terms of ensuring compliance, or an immediate end to consumer harm, lies at the point of contract between telecommunications networks and service providers. This is because it is the point at which a Phone-paid Service can be terminated, and revenue share payments stopped or held, with maximum certainty. For this reason the majority of IARN members have legal frameworks or Codes which hold service providers responsible for compliance

3.5 Networks, however, have a unique ability to cut-off numbers or disconnect mobile short codes and to stop the payment of customer charges to providers of non-compliant services. So some regulatory regimes also contain core provisions in relation to networks, which place a degree of responsibility onto networks to stop consumer harm.

3.6 Where service providers are held responsible for provisions, telecommunications networks which carry their Phone-paid Services shall ensure, as far as reasonably possible, that service providers comply with regulations. Where content providers are held responsible for provisions then this duty falls first to service providers, then to networks. Networks shall also comply with instructions issued by the regulator in countries where that is a requirement.

3.7 In some countries, the service provider may petition the regulator to hold the content provider responsible for specific incidents of consumer harm. If this is agreed by both the regulator and the content provider, then any judgement will apply to the content provider for that specific incident. This does not affect the service provider's overall responsibility.

3.8 The party or parties who are deemed responsible for Phone-paid Services must ensure they can be identified by their national regulator, and by consumers, by:

- Providing the regulator with their name, business address, and other details the regulator deems relevant
- Providing contact details in a way that consumers can easily find and understand. This could include contact details within promotional material. Where consumers are unlikely to have seen a promotion, then these details should be clearly provided as part of the Phone-paid Service itself.
- Provide satisfactory customer service arrangements. This should include the means to quickly receive and process complaints, at no more than a standard cost to the consumer, and to refer consumers to the regulator where such complaints are unresolved.

Overall Principles

3.9 Regardless of the country from which services are operated, the guiding principles remain the same.

- The promotion and operation of Phone-paid Services must be legal, decent and honest.
- All promotional material, and technology and content involved in a Phone-paid Service must be prepared with a responsibility to consumers and society.

Six Key Principles

3.10 These guiding principles can be expanded into six principles which are considered key by IARN members if consumers are to use premium rate phone-paid services with absolute confidence:

Legality

3.11 Phone-paid Services and their promotional material must comply with the law, both national and European where appropriate. Promotions and services must not facilitate or encourage anything which is in any way unlawful.

Decency

3.12 Services and promotional material must not be of a kind that might:

- Cause grave or widespread offence (e.g. pornography or pornographic wording unless it is confined to publications whose content is of a generally similar nature)
- Result in unreasonable invasion of privacy
- Induce a sense of undue fear or anxiety
- Induce or promote racial, religious, or social disharmony
- Encourage or incite any person to engage in any unreasonably dangerous activity

3.13 Premium charged payment is used in many markets for services of an adult and possibly sexually explicit nature. These services should not be marketed in ways that cause offence or that are likely to encourage attempted use by children. Promotional material should generally be in context to the publication or medium in which it is presented, and should properly describe the services on offer so that consumers who respond are not offended.

Fair Promotion

3.14 In the context of Phone-paid Services, the term “promotion” means any activity which intends, either directly or indirectly, to create awareness of Phone-paid Services or encourage their use. This could include advertisements (either in print or broadcast), SMS or email targeted at consumers, or the use of metatags to attract search engines to a website. The term “promotional material” should be interpreted accordingly.

3.15 Phone-paid Services and their promotional material must not:

- Mislead, or be likely to mislead in any way.
- Take advantage of any characteristic or circumstance which may make consumers vulnerable.

3.16 Responsible parties must use all reasonable endeavours to ensure that promotional material does not reach those for whom the service might be inappropriate. This includes instances where promotions appear in editorial material (e.g. “advertorials”). Promotions transmitted by electronic media must observe this condition in an appropriate manner to the technology they employ.

3.17 Advertising and other forms of promotion should be clearly recognised as such by consumers. The majority of IARN members do not permit the advertising of other Phone-paid Services within a Service for which the consumer is still being charged. An example of this would be the advertising of other Phone-paid Services as part of an SMS-based chat message.

Pricing clarity

3.18 As a general principle, consumers should not have to struggle to understand the cost of a Phone-paid Service, or any other details that could be considered relevant to their decision to purchase it.

3.19 Responsible parties must ensure that consumers are informed, clearly and straightforwardly, of the cost of using a Phone-paid Service before they incur any charge. Events or consumer action which will trigger a charge must be clearly identified. Prices must be inclusive of any sales taxes, and promotional material must make clear where additional network charges for carriage or downloading apply.

3.20 Textual pricing information must be legible. Standards for size, prominence, speed, colour, or other factors that may require close examination, will differ from country to country and responsible parties should be mindful of this. Some countries have very detailed regulations in this area, and it is recommended that parties responsible for Phone-paid Services contact national regulators for advice before promoting Phone-paid Services in a country.

3.21 If a pricing announcement is provided when a consumer connects to a Phone-paid Service, the correct charge rate per minute or per call should be audibly stated. The statement should be clearly worded and unambiguous. In countries where it is generally technically possible, pricing announcements should not be charged for.

3.22 If information about a Phone-paid Service, or instructions on how to use the service, are provided separately to the Phone-paid Service itself then they should be free of charge to consumers.

Fair Operation and Content

3.23 As a general principle, Phone-paid Services must deliver what the consumer has been led to expect on a consistent and assured basis.

3.24 Phone-paid Services must not be unreasonably prolonged or delayed.

3.25 Phone-paid Services which involves the downloading of content, or the registration of a vote or entry, must ensure that delivery or registration takes place where the consumer has been charged.

3.26 Responsible parties must use all reasonable endeavours to ensure that services are not accessed by those for whom the content is likely to be inappropriate. This includes the use of age verification processes where possible.

3.27 Phone-paid Services must not contain incorrect information. In the case of time-sensitive information or data, it should be made clear to consumers when the service was last updated.

3.28 Phone-paid Services must not be of a nature which encourages unauthorized calls.

Privacy and Unsolicited Communication

3.29 Phone-paid Services which involve the active or passive collection of personal information, such as names, addresses, personal MSISDN numbers, or IP addresses, must make clear the purpose for which the information is required. The Phone-paid Service concerned must clearly identify who will use the personal information, and any other uses it may be put to.

3.30 Personal information must not be used for marketing purposes without the active consent of the consumer. Where such consent has been given, each successive attempt to market must offer the consumer a clear and simple method of opting out of all further marketing.

3.31 Consumers must not incur any charge to receive marketing material.

Additional Principles

3.32 The following are not primary principles, but the development of the premium rate phone-paid market has made them necessary:

Numbering arrangements

3.33 The prefix or dialling code can play an important part in helping consumers to recognise the type and expected cost of a Phone-paid Service. These prefixes can also be used for selective call barring purposes where bill payers prefer that their telephone lines are not used to access Phone-paid Services.

3.34 For this reason numbers should always be presented in such a way that services can be clearly identified as premium rate. As far as possible, each country should enable consumers to opt for the selective barring of specific codes or prefixes that indicate the number provides carriage to a Phone-paid Service. Where a Phone-paid Service operates using an international number, then promotional material should make clear that an international call is required.

3.35 As technology develops there are new forms of premium billing and delivery that have less and less dependence on traditional numbering. Mobile shortcodes differ from traditional number ranges in that prefixes are determined and allocated by mobile networks themselves, and it is also increasingly possible to use premium payment through internet based “click and buy” platforms that use IP addresses. There is no current system used by IP or web addresses to identify Premium Rate or Value Add charges.

3.36 Whilst services and consumer issues remain relatively unchanged, IARN recognizes that premium codes or phone numbers are less visible or no longer required by an increasing number of Phone-paid Services. This may create future issues as to how consumers recognize a Phone-paid Service, which IARN feels are best addressed in an appropriate international forum.

Internet Diallers

3.37 In the context of Phone payment, internet dialler refers to software which is downloaded to a consumer’s computer or other device, in order that the consumer can access online content, and which initiates a Premium Rate or Value Add charge per minute when the content is accessed. The risk carried by internet diallers is limited in countries where broadband internet access is standard, but still considerable in countries where dial-up internet access is widespread.

3.38 Providers of online content which requires connection through an internet dialler, whether accessed by computer or other device, must, as set out in the E-Commerce Directive, display the cost per minute of the call and the number to be dialled before each connection is made. Active confirmation must be obtained from the consumer before each connection is made.

3.39 Any software which is used to access online content charged at premium rate must not cause any permanent change in user settings, unless the consumer has been clearly informed and has specifically requested so..

3.40 Parties responsible for Phone-paid Services should note that some IARN member countries prohibit the provision of online content which uses internet dialler software, unless express written permission has been obtained.

Subscription Phone-paid Services

3.41 In the context of Phone-paid Services, subscription services are those services where the consumer incurs a recurring Premium Rate or Value Add charge.

3.42 Promotional material must clearly indicate if a Phone-paid Service is subscription based, and clearly state the terms of the subscription (frequency of charging and how to opt-out of the subscription being most important)

3.43 Parties responsible for Phone-paid Services should note that some IARN member countries require that consumers are also provided with the terms of a subscription service after they elect to purchase it. This is most usually done by sending a free SMS message to a consumer which contains the terms and conditions. In some

IARN member countries the consumer must then confirm that they still wish to purchase the subscription, most usually by sending an SMS back to the content provider.

3.44 Consumers must be able to opt-out of a subscription Phone-paid Service to which they have previously subscribed quickly and easily. Some IARN member countries require that all subscription Phone-paid Services immediately opt a consumer out on receipt of a STOP command sent from the consumer's mobile handset to a previously specified mobile shortcode.

Protection of children

3.45 Regulators should have particular regard to the protection of children when considering the appropriateness of Phone-paid Services or their promotional material. Practices vary between IARN member countries, but generally Phone-paid Services aimed at children should not:

- Contain anything which is likely to result in harm to children, or that exploits their credulity, lack of experience, or sense of loyalty
- Include anything which a reasonable parent would not wish their child to hear or learn about in this way
- Involve an invasion of privacy to any child
- Make direct appeals to children to buy products, unless that product is one which a child could be expected to afford for themselves
- Encourage children to use the same service again, or other premium rate services
- Exploit the way in which children react or interact with the internet

3.46 Every effort should be made to prevent access by children to forms of age restricted services, such as adult or gambling. Where this cannot be achieved through technology such as age verification, then messages and joining instructions should specifically deter the under-aged.

Section Four – Investigations, Adjudications and Sanctions

4.1 In order to ensure that the relevant law or Code of Practice is respected by those providing Phone-paid Services in any country, that country's regulator should have the capacity and capability to:

- Accept and process consumer complaints
- Monitor all types of Phone-paid Services to ensure compliance
- Investigate alleged consumer harm
- Independently judge whether the rules have been broken
- Impose appropriate sanctions to deter repeat offences, and
- Appropriately and proactively engage with providers of Phone-paid Services

Consumer Complaints

4.2 Regulators should have standard routes to receive complaints from consumers about Phone-paid Services, such as postal or through a call centre. Because

developments in technology increasingly allow 24 hour communication through a number of different routes, regulators may also wish to consider offering other avenues for consumers to make enquiries or complaints, such as email or text.

4.3 New regulators should consider whether they have an appropriate database to capture, store, and progress their expected level of consumer complaints and enquiries in good time. Existing regulators should review such arrangements as appropriate.

Monitoring

4.4 Monitoring of Phone-paid Services and associated promotions is essential for regulators to gain evidence which supports or rebuffs allegations of consumer harm. Monitoring should also be carried out proactively, as well as in response to consumer complaints, wherever possible. Regulators should have the technical and intellectual resources to effectively monitor all types of consumer harm.

Investigation

4.5 It is important that regulators consider all complaints they receive, provided the complaints are made within a reasonable time from when they arose. Regulators will wish to ensure that they have provisions within law or a Code of Practice to request information from service providers in order to consider whether an investigation is warranted. In countries where content providers or telecommunications networks may sometimes be held responsible, such provisions should also exist for those entities.

4.6 Requests for information by the regulator, whether prior to an investigation or as part of it, should be met by the service provider (or content provider or network) within a stipulated time-frame. Where information is data intensive (e.g. call logs) then regulators should consider requiring a standard format in which that information must be provided.

4.7 Where investigations are warranted, either from consumer complaints or from monitoring by the regulator, then they should be strongly evidence based. Evidence should be gathered to support each allegation, and should be gathered from as many sources as necessary. In the experience of IARN members, evidence is usually gathered from four primary sources:

- Testimony from the consumer or consumers who have complained
- Monitoring of the Phone-paid Services concerned
- Information requested from the service provider (or other party where applicable)
- Traffic and billing information provided by network operators

4.8 New regulators may wish to consider carrying out investigations within a specified timeframe, except where an extension is granted to allow more time to gather evidence.

4.9 All investigations should be clearly auditable.

4.10 The severity of any non-compliance under investigation will differ between that which causes immediate and widespread consumer harm, and that which may cause

minimal or no consumer harm. For this reason regulators may wish to consider whether they should have emergency powers which allow them to immediately shut down a Phone-paid Service until an investigation is over. Regulators may also consider whether informal warnings should be substituted for formal investigations where there is little or no consumer harm.

4.11 It is important that there is a sensible fit between the powers to shut down services and the length of investigations. If a service is closed using emergency powers, then IARN members consider the regulator has a duty to carry out the necessary investigation as quickly as possible..

Adjudication

4.12 In some IARN member countries, independent hearing and judgement is carried out in a court of law. However in countries where this is not the case, regulators should consider the following:

- An Adjudications Panel of three or more independent people
- The right for service providers (or other parties) to receive an oral hearing from the Adjudications Panel
- The right of appeal to an independent body

4.13 Both the adjudications process and individual adjudications should take account of fair process and the right to an appeal.. In addition regulators should consider the value that publishing adjudications, and the thinking behind them, has as a deterrent to further incidents of the same consumer harm.

Sanctions

4.14 Regulators should ensure that they have in place appropriate sanctions to prevent consumer harm and encourage compliance. Whilst the following list of sanctions may prove helpful to new or existing regulators, not all of them are used by every IARN member:

- Requirement that a service provider (or other party) remedies the breach of regulation
- Formal warning or reprimand
- Requirements to commit to a list of changes or other actions to ensure compliance
- Requirement to seek compliance advice from the regulator before commencing new services, for a period of time
- Fines
- Requirement to refund the money consumers have spent on a specified Phone-paid Service
- Blocking of consumer access to a specified Phone-paid Service for a period of time
- Blocking consumer access to a number or shortcode for a period of time
- Withdrawing a previously allocated number or shortcode and not granting a new one

- Prohibition of a service provider, content provider, or individual from involvement with some, or all, Phone-paid Services for a period of time

Proactive Engagement

4.15 It is important for a regulator to always understand the Phone-paid Services market and emerging technologies, and to make the case for consumer trust as an important part of business success. For these reasons regulators should have the capacity to engage with all parts of the Phone-paid Services sector in their country. This may include offering free compliance advice to service providers, in order to make sure their Phone-paid Services are compliant before they are marketed to consumers.

4.16 It is also important to continuously review good practice in regulation, and apply it to Phone-paid Services regulation where appropriate. For this reason regulators should have the capacity to engage and share information with other regulatory bodies in their own country.

Section Five – Testing the Regulatory Framework

5.1 Having put in place an appropriate framework and capacity to regulate, regulators should regularly test these arrangements to ensure they are still fit for purpose as the Phone-paid Services sector develops.

5.2 In order to ensure that regulation is fair and proportionate (as set out in paragraph 2.6), IARN members believe that a regulator will need the following qualities:

- Independence to make impartial decisions
- Adequate resource to effectively regulate
- Clear strategy as to how problems are addressed in the short and long term
- A clear focus, which drives the three previous bullet points

5.3 It is IARN's belief that a regulator which possesses these four qualities will display the following characteristics:

- Accountability – it will be able to clearly account for its actions and decisions
- Consistency – its actions and decisions will be based on current and previous evidence
- Proportionality – its actions and decisions, especially when adjudicating, will be appropriate to the level of consumer harm
- Targeting – its actions and decisions will focus on the main causes of consumer harm, and increase consumer confidence
- Transparency – its processes and procedures will, except where data protection or commercial confidence apply, be easy for consumers and businesses to understand.

5.4 Regulators should continuously review their current arrangements to ensure they are fit for purpose. This process should examine the existing Code or legal framework, and the processes and procedures involved in enforcement and strategy. The review process should seek opinions from a broad spectrum, including consumer organisations and businesses from all parts of the PRS value chain.

Section Six – Future Developments in Phone-paid Services

6.1 As previously stated, IARN believes there is a need for a greater pro-active role in relation to the Phone-paid Services market. Developments in technology and innovative new types of Phone-paid Services will add to the advantages of the market, but may also present new risks to consumers.

6.2 The following is a list of emerging technologies or services in which IARN members will take an interest. Most, but not all, of these relate to mobile handsets:

New Technology

- New handsets have an increased range of technical capabilities, from which new services are inevitably developed.
- Digital television provides the opportunity for Phone-paid services to be accessed through a television set. Improvements in this technology should increase the number of these services, and make them more interactive.

Improved Connectivity

- The development and roll out of 3G mobile networks provides higher bandwidth, and should allow the streaming of video to mobile handsets to become common.

New Service Types

- Use of mobile handsets to track the location of people or monitor property. Already common in some IARN countries.
- Use of mobile handsets as a ticket (either for transport or an event such as a concert). The consumer's ticketing details and confirmation are purchased using phone-payment and delivered to the handset.
- Use of mobile handsets or Interactive TV for social networking, or to distribute user generated content such as video.
- Use of mobile handsets or Interactive TV to make donations to charities.
- Increased interest from major brands in providing Phone-paid content. This is especially true within the music, film, and TV industries.

E-Commerce and Money Transfer

- The increased usage of phone payment for goods or services which are non-digital. Examples would include physical goods such as books or CDs, or services such as parking
- The usage of phone-payment as a mechanism by which money can be transferred to individuals, especially in other countries.
- The potential for providers of internet broadband to provide phone-payment facilities for web-based content

Cross-Border Networks

- The development of VoIP or other types of network which can provide Phone-paid Services across borders, without the service provider having to seek a network contract in each country.

Section Seven – Cross-Border Governance

7.1 The majority of current IARN members are part of the European Union. As such a number of EU Directives related to commerce and/or communication carry principles which may be applicable to the way they regulate Phone-paid Services. At present these Directives are as follows:

- Audio-Visual Services Directive
- Consumer Protection Co-operation Regulations
- Distance Selling Directive
- E-Commerce Directive
- Financial Services Directive
- Internal Market Directive
- Privacy and Electronic Communications Directive
- Unfair Commercial Practices Directive

7.2 Information about all of these Directives can be found on the website of the European Union at www.europa.eu.

Section Eight – Further Information

8.1 Further information about IARN, including the up-to-date contact details of members and links to their websites, can be found on the IARN website at www.iarn.org.

8.2 The Independent Regulators' Group (IRG) was established in 1997 as a group of European National Telecommunications Regulatory Authorities (NRAs) to share experiences and points of views among its members on important issues relating to the regulation and development of the European telecommunications market at the beginning of the liberalisation of the markets with the 1998 so-called ONP (Open Network Provision) framework. More information about the IRG can be found on its website at www.irg.eu

8.3 The European Regulators Group (ERG) for electronic communications networks and services was set up by the European Commission to provide a suitable mechanism for encouraging cooperation and coordination between national regulatory authorities and the Commission. This is in order to promote the development of the internal market for electronic communications networks and services, and to achieve consistent application of EU regulatory frameworks in all member states. More information about the ERG can be found on its website at www.erg.eu.int

8.4 The International Telecommunication Union (ITU) is an organization established to standardize and regulate international radio and telecommunications. Its main tasks include standardization, allocation of the radio spectrum and numbering resources, and

organizing interconnection arrangements between different countries to allow international phone calls. More information about the ITU can be found on its website at www.itu.int.

8.5 The mission of The Internet Corporation for Assigned Names and Numbers (ICANN) is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular ICANN coordinates the allocation and assignment of the three sets of unique identifiers for the Internet; coordinates the operation and evolution of the DNS root name server system, and; coordinates policy development related to these technical functions. More information about ICANN can be found on its website at www.icann.org