



Mobile Premium Services Code review

Submission by the Australian Communications Consumer Action Network
to Communications Alliance



6 August 2010



The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Contact:

Kirisha Thanapalasuntheram – Policy Assistant

Suite 402, Level 4
55 Mountain Street
Ultimo NSW, 2007
Email: info@accan.org.au
Phone: (02) 9288 4000
Fax: (02) 9288 4019
TTY: 9281 5322

Background

The Mobile Premium Services Code (the Code), which replaced the Mobile Premium Service Industry Scheme (MPSI), came into effect on 1 July 2009 with the provision for a review after one year of operation. This submission is part of that review process now underway.

It is worth noting at the outset of the Code review that development of this Code was extremely problematic. Consumer representatives were excluded from the start. They were only included towards the end of the Code negotiations but did not have equal representation on the committee, which was not independently chaired. When the consumer representatives raised serious concerns about the lack of adequate community safeguards in the Code it was published without a committee. As a result, a coalition of nearly 30 consumer organisations formally objected to the Code's adoption. Subsequent to those objections, Communications Alliance submitted an amended code to ACMA, incorporating key provisions such as double-opt in for new subscription based services.

In June 2009 the Australian Communications and Media Authority (ACMA) announced a package of new consumer protections for users of premium and subscription SMS. The ACMA service provider determination (the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010*) requires mobile carriers to provide the option of barring premium SMS services on all plans, require all content providers to be registered and allows for known rogue operators to be deregistered, thus preventing them from supplying services to the Australian market.

Over a five-year period there was a long battle for basic community safeguards to apply to mobile premium services.

As predicted by consumer groups, the introduction of these protections has been accompanied by a significant reduction in complaints about mobile premium services to the Telecommunications Industry Ombudsman Scheme. However, there remains both unfinished business and new directions in mobile commerce that requires the attention of the Code Reviewers.

The purpose of the initial stage of this review is to determine whether to revise or amend, reconfirm or withdraw the Code. ACCAN is of the view that the Code must be revised. We have formed this view on the basis of the following observations

- Youth and vulnerable consumers remain at risk in the mobile commerce market
- Emerging mobile commerce service need to be addressed in the Code
- Code monitoring has failed to meet expectations
- Complaint processes remain a problem
- The language, style & structure of the Code need redesigning to empower consumers
- The Code needs to be brought in line with the Telecommunication Consumer Protection Code, also currently under review

These issues are addressed below.

1. Consumer needs



ACCAN believes that the Code should be amended to include better protection for consumers through clearer advertising and default barring. In addition, the complaint handling system should be improved to adequately protect and not be burdensome to consumers who have accessed these services.

1.1 Youth

ACCAN recently reviewed the Mobile Premium Service (MPS) experiences of a small sample of children aged 9 to 14 years. The purpose of the consultation was to uncover the participants' use and knowledge of MPS. Results revealed that the participants did not use MPS as they found it "too expensive". Unfortunately the participants reported that they had often come to this conclusion after their peers had used the service to significant financial detriment.

Participants had pre-paid accounts and had been given the responsibility of monitoring their own spending. Results showed that participants were financially literate and found other means of being entertained, without using MPS. For example, a 14 year old transferred mp3 music from his computer to his mobile phone and used this as a ring tone. The majority of participants also stated that they used games that already came with their mobile phone and had no intention of purchasing this or other entertainment via MPS.

ACCAN has found that consumers with pre-paid mobile phone accounts are vulnerable to the costs of Mobile Premium Services, whilst younger consumers, where informed either by indirect or direct experience, are very wary of Mobile Premium Services and seek to avoid them altogether. Further protections would appear to be of significant value to young consumers.

1.2 Indigenous consumers

Default barring needs to be implemented to protect vulnerable consumers, such as those in Indigenous communities. ACCAN recently consulted with remote Indigenous communities in Alice Springs and noted that mobile phones were often used communally. The combination of sharing of a mobile phone amongst family and friends, a lack of awareness of the costs of mobile –commerce technologies, a post-paid plan which meant that escalating bills were unknown, has at times resulted in high bills and consequently, high mobile phone debt.

The Indigenous Consumer Assistance Network (ICAN) has undertaken research which highlights a similar problem. In one case study, an Indigenous consumer received bills of \$3000 and \$5000 for her mobile phone usage. She used this mobile phone to access the Internet and believed that chatrooms she had entered were free, as they were located in a free web browser. In reality, each chat item would cost \$1¹.

From these cases, it is evident that service providers cannot assume that their customers possess a substantial amount of mobile phone literacy, where costs of new technologies are concerned.

¹ Indigenous Consumer Assistance Network (2010), 'Case 7' in *Unconscionable Conduct and Aboriginal and Torres Strait Islanders*, Westcourt, QLD, pp. 16 – 17.

1.3 Advertising Materials

Marketing of MPS requires improvement. The Code reviewers should consider the visibility and text size of pricing, terms, conditions and subscription disclosures in all advertising material. We are also aware of advertising that inappropriately use misleading words, like “free”. The Consumers’ Telecommunications Network undertook research in 2008 which highlighted that young people are vulnerable to misleading MPS advertising which remains problematic despite provisions of the MPS Code. At the time only 35% of magazine advertisements for Mobile Premium Services indicated an age requirement to subscribe to the service, while only 26% of Internet sites had an age requirement clearly shown. The study found examples of age requirements hidden in small font and the age written in words instead of numerically, making it harder to see.

1.4 Complaints Handling

There is evidence that consumers who have had issues with Mobile Premium Services are finding it difficult to navigate through the complaint handling system. For many of those who have become frustrated with this process, moving to another service provider is seen as the only option, which does not provide a solution. Code reviewers should consider the removal of a mandatory reference number for consumers to prove a complaint has been lodged, as this is often forgotten or misplaced, acting as a barrier to effective complaint handling.

1.5 Awareness Raising

In the development of the Code industry representatives gave undertakings by Industry that they would run a campaign about new protection available under the code. This has not occurred even though it was agreed by Industry, consumers and the government that it was an integral part of ensuring the new safeguards actually were beneficial as they relied heavily on proper disclosure. We encourage the Code Reviewers to identify how awareness raising strategies can be codified. It is unclear whether the Communications Alliance’s ‘19 SMS’ information service has been used or publicised much at all.

2. Future-proofing the Code

There is a need to broaden aspects of the code to allow provisions for new mobile commerce systems. At present, there is no protection in place for this emerging technology and consumers with complaints arising from payments systems are in a precarious situation. ACMA’s *Community research into attitudes towards the use of mobile payment services* demonstrates the growth and acceptance of new mobile payments systems, accompanied by very real concern about the trustworthiness of the service providers. ACCAN would like to see the Code expanded to address generic mobile commerce technologies. The ACMA’s report references the following new mobile payment services:

- “Wave and Pay’ or plugging the phone into a device, both of which use Radio Frequency Identification (RFID) technologies



- 'person to person' transfers, whereby money is instantly transferred from one individual to another by a mobile payment services company that allows individuals to set up an account
- SMS, which enables a transaction to take place and allows the user to pay in a number of ways such as billing directly to the mobile phone account, credit or debit card, or through a mobile payment services company
- WAP-based payment services
- mobile payment services linked to bank or credit card accounts.”²

The ramshackle development of the Code came at significant financial cost to consumers who were caught up in scams or caught up in unfair commercial practices. We see no reason why the Code could not be future-proofed to protect and empower consumers in making the most of emerging payment technologies such as those listed above, and thereby encourage innovation.

3. Language and Style

From its inception, ACCAN has recognised that consumer welfare is best served through vigorous competition in fair and informed markets and where empowered consumers shape supply through the expression of their demand rather than modifying demands to fit whatever is offered. We seek fairness in dealings and swift restitution where things go wrong.

In order for the Code to be a useful resource for Industry and adequately protect and empower consumers, the language used must reflect the needs of consumers and therefore by default the needs of industry. This will encourage market growth and healthy competition between content providers.

Unfortunately the Code remains inaccessible to consumers. It is a complex, lengthy and technical document. Very few people who are aware of the Code can actually use it effectively to help frame their complaint as a means of understanding their rights as consumers.

The Code reviewers should therefore consider wholesale changes to reorient the Code towards meeting consumers' needs, empowering them in the marketplace and informing them of their rights and responsibilities.

4. Monitoring

Monitoring was an important inclusion in the Mobile Premium Services Code deliberations. The Code registered by the ACMA did not include the level of detail about code monitoring that consumer representatives sought during Code negotiations. The Code did include an arrangement to ensure an independent code monitor was appointed with a mechanism to maximise transparency of code monitoring activities. Specifically, the Code requires all

² Australian Communications and Media Authority (2010), *Community research into attitudes towards the use of mobile payment services*, ACMA, Belconnen, ACT, p.2.



suppliers to cooperate with Code Monitoring (4.1.11). The Code defines Code Monitoring as reasonable requests for information when made by a Code Monitor that is:

... (g) appointed by or on behalf of Communications Alliance under the direction of a group of industry, consumer and government representatives;

In November last year, Telstra and Optus made a joint announcement appointing WMC Global to “implement in-market monitoring of mobile premium SMS services advertising that targets their Australian subscribers as well as SMS message flows generated during services opt-in and participation”, designed to meet Code Monitoring obligations. However under the terms of the Code any such appointment must be under the direction of, among others, consumer representatives. ACCAN has not been party to any such direction. To the best of our knowledge, nor has any other consumer representative been engaged in this appointment.

The Mobile Premium Service Code is too important to allow the industry to get away with junk implementation. We urge the Code reviewers to substantially improve the monitoring obligations incorporated in the Code in the hope that consumers will finally receive adequate protections.

5. Informed Consent

The issue of gaining informed consent has been on ACCAN's agenda since our inception. Whilst much of the Code focuses on information disclosure, we'd like to shift the discussion away from one way disclosure to efforts to obtain informed consent prior to contracting people for supply of a product or service. ACCAN's report into informed consent issues is available [here](#) on our website.

6. Consumer Protections based on Consumer Behaviour

Double-opt in clauses have been protections that use consumer behaviour to promote good practice. That is, the default position promotes better consent by requiring a repeated request – much like entering a password twice strengthens the protective measure. We encourage the further adoption of consumer protections that reflect consumer behaviour.

Default barring stands to be most beneficial to Australian minors. For example, ACMA has various initiatives, including the SpamMATTERS reporting system and the launch of the Cybersmart website, which empower young people to be smart and pro-active in telecommunications. It is important to build on these in default barring regulation and protect the rights of minors in the process. According to the United Nations Convention of the Rights of the Child, which was sanctioned by Australia in 1990, basic protections for youth include:

- right of a child to have their best interests considered (article 3)
- right of a child to receive and have access to information (article 13)
- right of a child to be protected from economic exploitation (article 32)



Default barring would allow children to be protected against the misleading advertising and financial loss experienced through subscribing to premium SMS/MMS services and would set a useful precedence for emerging mobile commerce technologies. We note that consumer representatives agreed to a compromised version of the Code on the premise that default barring would be a key component of this regulation. It is a source of frustration and disappointment that the ACMA has not adopted a default bar on premium/subscription service in its determination and we believe it is appropriate for the Code reviewers to consider its adoption.

7. Status of the Code

The Code reviewers need to consider whether the Mobile Premium Service Code should be incorporated into the Telecommunications Consumer Protection Code. ACCAN is of the view that basic underlying consumer protections should be standardised where possible. We also encourage the Code reviewers to clarify which industry participants should be signatories to the Code, particularly where the Code is expanded to address broader mobile commerce issues.

Conclusion

It is time to re-think the content and structure of the Code to accommodate consumer protections for current, emerging and 'unknown' mobile services of the future. ACCAN is very happy to support a healthy and vibrant market for premium and subscription mobile services and other mobile commerce technologies where there are sufficient safeguards in place to ensure that vulnerable consumers are protected, services provided do not cause consumer detriment (financial or otherwise) and redress is available when something goes wrong.

It is vital that this Code be reviewed in the context of the raft of measures implemented by the ACMA to regulate MPS.

ACCAN is pleased to respond to the Mobile Premium Services Code review and to participate in the review process as member of the Code Review Committee.