

(6)

Katherine Vander

From: [REDACTED]
Sent: 05 March 2008 11:02
To: Katherine Vander
Cc: [REDACTED]
Subject: RE: Phorm and targeted online advertising

Katherine

The BT Webwise service (as the BT service will be called in which we use the Phorm software and Phorm's services) will be trialled from 12th March to 16 April in the Kingston area. We will be targeting around 25,000 BT Broadband customers with the aim of getting 10,000 signed up users of the BT Webwise service.

The way in which we target the customers will be way of an interstitial that will pop-up the first time (on or after 12 March) that they use their browser. The interstitial will give them information about the service, tell them about the new ts and cs and privacy policy that will apply if they elect to use the service and ask them to click yes or no to indicate their choice. I attach a copy of this "invitation interstitial" (this page is still being worked on, for example the "please note..." wording at the bottom will be moved above the buttons, but in general this will be the page)

Only customers who elect to go on the service will be provided with targeted advertising and it's only those customers whose web searching will be profiled. Nothing will change to the way the BT Broadband service is provided today to those customers who do not wish to join the trial.

During this trial we will be assessing its success. Dependant on that we will work towards a wider roll-out of the service after the trial. The business is still reviewing the ways in which to undertake this wider roll-out and I will let you know more about that when I have the detail.

Please let me know if you have any questions.

Kind regards,

From: Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]
Sent: 03 March 2008 18:27
To: [REDACTED]
Subject: Phorm and targeted online advertising

[REDACTED]

I would be grateful for your help with some information as a follow up from our meeting.

When we met you mentioned that BT were going to trial a targeted online advertising product. We have also now spoken to Phorm (who I understand are the company involved) about their product.

You may be aware that there is currently quite a lot of interest in the privacy implications of this product and we are now receiving a significant number of enquiries from people about it. In light of this it would be very

20/06/2008

helpful if you could confirm when your trial is due to commence (I think you mentioned a timescale in the meeting but unfortunately I have not got a note of it), and when you intend to contact customers involved in the trial about it?

I am happy to discuss this on the phone tomorrow if that is easiest for you (01625 545843)

Many thanks for your help

Katherine

Katherine Vander
Casework and Advice Manager

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20/06/2008



Personal

You're Invited to Switch On BT Webwise

New, Free Online Protection from BT!

Webwise
www.webwise.bt.com

As a BT Total Broadband customer, we'd like to offer you the chance to try an exciting new service from BT called BT Webwise.

When switched on, BT Webwise:

- Provides extra protection from fraudulent websites designed to steal your personal details through "phishing" - e.g., fraudsters impersonating bank websites.
- Reduces the number of irrelevant adverts you see on participating websites.

If you would like to try BT Webwise, your data will be held in line with an amended BT Privacy Policy and you will be subject to amended BT Total Broadband Service Terms which can be viewed on www.bt.com/webwise. You may want to print these off or bookmark the www.bt.com/webwise link.

All these features are offered completely free with your BT Total Broadband package, and you are not required to download or install any software. If you change your mind later on, just visit www.bt.com/webwise to switch off BT Webwise.

Switch On Webwise protection

No

Find Out More

Please note that if you delete your cookies, you will be asked to switch on BT Webwise again.

Katherine Vander

92

From: Katherine Vander
Sent: 17 March 2008 14:11
To: [REDACTED]
Subject: Update on BT webwise

[REDACTED]
Apologies for contacting you again about this issue.

As you will be aware there has been an increasing level of public/media interest in Phorm and their product and we are still getting a large number of concerns raised with us about various issues connected with it. We appreciate that some of the concern is based on a lack of awareness about the basis on which ISP's will be using it, however we are also receiving a significant number of very technical queries from individuals, and queries from those who are simply concerned about the way this product operates and the involvement of Phorm.

I assume that BT will have received some queries directly and that you will also be aware of the press interest. We would be interested to know whether you are receiving feedback directly from customers about your trial (and what the nature of this feedback is) and whether BT are considering making any changes to your plans/timescales for continuing the trial and the roll out of this product on a wider scale in light of the interest/concern?

Many thanks

Katherine

Katherine Vander
Casework and Advice Manager
01625 545843

(15)

Katherine Vander

From: [REDACTED]
Sent: 18 March 2008 18:08
To: Katherine Vander
Cc: [REDACTED]
Subject: RE: Update on BT webwise

Katherine

No apologies necessary. Indeed, I should apologise to you for failing to keep you up to date. Things are moving so fast though, it is hard to keep up.

We have had to postpone the launch of the trial. As a result we do not have any live customers on the service at the moment. It now looks like the trial will commence in the first week of April. The trial will take place in the manner I detailed in my mail to you earlier this month. Also, it is still the plan to assess the trial before deciding how to roll the service out to a wider customer base. As per my earlier mail, I shall let you have the detail of the wider roll-out the moment I have it.

Although the trial has not launched we too have had a number of queries from our customers. Even now, before trial commencement, we are taking note of the nature of the queries in our contemplation of how to roll the service out post trial.

So we can have a complete idea of the interest the service has attracted, could you let me know how many queries you have received from individuals relating to the Phorm service?

Let us know if you would like [REDACTED] and I to come up to to see you to go through the details of the service with you (perhaps once we have launched the trial). If you would like us to do so, we suggest we bring a member of the BT Webwise project team with us.

kind regards,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@lco.gsi.gov.uk]
Sent: 17 March 2008 14:11
To: [REDACTED]
Subject: Update on BT webwise

[REDACTED]

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As you will be aware there has been an increasing level of public/media interest in Phorm and their product and we are still getting a large number of concerns raised with us about various issues connected with it. We appreciate that some of the concern is based on a lack of awareness about the basis on which ISP's will be using it, however we are also receiving a significant number of very technical queries from individuals, and queries from those who are simply concerned about the way this product operates and the involvement of Phorm.

20/06/2008

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Katherine

Katherine Vander
Casework and Advice Manager
01625 545843

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20/06/2008

(44)

Katherine Vander

From: Katherine Vander
Sent: 19 March 2008 18:35
To: [REDACTED]
Subject: RE: Update on BT webwise

[REDACTED]

Many thanks for getting back to me. I have not got a specific number for written complaints yet as we have unfortunately got substantial administration backlogs, however our helpline have reported 15+ calls a day about it over the last 2-3 weeks so it is a significant issue in terms of volume for us (especially as that is based simply on media reports).

We are speaking to Phorm again tomorrow so hopefully will be in a position to update you after that. Thank you for your offer to come up here again. We'll let you know if that seems likely to be necessary.

Kind regards

Katherine

Katherine Vander
Casework and Advice Manager

-----Original Message-----

From: [REDACTED]
Sent: 18 March 2008 18:08
To: Katherine Vander
Cc: [REDACTED]
Subject: RE: Update on BT webwise

Katherine

No apologies necessary. Indeed, I should apologise to you for failing to keep you up to date. Things are moving so fast though, it is hard to keep up.

We have had to postpone the launch of the trial. As a result we do not have any live customers on the service at the moment. It now looks like the trial will commence in the first week of April. The trial will take place in the manner I detailed in my mail to you earlier this month. Also, it is still the plan to assess the trial before deciding how to roll the service out to a wider customer base. As per my earlier mail, I shall let you have the detail of the wider roll-out the moment I have it.

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Let us know if you would like [REDACTED] and I to come up to to see you to go through the details of the service with you (perhaps once we have launched the trial). If you would like us to do so, we suggest we bring a member of the BT Webwise project team with us.

kind regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19/06/2008

From: [REDACTED]
Sent: 27 March 2008 16:42
To: [REDACTED] Phil Jones; [REDACTED]
Cc: Katherine Vander; Lee Taylor
Subject: RE: Phorm update

Regards.

From: [REDACTED]
Sent: 27 March 2008 16:10
To: Phil Jones; [REDACTED]
Cc: [REDACTED]; Katherine Vander; Lee Taylor
Subject: RE: Phorm update

Thanks for this.

Is this ok?

Thanks,

Please find the conference call details below for your call tomorrow at 3.15pm.

20/06/2008

[REDACTED]

[REDACTED]

From: Phil Jones [mailto:Phil.Jones@ico.gsi.gov.uk]

Sent: 27 March 2008 15:25

To: [REDACTED]

Cc: [REDACTED] Katherine Vander; Lee Taylor

Subject: RE: Phorm update

[REDACTED]

Thanks for this. As you know we were interested to know how things went with [REDACTED] before responding to FIPR's open letter which we will do next week. We also have queries from some MPs to respond to.

We would certainly be interested in Phorm's detailed comments on the FIPR letter/assertions, including the question of whether the fact that participating ISPs apparently copy and profile the url and content of the web pages their subscribers are accessing (presumably viewing the content marginally before the subscriber) - and share some of that info with Phorm (albeit that Phorm retain little of the info other than fleetingly) - constitutes an interception within the meaning of RIPA. We are not experts in the interpretation of RIPA but understand that Phorm spoke to [REDACTED] at the Home Office about this matter.

Best Wishes

Phil

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-----Original Message-----

From: [REDACTED]
Sent: 27 March 2008 14:37
To: Phil Jones
Cc: [REDACTED] Katherine Vander; Lee Taylor
Subject: RE: Phorm update

Dear Phil

Many thanks for being available tomorrow.

We are in touch with [REDACTED] office and will come back to you asap, hopefully with a slot that suits.

I know from speaking to Phorm that the meeting with the ORG was a positive one, and Phorm's strategy of being extremely open with everyone impresses even those who are initially a bit hostile!

As well as [REDACTED] from the ORG, [REDACTED] was there, and he seemed satisfied with the level of detail they went into on lots of the technical issues. [REDACTED] will update you on the call, but I thought you might find that useful in advance.

Their determination to be totally open and positively engage is even impressing critics, it seems.

Best wishes and I will come back to you soon,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Phil Jones [mailto:Phil.Jones@ico.gsi.gov.uk]
Sent: 27 March 2008 14:09
To: [REDACTED]
Cc: [REDACTED] Katherine Vander; Lee Taylor
Subject: RE: Phorm update

[REDACTED]

Thanks for this. Happy to speak. It would be useful for us.

I'm available between 1215 & 1400 & between 1515 & 1600. Any good?

Phil

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-----Original Message-----

From: [REDACTED]
Sent: 27 March 2008 12:38
To: Phil Jones
Subject: Phorm update

Dear Phil

I hope you're well.

Following on from Phorm's meeting with the ORG yesterday, would it be possible to arrange a quick conference call - say for just 10 minutes - so they are able to update you on how the meeting went?

Would you be free perhaps tomorrow? And like I say, it would just be a quick call.

Please let me know.

Best wishes.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

PR Week Awards 2007

Winner Best Financial Campaign (for the second year running)
Highly Commended for Best City Campaign

[REDACTED]
[REDACTED]

VirusChecked for the [REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Katherine Vander

From: Phil Jones
Sent: 31 March 2008 13:24
To: Katherine Vander
Subject: FW: Documents as Discussed.

(7)

-----Original Message-----

From: [REDACTED]
Sent: 28 March 2008 19:04
To: [REDACTED] Phil Jones; Lee Taylor
Cc: [REDACTED]
Subject: Re: Documents as Discussed.

All,

Please find below today's posting on ORG's meeting with Phorm this week. I think it accurately reflects the meeting and we are particularly pleased that [REDACTED] reports: "We didn't go to Phorm for "the layman's view". We wanted the real deal, and I'm delighted to say that that's what we got.

<http://www.openrightsgroup.org/2008/03/28/org-and-phorm-meet-with-phorm/>

Best wishes,

On 28/3/08 18:56, [REDACTED]

Hi Phil,

Thank you so much for taking the time to discuss with us the progress we have made recently on the briefings around Phorm's technology.

As promised here is the letter from [REDACTED] Also the consumer research we referred to.

Thanks so much and please let us know if there are any other details that you need.

Kind regards,

[REDACTED]

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Katherine Vander

From: Phil Jones
Sent: 31 March 2008 13:24
To: Katherine Vander
Subject: FW: Documents as Discussed.

-----Original Message-----

From: [REDACTED]
Sent: 28 March 2008 18:56
To: Phil Jones; Lee Taylor; [REDACTED]
Cc: [REDACTED]
Subject: Documents as Discussed.

Hi Phil,

Thank you so much for taking the time to discuss with us the progress we have made recently on the briefings around Phorm's technology.

As promised here is the letter from [REDACTED] Also the consumer research we referred to.

Thanks so much and please let us know if there are any other details that you need.

Kind regards,

[REDACTED]

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Covert Investigation Policy Team
Crime Reduction and Community Safety Group
2 Marsham Street, London SW1P 4DF

Direct number: 020 7035 0148 Switchboard 0870 000 1585 Fax: 0870 336 9058
E-mail: simon.watkin@homeoffice.gsi.gov.uk Website: www.homeoffice.gov.uk

[REDACTED]

4 February 2008

[REDACTED]

TARGETED ONLINE ADVERTISING

You and I have been in touch for some time about issues relating to the provision of targeted online advertising services in the UK. You were interested in the view of the Home Office on your clients' proposal for the roll out of an internet based advertising service in the UK.

I am now able to let you have our considered view. Please feel free to make the attached document "Targeted Online Advertising: interception of communications or not? If it is, is it lawful interception?" available to your clients, who may in turn share it with their clients and prospective clients.

[REDACTED]

Targeted Online Advertising: interception of communications or not? If it is, is it lawful interception?

Targeted online advertising enables ISPs, web publishers and advertisers to target consumers with contextually and behaviourally relevant messages based upon real time analysis of users' browsing behaviour, and done anonymously without reference to any personally identifiable information. Equally it offers ISPs' users an enhanced user experience in terms of the advertising and marketing they may be exposed to.

2. This note offers informal guidance on issues relating to the provision of targeted online advertising services. It should not be taken as a definitive statement or interpretation of the law, which only the courts can give.

Targeted online advertising: interception of communications or not?

Do targeted online advertising services involve the interception of a communication within the meaning of sections 2(2) and 2(8) of the Regulation of Investigatory Powers Act 2000 (RIPA)?

3. The meaning and scope of interception of communications is set out in sections 2(2) to 2(8) of RIPA.

4. Section 2(2), RIPA reads:

"a person intercepts a communication in the course of its transmission if, and only if he ... so monitors transmissions made by means of the system as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient".

5. Section 2(8), RIPA reads:

"... contents of a communications are to be taken to be made available to a person while being transmitted ... [in] any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently."

6. The provision of a service to deliver targeted online advertising will tend to involve a person (an ISP and/or a targeted advertising provider on behalf of an ISP) monitoring transmissions made by means of a relevant telecommunications system so as to make some of the contents of a communication available, while being transmitted, to a person (the ISP and/or the targeted advertising provider) other than the sender or intended recipient of the communication.

7. Targeted online advertising services operate by delivering a cookie, including a unique user identity (UID), to an internet service user's computer

which supports the advertising service. The UID is processed automatically in a closed system (which does not associate an IP address with the UID). The system performs an analysis of URLs and key words from web pages which allocates the UID to relevant advertising categories. Once this analysis is completed the URLs and key words are deleted from the system. The system then uses that analysis to match advertisers' criteria and to enable ISPs' users to be targeted with advertising based on their browsing interests (which includes web pages viewed, search terms entered and responses to online advertisements).

8. For the purposes of section 2(2) and (8), "available" is likely to be taken to mean that a person could in practice obtain those contents for examination. Processing of the contents of a communication under human control will be likely to be regarded as having been made "available" to a person and will therefore have been intercepted within the meaning of RIPA.

9. Where the provision of a targeted online advertising service involves the content of a communication passing through a filter for analysis and held for a nominal period before being irretrievably deleted – there is an argument that the content of a communication has not been made available to a person.

10. Where the provision of a targeted online advertising service involves storing and processing the content of a communication in circumstances where it would be technically possible for a person to access the content that can be regarded as having been "diverted or recorded so as to be available to a person subsequently". This might include circumstances involving a proxy server analysing the request to view a web page, in the course of it being downloaded, and presenting the user with the web page and targeted advertising content.

11. Where the technology involves the user's browser executing a script to download targeted advertising content to complement a previously or near simultaneous download of a web page, it can be argued that that the transmission of a communication ceased at the point the web page reaches the user's browser, that the end user's computer is not part of the telecommunications system and that the communication has not been made available to a person *while being transmitted*.

Targeted online advertising: is it lawful interception?

To the extent that targeted online advertising services might involve interception of communications, can they be offered lawfully without an interception warrant in accordance with section 3 of RIPA?

12. Section 3, RIPA, where relevant to targeted online advertising, creates two situations in which interception without a warrant may be lawful:

- 3(1), interception with consent; and
- 3 (3) interception for purposes connected with the operation of the telecommunications service.

13. Section 3(1), RIPA, provides that:

"conduct consisting in the interception of a communications is authorised if the communication is one which, or which that person has reasonable grounds for believing is, both: (a) a communication sent by a person who has consented to the interception; and (b) a communication the intended recipient of which has so consented."

14. The provision of a targeted online advertising service to an ISP user who has consented to receive the service should be able to satisfy section 3(1)(a). Each service will have its own relevant user agreements. Where consent to receive targeted advertising is included in the user's contract and the user should be alerted to the possibility of opting out of the targeted online advertising service at regular intervals, 3(1)(a) is arguably satisfied.

15. A question may also arise as to whether a targeted online advertising provider has reasonable grounds for believing the host or publisher of a web page consents to the interception for the purposes of section 3(1)(b). It may be argued that section 3(1)(b) is satisfied in such a case because the host or publisher who makes a web page available for download from a server impliedly consents to those pages being downloaded.

16. Section 3(3), RIPA, provides that:

"(3) Conduct consisting in the interception of a communication is authorised by this section if:

- (a) it is carried out by or on behalf of a person who provides a ...telecommunications service; and*
- (b) it takes place for purposes connected with the provision or operation of that service ..."*

17. The provision of a targeted online advertising service, contracted by an ISP as part of the service to the ISP's users, can probably be regarded as being carried out "on behalf of" the ISP for the purposes of section 3(3)(a).

18. It is arguable that a targeted online advertising service can be "connected with the provision or operation of [the ISP] service". The RIPA explanatory notes for section 3(3) state:

"Subsection (3) authorises interception where it takes place for the purposes of providing or operating a postal or telecommunications service, or where any enactment relating to the use of a service is to be enforced. This might occur, for example, where the postal provider needs to open a postal item to determine the address of the sender because the recipient's address is unknown."

19. Examples of section 3(3) interception, very relevant to the provision of internet services, would include the examination of e-mail messages for the purposes of filtering or blocking spam, or filtering web pages which provide a

service tailored to a specific cultural or religious market, and which takes place with user's consent whereby the user consents not to receive the filtered or blocked spam or consents (actively seeks) a service blocking culturally inappropriate material. The provision of targeted online advertising with the user's consent where the user is seeking an enhanced experience and the targeted advertising service provides that.

Conclusion

20. Targeted online advertising services should be provided with the explicit consent of ISPs' users or by the acceptance of the ISP terms and conditions. The providers of targeted online advertising services, and ISPs contracting those services and making them available to their users, should then – to the extent interception is at issue – be able to argue that the end user has consented to the interception (or that there are reasonable grounds for so believing). Interception is not likely to be at issue where the user's browser is processing the UID and material informing the advertising criteria.

21. Where targeted online advertising is determined and delivered to a user's browser as a consequence of a proxy server monitoring a communication to download a web page, there may be monitoring of a communication in the course of its transmission. Consent of the ISPs' user and web page host would make that interception clearly lawful. The ISPs' users' consent can be obtained expressly by acceptance of suitable terms and conditions for the ISP service. The implied consent of a web page host (as indicated in paragraph 15 above) may stand in the absence of any specific express consent.

22. Targeted online advertising can be regarded as being provided in connection with the telecommunication service provided by the ISP in the same way as the provision of services that examine e-mails for the purposes of filtering or blocking spam or filtering web pages to provide a specifically tailored content service.

22. Targeted online advertising undertaken with the highest regard to the respect for the privacy of ISPs' users and the protection of their personal data, and with the ISPs' users consent, expressed appropriately, is a legitimate business activity. The purpose of Chapter 1 of Part 1 of RIPA is not to inhibit legitimate business practice particularly in the telecommunications sector. Where advertising services meet those high standards, it would not be in the public interest to criminalise such services or for their provision to be interpreted as criminal conduct. The section 1 offence is not something that should inhibit the development and provision of legitimate business activity to provide targeted online advertising to the users of ISP services.

HOME OFFICE

January 2008

23

Katherine Vander

From: Lee Taylor
Sent: 03 April 2008 14:50
To: [REDACTED]
Cc: Katherine Vander; Phil Jones
Subject: RE: Chairman's Statement

[REDACTED]

We would probably have to say that we are looking in to the circumstances surrounding the trial with a view to seeing if it something that we need to take further action on.

Yes it is possible for a complaint to be lodged and considered even though it some time in the past especially as it has only recently come to light. Depending on how the trial was conducted there may be issues under Privacy and Electronic Communications Regulations 2003 regarding the use of traffic data. However it is the extent to which it is an interception of communication under the Regulation of Investigatory Powers Act without the knowledge or consent of any of the parties to that communication which is the real issue and that is for the Home Office to look into.

Lee

-----Original Message-----

From: [REDACTED]
Sent: 03 April 2008 14:25
To: Lee Taylor; [REDACTED]
Subject: Re: Chairman's Statement

Many thanks Lee,

Is it possible to tell us what the ICO's official response will be if asked if they are investigating? Will the ICO clarify that they are not investigating BT in a formal sense? Also is it possible for a customer [REDACTED] to lodge a formal complaint to the ICO even though the trial is in the past?

Best wishes,

[REDACTED]

On 3/4/08 14:17, "Lee Taylor" <Lee.Taylor@ico.gsi.gov.uk> wrote:

[REDACTED]

I have just spoken to [REDACTED] and staff here. Following the references in the press we have today asked BT for details of what the trial involved for the sake of clarity but we are not investigating it in a formal sense.

Lee

20/06/2008

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Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 700 Fax: 01625 524 510

-----Original Message-----

From: [REDACTED]
Sent: 03 April 2008 10:27
To: Lee Taylor
Subject: Re: Chairman's Statement

Hi Lee,

Thanks for this – BTW – on the BBC this morning a reporter said that that ICO was investigating BT's trial in 2006 and 2007. Do they have that wrong?

Also [REDACTED] had a very positive meeting yesterday with [REDACTED]. He was very supportive of the Phorm system. Meanwhile we are moving forward with our plans to have an open meeting for interested parties and to invite a Privacy coder in to inspect our systems.
Kind regards,
[REDACTED]

On 2/4/08 10:35, "Lee Taylor" <Lee.Taylor@ico.gsi.gov.uk> wrote:

[REDACTED]

Sorry for the delay in getting back to you. We would prefer that you didn't refer to the ICO in the statement in that context. You could mention elsewhere that we are pleased