



Consultation document for the Mobile Broadband Group's review of the "UK code of practice for the self-regulation of new forms of content on mobiles"

8th August 2008

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Introduction

In January 2004, the UK mobile operators published the "*UK code of practice for the self-regulation of new forms of content on mobiles.*" The Code provides protection against minors being able to access inappropriate content on advanced mobile devices over 3G mobile networks. It was the first of its kind and proved to be ahead of the market changes that it was designed to address. In our view, as the market has evolved, it has been successful in achieving this objective. The Code has been fully implemented since 2005 and it is now timely for the signatories, under the auspices of the Mobile Broadband Group (MBG)¹ to carry out a formal review.

The Code has had a significant influence on child protection policy. The "European Framework for the safer use of mobile by young teenagers and children"² (a pan-European self-regulatory initiative encouraged and endorsed by the European Commission) has drawn on its ideas and much of its content was based on initiatives first taken in the UK. The European Framework, which is promoted and administered by the GSM Association (Europe), the EU division of mobile operators' global trade body, sets the context for our continuing policy development.

The protection of minors from potentially harmful content is also central to other initiatives in which the mobile operators are engaged, such as the Audio Visual Media Services Directive, the recent report from the Culture Media Sport Select Committee on harmful content on the Internet³ and the Byron review commissioned by the Prime Minister, published in May 2008. A summary of the main points relating to mobile in the Byron review is set out in Annex 2⁴. As part of this review, the MBG will be reflecting seriously on the recommendations made by Byron. The MBG will also welcome comments from stakeholders about any aspects of Byron relating to the mobile sector.

Since the date of publication, the mobile operators have kept the Code under informal review. The measures to which the operators committed in the Code have been in place since February 2005, when the Independent Mobile Classification Body (IMCB) published its classification framework. In order to ensure its continuing effectiveness and relevance, though, the MBG is now undertaking a formal review of the code and thus are giving all stakeholders an opportunity, through public consultation, to input to the review process. In addition, since November 2007, the mobile operators have been providing Ofcom with information to allow them to carry out an independent review of the Code. Ofcom's findings will be published during our consultation period. The MBG will consider the input from Ofcom and will welcome comments from stakeholders about any of Ofcom's observations and recommendations.

¹ The Mobile Broadband Group (MBG) was founded in 2002 by the UK's mobile operators (O2, Orange, T-Mobile, Vodafone and 3 and the largest virtual mobile operator, Virgin Mobile) and is responsible, among other matters, for managing the Content Code

² <http://www.gsmworld.com/gsm europe/documents/eur.pdf>

³ Published on 31/07/2008

⁴ Full copy at www.dfes.gov.uk/byronreview/

In the three years since the Code was implemented, complaints from the public remain negligible. Furthermore, the IMCB has been called on to settle only two disputes over appropriate classification. It is the mobile operators' overall opinion that the code has been successful in achieving its objectives and ensuring that young customers are not exposed to inappropriate content. It is also our view that the Code is standing the test of time and is widely recognised as a successful self regulatory initiative.

A full copy of the current code is set out in the Annex. As part of the review, the Code will be rephrased to reflect the fact that commitments made when it was originally published have now been fulfilled. For example, where it says that 'mobile operators **will** appoint an independent classification body' this will be changed to 'have appointed'. Similar changes will be made to bring the document into the present day. Although no major policy changes are being proposed in this document, no final decisions have been taken prior to the review and the MBG looks forward to engaging with stakeholders either through written responses or in person.

History

The background to the publication of the Code in 2004 was that, increasingly, mobile devices were being made available with enhanced features, including colour screens, picture messaging, video cameras and Internet browsers and were beginning to be used to access a growing variety of visual content.

In anticipation of these products being widely adopted by consumers, including consumers under the age of 18, the mobile operators put in place the measures described in the Code. The intention was that parents and carers should have access to the information with which they could show their children how to use new mobile devices responsibly and be given the power to influence the type of visual content they could access.

The Code covered new types of content, including visual content, online gambling, mobile gaming, chat rooms and Internet access. It did not cover traditional premium rate voice or premium rate SMS (texting) services, which continued to be regulated under the PhonepayPlus (formerly ICSTIS) Code of Practice.

The assumptions underpinning the original publication of the Code have mainly been borne out by events. A very large proportion of mobile devices sold today have colour screens, Internet browsers, cameras etc. and their storage capacity and processing power have improved dramatically. 3G networks are widely deployed. Some operators have either announced plans or have already upgraded their networks with HSDPA⁵. The Mobile Data Association is stating that around 16.4 million web/wap page impressions⁶ are being recorded per month from mobile devices. PhonepayPlus believes that mobile subscribers spend around £800 million per annum on premium rate services (although only a relatively small proportion of this will be on services covered by the mobile content code).

⁵ HSDPA – a 3G upgrade - High Speed Downlink Packet Access

⁶ www.text.it

M Metrics⁷ has measured some of the value added uses that appeal to consumers:

	% of subscribers
Browsed for news and information	15.5%
Downloaded mobile game	11.0%
Used e-mail (personal and/or work)	9.1%
Watched video	5.1%
Purchased ringtone	3.7%
Accessed downloadable application	3.3%

Adult content did not show up on the survey as a significant category.

The Code is set out in eight sections. As part of the review, each of these is considered in turn. The main emphasis is on Commercial content, where the actions required of the operators by the original Code were very substantial.

1. Commercial content

Under the Code, the mobile operators committed to establishing an **independent classification body** to provide a framework for classifying **commercial content** that is unsuitable for customers under the age of 18.

The IMCB, a not-for-profit subsidiary of PhonepayPlus, was established on October 2004 and published its framework in February 2005. The framework can be found at www.imcb.org.uk. The IMCB is made up of a subset of the PhonepayPlus board, chaired by Sir Alistair Graham (originally chaired by Sir Peter North). The secretariat is run by the Deputy Director of PhonepayPlus and the IMCB shares facilities with PhonepayPlus but otherwise operates independently.

The classification framework is based on standards established by other classification bodies, such as the British Board of Film Classification and is set independently of the mobile operators. As part of the Code review the MBG will ask the IMCB to review the framework to ensure it remains in line with existing community standards.

In accordance with procedures set down in contract, commercial content providers are required to self-classify as 18 all content deemed by the IMCB's framework as unsuitable for customers under the age of 18. This requirement does not apply to premium rate voice or premium rate SMS (texting) services, which continue to operate solely under the PhonepayPlus Code of Practice.

By default, all commercial content not classified as 18 is unrestricted and available to all customers.

In practice the commercial content providers have been generally good at classifying their content in accordance with the IMCB's framework and rarely have to seek advice about its interpretation. In the most recent IMCB annual report, www.phonepayplus.org.uk/publications/annual_report0607/ (incorporated within PhonepayPlus report), it was recorded that content providers sought advice on 49 occasions, 11 of which were out of remit. This is very much in line with the previous

⁷ M Metrics Int'l consumer survey, November 2007

year when advice was sought 45 times. Mobile operators also monitor content providers' compliance with classification framework and, if appropriate, get content providers to modify the rating of content.

During its operation, the IMCB has only had to settle one dispute, where the content provider had self-classified as unrestricted and a mobile operator believed the content in question should be classified as 18. The IMCB judged the content to be 18 and the content provider made the appropriate change. The IMCB has one recent further case pending.

Customers are prevented from accessing 18 content because each mobile operator places commercial content classified as 18 behind access controls and only makes it available to those customers that it has satisfied itself, through a process of age verification, are 18 or over.

Access controls have been effective. There have been negligible reports of minors viewing 18 classified content on their mobiles. Only a handful of matters have been raised with the Mobile Broadband Group (responsible for managing the overall code). A few queries have arisen from reports of minors transferring 18 content via Bluetooth. However, Bluetooth is a handset to handset communications technology beyond the control of the mobile operators. As such it is outside of the scope of the Code, and so no further information was obtained or action taken in relation to these reports.

The IMCB is not reporting any significant levels of public concern about minors getting access to 18 content on mobile devices; nor are the mobile operators, Internet Watch Foundation or Ofcom.

Content Information

During the original discussions around the Code, some stakeholders suggested that it might be desirable for content providers to give more information about sub 18 content that parents may not regard as suitable for younger children.

In the published code, this topic was handled with the following text:

“Nothing in the Code prevents mobile operators from providing, for information purposes, further divisions of commercial content classification, where they deem that such an approach would be useful to customers in assessing the age range for which content is designed (e.g. for computer games).”

Beyond the requirement to put 18 content behind access controls, the mobile operators provide, on their own content portals, appropriate descriptions, including warnings, for items or categories of content so as to minimise the risk of harm and offence being caused to customers. The MBG is a signatory to the Good Practice Principles on Audiovisual Content Information published by leading industry players in broadcasting and new media.⁸ Mobile operators' most powerful method of communication in this regard is to use access controls to block minors from obtaining inappropriate content.

Given the almost negligible number of complaints, the MBG believes that children are not accessing inappropriate or offensive content via mobile networks, even though

⁸ <http://www.audiovisualcontent.org/>

there has been considerable growth in the penetration of mobiles in the younger age groups⁹.

It is proposed that mobile operators continue to follow the Good Practice Principles on Audio Visual Content Information – principally by providing appropriate signposting for own portal content and using access controls for adult content.

Consultation Q1: Do you agree that the way mobile operators currently signpost content on their portals and use access controls to signpost restricted access areas is the right approach? If not, what else do you feel could be done?"

Giving protection through more granularity of content information

As the market evolves mobile operators may wish to develop mechanisms that could allow younger children to be prevented from accessing certain material that parents might consider is more suitable for older teenagers. For those operators that offer a single access control for both commercial and Internet content (thus obviating the need to explain the difference), any change would have to be done in tandem with the Internet access. It should be noted that this could present significant practical problems, where the operator is dependent on the functionality offered by specialist third party filtering suppliers.

Nevertheless, preventing younger children accessing certain content could be achieved successfully in a number of ways:

- An operator may decide to offer additional age categories, at a greater level of granularity, than the current unrestricted and 18 categories.
- An operator may develop controls whereby parents are given the flexibility to chose what type of content their child can view (because content controls are offered at network level rather than device level, this would be a reasonably complex development)
- An operator may also decide to increase protection by placing content that is considered more suitable for older teenagers (but is not 18 rated) behind access controls.

Any additional controls that are offered should be based on the following principles:

- a) Any mechanisms used to filter content by at a greater level of granularity will be invoked at the customer's choice rather than at the network's.
- b) Any sub-categorisation will be provided by individual network operators rather than standardised across the industry as a whole.

The reasons lying behind these two principles are as follows:

Under the Code, customers cannot access commercial content categorised as 18 until they have been through a process of age verification. Thus, a customer effectively has to 'opt in' to receive the full range of adult services. There are practical reasons for this, in that 18 is the minimum age at which there are fairly universal and widespread methods of carrying out robust age verification. For other age categories

⁹ 93% of 12-15 year olds and 79% of 8-11 year olds – Ofcom Children's media literacy audit, May 2008

age verification sources are not widespread and so it is only realistic to proceed on the basis of age or profile being self-declared by customers rather than independently verified. Customers that might benefit from further categorisation are likely to be among the younger users. It is therefore viable to rely on parents (who are usually paying for the devices) to declare age accurately and to request the restrictions are set appropriately, if they so wish.

There are also policy reasons, in that there is very wide public acceptance that 18 classified content should not be available to minors. Below the 18 category, though, families have very varied ideas as to what type of content is suitable for their children to consume. It is therefore much more appropriate that the choice lies with parents and carers rather than having a top-down approach where the mobile operator decides.

The segment of the market that may opt for the restricting of content with greater granularity than 18 is a significant but nevertheless small proportion of the whole customer base. The low level of complaints suggests that it would be disproportionate to instigate further levels of granularity for commercial content through the Code. Should demand for more granular definitions on commercial content emerge, it is expected that there will be sufficient incentives for that demand to be met by the market.

The MBG proposes that the Code will still require that content providers continue only to self-classify as 18 content unsuitable for customers under 18, in accordance with the IMCB's classification framework.

As part of this review, the MBG will be requesting that the IMCB also carries out a review of its framework to ensure that it remains relevant and appropriate for the content being made available commercially through mobile networks.

Consultation Q2: "Do you believe that there is significant demand for a more granular age categorisation for content available on mobile handsets, rather than simply 18 and unrestricted? If so, what age categories do you think would be appropriate? Please explain the reasons for your answer."

Mobile chat rooms

Within the section on commercial content, the Content code provides that:

"The mobile operator will also place behind access controls all commercial content chat rooms, unless they are moderated chat rooms."

This approach has proved successful, in that there have not been reports of minors being exposed to harm as a result of using a mobile based chat room.

Mobile commercial chat rooms are SMS or WAP based, where all the participants are contributing via a mobile device. The primary method of customer protection is through moderation, whereby a combination of technical and/or human checking is being carried out to keep the conversation appropriate. The services do not generally use the more advanced methods to control what goes on in these chat rooms (such as algorithms for detecting breaches of acceptable use policies and provision of a customer complaints service), as are now used on more converged, Internet based services that can be accessed via a mobile or a fixed PC.

Social networking and other interactive sites.

All mobile operators apply rigorous content protection safeguards for customers accessing interactive sites hosted on their own portals. All interactive services such as, blogs, video sharing services and social networking sites are fully moderated. This means a trained person checks every message or image that appears and unsuitable content such as foul or abusive language, personal information or details about meeting up offline will be removed.

Where operators provide access to third party social network providers (such as Facebook, Bebo, Youtube and Myspace) mobile operators use their influence to encourage all providers to comply with the Home Secretary's Task Force Good Practice Guidelines for providers of social networking sites and user interactive services (published in April 2008)¹⁰.

Social networking sites are not chat rooms, as such, but do offer some functionality that shares the characteristics of chat rooms, such as the ability to exchange views, profiles and contact details with 'virtual' friends. They are designed to be accessible across a variety of platforms – home PC, mobile or public Internet access points. As a consequence it is not practical to have different access rules for different platforms.

In order to promote good practice for the operation of social networking sites, the mobile operators, alongside the market leading services, children's charities and law enforcement agencies¹¹, collaborated to develop the Good Practice Guidelines, which set down customer protections that provide consistency across all platforms. The respective service providers will be expected to follow them. The Byron review has suggested that a code of practice should also be drawn up to cover social networking services and similar.

The mobile operators propose to make it clear in the Code that only commercial chat rooms set up for mobile only participation fall within the remit of the Code. This policy has worked well for mobile-based commercial chat rooms and we propose to maintain it. Social networking sites will be expected to follow the Home Secretary's Task Force Good Practice Guidelines and any other relevant codes.

Consultation Q3: How do you feel about the approach the mobile operators take to chat rooms and social network sites and do you support the stricter moderation requirements for mobile based chat rooms that mobile operators have put in place?"

2. Internet Content

With respect to content that customers access via their mobile handset Internet browsers ("internet service"), the content Code provides as follows:

"Mobile operators have no control over the content that is offered on the Internet and are therefore unable to insist that it is classified in accordance with the independent classification framework.

*Mobile operators will therefore offer parents and carers the opportunity to apply a **filter** to the mobile operator's Internet service so that the **Internet content** thus*

¹⁰ <http://police.homeoffice.gov.uk/operational-policing/crime-disorder/child-protection-taskforce>

¹¹ Under the auspices of the Home Office Task Force for child protection on the Internet

*accessible is restricted. The **filter** will be set at a level that is intended to **filter** out content approximately equivalent to **commercial content** with a classification of **18**.”*

All mobile operators offer filters for their Internet service. Some set the filter to ‘on’ by default.

Although volume of page impressions is still low relative to the fixed Internet, it is growing. The most recent monthly figure published by the Mobile Data Association is 16.4million¹². The policy adopted by the mobile operators appears to be giving the right protection to customers.

Such filters are implemented on the network rather than on the client device. Although this means that they are not configurable by the customer personally, network based filters are much easier for parents to implement and much harder (than PC based filters) for tech-savvy children to disarm.

One potential development is that demand will emerge for more granular levels of filtering, so that a greater degree of configuration can be offered to customers. As mentioned in our summary of the Byron review in Annex 2, the Byron report concludes that a system based on 18+ and under-18 suitable content may not prove sufficiently granular as mobile internet access becomes more popular.

And although Dr Byron states that “*At the moment I do not see a case for specific recommendations around the regulation of mobile internet content,*” she recommends that the Council¹³ *monitor the changing risks for children from mobile internet access and work with the mobile industry to address them, including exploration of the need for more granular levels of filtering.*”

The MBG agrees with Byron that there does not seem to be evidence at present that would make it proportionate to mandate greater levels of filtering through the Code.

Nevertheless, this is something that should be kept under review going forward.

The MBG proposes that the Code requirement remains that mobile operators must offer a service that filters out adult content roughly equivalent to 18 rated commercial content.

Consultation Q4: Bearing in mind that mobile operators do not control the content available on the internet, do you think that there are any other options available to limit children's access to adult content over a mobile device? If so, how do you envisage this would work?”

3. Illegal Content

With respect to illegal content, the Code provides as follows:

“Mobile operators will work with law enforcement agencies to deal with the reporting of content that may break the criminal law. Where a mobile operator is hosting content, including web or messaging content, it will put in place notify and take-down provisions.”

¹² www.text.it figures for May 2008

¹³ The UK Council for Child Internet Safety (being formed as a result of a recommendation in the Byron review)

All the mobile operators are members of the Internet Watch Foundation¹⁴ and are thus subject to its Code of Practice. The main feature of this Code is that a mobile operator commits to operating a 'notice and takedown' for any illegal content (child sexual abuse images and race hate material) that is reported to be hosted on its servers. Illegal content hosted in the UK is very rare (less than 1% of all reports). If any potentially illegal content of this kind were ever to be found on a UK based server, the primary process is to refer the matter to the IWF for assessment. The IWF have the expertise to make an accurate judgement and, if appropriate, issue a take down notice and make the necessary report to law enforcement agencies. In the updated Code, it is proposed to recognise the role of the IWF as they are a key partner in making sure that UK based facilities remain free of child sexual abuse content.

All mobile operators also make use of the IWF database to block access to URLs that are designated as containing illegal content but use of this list is not part of the IWF's Code of Practice.

The MBG proposes to change the Code to make a direct reference to the Internet Watch Foundation, the UK's hotline for reporting illegal content. As part of the Code, mobile operators will respond to take-down notices issued by the IWF but use of the blocking list will not, at this stage, form part of the mobile content code.

Consultation Q5: Do stakeholders have any comments about the handling of illegal content by the mobile operators?

4. Unsolicited bulk communications

The Code currently provides that:

"Mobile operators will continue to take action against unsolicited bulk communications (i.e. spam), including text messages, picture messages and e-mails."

Mobile customers do not suffer anything like the levels of Spam experienced on fixed PCs via e-mail. This is because mobile operators devote considerable technical and commercial resources to minimise the Spam received by their customers. Nevertheless, there is a need to maintain constant vigilance against this problem. Mobile operators will also continue to work with PhonepayPlus in an effort to eradicate unsolicited messages that attempt to draw customers unintentionally into premium rate services.

It is proposed that the commitment remain in the Code unchanged.

Consultation Q6: Do stakeholders have any comments or suggestions about how to reduce unsolicited messages?

5. Malicious communications

The Code provides that:

"New forms of content may give rise to additional sources of malicious communications. The mobile operators will continue to deal vigorously with such matters, adapting existing procedures as appropriate."

¹⁴ The industry's (i.e. mobile, ISPs, search engines) self-regulatory body for receiving reports from the public and assessing potentially illegal content

As noted elsewhere, the capabilities of the mobile device has developed remarkably. As with any new technology, a small minority has appropriated it to engage in undesirable activities such as filming assaults (aka 'happy slapping') and bullying. Surveys have identified that roughly one in five users has received unwanted communications, the most extreme of which amount to bullying or harassment.

Ultimately, it is up to the customer to use his or her telephone responsibly. They risk prosecution under S127 of the Communications Act 2003 (misuse of electronic communications networks), if they don't.

Nevertheless, the mobile operators have made strenuous efforts to advise customers on how to handle malicious communications (and also discourage customers from perpetrating them). Each operator has processes and or teams specially trained to deal with this type of work (such as a Nuisance Call Bureau).

The Mobile Broadband Group is a member of the DCSF's cyber-bullying taskforce and has contributed to the creation of Childnet International's Cyberbullying Guidance¹⁵. UK mobile operators also contribute to and help to fund the European Schoolnet education initiative "Teach today", which has created a web site¹⁶ for teachers, setting out the most up to date information on cyber-etiquette and responsible use.

Technical measures are not the answer for tackling bullying and harassment. Ultimately the MBG believes that the best strategy is to educate customers about the harm that can be caused and encourage them to behave in a way that shows due consideration to other users.

It is proposed that this section remain in the Code unchanged.

Consultation Q7: Do stakeholders agree with the approach or have any other comments?

6. Information and advice

The Code currently provides that:

"Mobile operators will provide advice to customers - including children, parents and carers - on the nature and use of new mobile devices and services and support other relevant media literacy activities designed to improve the knowledge of consumers.

Information on the Code is available on the web site of each mobile operator."

In the last three years the mobile operators have done much to promote awareness about the capabilities of new mobile devices and to inform children and parents about how to use mobile devices safely. The MBG has also supported other organisations in developing information and safety resources.

- All mobile operators' web sites either contain resources or link to specialist sites that inform parents about all issues relating to a child's use of a mobile phone.

¹⁵ <http://www.childnet-int.org/news/articles/200907.html>

¹⁶ www.teachtoday.eu

- Mobile operators have partnered with such organisations as National Families and Parenting Institute, Milly's Fund, Childnet International and NSPCC to develop web based and printed information resources.
- The MBG commissioned the 'B Aware' teachers' resource which was distributed on request to 1200 secondary schools for year 8 and 9 pupils.
- Third parties such as the Child Exploitation and Online Protection Centre (CEOP)¹⁷ and Childnet have produced material for schools that incorporates information about all communications technologies, including mobile.

Mobile operators are conscious, though, that customers can suffer from information overload. It is with this in mind that mobile operators have installed the protections mostly by default so that children are protected, even if the parents are unaware of it. Nevertheless, mobile operators will continue in their efforts to both promote awareness and to work with others to promote awareness of the issues relating to developments in mobile technology and services.

Consultation Q8: Do stakeholders have any comments about mobile operators' approach to giving customers information and advice or any suggestions as to what further measures might be practical and helpful?

7. Other legislation, regulation and classification

Nothing in the Code conflicts with mobile operators' or content providers' responsibilities to abide by all relevant legislation and regulation. This will of course remain the case.

There are two recent developments that are worth noting in this section.

In the next few years, it is expected that mobile will become a significant platform for the delivery of advertising. As such, the mobile platform is subject to the British Code of Advertising, Sales Promotion and Direct Marketing. In recognition of this, the Mobile Broadband Group has joined the Committee for Advertising Practice (CAP) and will be contributing actively to the development of self-regulatory practice in advertising. To be clear the Advertising Standards Authority has jurisdiction over the content of advertising on the mobile platform not the Independent Mobile Classification Body.

Secondly, the MBG has signed up to the Content Information Principles published by the Broadband Stakeholders Group in February 2008¹⁸, in which the Broadcasters, ISPs, Search engines and other media providers undertake to make suitable arrangements for empowering customers to make informed choices prior to consumption of content.

¹⁷ CEOP's <http://www.thinkuknow.co.uk/> and Childnet's mobile resource: <http://www.childnet-int.org/mobiles/>

¹⁸ http://www.broadbanduk.org/component/option,com_docman/task,doc_details/gid,962/Itemid,9/

Responding to the consultation

The MBG will welcome submissions from all stakeholders, be they customers, consumer groups, charities, content providers, regulators or government departments.

The closing date for submitting comments is **Friday, 7th November 2008**

Comments should be sent by e-mail to hm@mobilebroadbandgroup.com, where possible. Copies may also be posted to the address below:

Hamish MacLeod
Mobile Broadband Group
PO Box 34586
London SE15 5YA

Additional copies of the consultation document can be obtained from www.mobilebroadbandgroup.com or by writing to PO Box 34586, London SE15 5YA

ANNEX 1 – The Code

**UK code of practice for the self-regulation of new forms of
content on mobiles**

19th January 2004

UK code of practice for the self-regulation of new forms of content on mobiles

Introduction

This Code of Practice has been developed by Orange, O2, T-Mobile, Virgin Mobile, Vodafone and 3 (referred to collectively in this Code as 'the mobile operators') for use in the UK market.

The background to the Code is that, increasingly, mobile devices are available with enhanced features, including colour screens, picture messaging, video cameras and Internet browsers and can be used to access a growing variety of content.

In anticipation of these products being widely adopted by consumers, including consumers under the age of 18, the mobile operators are putting in place the measures described in this Code. The intention is that parents and carers should have access to the information with which they can show their children how to use new mobile devices responsibly and the power to influence the type of content they can access.

The Code covers new types of content, including visual content, online gambling, mobile gaming, chat rooms and Internet access. It does not cover traditional premium rate voice or premium rate SMS (texting) services, which will continue to be regulated under the ICSTIS Code of Practice.

The Code does not cover peer to peer communications but it does give assurances to customers that the mobile operators are taking action to combat illegal, bulk and nuisance communications.

This Code provides a basic common framework and does not prevent mobile operators and content providers from adopting different commercial and brand positions with respect to the content and services they supply, providing these are consistent with the overall provisions of the Code. Each mobile operator may choose or need to use different organisational and technical solutions to enable it to meet aspects of the Code.

The Code

1. Commercial content

Mobile operators will appoint an **independent classification body** (see Glossary) to provide a framework for classifying **commercial content** that is unsuitable for customers under the age of 18. The framework will be consistent with standards used in other media and only treat as **18** content that would receive an 18 type classification for the equivalent material in, for example, magazines, films, videos and computer games.

Commercial content providers will be required to self-classify as **18** all content unsuitable for customers under the age of 18, in accordance with the framework. This requirement does not apply to premium rate voice or premium rate **SMS** (texting) services, which will continue to operate under the **ICSTIS Code of Practice**.

By default, all **commercial content** not classified as **18** will be unrestricted.

Each mobile operator will place commercial content classified as **18** behind **access controls** and only make it available to those customers that it has satisfied itself, through a process of **age verification**, are 18 or over.

The mobile operator will also place behind **access controls** all commercial content **chat rooms**, unless they are **moderated chat rooms**.

2. Internet content

Mobile operators have no control over the content that is offered on the Internet and are therefore unable to insist that it is classified in accordance with the independent classification framework.

Mobile operators will therefore offer parents and carers the opportunity to apply a **filter** to the mobile operator's Internet access service so that the **Internet content** thus accessible is restricted. The **filter** will be set at a level that is intended to **filter** out content approximately equivalent to **commercial content** with a classification of **18**.

3. Illegal content

Mobile operators will work with law enforcement agencies to deal with the reporting of content that may break the criminal law. Where a mobile operator is hosting content, including web or messaging content, it will put in place notify and take-down provisions.

4. Unsolicited bulk communications

Mobile operators will continue to take action against unsolicited bulk communications (i.e. spam), including text messages, picture messages and e-mails.

5. Malicious communications

New forms of content may give rise to additional sources of malicious communications. The mobile operators will continue to deal vigorously with such matters, adapting existing procedures as appropriate.

6. Information and advice

Mobile operators will provide advice to customers - including children, parents and carers - on the nature and use of new mobile devices and services and support other relevant media literacy activities designed to improve the knowledge of consumers.

Information on the Code will be available on the web site of each mobile operator.

7. Other legislation, regulation and classification

Nothing in the Code conflicts with mobile operators' or content providers' responsibilities to abide by all relevant legislation and regulation.

All content that is supplied through a Premium Rate Service must abide by the **ICSTIS Code of Practice**.

All those that deliver advertising or promotion through the medium of a mobile device must abide by all relevant Data Protection legislation, including the Privacy and Electronic Communications (EC Directive) Regulations 2003

Nothing in the Code prevents mobile operators from providing, for information purposes, further divisions of **commercial content** classification, where they deem that such an approach would be useful to customers in assessing the age range for which content is designed (e.g. for computer games).

8. Implementation and administration

The mobile operators take responsibility for the implementation and administration of the Code. They will keep the Code under review and make changes, where this is seen as necessary for the Code to remain relevant to customers.

Each mobile operator will enforce the terms of the Code through its agreements with **commercial content providers**.

Where new **commercial content** classified as **18** is offered, the mobile operator will deliver it in accordance with the Code.

It is anticipated that **filtering** for **Internet content** will be available from mobile operators during 2004.

Processes for dealing with illegal content will be agreed with law enforcement agencies by the end of April 2004 and implemented during 2004.

Glossary

Access controls – methods of preventing unrestricted access to content, including barring, PIN controlled access and subscription only services.

Age verification – a process by which reasonable and practical steps are taken to verify that a customer is 18 or over. Acceptable methods of age verification include: –

- a) at point of mobile device sale for new customers: inspection of document containing customer's date of birth (e.g. Driving licence, Citizen Card etc.); visual check (is the customer clearly over 18?);
- b) "customer not present": a valid credit card transaction for the customer; age confirmation using 3rd party agencies (e.g. Experian or Dun & Bradstreet etc.);
- c) documents and/or process used for contract mobile phone customers, combined with a process by which customers can manage access controls.

Commercial content – means content provided by commercial content providers to their mobile customers. Mobile operators act as the delivery and access provider and thus exercise an element of commercial control over the content delivered. Commercial content includes pictures, video clips, mobile games, music, sounds and experiences such as gambling. It does not include content accessed via the Internet - where mobile operators are providing only the connectivity.

Commercial Content provider – a mobile operator, or a provider having a contractual relationship with a mobile operator, supplying content to customers through a mobile device.

Chat Room – A chat room is a virtual environment where people can communicate with others, including people they don't know, by exchanging written words or images (for example, through **WAP** or **SMS**). The term does not encompass a commercial text service where a person communicates only with a (premium rate) SMS service provider. A **moderated chat room** is a chat room where either a person or special technology is used to block personal details and keep conversation appropriate.

Filter, filtering – a technical way of reducing the likelihood of unwanted material being accessed via the Internet. Methods include blocking sites with certain key words or sites that appear on 'black lists' or sites that do not contain an ICRA label. The filter will be applied at the network level, not the mobile device level, and will be simple for the customer to invoke.

ICSTIS Code of Practice – ICSTIS (Independent Committee for the Supervision of Telephone Information Services) is a co-regulatory body that has responsibility for the regulation of premium rate services delivered over electronic communications networks. The ICSTIS Code of Practice can be found at www.icstis.org.uk.

Independent classification body – This body's role will be to define classification criteria for **18** content that is consistent with other media; to provide advice to commercial content providers on whether an item of content should be classified **18**, in accordance with the classification framework; to investigate complaints of mis-classification and make determinations on those complaints. The body shall provide a process for appealing such determinations. The determinations of the body will be enforced by the mobile operators through their commercial contracts with content providers. The mobile operators will take responsibility for all other aspects of the Code.

Internet content – content accessed on the Internet (including sites that can be accessed using **WAP**), where the mobile operator provides only connectivity and cannot exercise commercial influence over the type of content supplied to the customer.

SMS – Short message service – the official description of the service known as 'text/texting'.

WAP – Wireless application protocol – a protocol used by mobile phones to browse either commercial or Internet content.

Annex 2 – The Byron review¹⁹

An important recent development in the policy debate about the appropriate safeguarding of children using new media is the publication of the Byron Review – “Safer Children in a Digital World.”

The review was particularly looking at the risks children face from the Internet and video games. Although the focus was on access from PCs and specialist consoles, the mobile operators engaged proactively with the review team and the implications for mobile access were also considered.

The overall conclusion was positive and that the Internet and video games offer young people a range of opportunities for fun, learning and development. However, the review also concluded that there are concerns over potentially inappropriate material, which range from content (e.g. violence) through to contact and conduct of children in the digital world.

The review has recommended the establishment of a UK Council for Child Internet Safety. The prime function of the Council will be to develop a national strategy for child Internet safety, which will include better self-regulation and better provision of information for children and families.

In relation to video games, there is a recommendation to improve the systems for restricting children’s access to games that are unsuitable for them – essentially making more use of the BBFC system for games aimed at the 12+ and 15+ market segments.

The Byron review made a number of references to the mobile market and also made a few specific recommendations.

The review recognised that the *UK Code of Practice for the Self-regulation of New Forms of Content on Mobiles* had been an important influence on the development of a European Framework for safer mobile use. This was a very good example of how the UK could seek to establish itself as a world leader in child Internet safety.

It reported that 99% of 8-17 year olds access the Internet, of which 7% have used a mobile to do this and speculated that as the use of Internet on a mobile increases, the risk of children accessing harmful or inappropriate material will increase. The report concludes that a system based on 18+ and under-18 suitable content may not prove sufficiently granular as mobile internet access becomes more popular.

And although Dr Byron states that “*At the moment I do not see a case for specific recommendations around the regulation of mobile internet content,*” she recommends *that the Council monitor the changing risks for children from mobile internet access and work with the mobile industry to address them, including exploration of the need for more granular levels of filtering.*”

Further, since 21% of 5-7 year olds have a mobile phone (Ofcom, 2008), she recommends that “*the mobile phone industry consider offering specific products for young children, such as phones without Internet access.*”

¹⁹ <http://www.dfes.gov.uk/byronreview/>

Within the Review's section on games, Dr Byron devoted considerable efforts to assessing the available evidence about whether the playing of violent video games caused violent behaviour offline, addiction and other undesirable effects. She concludes that *"It would not be accurate to say that there is no evidence of harm but equally it is not appropriate to conclude that there is no harm."* Further *"there are many potential areas where games could have great potential for the mental and physical health of children and for education"* and *"Online games present the same issues of content contact and conduct as those seen in relation to the Internet."*

Overall the report concludes that, taking into account how children learn and develop, there may be risks to them from playing games that are not designed for them and that improving the system of BBFC and PEGI rating would be appropriate.

In relation to mobile gaming, the report recognises that mobile games represent a relatively small number when compared to the retail market for traditional video games but there is potential for future growth. And, although there is no staggered age rating system, 18 rated games are subject to the IMCB framework (although to date, there have not been any in the UK for mobile) and access by minors is thus restricted. The Code of Practice for location services addresses the risk that minors may be introduced to strangers through a mobile game.

The only specific recommendation made is that *"in anticipation of mobile gaming products being widely adopted by consumers, mobile operators and those representing mobile entertainment should be represented on the Internet Council's online gaming sub-group"*, so that they and other stakeholders can be fully up to speed with market developments.

MBG comments

The MBG and its members were completely engaged in the Byron review and held several a number of meetings with Dr Byron and her team. The review was a timely and very necessary piece of work and has set a clear reference point against which sensible, evidence based policy can be developed in the next few years. We support the creation of the UK Council and will be represented when it is launched later in 2008.

We note the review's comment that a binary rating system may prove insufficiently granular as mobile Internet access becomes more popular. However, as we state elsewhere in this consultation document, there are other ways of addressing this issue and the MBG feels that there is insufficient evidence at the moment for mandating a standard approach via the Content Code. The MBG refers to this issue in question 3 of our consultation document.

We also note the recommendation that the mobile operators should seek membership of the Council's sub-group dealing with gaming. It is too early to say how the Government will structure the Council and its sub-groups. Due to the limited functionality and graphics of games based on mobile phones, there have not been the same concerns around extreme violence and unsuitable material compared to PC and console based games. Nevertheless, the MBG will remain engaged in the debate about the appropriate classification of games.