



**Australian Mobile
Telecommunications
Association**

Commonwealth Consumer Affairs Advisory Council

December 2012 Issues Paper:

"App purchases by Australian consumers on mobile and handheld devices"

AMTA Submission - 31 January 2013

Introduction

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including Mobile carriers, Mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

AMTA welcomes the opportunity to provide comments to the Commonwealth Consumer Advisory Council's (CCAAC) inquiry into the experiences of Australian consumers when making app purchases on mobile and handheld devices.

AMTA notes that this submission is also endorsed by [Communications Alliance](#), the primary telecommunications industry body in Australia.

Features and Trends of App Markets

AMTA endorses the CCAAC's analysis that shows the global app market is dynamic and growing and that apps are both easily accessible and affordable for Australian consumers.

AMTA notes that Australians have rapidly adopted smartphone technology with half the population now using smartphone technology¹ with apps being readily adopted.

Unlike other goods and services produced overseas, the global app market is readily accessible to Australians via the ubiquity of the internet. This coupled with Australian's high adoption rate for smartphone technology² means that Australians are readily able to benefit from the innovation of the global app market as well as pricing benefits due to the competitive nature of Australia's domestic mobile market. Apps are both easily accessible and affordable.

A recent report into the app market³ found that nearly all of the global app stores doubled their number of available apps in 2011. The report also found that the seven major app stores combined offer more than one million apps for download, with 2011 the year where in-app purchases and the 'freemium' business model discussed below become an important monetization strategy for developers.

Free, Freemium and Premium Apps

A large percentage of apps are free. Popular free apps include social media apps, such as Facebook, VOIP apps such as Skype, as well as games, such as Angry Birds. Utility apps, particularly for weather and mapping services are also extremely popular.⁴ AMTA notes that Government agencies have also developed useful apps such as the Attorney-General's Department's 'DisasterWatch' app which has proven popular to improve access to disaster information on a mobile platform during natural disasters.⁵

¹ [Telstye](#), 14 June 2012 - "[Half the population using a smartphone..](#)"

² Ibid.

³ Distimo Publication Full Year 2011, by Heindrik Koekkoek, 2011

⁴ <http://www.gizmodo.com.au/2012/03/the-most-popular-iphone-and-ipad-apps/>

⁵ <http://www.em.gov.au/Resources/Pages/DisasterWatchPhoneApp.aspx>

The Distimo report shows that the ‘freemium’ model for marketing apps is increasing in size.⁶ Such apps are free to purchase but may offer in-app purchasing, including costs for additional features and may include advertising.

Other apps, known as ‘premium’ apps have an upfront purchase cost but may actually cost a consumer less over time as they use the app in comparison to a ‘freemium’ app and rarely include advertising. Premium apps are still generally low cost items with prices, on average, ranging from a few cents to a few dollars.

Industry roles in the app market

App Developers develop apps and generally have a contractual arrangement with an app store such as GooglePlay, iTunes or BlackBerry World so that the app they develop can be retailed.

App Stores such as GooglePlay, iTunes and BlackBerry World provide online stores where mobile phone and other device users can locate, review, and either download for free or purchase an app. Customers establish an account with the app store. Customers can then make payments online on their account by using a credit card, prepaid voucher or in some circumstances, where mobile carriers have contractual arrangements with app stores, bill an app to a post-paid mobile account or deduct the cost of an app from a pre-paid mobile account balance.

Mobile Carriers and Carriage Service Providers sell mobile services to customers. Customers generally have a billing relationship with their mobile carrier or service provider (with the exception of mobile pre-paid services). Also apps can be billed to a customer’s post-paid mobile bill or deducted from a pre-paid mobile credit balance. This option is generally limited to digital services such as games, information services, productivity tools, location services or other entertainment.

In reality, mobile carriers and carriage service providers have very limited control or even visibility of the content or type of apps purchased by their mobile customers as most apps will be purchased by the customer directly from an online App store such as Apple’s iTunes, BlackBerry World or Google Play.

Mobile carriers may also have proprietary app stores or provide apps that can be downloaded from company websites. Such apps often include utility apps to allow for account management, usage monitoring or parental control apps to enable parents to monitor and control children’s use of the internet and other mobile phone functions.

For example, the Vodafone Guardian for Android App is a parental control app that enables parents to monitor and control their children’s purchase of mobile apps and it can be used on compatible Android mobile devices, regardless of the customer’s chosen mobile network.

⁶ Distimo Publication Full Year 2011, by Heindrik Koekkoek, 2011

Australian Consumer Experiences

AMTA is aware of concerns raised by ACCAN regarding the way some apps are supplied and marketed, particularly apps that allow in-app purchasing that are marketed primarily to children.⁷

AMTA acknowledges that there is a gap in consumer awareness that needs to be promptly assessed and targeted mechanisms developed by relevant sectors of the app industry.

AMTA has proactively made efforts (see box below) to raise consumer awareness of how parents can prevent bill shock associated with in-app purchasing by children.

AMTA recommends strongly that parents and carers supervise and manage access to mobile devices, for example by locking handsets, which may be accessible or used by children or other minors.

AMTA also suggests parents avoid linking credit card details to app store accounts that children or other minors may use.

AMTA's tips for parents on managing in-app purchases:

- Do not share any account passwords or PINs with your child that will allow them to make purchases from your mobile.
- Do not allow your child to use an app store or iTunes account that is linked to a credit card. Instead create another unlinked account just for them and protect your linked account with a password or PIN.
- Consider providing your child with a voucher for iTunes or another app store to limit your child's ability to download apps or make in-app purchases.
- There are also several ways parents can implement controls on mobiles or app accounts:
 - Sometimes spend limits can be set for an account, either by contacting your mobile service provider or when you set up the app store account.
 - If you use an android mobile device, there are general parental control apps available for download, such as the Vodafone Guardian app for android which enables parents to set parental controls, including restricting the download of apps.
- Blackberry smartphones have features that give parents the ability to control and restrict their children's use of various services and apps, including installation of third party apps. For information and use of parental controls on Blackberry devices please refer to [Turn on Parental Controls](#),
- iPhone users can [visit Apple's website](#) to find out how to set up parental controls on their iPhone or other Apple devices, including setting the timeframe before a password is required for any in-app purchases (the default setting is 15 minutes).

⁷ <http://www.abc.net.au/lateline/content/2012/s3592166.htm>

Parents are also encouraged to take advantage of the range of services and applications provided by their mobile provider which can prevent access to particular services on mobile phones:

Mobile Carrier Apps to assist consumers

Optus:

- The Optus Application Store has [FAQ](#) that includes information about apps and the charges that may apply for downloading and using apps on an Optus mobile.
- Customers can download the [My Optus App](#) to provide 24/7 access to their mobile account and usage information.

Telstra:

- Information on [Telstra's website](#) tells customers about Telstra's 24 x 7 App which enables customers to access their account information from their mobile and access online support.
- Customers that purchase Apps that are billed to their Telstra account can also access additional information on Telstra's website - '[Bill My Telstra Account](#)' option for GooglePlay including FAQs.
- And information on Telstra's Customers Terms for data services can be found [here](#) (please see Part G – Data Services, Section 28 on page 212)
- Telstra customers can also purchase preinstalled apps (e.g. mobile games) from the [BigPond mobile portal for Android devices](#). The customer selects a game and sees a screen showing an editorial overview of the content, rating and cost information. The customer can select 'Buy' and are then asked to confirm their decision and download and pay for content.

Vodafone:

- The [Vodafone Guardian App for Android](#) can be downloaded and used on compatible Android mobile devices, regardless of the mobile network used by the customer. The Guardian App enables parents to monitor and control the purchases of Apps by children.
- The [My Vodafone App](#) can also be downloaded from Vodafone's website or My Vodafone features can be used via the web to track usage and spending.

AMTA also notes that apps are generally downloaded by mobile customers directly from an app store that provides consumer information.

For example, BlackBerry (RIM) has a parental control and online safety policy [available online](#) and the Blackberry World store has a [parental control application available for download](#) which enables additional controls and functionality for parents to be able to restrict access on the device.

Similarly, the Google Play store has consumer information included on its website in the form of '[Buying Apps](#)' - that explains charges, payment information, carrier billing, how to report abuse, cancellations, returning apps and other information about subscriptions and using gift cards.

The Google Play store also has information about '[Refund, Comment and Content Policies](#)' which included its '[In-App Purchase Policy](#)'. And customers are able to contact Google Play directly from the store's website.

Adequacy of information being disclosed before and after the app is downloaded

AMTA agrees that consumers need to be supplied with adequate information about the price and charging model for an app prior to the purchase or download of the app.

While mobile carriage service providers have limited visibility or control of the vast majority of apps that their customers download, they have greater control when a customer downloads an app from a carrier website or contracted app store. In these cases, the mobile carriers are able to enforce strict consumer protections via contractual arrangements that cover processes including:

- payment;
- spend limits;
- purchase confirmation;
- customer service and complaint handling; and
- content standards.

Where a customer elects to bill a charge for an app to their mobile account there are strict consumer protection policies in place that are modelled on the Mobile Premium Services code, the Telecommunications Consumer Protections (TCP) Code and Australian Consumer Law.

For example, [Telstra](#) provides Google Play apps to its customers by pre-loading the Google Store on android devices. Consumer protections put in place by Telstra include:

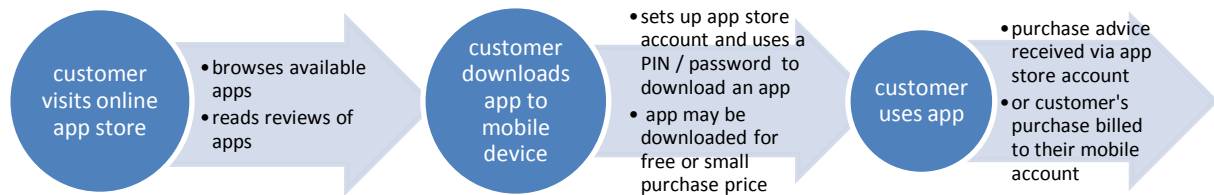
- Default spending limit of \$20 per transaction and \$100 per month (post-paid customers) and \$500 per month (prepaid customers);
- Applies to digital content only and not physical goods;
- Customers can get a refund if they download an Android app but then change their mind and want to return it. There is a refund button within the app and customers won't be charged as long as they return the app within 15 minutes; and
- Customers are advised to contact the merchant or Google Play with respect to complaints or requests for refunds.

Similarly, Optus contractually enforces the following consumer protection mechanisms with app store partners, for example, BlackBerry (RIM) where a customer elects to directly bill an app purchase to their post-paid mobile account or deduct it from their pre-paid balance:

- **Payment:** pages must include: price; helpline number; purchase button; 'cancel' or 'back option'; and a terms and conditions hyperlink;
- **Subscription:** sign up includes: disclosure of the recurring nature of the product or service, the word 'subscribe', 'subscription' ; or 'subscribe now'; charge period; quantity; and define any free period;
- **Spend Alerts:** mandatory \$30 spend notifications;
- **Spend Limits:** mandatory per transaction limit of \$50 and a default monthly spend limit of \$200, with customers able to elect a monthly spend limit;
- **Confirmation:** customers confirm charge or subscription via SMS or online, with customers notified of charge failure and unsubscribe confirmation via SMS;

- **Complaint Handling:** established processes for complaint handling by Optus Customer Care and escalation to TIO used;
- **Content Standards:** content standards and restricted access policies apply; and
- **Other:** external compliance audits against contractual obligations apply with escalated breach process, from withholding payment to contract termination.

How a typical app transaction takes place:



Current protections available to consumers

AMTA notes that current consumer protections for app purchases currently exist in the legal framework as set out in the issues paper, namely:

- Contract law, including in relation to the legal capacity of minors;
- *Electronic Transactions Act 1999 (Cth)*;
- State and territory sale of goods laws (e.g. the Goods Act 1958 (Vic));
- State and territory laws in relation to minors who enter into contracts;
- Laws relating to pre-contractual conduct and disclosure obligations e.g. National Consumer Credit Protection Act 2009 (Cth);
- Privacy legislation;
- Australian Consumer Law; and
- Industry specific regulation such as the Mobile Premium Services Industry Code and the Telecommunications Consumer Protections (TCP) Code.

AMTA notes that the industry specific TCP code, that is registered with and enforced by the ACMA, sets and regulates consumer protection standards and is a supplement to the broad body of consumer and contract law.

AMTA notes that many overseas manufacturers and app store providers have taken steps to put in place consumer protections and options on a proactive and self-regulating basis, often in response to consumer concerns being raised.

For example:

- BlackBerry (RIM) has in place controls and restrictions on its devices that enable parents to control the purchase of apps, including third party apps.⁸
- Google Play 3.1 requires users to enter a PIN when making an app or in-app purchase.

⁸ [How to set BlackBerry parental controls](#)

- While iTunes does require a password for purchases on its app store, the default password setting is “persistent”. That is, once the password has been entered then any purchases made within the next 15 minutes can be completed without the password being re-entered. AMTA notes that this default setting can be changed by users.⁹

However, AMTA recognises that many apps are provided for sale in Australia by companies that are based overseas, do not have an Australia related entity and have not taken steps to put into place consumer protection advice. This raises a jurisdictional issue regarding the enforcement of Australian consumer protection laws and regulations.

Actions that can be taken by consumers, industry and Government to improve consumer experiences

As stated above, AMTA acknowledges that there are valid consumer concerns in relation to the way some apps and in-app features are marketed or supplied to customers.

AMTA suggests that the CCAAC consider recommending:

- reviewing the recently instigated *Cooperative Arrangement for Complaints Handling on Social Networking Sites*¹⁰ and consider its usefulness as a model for how the Australian Government could engage with app store providers who may lie outside the Government’s jurisdiction to develop arrangements to improve the quality and scope of customer information.; or
- supporting initiatives such as the ‘Coalition to make the Internet a better place for kids’ and encourage industry to work together to create a self-regulatory standard for consumer protections that work across jurisdictions.

AMTA is committed to improving industry efforts to raise consumer awareness of the available controls, restrictions and protections that are available on various platforms and mobile devices.

AMTA submits that a large part of the problem is a lack of awareness of existing safeguards and that for example, many parents are unaware of the controls available to them on various App stores or devices that allow them to limit purchases and/or spending by children. This is due partly to the dynamic and rapidly expanding market and as the app market matures it can be expected that consumer awareness levels will rise.

Also, AMTA is committed to more widely communicating its mobiletips.org.au website that contains tips for parents regarding in-app purchases.

AMTA notes that the US Federal Trade Commission’s report, *Mobile Apps for Kids: Current Privacy Disclosures are Disappointing* found that there was a lack of information available to parents prior to downloading apps.

⁹ <http://www.cultofmac.com/201559/re-enable-password-check-in-ios-6-to-avoid-nasty-in-app-purchase-surprises-ios-tips/>

¹⁰ http://www.dbcde.gov.au/_data/assets/pdf_file/0004/160942/Cooperative_Arrangement_for_Complaints_Handling_on_Social_Networking_Sites.pdf

The report acknowledged that only the providers of app stores are able to provide parents with the appropriate information prior to downloading an app as mobile service providers rarely have visibility of the transaction involved when a customer downloads an app from an online app store.

AMTA notes that the FTC's follow up report, *Mobile Apps for Kids: Disclosures still not making the grade* recommended the following be considered by industry:

- *“Incorporating privacy protections into the design of mobile products and services;*
- *Offering parents easy-to-understand choices about the data collection and sharing through kids' apps; and*
- *Providing greater transparency about how data is collected, used, and shared through kids' apps.”¹¹*

AMTA notes that any review of privacy issues in relation to mobile apps should be considered within the context of the current privacy law reform process.

Australian mobile carriers have taken steps to provide consumer protection information to their customers and also provide apps and services to assist customers in monitoring and controlling their app purchases.

They have also developed options for parental control, including apps and the ability for parents to set limits or prevent the purchase of apps or in-app purchases by children. Further the TCP Code sets and regulates consumer protection standards for mobile services.

AMTA concludes that further regulation of mobile service providers is not warranted in relation to the mobile apps market in Australia, but recommends that the CCAAC recommend:

- Further education and awareness campaigns to increase awareness of existing safeguards provided by mobile carriers, mobile device providers and app stores;
- Engagement with app store providers under either:
 - the model of the Cooperative Arrangement for Complaints Handling with Social Networking Sites to ensure that any gaps in consumer awareness and education are appropriately addressed, or
 - initiatives such as the 'Coalition to make the Internet a better place for kids' and encourage industry to work together to create a self-regulatory standard for consumer protections that work across jurisdictions.

AMTA would be happy to discuss any of the above with the CCAAC and any questions relating to this submission can be directed to Lisa Brown, Policy Manager, AMTA at lisa.brown@amta.org.au or on (02) 6239 6555.

¹¹ FTC Dec 10, 2012 <http://www.ftc.gov/opa/2012/12/kidsapp.shtm>