

## **PHONEPAYPLUS CONTRIBUTION TO THE CONVERGENCE THINK TANK**

PhonepayPlus is the Ofcom-appointed agency responsible for the regulation of premium phone-paid services.

Phone-payment, the charging of services and content to a telecommunications or a broader communications account, is widely used in the UK. The British public spend over £1 billion each year on mobile video, music and other products, on TV show voting and competitions, directory enquiry, information and help-line services, and on a variety of other content services. The ease of use and ubiquity of mobile telephones, landline connections and internet links makes this an attractive form of micro-payment. This is already starting to extend to use as payment for services quite unrelated to the communications device; web content charged to a click and buy phone account, parking and congestion charges, event ticketing and low value goods.

Our regulation seeks to deliver the market certainty and public trust necessary for its use across a wide spectrum. PhonepayPlus, ahead of the creation of Ofcom, was among the first regulatory bodies to deal with the practical consequences of convergence in the communications industries. We have dealt for many years with telecommunications as a form of payment for content services on phones, on-web and via television. For us convergence is three-way: we are dealing not just with broadcasting and communications but also with a financial services instrument.

We believe PhonepayPlus has a major contribution to make to this new debate on convergence. This is based not only on our experience to date but also on our assessment of how consumer protection is delivered in this space.

We have identified themes we think worthy of debate as part of the exercise. Our overarching message would be to give particular attention to the citizen/consumer and to explore how the State can underpin or mandate non-statutory forms of consumer protection. The challenges we face today of product and technology illiteracy, of mis-selling, pricing confusion, variable levels of customer service, and abuses of privacy, could worsen if not addressed.

### **Commoditisation**

The reality of an Internet Protocol (IP) is that the business models that underpin the delivery of services are in a state of flux. The public may not be willing to pay on a “by use” basis for conventional communication services. Calls and text messages are already expected as part of an “all you can use” package of some broader description. Insofar as we will still have businesses that are identifiably providers of telecommunications services, it seems likely that these businesses will be more dependant on other value-add services that the public are willing to pay for, or that other businesses (for example, the 0800 model of service provision) are willing to subsidise. The belief that any and all new services can be advertising-funded may be optimistic. However what seems clear is that new funding models – or more hybrid funding

models - will be required. This will pose challenges around developing a coherent approach to regulation.

There is some pressure on communications providers to act almost as banks, providing credit or forms of (pre-pay) cash storage that the public can use to buy services from third-party merchants and from any third-party with whom they inter-connect and contract. There will therefore be a broader need to look at the interaction between communications businesses and the payments/financial services regulations. In addition to regulatory implications there are practical issues over billing, refunds and the liability that may or may not rest with communication providers for content services provided by others.

The practical and political implications of this were made clear with publicity around Participation TV in 2007 when broadcasters arguably failed to recognise that they had turned “viewers” into “customers” by introducing a payment element to the viewing experience.

### **Technological developments and the move to “IP”**

Moving to a world where certain elements of conventional telephone numbering are being replaced by other forms of “addressing” with IP and related [IMS] technologies, it is possible for individuals to have multiple addresses and for communication and other transactions to take place in parallel without the use of conventional numbering.

There are several commercial implications of this in the marketplace; not least in relation to identity, billing and the risk of consumer or business fraud. It may also raise new competition policy issues. It certainly raises issues over Ofcom’s capacity to regulate the market through the issue and control of numbering and through conditions on the use of individual number ranges.

There are consumer implications in terms of billing information, general user “literacy” and the individual’s ability to manage access to services and content. From a consumer protection point of view there will be issues in terms of the evidence trail available in the event of problems or wrongdoing.

Telephony in general, and VoIP specifically, raises the possibility that telecommunication services in the UK, including those involved with premium content services, could easily become based off-shore (and outside the EU). The current framework of phone-paid regulation is based on the premise that PhonepayPlus or Ofcom would have regulatory purchase over the contracting network and require compliance with our directions. This may no longer be assured. The example is specific to PhonepayPlus but there are bound to be many consumer and compliance issues arising as a possibility of off-shore providers of communication services to the UK public.

### **Regulating the internet**

The regulation of the internet has to be constantly re-evaluated as the medium continues to evolve into a “Web 2.0” world. At this stage we face a business flux, as competing media owners and others vie for business and test a range of business models, produce different content and also test what plays well with users. This is a dynamic process in a relatively early stage of development.

There is a debate to be had about the regulation of the internet as a “super-highway” or communications system. It is incorrect, however, to suggest that services on the internet

cannot, are not or should not, be regulated appropriately. This already happens when holidays, financial services, books and other things are bought online. It also already happens when illegal content is found online. It is starting to happen with advertising online. And all phone-paid services offered online are certainly subject to our Code of Practice.

There will be others better placed to comment on IPTV and the distinctions between “push” and “pull” services. We are, however, of the view that there needs to be appropriate consumer/citizen protection, especially for services that look like television as we know it today. This raises issues over the forms of protection provided, and over jurisdiction.

### **The nature of protection: informing, educating and empowering consumers**

We have highlighted the distinction between push and pull services. These, and other services that are trans-national, or which raise content issues about acceptable community standards, require different protective mechanisms. The need for actions grows in parallel with the growth in volume of content and in the number of platforms through which free or commercial content can be accessed.

We comment below on the potential for solutions that are non-statutory but still regulatory in approach. We attach equal priority to actions that inform, educate and empower the public.

There are few, if any, statutory obligations on providers of communications services to meet specific information or protective needs. Businesses have at times sought to limit the obligations on them by protesting compliance costs, technical limitations or some competition-based reason for not having to deliver basic information on services.

We are committed to the principle of proportionate regulation. Part of the assessment of proportionality must lie in the adequacy, effectiveness and coverage of industry support services for consumers. Where these are robust and assured it is possible to roll back regulation. And in some places, where regulation is impractical, these support services may need to be mandatory.

### **Internationalisation and subsidiary in regulation**

The Think Tank should look at questions of jurisdiction and consumer protection as critically inter-related issues. When UK consumers come off the “super-highway” and go to a UK online “business location” they expect the same protection there that they enjoy on the high street. The same is true for us as citizens of the EU. When we leave the super-highway to visit websites elsewhere in the world there are questions over the practicality of providing consumer protection through conventional rules and sanctions.

Jurisdictional limitations are not, however, grounds for leaving consumers entirely to the vagaries of market forces. They highlight the importance of looking at market-based solutions alongside domestic legislative ones. Those who provide the credit or currencies for consumers have a certain degree of responsibility for our protection in these more exotic market-places. National or EU legislation can underpin these arrangements.

In an IP web-based world, trading is a global activity. If communication providers bill their customers for services provided from around the globe then we need to have regulatory systems that address this reality. However, we also need to provide consumers with a realistic expectation of the support they will receive.

We are concerned over the need to balance two distinct propositions from the European Commission. We note and understand the arguments for a country of origin jurisdiction as part of the drive toward a Single Market. However consumer harm can be local or localised to particular communities of consumers.

Consumer protection does not easily lend itself to pan-national institutions or to systems where consumers in one market are reliant for protection on regulators or self-regulatory mechanisms in another market. The public expect local or national agencies to help them as do many politicians. This help should involve more than referring problems to authorities elsewhere in Europe.

We have not yet been convinced by all of the arguments for pan-European regulatory bodies and continue to doubt that this is a practical solution. Equally, however, statutory regulators who are unable to deal with cross-border activity risk losing public interest and confidence. We take the view that the model developed by Ofcom and PhonepayPlus for premium phone-paid services is worth closer examination.

A market based approach based on the “follow the money” principle allows this organisation to regulate any service provider anywhere in the world with a full assurance that UK communications providers responsible for billing and payments continue to be comprehensively within our joint regulatory reach.

**PHONEPAYPLUS**  
**30<sup>th</sup> January 2008**