



## Direction to comply with industry code

(Subsection 121(1) of the *Telecommunications Act 1997*)

TO: Switchfire Pty Ltd  
ACN: 112 470 309

OF: 7 Stanley Street  
CHATSWOOD NSW 2067

Attention: Company Secretary

I, Nerida O'Loughlin, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied in accordance with subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) that Switchfire Pty Ltd (ACN: 112 470 309) (**Switchfire**):

- (a) is a participant in a particular section of the telecommunications industry; and
- (b) has contravened clauses 3.1.2(d)(ii), 3.1.9(b), 3.2.3(b)(ii), 3.2.4(b)(ii), 3.3.3(c) and 3.3.3(e)(ii)(B) of the *Mobile Premium Services Code (C637:2009)* (**the Code**), a Code registered under Part 6 of the Act which applies to participants in that section of the industry;

**HEREBY** give notice under subsection 121(1) of the Act, directing Switchfire to take such steps as are necessary to ensure that Switchfire complies with the Code, in particular clauses 3.1.2(d)(ii), 3.1.9(b), 3.2.3(b)(ii), 3.2.4(b)(ii), 3.3.3(c) and 3.3.3(e)(ii)(B) of the Code by no later than **close of business 21 July 2010**.

### Details of the contraventions

1. Switchfire is a "content service provider" within the meaning of section 97 of the Act.
2. As a content service provider, Switchfire is a "participant in a section of the telecommunications industry" within the meaning of section 111 of the Act (relevantly, section 110 of the Act defines "section of the telecommunications industry" and section 7 of the Act defines "telecommunications industry").

3. The Code was developed by Communications Alliance Ltd (ACN: 078 026 507), being a body or association that represents a section of the telecommunications industry, and registered with the ACMA under section 117 of the Act on 14 May 2009.
4. Clause 1.3.1(b) of the Code states that the Code applies to the content service providers section of the telecommunications industry under section 110 of the Act.
5. The Code applies to Switchfire as a content service provider and a participant in a section of the telecommunications industry.
6. For the purposes of the Code, Switchfire is considered a "Content Supplier" as defined in clause 2.2, as the services supplied by Switchfire are Mobile Premium Services (Premium SMS or MMS Service) supplied by way of a call to or from a Short Code with the prefix '197' and '199'.
7. On 9 September 2009, the ACMA commenced an investigation under paragraph 510(1)(c) of the Act into whether Switchfire was acting in compliance with the Code.
8. The investigation results indicated that Switchfire was in contravention of clauses 3.1.2(d)(ii), 3.1.9(b), 3.2.2(b)(ii), 3.2.4(b)(ii), 3.3.3(c) and 3.3.3(e)(ii)(B) of the Code.
9. Based on the conclusions of the investigation, I am satisfied that Switchfire was in contravention of:
  - a. clauses 3.1.2(d)(ii), 3.1.9(b), 3.2.3(b)(ii), 3.2.4(b)(ii), 3.3.3(c) and 3.3.3(e)(ii)(B) of the Code in relation to the advertisement for the Mobile Premium Service supplied using the Short Code '19788197' (**'the Shocking Movies Service'**); and
  - b. clause 3.2.3(b)(ii) of the Code in relation to the advertisement for the Mobile Premium Service supplied using the Short Code '19923283' (**'the Mobile Camera Fun Service'**).
10. Relevantly, I am satisfied that Switchfire contravened:
  - a. clauses 3.1.2(d)(ii) and 3.2.4(b)(ii) in relation to the Shocking Movies Service by failing to clearly and legibly state how to unsubscribe from a subscription service;
  - b. clauses 3.2.3(b)(ii) in relation to the Shocking Movies Service and the Mobile Camera Fun Service by failing to ensure that pricing information met specified minimum size requirements;
  - c. clause 3.3.3(e)(ii)(B) in relation to the Shocking Movies Service by failing to ensure that subscription information met specified minimum size requirements;
  - d. clause 3.1.9(b) in relation to the Shocking Movies Service by failing to ensure that no charge was associated with the term 'free'; and
  - e. clause 3.3.3(c) by failing to provide details of the 'STOP' message.

## TAKE NOTE:

Under subsection 121(2) of the Act, Switchfire must comply with a direction under subsection 121(1) of the Act.

Under subsection 121(3) a person must not:

- (a) aid, abet, counsel or procure,
- (b) induce, whether by threats or promises or otherwise,
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to; or
- (d) conspire with others to effect;

a contravention of the requirement in subsection 121(2).

Subsection 121(4) states that subsections 121(2) and (3) of the Act are civil penalty provisions.

If Switchfire does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover pecuniary penalties against Switchfire in accordance with section 570 of the Act.

The maximum pecuniary penalty for one contravention by a body corporate is \$250,000.

## REVIEW RIGHTS

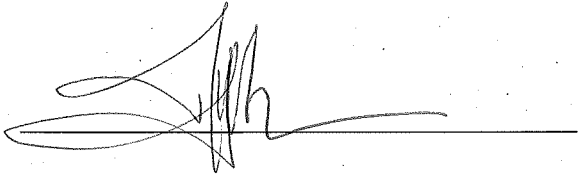
As a person affected by the decision, if you are dissatisfied with the delegate's decision to direct Switchfire under subsection 121(1) of the Act, you may apply to the ACMA for reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

An application for reconsideration must be made **within 28 days** after you are informed of the delegate's decision to issue the Direction (subsection 558(3) of the Act).

If you are dissatisfied with the ACMA's decision on the reconsideration of the delegate's decision:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration under section 562 of the Act; and
- (b) you may request a statement under section 28 of that Act in relation to the decision on that reconsideration.

Dated this 6 day of July 2010

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Nerida O'Loughlin

**Delegate of the Australian Communications and Media Authority**