

INFORMATION SHEET

Producing TVCs which promote Mobile Premium Services

From 1 June 2012, the Mobile Premium Services Code C637:2011 (**Code**) replaces the previous Mobile Premium Services Code C637:2009 (**2009 Code**). The Code applies to all commercials for premium messaging services. This Information Sheet is intended as a summary only of the advertising requirements in the Code. There are other requirements in the Code that may be relevant to you and with which you will need to comply.

The Communications Alliance Limited has also issued Mobile Premium Services Mandatory Information Industry Guidelines G639:2012 (**Guidelines**) to assist organisations in seeking to comply with their obligations under the Code.

What is a Mobile Premium Service?

The Code sets out a list of terms to define the various types of Mobile Premium Services and suppliers of those services. The terms are specific and you will need to check them to see whether your service is a Mobile Premium Service, and if so, what type of Mobile Premium Service.

By way of general summary, Mobile Premium Services are mobile services offered to consumers at an additional or "premium" cost. All charges for these services are billed to the customer by the provider of the Mobile Premium Service.

They include premium messaging services, being communications delivered or carried by a mobile or telecommunications service (or Carriage Services) and broadcasting services or any on-line information, entertainment or other services (or Content Services) which are delivered to customers through a call to a number with a predetermined prefix (eg 191, 193, 194 etc).

Which services does the Code apply to?

The Code only applies to premium messaging services and not proprietary network services. Proprietary network services are services provided by a mobile carrier that enable customers of that carrier only to access, by way of a mobile device, a premium content service that is not otherwise generally available. Proprietary network services are regulated under the Telecommunications Consumer Protection Code.

Who does the Code apply to?

The Code applies to Carriage Service Providers and Content Service Providers in Australia. These providers must comply with the Code if they are engaged in the following activities:

- carrying on a business as a mobile or telecommunications provider;
- supplying Content Services using a mobile or telecommunications service located in Australia; or
- supplying goods or services for use in connection with the supply of a mobile or telecommunications service located in Australia.

The Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

How is the Code enforced?

The Code is registered with and enforceable by ACMA. ACMA may direct suppliers of Mobile Premium Services who are subject to the Code to comply with the Code.

Which rules regulate other premium telephone services?

The Code of Practice for Infocall 190 Services regulates advertising and promotion of premium rate services. These are information services charged at a premium rate which are accessed by using a telephone number starting with a prefix of 190 (eg 1900, 1901 and 1902 numbers). Calls to these services can be via a fixed line service or mobiles. Further information on the Code is available at [Code of Practice for Infocall 190 Services](#)

The Commercial Television Industry Code of Practice (**TV Code of Practice**) regulates the advertising of, and invitations to viewers to use, premium charge telephone services in and around programs directed to children. Generally, such advertising involves an invitation to viewers to use a premium charge telephone service by calling a specific number to obtain information or enter a competition. Further information on the TV Code of Practice is available at www.freetv.com.au.

A full list of acronyms and definitions is attached as Annexure A.

Rules that apply to commercials for premium messaging services

What information must the commercial include?

Commercials must be clear, legible or audible (if applicable), and use plain language and include prominent and up to date information about:

- any fees charged by the supplier for the supply of a mobile premium service, including any fees incurred on sign-up and the basis for calculating these fees (eg the amount charged per message and how often the customer will be charged);
- if applicable, whether the advertised service is a Subscription Service (ie whether the service delivers content on an ongoing or periodic basis, and not only on one single instance);
- any Data Fees charged by an End Carriage Supplier (eg Telstra, Optus or Vodafone) for the supply of mobile internet data;

Some examples from the Guidelines of a clear reference to Data Fees that the customer will have to pay include: "\$3 plus standard SMS rates" and "data carriage charges also apply".

- the Content Supplier's customer support helpdesk number;
- how to unsubscribe from a Subscription Service (if applicable);
- any limitations on the offer, eg if the offer is for a limited period, in a limited quantity, or only available to a limited class of customers; and
- any fees charged to the customer for replying to marketing, prompt or inducement message sent as part of the premium messaging service.

For example: An offer will not be up to date, and should not be advertised, if the offer has expired or a different offer has replaced it.

In addition, commercials for premium messaging services must:

- display the Short Code (defined in Annexure A) for at least 10 seconds; and
- only imply that the premium messaging service is supplied or endorsed by a particular End Carriage Supplier or Aggregator if that is true.

How should the information be displayed?

Information about the premium messaging service must be displayed in a clear, prominent and legible or audible (as applicable) manner, that is:

- in the same orientation and direction as the Short Code or subscription number;
- at the same time as, and for the same duration as, the Short Code or subscription number; and
- displayed for long enough to allow the average person to read, hear and understand the information, keeping in mind the relevant audience that will be viewing the commercial - it is recommended that each word should be displayed for a minimum of 0.2 seconds and each set of 5 words or less should be displayed for a minimum of 2 seconds.

For television commercials, this information must be displayed in a manner that:

- contrasts with the background of the commercial, keeping in mind that moving text, fading text and certain colour combinations make text harder to read; and
- is easily comprehensible and on screen long enough for an average viewer to read all text.

Pricing information must:

- be displayed in a prominent and highly visible manner in the visual part of the commercial;
- be displayed in a font size that is at least 50% of the font size of the Short Code; and
- include any sign-up cost and the basis for calculating charges for a Premium Messaging Subscription Service (eg the charge per message).

Special rules about proximity

An advertiser must display information about:

- fees charged for the supply of a premium messaging service; and
- (if applicable) whether the advertised service is a Subscription Service, in "sufficient proximity" to the Short Code.

For Subscription Services, an advertiser must:

- state that the advertised service is a Subscription Service; and
- display this statement in "sufficient proximity" to any information on fees charged for the subscription service.

What is sufficient proximity?

Information will be deemed to be displayed within "sufficient proximity" to the Short Code or other information (as applicable) if:

- the information is included in the visual components of a commercial;

- the information is placed directly above, below or on either side and within three line breaks of the Short Code or the other information; and
- there is no intervening text or graphics between the two pieces of information.

Note: This description of "sufficient proximity" in the Code does not limit the ways in which commercials can comply with the Code. Rather, it indicates a particular way of complying with the proximity requirements that will be deemed to comply with the Code.

Additional rules that apply to commercials for premium messaging Subscription Services

What information must the commercial include?

In addition to all the rules above, commercials for premium messaging Subscription Services must also:

- clearly state whether, by subscribing, the customer is also consenting to their details being included in a marketing database;
- clearly and prominently state that the offer is for a Subscription Service;
- clearly and prominently include any fees charged by the supplier for the supply of the service, including any fees incurred on sign-up and the basis for calculating these fees (eg the amount charged per message and how often the customer will be charged);
- display pricing information close to the statement that the offer is for a Subscription Service. This is intended to make it sufficiently clear that the fees charged relate to a Subscription Service;
- include details of the "STOP" Message;
- include information about how the customer can opt-out of receiving marketing material; and
- include the word "subscription" or "subscribe" in a prominent and highly visible manner in all visual elements of the commercial. For a **television commercial**, this means for the same amount of time as the Short Code is displayed, and in a font size that is at least 50% of the font size of the Short Code and in a voice over for the commercial.

Here is an example from the Guidelines of how to include some of the required information in a commercial for a Subscription Service:

"Subscription service costs \$5 to subscribe and \$2 per message sent. 5 messages per month. To unsubscribe send STOP to XXX. Further information is available at www.XXX.com.au. Content Supplier is XXXX. Contact XXXX for customer help and support."

Here are some examples from the Guidelines of how to include information in a commercial about the basis for calculating charges for a Subscription Service:

- "Subscription service: \$5 per message, 2 messages each week (\$10 weekly)."
- "Subscription service: \$5 on sign-up, then 1 x \$5 message each day (\$5 plus \$35 weekly)."
- "Subscription service: \$10 per week plus \$5 on sign-up".

Other relevant rules

How should a disclaimer be displayed?

A disclaimer in a commercial for a premium messaging service must be:

- included as part of the commercial, either visually or aurally;
- displayed next to the offer for the premium messaging service; or
- linked to the offer for the premium messaging service by an asterisked footnote or other symbol.

Disclaimers must also be clearly displayed, keeping in mind the context and the intended audience of the commercial.

What should not be included in a disclaimer?

A disclaimer in a commercial for a premium messaging service:

- must not be inconsistent with, contradict or negate anything in the principal message of the commercial;
- must not introduce a new or additional offer to that in the principal message of the commercial; and
- should not include the types of information that must be specifically displayed in a clear, prominent and legible way (eg information about pricing and Data Fees - see above).

What information must be included about special offers, customer savings or benefits?

A commercial for a special offer to give a discount or rebate from standard fees must include specific details about:

- any conditions or limitations on the offer;
- any future start date of the offer; and
- the end date of the offer.

A commercial that makes a claim about customer savings must include specific details about how the savings are calculated, including the service or rate used as the basis for calculating the savings.

A commercial that offers any benefits (such as credits, free services or free products) must clearly state any conditions or limitations on the customer's ability to access and use the benefits.

When can a service be described as "free"?

A commercial that offers a premium messaging service as "free" must:

- truly be 100% free - the offer must not be subject to any charge, fee or cost other than regular Data Fees and the price of any other products or services accompanying the free service must not be inflated to cover some or all of the offer described as "free";
- clearly identify those parts of the offer that are free, particularly if other parts of the offer are not free; and
- clearly state any conditions on supplying the service as free, eg if the free offer is conditional on the customer purchasing another service.

For example:

If a premium messaging service that is a subscription service does not usually have a sign-up fee and usually charges customers only \$5 per week subscription fee and \$1 per message, any

offer to provide "free messaging for your first week" would not be permitted if the supplier intends to charge new customers a sign-up fee of, for example, \$10 in addition to the usual \$5 per week subscription fee. This is because the usual sign-up fee of \$0 has been inflated to cover at least some of the costs of the "free" messaging.

What are equivalent terms to the word "free"?

The rules above apply to offers that use the word "free" AND any equivalent term, eg "no cost", "no fee", "no charge" or "\$0".

How can premium messaging services be advertised to children?

A commercial must not be broadcast or displayed in or around any program that is specifically and primarily targeted at children less than 15 years, eg after-school cartoons.

A commercial that is broadcast or displayed in a way that is reasonably likely to attract or encourage a significant number of children under 18 years to use the premium messaging service must include the following warning: "If you are under 18 you must ask the account holder before using this service".

Whether a commercial will be reasonably likely to attract a significant number of children depends on its content, placement, context and time of broadcast. For example, advertisements broadcast around a program presenting video clips of popular songs that is broadcast during a timeslot that is reasonably likely to attract a significant number of children less than 18 years.

Annexure A ACRONYMS AND DEFINITIONS

Act

means the *Telecommunications Act 1997* (Cth).

Aggregator

means a Supplier who contracts with both:

- (a) a Content Supplier; and
- (b) an End Carriage Supplier,

to facilitate the carriage of the Content Supplier's Mobile Premium Service to Customers using the End Carriage Supplier's Carriage Service.

Carriage Service

has the meaning given by section 7 of the Act. In summary, a carriage service is a means of delivery or carriage of a mobile or telecommunications service. It refers to the apparatus or infrastructure for delivery or carriage of the service rather than the content of the service itself.

Carriage Service Intermediary

has the meaning given by section 87(5) of the Act.

Carriage Service Provider

has the meaning given by section 87 of the Act. In summary, a carriage service provider is a person who supplies Carriage Services, including telecommunications providers in Australia such as Telstra, Optus, APPT and Vodafone.

Content Service

means:

- (a) a broadcasting service;
- (b) an on-line information service (for example, a dial-up information service);
- (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service);
- (d) any other on-line service (for example, an education service provided by a State or Territory government); or
- (e) a service of a kind specified in a determination made by the Minister for the purposes of section 15(1)(e) of the Act.

Content Service Provider

has the meaning given by section 97 of the Act. In summary, a content service provider is a person who provides or supplies a Content Service to the public via a Listed Carriage Service.

Content Supplier

means the Content Service Provider who is the originating Supplier of a Mobile Premium Service to Customers via the supply chain, but does not include a Supplier who is only acting in the capacity of an Aggregator.

Customer

means a customer who acquires a Mobile Premium Service, or a potential customer of Mobile Premium Services.

Data Fees

means fees charged by an End Carriage Supplier for the supply of mobile internet data.

End Carriage Supplier

means the Mobile Carriage Service Provider who:

- (a) has a contract with the Customer for the carriage of data, which includes a Mobile Premium Service; and
- (b) is the entity responsible for charging the Customer any Data Fees in respect of that carriage.

Exempt Service

means:

- (a) a Carriage Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199, where:
- (c) the only purpose of messages sent as part of that service is to facilitate the billing of another service (for the purposes of this definition, the non-related service);
- (d) the non-related service is not a service of the kind described in subclause (a) or (b) above, nor a Proprietary Network Service; and
- (e) the messages sent as part of the service do not contain content (or a means to access content) of any kind, other than:
 - (i) a statement that the customer has been charged for the non-related service;

- (ii) any relevant details of the non-related services being billed and the relevant charges;
and
- (iii) any other content required by law.

Helpline

means the Customer support helpdesk number referred to in clause 6.1.2.

Listed Carriage Service

has the meaning given by section 16 of the Act.

Minor

means a person below the age of 18.

Mobile Carriage Service Provider

means:

- (a) a Carriage Service Provider who supplies a customer with a public mobile telecommunications service; or
- (b) a Carriage Service Intermediary who arranges for the supply by a Carriage Service Provider to a customer of a public mobile telecommunications service.

Mobile Content Fees

means fees charged for the supply of a Mobile Premium Service, excluding any Data Fees.

Mobile Premium Service

means:

- (a) a Premium Messaging Service; or
- (b) a Proprietary Network Service.

Premium Content Service

means a Content Service to which either of the following applies:

- (a) a charge for the supply of the service is expected to be included in a bill sent to a relevant Customer of a Mobile Carriage Service Provider or any person acting on behalf of that provider;
- (b) a charge for the supply of the service is payable by a relevant Customer to a Mobile Carriage Service Provider or any person acting on behalf of that provider:
 - (i) in advance; or
 - (ii) in any other manner

Premium Messaging Service

means:

- (a) a Carriage Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199

where all charges for use of the Premium Messaging Service are billed to the Customer by their Mobile Carriage Service Provider, other than a Billing Only Service.

Premium Messaging Subscription Service

means a Premium Messaging Service that is a Subscription Service.

Proprietary Network

means a Telecommunications Network used by a Mobile Carriage Service Provider that enables Customers of that provider to access, by way of a mobile device, a Premium Content Service that is not otherwise generally available.

Proprietary Network Service

means a public mobile telecommunications service that enables an end-user to access a Proprietary Network.

Public Mobile Telecommunications Service

has the meaning given in section 32 of the Act.

Short Code

means a number between 6 and 8 digits long that enables the charging of Mobile Content Fees.

"STOP" Message

means a "STOP" message as described in clause 7.2.1.

Subscription Service

means a Mobile Premium Service that delivers material to a Customer on an ongoing or periodic basis.

Supplier

means a Mobile Carriage Service Provider or Content Service Provider.

Telecommunications Network

has the meaning given in section 7 of the Act.

For further information please contact CAD on 02 8968 7200 or email us at cad@freetv.com.au