Comments on MPS Code and Guideline

Information Dialling Services

July 2010

General Comments

Information Dialling Services (IDS) supports the concept of an Industry Code which is jointly agreed, universally and impartially applied and subject to monitoring and penalty for breach.

The current Code was developed by the industry in response to increasing public, governmental and regulatory concern about the mobile premium services industry and came into force from 1 July 2009. July to September 2009 also saw the introduction of proactive monitoring of compliance, by both the ACMA and WMC Consulting (under contract to Optus and Telstra).

IDS believes that the new Code and more active monitoring have reduced complaint levels, both for TIO complaints and for carrier front-of-house complaints. However, the implementation has been far from pain-free and in our experience a significant part of that pain and administrative burden has been borne by services which were relatively 'consumer-friendly' in that the services generated minimal consumer complaints for quite sizeable revenue and message volumes. It appears to IDS that the Code was (quite understandably) drafted with a focus on the main 'problem area' of subscription services, which meant that the impact on other service types was not always fully thought through, but became evident after acceptance and implementation. The situation has been further compounded since WMC, who are actively monitoring the market, are contracted to the carriers and are monitoring based on carrier standards based on the Code, rather than on the Code itself.

The current review allows an opportunity to address some of the areas where the Code has been unintentionally unclear, so that there may perhaps be less scope for different interpretations of the Code in the future. This would increase industry consensus, make compliance easier and hopefully reduce the administrative burden all industry participants have to shoulder.

Detailed comments below are intended mostly to clarify, with minimal change to the requirements of the Code itself. A specific exception to this is our submission that the requirements for subscription notification and confirmation should be revised to a) remove the requirement to send multiple messages with essentially the same information before and after a consumer subscribes and b) standardise the consumer experience across different marketing media.

Detailed Comments

Sections of the Code are referenced throughout.

2.2 Definitions	Chat Service: We would prefer the Definitions and the Code to distinguish between Peer-to-Peer Chat Services and Operator Chat Services. Our reasoning is that certain requirements, such as Chat Warning Messages, do not make sense in an Operator Chat Service and can in fact be contradictory. Consider the consumer experience when a psychic advice service first sends a message advising the consumer to avoid disclosing personal information and then immediately sends a message asking for date of birth. Carriage Fees / Mobile Content Fees: We find these terms problematic as there is conflict between the definitions in the Code and the practical realities of operating in the MPS industry space. This is specifically an issue with MO traffic. MOs to a particular Short Code are all billed at one price point. A number of the carriers require this to be a price point above $0.00, in order to create a billing record and support their frontline customer service. The accepted price point is $0.25. This MO tariff is made up of both Carriage Fee and Mobile Content Fee, yet the MO is used to unsubscribe and opt out of databases. From a legalistic viewpoint, this means the consumer is being billed a Mobile Content Fee for every unsubscribe or opt-out message, which is against Code requirements. We suggest resolving this issue by inclusion of a new definition: Standard SMS / Standard cost SMS: There is no definition of a Standard SMS or a Standard Cost SMS in the Code at present. In day to day usage, both industry and consumers work on the principle that a $0.25 premium SMS message 'counts as' a standard cost SMS. We propose the inclusion of a 'Standard Cost SMS' definition along the lines of (a) An MT message which costs the consumer nothing to receive (b) An MO message which is charged to the consumer according to their overall plan with their carrier (c) An MO message which is charged to the consumer at the minimum Premium SMS tariff available on all carriers. (Currently $0.25) Relevant sections of the Code could then be reworded to require unsubscribe and opt-out actions must cost 'no more than a Standard Cost SMS'. This would simplify language, reduce confusion and recognise reality, with no negative impact on consumers. Message Pair We seek an agreed industry position on whether 'per message pair' and similar should or should not be an acceptable method of advising pricing for Chat Services and similar. In the last year we have experienced one ruling from WMC, under carrier interpretation, and a different ruling from the ACMA. Consistency and clarity would make compliance easier.
3.1.2.iii	We note that 'sufficient proximity' has been the subject of much dispute and varied

	interpretation.
4.1.3 (d)	As per our comments above, all billed Premium SMS Messages include Carriage Fees as part of the stated tariff. We understand that this may have been an error in drafting and that the intent here was to advise where 'additional data carriage fees' may apply. We suggest rewording to 'additional fees including but not limited to data carriage fees'.
4.1.7	We understand the consumer protection objective behind this requirement, however we do not see its relevance for Operator Chat. Operators on Chat Services are already vetted by their employers and messages are monitored as part of business and staff management. We believe a distinction should be made between Operator Chat and Peer-to-Peer Chat, and this requirement should apply to Peer-to-Peer Chat only.
4.2.2	We note that the Short Code Lookup Database is not yet live, although we understand the launch is imminent.
4.4.2 / 4.4.3 (a)	We do not believe the requirements of these two clauses present a good customer experience. A customer initiates a subscription by other means than sending an MO – from a piece of advertising which displays pricing etc A customer is sent a subscription request message which includes all pricing information and has to take further positive action in order to activate the subscription A customer is then sent yet another message (a subscription confirmation message), including all the pricing information once more. By contrast, a customer who initiates a subscription by sending an MO is automatically subscribed and simply sent a subscription confirmation message. Clause 4.4.3 (b) Our suggestion would be to remove the requirement for a subscription confirmation message if (and only if) a subscription request message has already been sent. In this case it would be appropriate that the subscription request message also include unsubscribe instructions.
4.4.2 / 4.4.3	The subscription request and subscription requirement messages are required to contain a significant amount of information, in a limited number of characters. We are aware of cases where content providers have wanted to use two messages in order to provide more detail, but this has not been approved by the in-market monitors. We seek a clear industry consensus around whether using two messages and having the option to include more characters and less abbreviation is appropriate.
4.4.9	We note that this clause has caused some difficulties in interpretation within the industry, specifically in terms of identifying the 'Content Supplier'. It is unclear whether the Content Supplier must be identified by the name of its legal entity or whether use of a brand name is appropriate. Inclusion of both is problematic due to the limited number of characters available in the message. Industry consensus would be useful for the future.
7.1.3.b.ii	See comments in Definitions section above. It appears that legalistic application of this clause would mean each and every 'STOP' message required the CP to issue a refund of ($0.25 less carriage fee). The only way to do this would be to contact asking for full details and then send a cheque.

	We do not believe this is what the industry or the regulator intended, and recommend revision of this clause using a 'Standard Cost SMS' definition.

The STOP Command: interaction of the MPS Code, the Spam Act and Barring

Recent PSMS Barring changes have had an effect on how well this command works – it is no longer the 'universal opt out' which was set as an industry standard years ago.

The key points are:

- Clause 7.2.1 (b) of the MPS Code states that Content Suppliers are 'where practical' required to use 'reply STOP' as an unsubscribe or opt-out mechanism.
- Carrier implementation of barring has rendered this 'reply STOP' methodology unworkable for any Customer who has barred PSMS, yet receives a marketing message.
- The Spam Act requires all commercial electronic messages (including PSMS marketing messages) to include a functional unsubscribe capability. ('Unsubscribe' in the context of the Spam Act being 'opt out' in the context of the MPS Code.)

The interaction of the three points above in essence mean that all PSMS marketing messages should now include TWO opt-out mechanisms: a STOP reply, plus either a website or a 1300/1800 number for consumers whose access to PSMS is barred. This increases the 'compliance' character usage and leaves less space for the actual marketing message.

From a consumer perspective:

- The promise of the last few years 'just send STOP and it will go away' is no longer universal. This is especially disappointing after the industry-wide progress and improvements of the last 12 months.
- Getting explanation of when STOP will work and when it won't work just got complicated.
- Easy opt-out functionality with no change of device / communication methodology is no longer universally available.

While this may not be strictly a MPS Code Review issue, we raise it because of its impact on what we understand to be the fundamental purpose of the Code – a universally applicable set of standards which underpin consumer confidence and trust in the industry.

As an industry, we are 'letting down' consumers by not having a universally functioning STOP command. Anything we can do to bring this universal functionality back should be considered.