

INFORMATION SHEET

Producing TVCs which promote Mobile Premium Services

The Mobile Premium Services Industry Code (**Code**) applies to all advertisements for Mobile Premium Services. The Code, effective from 1 July 2009, replaced the Mobile Premium Services Industry Scheme (**MPSI**). This Information Sheet is intended as a summary only of the advertising requirements in the Code.

Communications Alliance Limited has also issued Industry Guideline Mobile Premium Service (**Guidelines**) to assist organisations in seeking to comply with their obligations under the Code.

The Code introduces broader and stricter rules regarding mobile premium services that are intended to significantly strengthen consumer protection obligations.

Regulation of premium telephone services

If your service is a premium telephone service and not a Mobile Premium Service, the following codes will apply:

- the Telephone Information Services Standard Council (**TISCC**) Code of Practice, which regulates advertising and promotion of premium rate services, ie services charged at a premium rate that 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. For further information, the TISCC Code of Practice is available at www.tissc.com.au; and
- the Commercial Television Industry Code of Practice (**TV Code of Practice**), which regulates 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. For further information, the TV Code of Practice is available at www.freetv.com.au

What is a Mobile Premium Service?

The Code will only apply to the following Mobile Premium Services offered to consumers at an additional or "premium" cost:

- Premium SMS or MMS Services, being short message services (or text services) and multi-message services (or content services) delivered to customers through a call to a number with a predetermined prefix of 191, 193, 194, 195, 196, 197 or 199; and
- Proprietary Network Services, being services provided by a public mobile carrier that enable customers of that carrier to access premium content via their mobiles at a charge that is not otherwise generally available.

Who does the Code apply to?

The Code is registered under the *Telecommunications Act 1997* (Cth) and applies to:

- Carriage Service Providers; and
- Content Service Providers,
in relation to their following activities:
 - carrying on a business as a Carriage Service Provider;
 - supplying a Content Service using a Listed Carriage Service; and
 - supplying goods or services for use in connection with the supply of a Listed Carriage Service.

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

In general, Carriage Service Providers and Content Service Providers are telecommunications providers. You should carefully consider whether your business constitutes a Carriage Service Provider or a Content Service Provider as defined under the Act.

If you are not a Carriage Service Provider or a Content Service Provider, but you are nonetheless advertising a Mobile Premium Service, as the Code is intended to "establish appropriate community safeguards and customer services requirements for mobile premium services", you may decide to comply with the Code as it sets a good benchmark against which to assess your advertising.

How is the Code enforced?

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

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

1.	Rules that apply to advertisements for all Mobile Premium Services
1.1	<p>What information must the advertisement include? Advertisements must be clear, legible, use plain language and include prominent and up to date information about:</p> <ul style="list-style-type: none"> • pricing, including the basis for calculating charges (eg the amount charged per message and how often the customer will be charged); • any Carriage Fees that the customer will have to pay to access or use the Mobile Premium Service (eg SMS rates or data carriage fees); Some examples from the Guidelines of a clear reference to Carriage 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

	<ul style="list-style-type: none"> any fees charged to the customer for replying to a marketing, prompt or inducement message sent as part of the Mobile Premium Service. <p>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.</p>
1.2	<p>How should the information be displayed?</p> <p>Information about the Mobile Premium Service must be displayed in a clear, prominent and legible manner, that is:</p> <ul style="list-style-type: none"> 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 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 advertisement.
1.3	<p>How should a disclaimer be displayed?</p> <p>A disclaimer in an advertisement for a Mobile Premium Service must be:</p> <ul style="list-style-type: none"> included as part of the advertisement, either visually or aurally; displayed next to the offer for the Mobile Premium Service; or linked to the offer for the Mobile Premium Service by an asterisked footnote or other symbol. <p>Disclaimers must also be clearly displayed, keeping in mind the context and the intended audience of the advertisement.</p>
1.4	<p>What should not be included in a disclaimer?</p> <p>A disclaimer in an advertisement for a Mobile Premium Service:</p> <ul style="list-style-type: none"> must not be inconsistent with, contradict or negate anything in the principal message of the advertisement; must not introduce a new or additional offer to that in the principal message of the advertisement; 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 Carriage Fees - see above).
1.5	<p>What information must be included about special offers, customer savings or benefits?</p> <p>An advertisement for a special offer to give a discount or rebate from standard fees must include specific details about:</p> <ul style="list-style-type: none"> any conditions or limitations on the offer; any future start date of the offer; and the end date of the offer. <p>An advertisement 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.</p> <p>An advertisement that offers any benefits (such as credits, free services or free products)</p>

	must clearly state any conditions or limitations on the customer's ability to access and use the benefits.
1.6	<p>When can a service be described as "free"? An advertisement that offers a Mobile Premium Service as "free" must:</p> <ul style="list-style-type: none"> truly be 100% free - the offer must not be subject to any charge, fee or cost other than regular Carriage 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. <p>For example: If a Mobile Premium 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.</p>
1.7	<p>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".</p>
1.8	<p>How can Mobile Premium Services be advertised to children?</p> <ul style="list-style-type: none"> General prohibition where directly targeted at children under 15 years: An advertisement of a Mobile Premium Service must not be broadcast or displayed in or around any program that is specifically and primarily targeted at children under 15 years. For example, programs with a "C" classification such as after-school cartoons, should not contain advertisements for Mobile Premium Services. Warning where reasonably likely to attract children under 18 years: An advertisement of a Mobile Premium Service that is broadcast or displayed in a way that is reasonably likely to attract or encourage a significant number of people under 18 years to use the Mobile Premium Service must include the following warning: "If you are under 18 you must ask the account holder before using this service". Whether an advertisement will be reasonably likely to attract a significant number of people under 18 years depends on its content, placement, context and time of broadcast. For example, an advertisement broadcast around a program presenting video clips of popular songs in a program with a "PG" classification (but providing the program is not specifically and primarily targeted at children) that is broadcast during a timeslot that is reasonably likely to attract a significant number of children under 18 years, which advertises a premium SMS service to receive messages ring tones for popular music. Such an advertisement would need to include the warning set out above. <p>Existing rules: advertising of premium charge telephone services to children</p>

	<p>You should also be aware of existing rules under the TV Code of Practice that restrict advertising of, and invitations to viewers to use, "premium charge telephone services" in and around programs directed to children.</p> <p>In summary, under the TV Code of Practice, advertising of premium charge telephone services during:</p> <ul style="list-style-type: none"> • programs with a "C" (Children's) classification; • program promotions in "C" viewing periods; and • programs with a "G" (General) classification that have a substantial child audience and commence before 5:00pm, <p>must contain:</p> <ul style="list-style-type: none"> • clear visual and aural information about the cost of the call in a manner that children can easily understand; • clear information about the basic terms of any competition in a manner that children can easily understand; and • a clear direction to children to seek parental permission before calling the number.
2.	Additional rules that apply to advertisements for Premium SMS or MMS Services
2.1	<p>What information must the advertisement include?</p> <p>In addition to the rules set out above, advertisements for Premium SMS or MMS Services must also:</p> <ul style="list-style-type: none"> • display the Short Code for at least 10 seconds; • display the terms and conditions of the offer, including about pricing, in a clear and legible manner, and contrast with the background of the advertisement, keeping in mind that moving text, fading text and certain colour combinations make text harder to read; • be displayed for long enough so that an average viewer can read all the text in the advertisement – 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; • only imply that the Premium SMS or MMS Service is supplied or endorsed by a particular End Carriage Supplier or Aggregator if that is true; • include the Content Supplier's customer support helpdesk number; and • if the offer is for a Premium Messaging Subscription Service, state that the offer is for a Subscription Service and include information about how to unsubscribe from the service.
2.2	<p>How should pricing information be displayed?</p> <p>Pricing information must be displayed:</p> <ul style="list-style-type: none"> • in a prominent and highly visible manner in the visual part of the advertisement; • in a font size that is at least 50% of the font size of the Short Code; and

	<ul style="list-style-type: none"> include any sign-up cost and the basis for calculating charges for a Premium Messaging Subscription Service (eg the charge per message).
3.	Additional rules that apply to advertisements for Premium Messaging Subscription Services
3.1	<p>What information must the advertisement include?</p> <p>In addition to all the rules above, advertisements for Premium Messaging Subscription Services must also:</p> <ul style="list-style-type: none"> 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 pricing information, including any sign-up cost and the basis for calculating charges (eg the charge per message); display pricing information close to the statement that the offer is for 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": <ul style="list-style-type: none"> in a prominent and highly visible manner in all visual elements of the advertisement - that is, 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 the voice over for the advertisement. <p>Here is an example from the Guidelines of how to include some of the required information in an advertisement 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."</p> <p>Here are some examples from the Guidelines of how to include information in an advertisement about the basis for calculating charges for a Subscription Service:</p> <ul style="list-style-type: none"> "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".

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 Fees means fees charged for supply of a 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.

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 Carriage 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.

MMS means multimedia message service.

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 Carriage Fees.

Mobile Premium Service means:

- (a) a Premium SMS or MMS 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 Subscription Service means a Premium SMS or MMS Service that is a

Subscription Service.

Premium SMS or MMS 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, other than an Exempt 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.

SMS means short message service.

"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](mailto:cad@freetv.com.au)