

Australian Consumers' Association (ACA)¹

Comment on

Australian Communications Authority (ACoM) (ACA)

Determination for

Regulation of Mobile Premium Services²

Preface

The Australian Consumers' Association (ACA) is a not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. The ACA is funded primarily through subscriptions to its magazines, web site, fee-for-service testing and related other expert services. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

We do not think consumers have been particularly well served by the light touch self-regulatory approach to consumer protection in telecommunications and the introduction of SMS premium services has been a recent example. There has not been any particularly strong consumer demand driving this 'innovation'. Industry pressure for the release of numbers appears to have driven a process that has been characterised by haste, interim arrangements and lack of clarity about regulatory boundaries and responsibilities. The products are in the marketplace and consumers have been negotiating the hazards well in advance of the required protections.

Overview

The draft Service Provider Rule for the Regulation of Mobile Premium Services gets one important thing right in providing for consumer opt-in to access to adult content. The attempts in the Rule to grapple with age verification and chat-room moderation remain clumsy and require refinement. Where it specifically creates a potential hazard is in the treatment of dispute resolution. The Determination defines a default scheme that is neither of the existing telecommunications ADR schemes, the TIO or TISSC. It further contemplates additional schemes, and makes provision for carriage service providers to transfer between the default scheme and a self-regulatory scheme, or transfer between self-regulatory schemes. We are very concerned that this moves in an entirely contradictory direction to the frequently expressed aspiration of consumer groups for a 'one stop shop' for consumer's communications problems, probably by encouraging the TIO to evolve into a 'Communications Industry Ombudsman'.

¹ ACA File Reference o4F/442/1; 24 February 2005; ACA contact Charles C. Britton, Senior Policy Officer, IT and Communications Ph: (02) 9577 3290; 57 Carrington Rd Marrickville NSW 2204

² http://internet.aca.gov.au/ACAINTER.5308464:STANDARD:566131123:pp=PC_2064,pc=PC_2547,#contentdp

In our view important aspects of consumer protection continue to be unaddressed in the regulation of premium services. The key problem for consumers in the area of premium services is the large and unexpected bills that can mount up. Consumer advocates have called for a hard cap on premium rate services. Previous Rules have been drafted simply to require information about the financial risks associated with premium services. Other problems are the terms of offers like subscription services, and the emergence of premium services as a payment system. The draft Rule is silent on these matters. Some are being dealt with in other strands of regulatory endeavours. *Preventing Unexpectedly High Bills: Credit Management in Telecommunications* is a report to the Minister completed in October 2004, released in February 2005. It lists options for further discussion, with a preference expressed for a 'hybrid' solution embodying a fair measure of industry self regulation. This calls for further analysis and comment, but the key point in the context of the premium service rules is that it is a work in progress. Another work in progress is the finalisation and registration of the ACIF Code on Unfair Contract Terms. Both these initiatives are trying to address outstanding problems that have material consequences for consumers of premium rate data services. Yet the products are in the marketplace and consumers are negotiating the hazards well in advance of the required protections. There are too many dots in telecommunications consumer protection and not enough lines joining them!

Comment on specific aspects

Consumer opt-in

ACA endorses the requirement that providers should enable access to adult content only after an adult customer has indicated in writing that he or she wishes to have such access³. This should assist to some degree in protecting consumers against inadvertent access to costly and inappropriate services.

Definition of adult content

ACA is somewhat concerned at the sleight of hand by which the age of eligibility for access has been raised from 15 years to 18 years for MA content in the context of these mobile data services. We argue for consistency in matters of rating and censorship. In our opinion a consumer, either as user of content or as parent deserves consistent messages about the nature of content across various media. The maturity of individuals between the ages of 15 and 18 also needs to be respected and not removed at the sweep of a capricious regulatory pen. There may be practical difficulties – these need to be addressed rather than peremptorily swept aside. In our view the clash between the legal framework defined by the OFLC legislation and this draft subordinate instrument should also not be swept away. It sets a disturbing precedent in terms of moving age access goalposts for reasons of technological convenience.

Age verification

There was significant discussion about the practicalities of age verification in an electronic environment. We are comfortable with the notion of treating a primary card holder as de facto age verified as over 18-years. We agree that supplementary cards issued to persons under 18 could cloud the issue and therefore suggest that supplementary cards as such should be disregarded as evidence of age verification –

³ Draft Determination P9

we think it is very likely that information about the status of a card in this respect should be easily obtained⁴ and is not privacy intrusive. Adult holders of supplementary cards may then face the minor inconvenience of further age verification measures, but we think the problem is likely to be occasional and slight.

We do not endorse the suggestions made at the Sydney forum by the AComA that industry should attempt to gain access to the proposed document verification gateway for purposes of age verification. This would be contrary to the objective of that gateway as we understand them, which is to validate documents not people. Re-purposing it in this way would in our view reflect a substantial degree of function creep before the facility has even been launched.

Chat-room moderation

We share the concerns expressed by industry about the overly broad and possibly destructive implications of the requirement that service providers must subject mobile chat room services supplied by way of their premium messaging services or “walled garden” mobile portals, where access is not restricted, to real-time moderation.⁵ While it is obviously important to safe guard children from predators, it important that onerous regulatory requirements do not mean that services are not offered, as will likely be the case in this instance. In our view the regulation should more precisely address the nature of the hazard a service presents, and what it may do to mitigate these hazards. It is worth bearing in mind that even adults confront hazards in cyber space, such as stalking and harassment, so tools to mitigate perils in such environments short of constant supervision will be necessary and commercially useful. Therefore the existence of hazard reduction tools such as closed groups, PIN access, participant identification etc need to be recognized. How the service is promoted or made available to the market may also be material.

Dispute resolution

We noted the comments by the AComA sponsored speaker from the UK based ICSTIS, the Independent Committee for the Supervision of Standards of Telephone Information Services on the importance of universal coverage. Not only do we not have such coverage for this area in Australia, in our view the Determination risks making matters worse.

The Determination defines a default scheme that is neither of the existing telecommunications ADR schemes, the TIO or TISSC. We accept that in the instance of the TIO there are policy issues beyond the remit of the AComA. However this issue is under considerable scrutiny in the move to create ACMA. As the recent Consumer Driven Communications: Strategies For Better Representation⁶ (CDC) Report suggested at Recommendation 44:

⁴Since for instance purchases made with a Supplementary Card are typically shown separately in card account statement

⁵ Draft Determination P10

⁶ http://internet.aca.gov.au/ACAINTER.3997752:STANDARD:969748898:pp=DIR2_2,pc=PC_1661

44 DCITA should work toward streamlining complaints processes relating to premium services by conducting a review of consumer complaint handling across the different service types and in the context of the ACA-ABA merger. The merger of the ACA and the ABA presents an opportunity to overcome existing jurisdictional limitations that affect code development on matters that cross carriage and content. In this environment, it may be appropriate for the Telephone Information Services Standards Council (TISSC) code to be registered with ACMA and to be enforceable by the new regulator. This would also allow content regulation on mobiles as well as other issues associated with high bills to be dealt with via a registered code. The successful aspects of the TISSC process (for example, the participation of public/consumer members, compared to other self-regulatory processes; the audit compliance program) could also be recognised under these arrangements.

It is unclear to us what the default scheme is, who will administer it, and where consumers would go for redress. We are concerned that the Determination explicitly contemplates schemes additional to the established schemes and to the default scheme. It makes provision for carriage service providers to transfer between the default scheme and a self-regulatory scheme, or transfer between self-regulatory schemes⁷. We are very concerned that this creates a “universe” of possible schemes and moves in an entirely contradictory direction to the frequently expressed aspiration of consumer groups for a ‘one stop shop’ for consumer’s communications problems. The desired strategy was articulated at Recommendation 43 of the CDC Report:

43 The Minister and DCITA, in formulating communications policy, recognise the benefits to consumers of a “one stop shop” for resolution of consumer complaints in communications and work towards the most appropriate way of achieving this.

One way of achieving this policy outcome would be by amending the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in order to:

- expand the jurisdiction of the TIO to allow the TIO to evolve into a ‘Communications Industry Ombudsman’;
- bring consumer complaints relating to pay television services within the operations of the TIO; and
- bring network connection & customer equipment issues under the jurisdiction of the TIO.

Intellectual property protection

In the view of the ACA it is not proper to make CSPs responsible for policing copyright. Copyright is a privately enforceable right held by owners of those rights. We consider it to be an impost on consumers for these rights holders to try to make the CSPs become their guardian, and hence create costs and impositions on the bulk of consumers simply going about their daily lives using the technology as intended by

⁷ Draft Determination P12

the manufacturers, suppliers and service providers. If copyright holders suspect infringement, then in our opinion they should initiate the relevant action on their own behalf, and not attempt to create a duty on third party carriage providers.

Walled gardens

Subject to the observations above, we consider that there should not be a regulatory distinction in terms of the standards required of services provided by the suppliers themselves via a “walled garden”, or those sourced from third party suppliers or content aggregators. Consumers expect and deserve a consistent set of rules, expectations and protection.