

14 February 2007

Mr Simon Cordina
General Manager
Digital Content
Department of Communications Information Technology and the Arts
PO Box 2154
CANBERRA ACT 2601



Dear Mr Cordina,

Subject: Comment on the Draft of the Communications Legislation (Content Services) Amendment Bill 2006

Please find attached Communications Alliance's submission in response to DCITA's request for comment on the '*Draft of the Communications Legislation (Content Services) Amendment Bill 2006*'.

Yours sincerely,

Anne Hurley
Chief Executive Officer
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COMMENTS ON THE DRAFT OF THE COMMUNICATIONS LEGISLATION (CONTENT SERVICES) AMENDMENT BILL 2006

COMMUNICATIONS ALLIANCE

1. INTRODUCTION

Communications Alliance is pleased to have this opportunity to provide comments on the 'Draft of the Communications Legislation (Content Services) Amendment Bill 2006'.

Communications Alliance Ltd was formed in 2006 following the merger between the Australian Communications Industry Forum (ACIF) and the Service Providers Association Inc. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

The vision of Communications Alliance is to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services. In pursuing its goals, Communications Alliance aims to provide constructive contributions to policy development and debate.

Communications Alliance understands that the Australian Mobile Telecommunications Association (AMTA) has provided a submission on the Exposure Draft Bill which focuses on the ways that it can be amended to achieve the overall result that the Minister is seeking. Communications Alliance supports AMTA's submission.

The objective of Communications Alliance's submission is therefore to emphasise the importance of ensuring the current self-regulatory regime which is in place for mobile premium services, namely the Mobile Premium Services Industry Scheme [the 'Scheme'], continues to operate and that the Exposure Draft Bill is amended so that it is consistent with the Scheme. In addition, it is critical that the Exposure Draft Bill does not impose additional regulatory or financial burdens on the Industry, stifle digital content service innovation, and that it is consistent with, and complementary to, the complaint handling, content classification and review processes as set out in the Scheme.

2. EXISTING SELF-REGULATORY REGIME

The digital content matters outlined in the Exposure Draft Bill are of critical importance to the Communications sector. The underlying policy principles of the draft legislation are not disputed and our members support the legislative aims of protecting families and children from accessing inappropriate or harmful content.

Premium services that involve sending an SMS to a number starting with 191, 193, 194, 195, 196, 197 or 199 or accessing a mobile carrier 'portal' are regulated under rules devised by ACMA, set out in the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1).

The Determination makes provision for Mobile Carriage Service Providers and Content Service Providers to develop a self-regulatory scheme that contains rules about providing mobile customers with clear and transparent information about the costs and terms and conditions on which mobile premium services are offered, and about the handling of complaints about mobile premium services.

The industry has spent considerable time and resources developing such a scheme, known as the Mobile Premium Services Industry Scheme, which was approved by ACMA on 28 September 2006.

The Determination also establishes a Default Scheme which applies to any carriage service provider and content service provider which is not a member of an ACMA approved self-regulatory scheme.

The Schemes came into effect on 29 October 2006.

Although the Scheme has been in operation for only a short period of time and was designed to provide arrangements for an interim period pending implementation of the Government decision on longer term legislative structure, it is working well and addresses the policy objective of protecting consumers (particularly minors) from inappropriate content. The industry is committed to the Scheme's success and continues to invest in the Scheme's successful operation. In addition, the industry has implemented compliance programs to ensure that the rules of the Scheme are adhered to.

The Telecommunications Industry Ombudsman (TIO) is the 'Escalated Complaints Handling Body' nominated under the Mobile Premium Services Industry Scheme and provides a free and independent alternative dispute resolution scheme for small business and residential consumers who have a complaint about their telephone or Internet service, including complaints pertaining to mobile premium services.

One of the benefits of having the TIO act in the capacity of the escalated complaints handling body was to provide consumers with a 'one stop shop' for all their telecommunications complaints. Repeal of the Scheme would lead to consumer confusion and undermine the various consumer education initiatives that are in train to ensure that consumers are aware of the Scheme's complaint handling mechanisms and processes.

3. EXISTING SELF-REGULATORY REGIME

The Scheme introduces a range of protective measures for consumers and imposes obligations on both carrier service and content service providers. Such protective measures include;

- A raft of rules related to subscription services, such as:
 - i. Advertising rules
 - ii. Appropriate customer consent
 - iii. Information up front – confirmation message
 - iv. Expenditure notification messages
 - v. Subscription reminder messages
 - vi. Easy opting out "stop" message
- The provisions of the scheme are binding on the scheme members and the review body
- Scheme members are required to post a copy of the scheme on the Internet for public inspection
- General advertising requirements
- Advertising age-restricted services and services for children
- Content assessment in accordance with Office of Film and Literature (OFLC) guidelines
- Rules requirement that consumers are informed of various prices, terms and conditions before use
- Clear information about fees and charges
- Information about how customers can unsubscribe from a subscription service

- Information for customers about terms and conditions of voting & competition services
- Information for customers about terms and conditions of chat services
- Complaints handling procedures

Communications Alliance is the Scheme Custodian which means that we have implemented a number of administrative support mechanisms to ensure the Scheme's ongoing success and have also introduced a number of awareness raising and education initiatives surrounding the Scheme.

As Scheme Custodian, we manage the Mobile Premium Services Industry Scheme Management Group [MPSI SMG]. The MPSI SMG is the ongoing group responsible for ensuring the currency and effectiveness of the Scheme and accompanying Guideline to the Mobile Premium Services Industry Scheme.

The Group's Terms of Reference are to:

- maintain the Scheme documentation, including the Guideline;
- provide advice on the operation of the Scheme or the intent of Scheme rules;
- conduct the 12 month review of the Scheme;
- review matters of Scheme compliance, such as statistics from the Office of the Telecommunications Industry Ombudsman;
- monitor developments in the Mobile Premium Services industry to identify and recommend change to the Scheme and Guideline, as appropriate;
- draft variations to the Scheme and Guideline as needed; and
- facilitate public consultation and regulatory approval of Scheme changes.

The MPSI SMG are comprised of equal representation of mobile and content service providers who are all committed to ensuring the safeguards and consumer protection enshrined in the Scheme and Guidelines to the Scheme are being complied with by industry stakeholders.

4. POLICY OBJECTIVE OF THE TELECOMMUNICATIONS ACT 1997

It is a fundamental policy objective of the *Telecommunications Act 1997* that 'telecommunications be regulated in a manner that promotes the greatest practicable use of industry self-regulation.'

The underlying rationale for this policy objective is to encourage industry self-regulation and to limit the involvement of regulatory agencies to cases where self regulation has serious failings. As noted by the Productivity Commission in its 2001 report, a main reason for the emphasis on industry self-regulation springs from the fact that the changing nature of telecommunications technology and its complexity make it difficult for any government agency to devise appropriate standards. Further, the potential costs to the industry from regulatory error are very high.

It is submitted that the Scheme is a good example of the industries increasing role of self-regulation and that by having the Scheme repealed or introducing legislation that is inconsistent with the Scheme undermines this important self-regulatory mechanism which is delivering robust consumer protections.

We strongly recommend that the current Scheme is allowed to continue so that consumers can continue to receive the protections it delivers.

5. CONCLUSION

In closing, we strongly encourage DCITA to ensure that the Exposure Draft Bill is amended so that it is consistent with the Scheme and allows for its ongoing successful operation. Communications Alliance and its members do not support the Scheme being repealed. There is evidence that the Scheme is working well and that consumers are being served by having any complaints dealt with by the TIO. Industry processes and administrative support mechanisms are in place to support the Scheme and the Scheme meets the Minister's overall policy objective of protecting families and children from accessing inappropriate or harmful content.

Ends...