

Telecommunications Carriers' Forum

**Code of Practice for Provision of
Content via Mobile Phones**

(“Mobile Phone Content”)

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A. PURPOSE

1. This Code has been developed as a mechanism for self-regulation of commercial content services provided via mobile phones.
2. It sets out industry agreed principles under which Mobile Content Services will be provided in order to ensure that they are provided in a socially responsible manner. This includes an industry agreed position on the protection of minors from inappropriate content. It is intended that the Code will provide end users with confidence in the provision of content services by Telecommunications Service Providers. Telecommunications Service Providers will support the Code by providing Customers with information and education on the safe and appropriate use of Mobile Content Services.
3. The Code covers issues relating to commercial services, Internet Content; Illegal Content, unsolicited bulk communications, and Malicious Communications. The Code provides assurance that Telecommunications Service Providers will take action against Illegal Content, unsolicited bulk communications and Malicious Communications. The Code does not cover Peer-to-Peer Communications or broadcasting as defined under the Broadcasting Act.
4. This Code does not impose rigid guidelines but allows Telecommunications Service Providers to differentiate themselves with respect to the content and services they supply, provided that all relevant content provision is consistent with the guiding provisions of the Code. Telecommunications Service Providers are able to use different organisational and technical solutions to meet the requirements of the Code.
5. This Code will take effect from the date the Code has been endorsed by the TCF and signed up to by the Telecommunications Service Provider. As Telecommunications Service Providers will have differing technical and commercial arrangements in place it will be the individual Telecommunications Service Provider's responsibility to make the detailed decisions on how it implements the requirements of this Code. Telecommunications Service Providers will enforce the terms of this Code with third party Telecommunications Service Providers through their commercial contractual arrangements going forward.

B. DEFINED TERMS

In this Code, unless the context otherwise requires:

“Access Controls” means a technical measure imposed to control access to Restricted Content, for example PIN access to Restricted Content.

“Age Verification” means a process that is used to verify, as much as reasonably possible, that a Customer is over the age of 18.

“Broadcasting Act” means the Broadcasting Act 1989 as amended from time to time.

“Business Day” means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide public holidays. Regional public holidays are considered to be Business Days.

“Clause” refers to a clause in this Code.

“Code” means this Mobile Content Code including any annexures.

“Commercial Content” has the meaning prescribed to that term in clause 13.1.

“Content Provider” means the party who has a contractual relationship with a Content Service Provider or Telecommunications Service Provider, in order to provide Mobile Content/Messages to the Customer.

“Content Service Provider” means any person that has a contractual relationship with a Telecommunications Service Provider in order to deliver content services to the Customer.

“Customer” means a person who:

- a) elects to receive Premium Messaging Services from a Telecommunications Service Provider and/or Content Provider;
- b) has a bona fide billing relationship with a Telecommunications Service Provider; and
- c) is invoiced by that Telecommunications Service Provider for those Premium Messaging Services.

“Enforcement Agency” means a person(s) nominated by the Telecommunications Carriers’ Forum whose role is to monitor and enforce compliance of the obligations set out in this Code.

“Further Recourse” means any avenue beyond a Service Provider’s internal complaints handling process for resolution of a complaint.

“Illegal Content” includes content that is defined as “objectionable” by section 3 of the Films, Videos, and Publications Classification Act 1993; or as otherwise illegal by New Zealand criminal law.

“Internet Content” means the content on the internet which may be accessed by handsets but over which the Telecommunications Service Provider may not have control because it is not provided to Customers by the Telecommunications Service Provider or by a third party which has a commercial arrangement with the Telecommunications Service Provider for the provision of Mobile Content Services.

“Malicious Communications” means communications which would involve the misuse of a telephone device as specified under section 112 of the Telecommunications Act 2001.

“Mobile Content Services” means commercial content services made available via mobile phones through a Content Provider.

“Netsafe (The Internet Safety Group)” means the non-profit, independent organisation established in NZ to provide education about safe, secure and responsible use of information and communication technology.

“Party” means a Person signed up to and bound by this Code.

“Peer-to-Peer Communications” means direct person to person communications and include person to person voice and video calls, text messages, photo and video messaging.

“Person” means a legal person and includes a company and any other legal entity.

“Restricted Content” See definition in Schedule 1.

“Scheme Agent” means the independent body contracted by the TCF to provide the Telecommunications Dispute Resolution Scheme service.

“**Scheme Member(s)**” means a provider of Telecommunication Services to a customer, and who has the Billing Relationship with the customer for that Telecommunications Service and who has signed the Scheme Deed. Scheme Members may include TCF members and non-TCF members.

“**Telecommunications Act**” means the Telecommunications Act 2001 as amended from time to time.

“**TCF**” means the Telecommunications Carriers’ Forum Incorporated Society of New Zealand.

“**Telecommunications Dispute Resolution Scheme**” or **TDRS** means a Further Recourse scheme that has been established by the TCF, the processes of which are set out in Annexure 2 of the Customer Complaints Code.

“**Telecommunication(s) Service**” means any goods, services, equipment and/or facilities that enables or facilitates Telecommunication.

“**Telecommunications Service Provider**” Means any person providing a Telecommunication Service to a Customer who has the billing relationship with that Customer to charge them for any chargeable activity relating to the provision of the Mobile Content Services.

“**Unrestricted Content**” means content that is not Illegal Content or Restricted Content.

C. OBJECTIVES AND SCOPE

6. This Code governs the commercial content services provided via mobile phones.

7. Objectives

The Code’s high-level objective is to provide a mechanism for self-regulation of commercial content services provided via mobile phones. This objective will be achieved by:

7.1. Setting out the industry agreed principles in the following areas under which Mobile Content Services will be provided:

- 7.1.1 Commercial content;
- 7.1.2 Chat services;
- 7.1.3 Internet Content;
- 7.1.4 Illegal Content;
- 7.1.5 Unsolicited electronic communications; and
- 7.1.6 Malicious Communications.

D. COMPLIANCE

8. The Code is applicable to all Telecommunications Service Providers who sign up to the Code or who have agreements relating to Mobile Content Services with Content Service Providers who have signed up to this Code. This Code is not intended to impact on other parties who do not have obligations under this Code with the exception of signatories to the TCF Premium Messaging Code who are obligated to comply with this Code at all times as per Section 9 of the TCF Premium Messaging Code.

9. All Telecommunications Service Providers who have signed up to this Code must abide

by the agreed principles in accordance with this Code and any relevant legislation or Commerce Commission determinations.

10. If one Party defaults in the performance of any of its obligations under this Code, the defaulting Party will use its best endeavours to remedy the default as soon as possible and to prevent a recurrence of the default. This provision applies as long as the default does not prevent other parties to the Code complying with their obligations.
11. The Code does not cover content defined as a broadcast under the Broadcasting Act.

E. THE CODE

12. The objective of this section is to define the agreed principles of the Code.

13. Commercial Content

- 13.1. "Commercial Content" in this Code means Mobile Content that is provided to Customers via a mobile phone network, whether free or on a subscription or per event basis, either by the Telecommunications Service Provider directly to its Customers, or that is provided to Customers by a third party that the Telecommunications Service Provider has a commercial arrangement with for the provision of Mobile Content Services. Commercial Content includes, but is not limited to, video clips, games, screen savers, chat services, ring tones and other personalised audio content. Commercial Content does not include Internet Content, as described below, or Peer-to-Peer Communications.
- 13.2. Only Commercial Content that is Unrestricted Content will be provided to Customers by a Telecommunications Service Provider without Access Controls. Restricted Content services will only be provided if Age Verification mechanisms and Access Controls are implemented. In the event that Restricted Content is inadvertently provided without proper restrictions, Telecommunications Service Providers will ensure that such content is promptly removed.

14. Chat Services

- 14.1. Where a Telecommunications Service Provider has a commercial relationship associated with the provision of public chat room services, the Telecommunications Service Provider will ensure that public chat rooms are Monitored 24 hours a day 7 days a week. Monitoring implies that participants' behaviours will be monitored and any inappropriate behaviour will result in the user receiving a warning or being banned from the chat room. Participants in chat rooms remain responsible for the content of their chat.
- 14.2. Chat room behaviour which may be illegal under New Zealand criminal law, such as grooming people under 16 for sex (refer section 131B of the Crimes Act 1961), will be reported to the Police.

15. Internet Content

- 15.1. In some cases, content on the Internet that may be accessed by handsets may be illegal or unsuitable for minors. Telecommunications Service Providers may not have control over, or the ability to block, this kind of content, but will provide information to Customers on safe Internet practices, including providing a link through to NetSafe on their company website.

- 15.2. Should Internet filtering technology for mobile phones become readily accessible, Telecommunications Service Providers will work towards making the technology available to Customers.

16. Unsolicited Electronic Communications

- 16.1. Telecommunications Service Providers will have procedures in place to deter Malicious Communications and, in particular, will have processes in place to deal with complaints relating to Malicious Communications.
- 16.2. Telecommunications Service Providers will act in accordance with the Unsolicited Electronic Messages Act 2007.

17. Information and Advice

17.1. In order to comply with this Code, Telecommunications Service Providers will:

- 17.1.1 Provide information to Customers on the nature and capabilities of products and services - especially for parents and children;
- 17.1.2 Provide information on this Code on their website;
- 17.1.3 Provide Customers with a way of communicating any concerns, including the ability to notify any inappropriate content or behaviour to Telecommunications Service Providers; and
- 17.1.4 Provide a link to NetSafe's website on their website.

F. MOBILE CONTENT COMPLAINTS PROCEDURES

18. The objective of this section is to outline the complaints procedures in terms of the Mobile Content Code.
19. In the first instance, Customers should always lodge their complaint with their Telecommunications Service Provider.
- 20. Complaints Relating to Mobile Content as Unrestricted Content or Restricted Content**

The complaints procedure in this section 20 relates only to the rating of Mobile Content as Unrestricted Content or Restricted Content. Any other complaints relating to the provision of Mobile Content, for example issues with service quality or billing, will be governed by the provisions of the Customer Complaints Code if the Telecommunications Service Provider is a signatory to this Code.

20.1. Lodge complaint with Telecommunications Service Provider

- 20.1.1 If a Customer believes that Commercial Content provided by a Telecommunications Service Provider has been incorrectly rated, i.e. Restricted Content being sold as Unrestricted Content, the Customer should make a complaint to the Telecommunications Service Provider, using the telephone or website contact details provided. The complaint must:
- a) identify a specific piece of Commercial Content ;
- b) identify why the Customer believes the Commercial Content has been inappropriately rated;

- c) be made as soon as reasonably possible and in any event within 15 days of the Commercial Content being accessed by Customer; and
- d) not be frivolous or vexatious or have been previously dealt with.

20.1.2 The Telecommunications Service Provider will endeavour to resolve the Customer's issue at the first point of contact, and in any event within 10 Business Days of the complaint.

20.1.3 If the Telecommunications Service Provider finds that the Commercial Content has been rated as Unrestricted Content when it ought to have been rated as Restricted Content, the Telecommunications Service Provider will either take down the Commercial Content, or place it behind Access Controls.

20.1.4 If the Telecommunications Service Provider considers that the Commercial Content has been appropriately rated, the Telecommunications Service Provider will advise the Customer of its decision in writing, or by telephone if the Customer has not provided any postal contact details.

20.2. Processes available via the Department of Internal Affairs and Classification Office

20.2.1 If the Customer still believes that the Commercial Content has been incorrectly rated the Customer may complain to the Department of Internal Affairs:

20.2.2 By completing the content complaints form on the Department's website

<http://www.dia.govt.nz/web/submitforms.nsf/cencomp?OpenForm>; or

20.2.3 By writing to:

Censorship Compliance Unit
Department of Internal Affairs
PO Box 805
Wellington

20.2.4 A Customer may, with the leave of the Chief Censor, submit content to the Classification Office for classification. Contact details for the Classification Office are:

Office of Film and Literature Classification
P O Box 1999
Wellington
Ph: 0508 236 767
Email: information@copyright.govt.nz

20.2.5 At any stage of the process the Telecommunications Service Provider may seek the advice of the Department of Internal Affairs or the Classification Office on the nature or classification of a particular

piece of Commercial Content.

21. Customer Complaints Code

22. If a Telecommunications Service Provider is bound by the Customer Complaints Code and a Customer of that Telecommunications Service Provider lodges a complaint that the Telecommunications Service Provider has not met their obligations under this Code, the complaint will be dealt with in accordance with the Customer Complaints Code.
23. Customers and Telecommunications Service Providers must follow the processes set out in the Customer Complaints Code for resolution of a customer complaint before a customer can take a complaint to the Scheme Agent if their Telecommunications Service Provider has joined the Telecommunications Dispute Resolution Scheme (TDRS).
24. If a Telecommunications Service Provider is not bound by the Customer Complaints Code and a Customer of that Telecommunications Service Provider lodges a complaint, the complaint will be dealt with using the Telecommunications Service Provider's own internal Customer complaints process. If this Customer is not satisfied with the outcome from their Telecommunications Service Provider's internal complaints handling process, the Customer may choose to pursue Further Recourse avenues other than the TDRS (including other legal avenues). If the complaint relates to the rating of Mobile Content as either Unrestricted Content or Restricted Content the Mobile Content Complaints Procedure as detailed in clause 20 should be adhered to.

G. MONITORING AND ENFORCEMENT OF MOBILE CONTENT CODE OBLIGATIONS

25. At the same time as this code was developed, the TCF was considering establishing a compliance regime to apply across all TCF codes. If a new compliance regime is implemented, it will supersede the compliance regime set out in this section of the Mobile Content Code.
26. Without limiting each Party's obligations parties to this Code must keep any information they deem necessary to show their compliance with this Code, should it be required.
27. If the TCF becomes aware, either through the TDRS or other channels, of a suspected breach of the Code by a Telecommunications Service Provider, the TCF may appoint an Enforcement Agency to investigate the suspected breach.
28. When considering the non-compliance of the Party the Enforcement Agency must consider:
- 28.1. the volume of non-compliance complaints received in relation to the Code;
 - 28.2. the likely impact of the non-compliance on the Customer;
 - 28.3. the seriousness of the non-compliance of the Party; and
 - 28.4. the Party's past conduct with respect to compliance with the Code's obligations when making a determination.
29. The Enforcement Agency may issue that Party with a written:
- 29.1. Caution Notice of Breach;
 - 29.2. Warning Notice of Breach; or
 - 29.3. Public Censure Notice.
30. The Enforcement Agency must first issue a Caution Notice of Breach and then a Warning

Notice of Breach to the Party in relation to the particular breach in question before making a determination to issue a Public Censure Notice relating to the Party.

31. The Enforcement Agency will provide a copy of any Caution Notice of Breach, Warning Notice of Breach or Public Censure Notice issued to all Parties to the Code. Parties to the Code who receive a copy of a Caution Notice of Breach or Warning Notice of Breach shall keep such notice confidential.

32. Caution Notice of Breach

- 32.1. The written Caution Notice of Breach to the Party will include a request that one or more of the following actions be undertaken by that Party:

- 32.1.1 rectification of the breach;
- 32.1.2 specific corrective actions; and/or
- 32.1.3 an internal review of the Party's state of compliance with the obligation.

- 32.2. The Caution Notice of Breach will specify a timetable within which the action is required to be completed, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the Caution Notice of Breach.

33. Warning Notice of Breach

- 33.1. The written Warning Notice of Breach to a Party is a more severe version of the Caution Notice of Breach, and may be appropriate for situations where the Party has failed to undertake voluntarily the actions requested by the Caution Notice of Breach, within the timetable specified therein. The Warning Notice of Breach to the Party will include an order that one or more of the following actions be undertaken by the Party:

- 33.1.1 rectification of the breach;
- 33.1.2 specific corrective actions;
- 33.1.3 arrange for an independent audit of its compliance procedures in relation to the Code's obligations. The auditor must be approved by and report to the Enforcement Agency on compliance with the Code's obligations. The Party will be required to implement recommendations of the audit; and
- 33.1.4 that the Party conduct relevant education of its relevant staff to address knowledge inadequacies that may have led to the breach.

- 33.2. The Warning Notice of Breach will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the Party to address the action required by the Warning Notice of Breach, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the notice.

34. Public Censure Notice

- 34.1. In the event of a refusal or failure on the part of the Party to undertake to the Enforcement Agency's satisfaction any actions required by a Warning Notice of Breach within the timetable specified therein, the Party will promptly be formally advised by the Enforcement Agency that a Public Censure Notice is to be prepared for widespread publication. The Party will be sent an advance copy

of the intended Public Censure Notice, which will:

- 34.1.1 identify the Party by name;
 - 34.1.2 give details of the breach;
 - 34.1.3 list all requests/orders previously made of the Party;
 - 34.1.4 report on whether an independent audit has been ordered and, if so, state the results of the audit;
 - 34.1.5 state that at the date of publication, the requests of the Caution Notice(s) of Breach and the orders of the Warning Notice(s) of Breach have not been complied with;
 - 34.1.6 specify a final timetable by which any corrective action must be completed by the Party.
- 34.2. The Party will also be advised that publication of the Public Censure Notice will not occur until a specified time period has elapsed from the date the advance copy of the public censure notice is sent, (the period of time is at the discretion of the Enforcement Agency). If the Enforcement Agency is fully satisfied that the Party has fully complied as ordered prior to the date the Public Censure Notice is due to be published, then the Public Censure Notice shall not be published.
- 34.3. If the Public Censure Notice is proceeded with, it will be published in the New Zealand Gazette, the TCF's newsletter, and at the Enforcement Agency's discretion, may be published in any relevant industry newsletter or magazine, in the national newspapers or in Consumer bulletins.

35. Audit Report

- 35.1. If the audit report states that the Party has complied with the Code then, if the audit was undertaken at the request of the TCF, the Party shall bear its own costs and the costs of the Enforcement Agency shall be reimbursed to it by the TCF.
- 35.2. If the audit report states that the Party has not complied with the Code then the Audit Costs will be payable by that Party.
- 35.3. For the purposes of 35.2, "Audit Costs" means the aggregate of:
- 35.3.1 Enforcement Agency and TCF reasonable direct costs in respect of the audit (including auditing and legal fees); and
 - 35.3.2 such costs of the audited Party in respect of time involved in assisting the audit as are submitted by the Party to the Enforcement Agency which the Enforcement Agency determines are fair and reasonable.

H. EXPIRY, REVOCATION AND AMENDMENT OF THE CODE

36. For the avoidance of doubt, and in accordance with the Telecommunications Carriers' Forum's Operating Procedures Manual, any Forum Member may put a Project Proposal to the Forum Board (at any time) for the amendment or revocation of the Code.

Definition of Restricted Content

This definition is intended to cover types of material that are likely to be “restricted publications” under section 23(2)(c) of the Films, Videos, and Publications Classification Act 1993 (“the Act”). Telecommunications Service Providers will need to exercise discretion when applying this Code’s definition of Restricted Content since some types of content, (including but not limited to those involving sex, violence or sexual violence), could be “objectionable”, as defined in section 3 of the Act.

A Telecommunications Service Provider rating of content as Restricted Content would not preclude it being classified as objectionable by the Office of Film and Literature Classification (“Office”) and could not be relied on as a defence to charges involving objectionable material. This definition is not intended to be a complete list of restricted content or supplement, or in any way be a substitute for, the authority of the Office or current laws or statutory definitions.

1. Restricted Content

Types of Restricted Content include:

- 1.1. Language
 - 1.1.1 Frequent use of highly offensive language or explicit sexual references.
- 1.2. Nudity
 - 1.2.1 Nudity depicting male or female genitals or female nipples, whether or not such genitals or nipples are real.
- 1.3. Sex
 - 1.3.1 Actual or realistic depictions of sex activity, for example:
 - a) Real or simulated sexual intercourse.
 - b) Depiction of sexual activity involving devices such as sex toys.
 - c) Sexual activity with visible pubic areas.

Note, however, that material which genuinely seeks to inform and educate such as in matters of sexuality, safe sex and health and where explicit images are the minimum necessary to illustrate and educate in a responsible manner may be permissible.

- 1.4. Violence
 - 1.4.1 Violence which dwells on the infliction of pain or on injuries
 - 1.4.2 Depictions of sexual violence.

In respect of mobile games in particular:

- 1.4.3 Violence towards realistic depictions of humans or realistic depictions of animals such as scenes of dismemberment, torture, sadism and other types of excessive violence.
- 1.4.4 Graphic, detailed and sustained violence towards realistic depictions of humans or realistic depictions of animals or violence towards vulnerable or defenceless humans or animals.
- 1.5. Drug use
 - 1.5.1 Depictions of illegal drug taking or solvent abuse or instructive details

on illegal drug taking or manufacture of drugs or solvent abuse.

- 1.6. Horror
 - 1.6.1 Depictions of sustained or detailed inflictions of pain or injury including anything which involves sadism, cruelty or induces a high level of fear or anxiety.
- 1.7. Cruelty
 - 1.7.1 Depictions of mental or physical cruelty.
- 1.8. Imitable techniques
 - 1.8.1 Dangerous combat techniques such as ear-claps, head-butts and blows to the neck.
 - 1.8.2 Instructive details on obtaining or manufacturing weapons, such as knives, firearms or bombs.
 - 1.8.3 Instructive details of techniques for use in the commission of a criminal offence.
 - 1.8.4 Depictions of suicide.
 - 1.8.5 Instructive details of harmful body modification techniques (such as tattooing, body piercing, branding, scarification, cosmetic surgery).
 - 1.8.6 Depictions of dangerous, imitable stunts likely to result in a real risk of serious harm. For the avoidance of doubt this does not include sporting activities for example, snowboarding, skateboarding.