



Commission for  
**Communications Regulation**

## Consultation Paper

### **Protecting Phone Users from Internet Dialler Scam**

#### **Draft Direction to Internet Access Providers and Providers of Publicly Available Telephone Services**

|                     |                     |
|---------------------|---------------------|
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**Market Operations Consultations  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1.  
Ireland**

Fax: 01 804 9680

Email: [consumerline@comreg.ie](mailto:consumerline@comreg.ie)

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Having analysed and considered the comments received, ComReg will issue the Direction with or without amendment as appropriate

**An Coimisiún um Rialáil Cumarsáide  
Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

# Protecting Phone Users from Internet Dialler Scam

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### Foreword

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and European legislation. Both the Communications Regulation Act 2002 and the relevant European Directives adopted in 2002 and effective from 2003 give ComReg a specific role regarding the protection of end users.

The protection of end users is achieved through setting appropriate requirements on operators related to issues such as transparency of terms and conditions including prices, complaint handling procedures and quality of service information. ComReg also places particular importance on ensuring that users of communications services are adequately informed of matters which affect them in their dealings with network and service providers.

Earlier this year, ComReg became aware of a growing problem for users of dial up internet access. The problem faced by such users is the prevalence of dialler programs which permanently change dial up settings frequently without the user’s knowledge or consent. The result is that the user is connected to the internet at international call rates instead of the normal call rate which varies between 1c and 5c per minute. All too frequently, the subscriber will only realise that they have fallen victim when they receive their telephone bill with high call charges to International numbers.

Last April, ComReg issued a Consumer Guide – “Modem Hi-jacking using dialler programs” - to warn consumers about the problem and to highlight some practical preventative measures that could be taken to guard against the problem. In addition discussions have been held with Internet Service Providers and telephone service providers with the aim of having additional measures at industry level to help deal with the issue. Industry currently employs a number of security measures which it is not appropriate to publicly describe but without these the scale of the problem would be considerably worse.

However, despite these measures, telephone subscribers continue to be affected and in recognition of the exceptional circumstances, ComReg is proposing that specific measures are taken by industry to further address this problem. ComReg is now engaging in a public consultation on the proposed measures and welcomes the views of interested parties, particularly consumers, before we make a final decision on the issue.

**Isolde Goggin,  
Commissioner**

### 1 Introduction

The issue of dialler programs and modem hijacking has affected a growing number of consumers in Ireland. While dialler programs may act as an alternative payment method to credit cards for internet based transactions, problems arise where consumers are not aware that their internet dial up settings have been changed. In some cases this is due to internet users not reviewing all applicable terms and conditions associated with web sites while in other cases the user is not presented with the relevant information. The result is that the user is connected to the internet at international call rates instead of the normal call rate which varies between 1c and 5c per minute. All too frequently, the subscriber will only realise that they have fallen victim when they receive their telephone bill with high call charges to International numbers. The problem is a global one and not confined to Irish internet users.

Last April, ComReg issued a Consumer Guide – “Modem Hi-jacking using dialler programs” - to warn consumers about the problem and to highlight some practical preventative measures that could be taken to guard against the problem. In addition discussions have been held with Internet Service Providers and telephone service providers with the aim of having additional measures at industry level to help deal with the issue. Industry currently employs a number of security measures which it is not appropriate to publicly describe but without these the scale of the problem would be considerably worse.

ComReg has a statutory function to investigate complaints from undertakings and consumers regarding its supply of and access to Electronic Communications Services, Electronic Communications Networks. Since the beginning of 2004 ComReg has been contacted by over 200 telephone subscribers regarding excessive telephone charges arising from Autodiallers. The amounts complained of have generally ranged from €20 to €2,000 with one business subscriber incurring charges of €12,000.

Arising from its investigation of complaints from consumers and as a follow-up to the Consumer Guide, ComReg is now proposing measures which both Internet Access Providers and Providers of Publicly Available Telephone Services shall be required to adopt in order to address the subject matter of those complaints. Before making a final decision on requiring specific measures, ComReg is holding a public consultation on its proposals. Views are sought from industry players and from consumers on the appropriateness of the measures. Where there is disagreement with the measure which ComReg has proposed or with a particular aspect of the measure, ComReg would like to receive views on alternative measures. If it is felt that mandatory measures are inappropriate, it would be helpful if the basis for this view was stated and whether a different strategy is proposed.

Section 2 of this paper sets out the text of the draft directions and the intended impact of those directions. That Section also sets out questions to which interested parties are invited to respond.

Section 3 sets out the legislative background including considerations arising from Ireland’s membership of the ITU and GATT.

## **2 Proposed Directions**

In pursuit of ComReg's objectives and in accordance with the powers conferred on ComReg by the Communications Regulation Act, by Regulation 18 of S.I. No 535 of 2003 (Data Protection and Privacy Regulations) in relation to Regulation 4 of those Regulations and Regulation 23 of S.I. No 306 of 2003 (Authorisation Regulations) in relation to Condition 19.1 of the General Authorisation, ComReg proposes to issue the following directions:

### **Draft Direction 1**

Internet Access Providers are required no later than (2 weeks from the date of the Decision Notice) to recommend to their subscribers, members and users, free or low-cost hardware and/or software solutions designed to remove or render inoperable dialler programs and to block the installation of dialler programs in the future. ISPs shall effect this by sending a targeted e-mail to all registered e-mail accounts, followed by reminders at weekly intervals for a total period of 6 weeks.

The solutions recommended will, if acted upon by computer users, help to protect the dial up settings of the computer from being overwritten. However any solution of this nature can only address the current nature of dialler programs and computer users will need to remain vigilant to prevent falling victim to any future strategy which promoters of dialler programs employ.

### **Draft Direction 2**

- a) Providers of Publicly Available Telephone Services shall no later than (2 weeks from the date of the Decision Notice):
  - i. suspend direct dial access to destinations listed in the attached Appendix B. The Appendix will be reviewed on a regular basis by ComReg and the network operators and amended appropriately in response to any significant changes to problem destinations; and
  - ii. permit direct dial access to specific telephone numbers located within the destinations referred to in the attached Appendix B only at the request of a subscriber and following the network operator having verified that the requested telephone number is a voice only service.
- b) Providers of Publicly Available Telephone Services, with effect from the date of i) above, shall not charge any subscriber account for direct dial calls to destinations listed in the Appendix B unless the call invoiced was to a number unbarred under a subscriber request as detailed above.
- c) The requirements under a) and b) shall be operable for a period of six months from the date of the Decision Notice and shall lapse if not renewed or otherwise amended following a further consultation.

As noted earlier, since the beginning of 2004 ComReg has been contacted by over 200 telephone subscribers regarding excessive telephone charges arising from Autodiallers. The amounts complained of have generally ranged from €20 to €2,000 with one business subscriber incurring charges of €12,000. In proposing the measures under Direction 2, ComReg seeks to ensure that consumers are protected from incurring inadvertent call charges. ComReg also seeks to ensure that call traffic to specific locations is not completely terminated by requiring that specific numbers can be unblocked upon request. Because of the exceptional nature of the proposed direction, ComReg is proposing that the requirements operate for a period

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of six months during which time ComReg hopes to achieve a more permanent solution to this issue in conjunction with the industry. The destinations selected are those destinations which the telephone companies have informed ComReg represent the majority of complaints.

In proposing these measures, ComReg has considered various protection mechanisms that exist in other countries. In a number of countries, telephone companies have voluntarily blocked direct dialled calls to certain countries. In other administrations, legislation has been enacted or is proposed regarding the use of dialler programmes.

ComReg has also considered the possibility of individual subscribers choosing to block access to specific destinations. Currently it is possible for individual telephone users to block outgoing calls to international numbers but it is not possible to do so on a country by country basis. Because most telephone subscribers require international access, such a solution is not feasible in current circumstances.

**Q. 1. Do you agree with the measures as proposed? If not, please indicate what aspect you disagree with and the reasons for your views. Also where appropriate please indicate alternative measures to address the problem**

**Q. 2. Do you have views on the appropriateness of including any of the individual destinations listed in Appendix B**

**Q. 3. Have you views on how the destinations listed in Appendix B can be kept up to date**

### 3 Legislation

#### National Provisions

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and European legislation. The Communications Regulation Act 2002 gives ComReg a specific role regarding the protection of consumers.

In accordance with Section 10(1) of the Communications Regulation Act 2002 ComReg’s functions are inter alia

- To ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks.
- To investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks.

Section 10(3) of the Act provides ComReg with all such powers as are necessary for and incidental to the performance of its functions under the said Act.

The Authorisation Regulations<sup>1</sup>, Schedule Part A Condition 16 and Condition 19 of the General Authorisation<sup>2</sup> impose an obligation on Authorised Operators regarding the security of Public Networks against unauthorised access according to Directive 97/66/EC<sup>3</sup>.

The 2003 Data Protection and Privacy Regulations<sup>4</sup> impose the following obligations at Regulation 4:

(1) An undertaking providing a publicly available electronic communications service shall take appropriate technical and organisational measures to safeguard the security of its services, if necessary in conjunction with undertakings upon whose networks such services are transmitted with respect to network security. These measures shall ensure the level of security appropriate to the risk presented, having regard to the state of the art and the cost of their implementation.

(2) In the case of a particular risk of a breach of the security of the public communications network, the undertaking providing the publicly available electronic communications service shall inform its subscribers concerning such risk without delay and where the risk lies outside the scope of the measures to be taken by the relevant service provider, any possible remedies including an indication of the likely costs involved.

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<sup>1</sup> European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 – S.I. No 306 of 2003

<sup>2</sup> ComReg Document No 03/81

<sup>3</sup> This directive was repealed by 2002/58/EC which was implemented by national legislation by the making of the 2003 Data Protection and Privacy Regulations

<sup>4</sup> European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 – S.I. No 535 of 2003

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Regulation 18 provides ComReg with the power to issue directions to an undertaking specifying requirements to be complied with to do or refrain from doing anything relating to the obligations imposed by Regulation 4. Regulation 23 of the Authorisation Regulations also provides ComReg with the power to issue directions to an undertaking specifying requirements to be complied with to do or refrain from doing anything relating to the conditions of the General Authorisation.

In exercising its functions ComReg must have regard for its objectives which are derived from Section 12 of the Communications Act 2002, and are as follows:

In relation to the provision of electronic communications networks, electronic communications services and associated facilities

- To promote competition
- To contribute to the development of the internal market, and
- To promote the interests of users within the Community.

### **International Telecommunications Union**

Ireland is a member of the International Telecommunications Union (ITU). The legal framework of the ITU comprises the basic instruments of the Union, which have treaty status and are binding on ITU Member States. These instruments are:

- The Constitution and Convention of the International Telecommunication Union signed on 22 December 1992 (Geneva) and which entered into force on 1 July 1994, as amended by the Plenipotentiary Conference (Kyoto, 1994) and the Plenipotentiary Conference (Minneapolis, 1998).
- The Administrative Regulations (Radio Regulations and International Telecommunication Regulations), which complement the Constitution and the Convention.

Article 35 of the Constitution of the ITU provides:

"Each Member State reserves the right to suspend the international telecommunication service- either generally or partly for certain reasons and for certain periods of correspondence- put together- in order to protect the interests of the other Member States through the Secretary-General."

The proposed direction would be a suspension for certain types of correspondence, thus Ireland would be required to inform the other Member States through the Secretary General of the proposed requirement.

The Administrative Regulations referred to are the International Telecommunications Regulations 1988 which are binding on Ireland as a member of the ITU which provide at Article 7 in relation to the Suspension of Services:

55. 7.1 If a Member exercises its right in accordance with the Convention to suspend international telecommunication services partially or totally, that Member shall immediately notify the Secretary-General of the suspension and of the subsequent return to normal conditions by the most appropriate means of communication.

56. 7.2 The Secretary-General shall immediately bring such information to the attention of all other Members, using the most appropriate means of communication.



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The provisions of the International Telecommunications Regulations supplement the International Telecommunication Convention, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for world-wide telecommunications.

### **General Agreement on Tariffs and Trade (GATT)**

The proposed direction may impact on Ireland's obligations as provided for under the General Agreement on Tariffs and Trade (GATT) to which Ireland is a signatory; these obligations include the elimination of obstacles to trade and the maintenance of open telecommunications networks. There are also various bi-lateral trade and developmental aid agreements between the EU and the countries/States referred to in Appendix B or directly between Ireland and those countries/States which may be impacted by the proposed action. Through the relevant Government Departments, ComReg intends to address any implications that compliance with the direction might raise under these various agreements.

This consultation document is based on the existing electronic communications regulatory regime and is in accordance with the objectives of the Commission as set out in Section 12(1) and 12(2)(c) of the Communications Regulation Act 2002.

#### 4 Requests for Views

ComReg is requesting views from interested parties on the specific measures set out in Appendix A of this paper.

ComReg's normal period for consultations is four weeks. In providing for public consultation, ComReg attempts to strike a reasonable balance between the need for adequate input and the need for swift decision-making. In our statement of consultation procedures –Doc 03/31 ComReg pointed out that the timescale allowed may be different in some cases. In particular, we indicated that a shorter period may be proposed where there is an urgent need to implement measures. ComReg considers that this is the case as consumer welfare is being adversely affected by the absence of additional measures by Internet Access Providers and Providers of Publicly Available Telephone Services.

Accordingly the consultation period will run from 28 July 2004 to 20 August 2004 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will issue the Direction with or without amendment as appropriate. In addition ComReg will publish a report on the consultation.

ComReg appreciates that some of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential in accordance with ComReg's obligations.

**Please note,** ComReg will publish all submissions on its website, excluding any confidential material provided that it is indicated as such and supplied as an annex to submissions. ComReg will not reference or repeat defamatory statements or other material which might expose the Commission to possible legal action which could result from the publication of such submissions. However, all submissions will be made available in their entirety (with the exception of confidential information) for public inspection upon reasonable request at ComReg's offices.

## Appendix A – Draft Direction

### **Draft Direction 1**

Internet Access Providers are required no later than (2 weeks from the date of the Decision Notice) to recommend to their subscribers, members and users, free or low-cost hardware and/or software solutions designed to remove or render inoperable dialler programs and to block the installation of dialler programs in the future. ISPs shall effect this by sending a targeted e-mail to all registered e-mail accounts, followed by reminders at weekly intervals for a total period of 6 weeks.

### **Draft Direction 2**

- a)** Providers of Publicly Available Telephone Services shall no later than (2 weeks from the date of publication of decision):
  - i. suspend direct dial access to destinations listed in the attached Appendix B. The Appendix will be reviewed on a regular basis by ComReg and the network operators and amended appropriately in response to any significant changes to problem destinations; and
  - ii. permit direct dial access to specific telephone numbers located within the destinations referred to in the attached Appendix B only at the request of a subscriber and following the network operator having verified that the requested telephone number is a voice only service.
- b)** Providers of Publicly Available Telephone Services, with effect from the date of i) above, shall not charge any subscriber account for direct dial calls to destinations listed in Appendix B unless the call invoiced was to a number unbarred under a subscriber request as detailed above.
- c)** The requirements under a) and b) shall be operable for a period of six months from the date of the Decision Notice and shall lapse if not renewed or otherwise amended following a further consultation.

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### Appendix B –Destinations for which Direct Dial Facilities are to be suspended

| <b>Destination</b>    | <b>Code</b> |
|-----------------------|-------------|
| Norfolk Island        | 00 672      |
| São Tomé and Príncipe | 00 239      |
| Cook Island           | 00 682      |
| Tokelau               | 00 690      |
| Diego Garcia          | 00 246      |
| Wallis and Futuna     | 00 681      |
| Nauru                 | 00 674      |
| Tuvalu                | 00 688      |
| Comoros               | 00 269      |
| Kiribati              | 00 686      |
| Solomon Islands       | 00 677      |
| Mauritana             | 00 222      |
| French Polynesia      | 00 689      |