

The background is a collage of four photographs, all tinted with a warm orange color. The top-left photo shows a man in a baseball cap and apron smiling while looking at a mobile phone. The top-right photo shows a woman in a headscarf smiling broadly while holding a mobile phone to her ear. The bottom-left photo shows a woman in a floral patterned dress looking down at a mobile phone. The bottom-right photo shows a man in a cap talking on a mobile phone while sitting in a boat, with another person in the background.

Mobile For Development
Legal considerations for partnerships between
mobile operators & start-ups

DECEMBER 2016



The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with almost 300 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading events such as Mobile World Congress, Mobile World Congress Shanghai, Mobile World Congress Americas and the Mobile 360 Series of conferences.

For more information, please visit the GSMA corporate website at www.gsma.com

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Mobile for Development

Mobile for Development brings together our mobile operator members, the wider mobile industry and the development community to drive commercial mobile services for underserved people in emerging markets. We identify opportunities for social, economic impact and stimulate the development of scalable, life-enhancing mobile services.

For more information, please contact us:
Web: www.gsma.com/mobilefordevelopment
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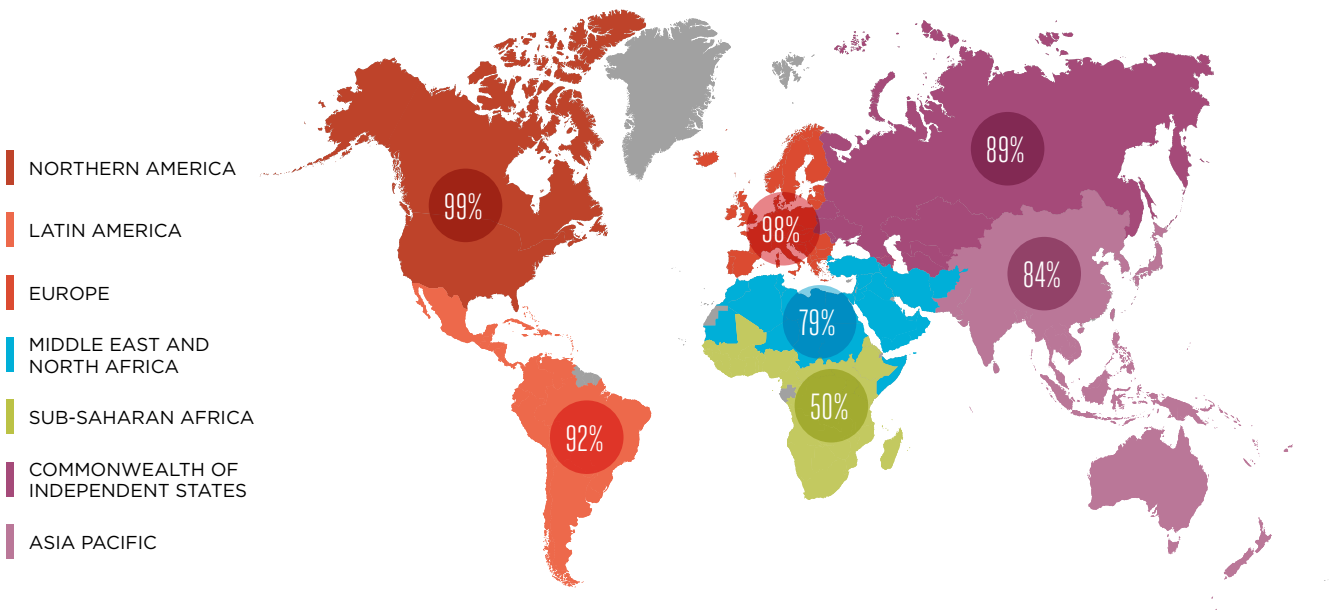
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Introduction

Thanks to widespread and rapid adoption, mobile technology is uniquely positioned to drive economic, environmental and social change at a global scale. This presents opportunities for both mobile network operators (MNOs) and innovators in emerging markets.

Mobile broadband (3G & 4G) coverage Q3 2016

Source: GSMA Intelligence



2bn PEOPLE

LACK ACCESS TO FORMAL FINANCIAL SERVICES



2bn PEOPLE

LIVE IN SMALLHOLDER SETTLEMENTS AND DEPEND ON AGRICULTURE FOR THEIR PRIMARY SOURCE OF INCOME



1.8bn

PEOPLE LACK ACCESS TO IMPROVED SANITATION



262m

PEOPLE LACK ACCESS TO AN IMPROVED DRINKING WATER SOURCE



643m

PEOPLE IN LOW-INCOME COUNTRIES LACK ACCESS TO ELECTRICITY



WHEN

90%

OF THE GLOBAL POPULATION IS COVERED BY 2G NETWORKS, WITH A GROWING NUMBER OF PEOPLE HAVING ACCESS TO FASTER MOBILE BROADBAND (3G & 4G) SERVICES

To open up untapped markets and fight declining average revenue per user (ARPU), pioneering MNOs are exploring new business models which offer affordable services with socio-economic benefits to users - such as access to financial, utility and agricultural services - as well as driving commercial benefits for the MNOs, such as increased customer loyalty, brand recognition and revenue growth. Simultaneously, innovators across emerging markets are creating mobile-enabled solutions that serve market needs, building new businesses, benefiting consumers and bolstering emerging market economies. Partnerships that leverage mobile network operator (MNO) assets over and above the vital, basic connectivity they offer – assets such as billing relationships with large subscriber bases, marketing channels and distribution networks – along with the innovative ideas of mobile-enabled start-ups – new businesses in their entrepreneurial early stages - will be key to realising the full potential of mobile for commercial and social impact.

Over the last decade, the GSMA Mobile for Development team has worked extensively with start-ups seeking partnerships with MNOs, directly through its various innovation funds covering utilities, agriculture, Women's Services and mobile money, as well as more broadly through research, convening and thought leadership. The team has seen that often start-ups lack in-depth understanding of the mobile industry, as well as access to legal counsel. Conversely, the MNOs seeking to innovate through such a partnership with a start-up often have set legal procedures and requirements, which the start-ups know little about, leading to delays in the contracting process and extra work for the MNO legal team. With the launch of the GSMA Ecosystem Accelerator, which aims to scale innovative and sustainable mobile services in emerging markets through partnerships between operators and innovators, we will continue to build on the work our team has done in this area.

The GSMA seeks to help start-ups be more prepared for legal negotiations with MNOs by offering the following concise points for consideration.

This is by no means an exhaustive list and is intended to be a living document, on which the GSMA Mobile for Development teams can build as their work progresses. In discussion with legal counsels at MNOs, the importance of understanding what kind of relationship a start-up really needs with an MNO came up repeatedly, as did the importance of clearly outlining the business case and building testing phases and clear milestones into project plans agreed with the MNOs. However, as these topics will be covered in later publications by the Ecosystem Accelerator team, this document focusses purely on core legal issues.

Please share your thoughts and suggested additions to m4d@gsma.com or <http://www.gsma.com/mobilefordevelopment/contact-us>.



1. Confidentiality

How are you going to maintain confidentiality?

MNOs want their strategy and planned activities to be confidential from competitors and the wider market until they are ready to communicate them. Start-ups want their business/product idea to be safe from theft or copying. Before embarking on discussions with any potential partner, both start-ups and MNOs should protect their idea, technology and/or brand by registering it with the local patent office or asking the contact to sign a non-disclosure agreement (NDA) (common practice with most operator legal departments). An NDA, also known as a confidentiality agreement (CA), confidential disclosure agreement (CDA), proprietary information agreement (PIA), or secrecy agreement (SA), is a legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to or by third parties.



2. Intellectual property

Who owns the IP, patent or trademark for your technology, product, service or brand name? If it is not the start-up, does the start-up have adequate licensing for it? For how long? If the MNO requests new functionality, does it then have a right to a share of the IP?

Maintaining intellectual property is rightly a key area of concern for start-ups; it is also vital for MNOs to protect their own IP, logo and brand. Being very explicit in the contract about who owns what and the role the MNO will play in any development of the technology or service will give as much protection as possible to the innovator, as well as protecting the MNO from imputations against its integrity.



3. Exclusivity

Do you want exclusivity with the MNO? Are you replicating a model used elsewhere? What are the benefits to you and the MNO of exclusivity in this partnership?

Exclusivity means working with just one MNO in the market. There may be advantages to this: MNOs benefit from being the only player in the market able to offer the product/service; start-up secure the backing of an important corporate player. However, it also limits scale for the start-up and undermines long-term profitability of the service for the MNO, because the more cross-network demand there is, the more MNOs can differentiate themselves on their strengths of marketing and distribution and the more likely it will grow and contribute sustainably to the MNOs' bottom line.

Start-ups approaching MNOs for a partnership want to maximise scaled access to customers, which of course is part of what attracts them to MNOs in the first place. They also want to stimulate demand for their service in the market as much as possible, meaning exclusivity may limit their growth long-term and reduce opportunities for MNOs to leverage their innovation.

It may be useful to agree exclusivity with one MNO in the market for a set period of time, with the option for the start up to enter into agreements with other MNOs after this time. Be clear in discussions of the rationale and express this arrangement in terms of the benefits to both parties. If exclusivity is agreed, clarify if this exclusivity is at market level (e.g. MTN Nigeria) or group level (across the whole of MTN's footprint).



4. Liability

Which party is responsible by law for what activities or deliverables?

A Service Level Agreement (or SLA) is the part of a contract which defines exactly what services a vendor or service provider will provide and the required level or standard for those services. Most vendors to MNOs will have an SLA with their client MNOs, to which they will be held liable, or 'responsible by law.' For example, vendors are often responsible for licensing content, credibility and giving options to unsubscribe; MNOs are responsible for providing reliable coverage to enable the service to operate and marketing the service through certain of their channels.

MNOs are often seen as the face of any service offered through their networks, so if something goes wrong they will do all they can to protect their customers and their brand reputation. They want liability clauses in contracts that enable them to do this effectively.

Liability provision will look very different dependent on the service in question. For example, a health information service that has the potential to affect people's health and wellbeing will require much more stringent content and credibility service levels than perhaps would a service offering pure entertainment such as sports scores. Liability provision will also depend on how many of the MNOs assets are engaged: the more assets and the more publically recognisable they are e.g. the MNO's brand colours or logo, the more the vendor will be likely be liable for.

Make sure you understand where liabilities fall in the chain, make these explicit in contracting and consider liability insurance if this is appropriate to your organisation.



5. Regulatory

Do you need any approvals from governments, regulators? Have you achieved these yet?

Telecommunications is a regulated industry and therefore strictly monitored by governmental bodies. MNOs need to ensure any activity they engage in complies with relevant regulation. To facilitate legal discussions with an MNO, it is key to demonstrate you understand the regulatory environment for your product, service or business and if relevant, to demonstrate progress on or the achievement of regulatory approvals. MNOs can support start-ups by being clear from the outset what areas of compliance a partnership may touch on, to enable the start-up to address these properly and in good time.

If a start-up's product is in an adjacent sector that may support other national governmental objectives e.g. in health, education or utility access, this may support the proposition to the MNO, as building sound governmental relationships is in the company's interests.



6. Privacy

What measures are in place to secure the personal data of the users and the corporate data of the MNO? Do you know where you can legally store subscriber data, in what format and for how long? What data can each party access from the other? How can this data be used?

MNOs make stringent efforts to protect their customers' data, and need to ensure that privacy risks are considered when designing new apps and services and allowing access to APIs, as well as developing solutions that provide consumers with simple ways to understand their privacy choices and control their data. Demonstrating how your product, service or business supports this aim will in turn support your legal discussions with MNOs.

Each party should be clear about what data the other can access and how it can be used.

If non-sensitive customer data is shared for commercial purposes, it must always be shared with customer consent and in line with local regulation.



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