

with the way that Phorm have engaged with technical experts and concerned individuals following the announcement of the service if you wanted.

Thanks
Lee

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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: 01 April 2008 15:51
To: Lee Taylor
Cc: [REDACTED]
Subject: Re: Chairman's Statement

Thanks lee -- we'll probably be OK to morning.

Thanks again
[REDACTED]

On 1/4/08 15:34, "Lee Taylor"
<Lee.Taylor@ico.gsi.gov.uk> wrote:

[REDACTED]
I cannot get hold of him until tomorrow morning. If it can't wait can you please take out the reference to the ICO.

Thanks
Lee

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Office, Wycliffe
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Wilmslow,
Cheshire, SK9 5AF

Tel: 01625 545 700
Fax: 01625 524
510

-----Original
Message-----
From: [REDACTED]
[REDACTED]
[REDACTED]

Sent: 01 April 2008
14:11
To: Lee Taylor;
[REDACTED]
Subject: Re:
Chairman's
Statement

Thank you Lee. We
need to put this to
bed today so if you
could come back
later that would be
helpful.
Thanks
[REDACTED]

On 1/4/08 14:03,
"Lee Taylor"
<Lee.Taylor@ico.gsi.gov.uk>
wrote:

[REDACTED]
I will
have to
check
with
Phil.

Regards
Lee

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Tel: 01625 545 700 Fax: 01625 524 510

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

From: [REDACTED]
Sent: 31 March 2008 18:51
To: Lee Taylor; [REDACTED]
Subject: Chairman's Statement

Hi Lee,

We wanted to add a line in our annual chairman's statement due out mid April. From an ICO perspective – would you be happy with the following?

20/06/2008

Thanks
[REDACTED]

Positive initial feedback received from a number regulatory bodies including the Information Commissioner's Office

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(46)

Katherine Vander

From: Katherine Vander
Sent: 03 April 2008 15:01
To: Lee Taylor
Subject: FW: Webwise/ Phorm

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

From: [REDACTED]
Sent: 03 April 2008 14:46
To: Katherine Vander
Subject: RE: Webwise/ Phorm

Katherine

We have made a couple of public statements recently about trials (and there is in fact q&a included on the Want to know more about BT Webwise? site), but not produced any specific briefing.

More than happy to provide further info, but think it may be helpful to have a quick chat first- perhaps with Phil as well ?

Please let me know- happy to discuss whenever suits, today or tomorrow.

Thanks

[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]
Sent: 03 April 2008 13:36
To: [REDACTED]
Subject: RE: Webwise/ Phorm

[REDACTED]

Thank you for this. I'm happy to help if I can so please feel free to contact me if you need information.

We'll certainly have a look at the details through the links - thanks for updating us.

In terms of the media coverage of the trials conducted in the past (rather than the upcoming trial) I would appreciate it if you could confirm whether the general explanation of BT's position on the BBC technology article (<http://news.bbc.co.uk/1/hi/technology/7325451.stm>) is broadly accurate. In particular the fact that BT did conduct two trials of a prototype of Phorm in 2006 and 2007, and did not specifically inform customers who were part of these trials that they were taking place?

The BBC article refers to 'eighteen thousand customers' in the 2006 trial and the 2007 test of a 'similar scale.'

It would be helpful if you could confirm any details of the previous trials that you have (in particular the numbers involved and any information provided to them). If you have provided this information to the ICO previously would be grateful if you could let me know when so that I can look it up.

I will keep you updated with our line on this when we've had a chance to consider this information.

Many thanks

19/06/2008

Katherine Vander
Casework and Advice Manager
01625 545843

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Tel: 01625 545 700 Fax: 01625 524 510

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

From: [REDACTED]
Sent: 03 April 2008 13:18
To: Katherine Vander
Subject: Webwise/ Phorm

19/06/2008

Katherine

Many thanks for digging around last night at rather short notice- appreciated. You may have seen some of the BBC coverage/ interviews this morning. I have not seen them all, but one of the common themes to emerge was that the "ICO are investigating/ considering the trials". Are you happy to us to rebut that comment as necessary?

On a separate but related theme, I mentioned to Phil this week that we would be revamping our Qs&As on Webwise and giving the proposition more prominence. Although there are always likely to be changes/additions, that process is now largely complete.

There is a link on the front page of www.bt.com to [Want to know more about BT Webwise?](#) . This gives some basic information, and provides a link (for more detailed info) to www.bt.com/webwise. There is a whole raft of qs&as in the "Help" section on that site.

If it would help in the context of the "what's it all about ?/ how does it work?" queries, we're more than happy for you to post links/ or refer people to these sites. Will keep you posted in the event that there are any URL changes etc.

Kind Regards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(4)

Katherine Vander

From: Katherine Vander
Sent: 04 April 2008 14:08
To: [REDACTED]
Subject: RE: Webwise/ Phorm

[REDACTED]

Apologies for the delay in getting back to you. I spoke to Phil last night as he was out of the office most of the day (and is unavailable most of today and next week). As an update we have now received at least one formal complaint about the BT trials so we will need to look into that through our complaint handling process.

I would be happy to have a chat any time that is convenient for you, if there is anything you would prefer to discuss on the phone, however Phil is not likely to be available for some time.

In addition to the clarification on timescales and numbers of customers in the trial (and how those involved were selected), we need to understand what each of the trials involved. I note BT have publicly explained that no personally identifiable information was processed, stored or disclosed during the 2006 test. However I would be grateful if you could confirm whether any information collected in either trial was used in any way to target advertising material to individuals.

In light of the complaint(s) that we have now received we are likely to need to request this information more formally in a letter, however if there is any information you can provide at this point that will enable us to be in a better position to formulate a response to media and other enquiries that would be helpful.

Kind regards

Katherine

Katherine Vander
Casework and Advice Manager

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

From: [REDACTED]
Sent: 03 April 2008 14:46
To: Katherine Vander
Subject: RE: Webwise/ Phorm

Katherine

We have made a couple of public statements recently about trials (and there is in fact q&a included on the [Want to know more about BT Webwise?](#) site), but not produced any specific briefing.

More than happy to provide further info, but think it may be helpful to have a quick chat first- perhaps with Phil as well?

Please let me know- happy to discuss whenever suits, today or tomorrow.

Thanks

[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@lco.gsi.gov.uk]
Sent: 03 April 2008 13:36
To: [REDACTED]

19/06/2008

Katherine Vander

(49)

From: Katherine Vander
Sent: 07 April 2008 11:49
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Webwise/ Phorm

[REDACTED]
Thanks for this.

I certainly can address the letter(s) as you have requested and will probably be writing to you in the next 2 weeks. I will email you to let you know when it's on the way.

Happy to expect the information about the trials tomorrow.

Thanks

Katherine

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

From: [REDACTED]
Sent: 07 April 2008 11:44
To: Katherine Vander
Cc: [REDACTED]
Subject: RE: Webwise/ Phorm

Katherine

Apologies for delay in getting back to you. Understand that complaints will have to be processed through normal channels, and will expect formal letters. Just to ensure we can respond speedily, can they please be addressed to me at address below? Can I assume they'll be with us shortly?

Am more or less timed out on meetings for rest of today- will it be ok to get some general points on background to trials to you tomorrow am?

Thanks

[REDACTED]

[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]
Sent: 04 April 2008 14:08
To: [REDACTED]
Subject: RE: Webwise/ Phorm

[REDACTED]
Apologies for the delay in getting back to you. I spoke to Phil last night as he was out of the office most of the day (and is unavailable most of today and next week). As an update we have now received at least one formal complaint about the BT trials so we will need to look into that through our complaint handling process.

19/06/2008

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In light of the complaint(s) that we have now received we are likely to need to request this information more formally in a letter, however if there is any information you can provide at this point that will enable us to be in a better position to formulate a response to media and other enquiries that would be helpful.

Kind regards

Katherine

Katherine Vander
Casework and Advice Manager

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(51)

Katherine Vander

From: Katherine Vander
Sent: 09 April 2008 15:44
To: Lee Taylor
Cc: Phil Jones; David J. Evans
Subject: FW: Webwise/ Phorm

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

From: [REDACTED]
Sent: 09 April 2008 00:22
To: Katherine Vander
Cc: [REDACTED]
Subject: RE: Webwise/ Phorm

Katherine

Apologies for coming back to you so late on trials. There is not a huge amount to say:

- We conducted two small scale technical tests of a prototype advertising platform in June 2007 and in September-October 2006.
- These tests were specifically conducted to evaluate the functional and technical performance of the platform.
- As with all Service Providers, it is important for us to ensure that, before any potential new technologies are employed, they are robust and fit for purpose.
- In each instance, a small number of customers on one internet exchange (they were two different internet exchanges) were randomly selected for the test and were completely anonymous.
- No personally identifiable information was processed, stored or disclosed during either trial.
- We took legal advice at the time.

I need to check whether there was any targeted advertising presented during the trials, but I am fairly certain that there was- will get back to you.

Regards

[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]
Sent: 07 April 2008 11:49
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Webwise/ Phorm

[REDACTED]

Thanks for this.

I certainly can address the letter(s) as you have requested and will probably be writing to you in the next 2 weeks. I will email you to let you know when it's on the way.

Happy to expect the information about the trials tomorrow.

Thanks

19/06/2008

Katherine Vander

(33)

From: [REDACTED]
Sent: 10 April 2008 16:45
To: Katherine Vander
Cc: Lee Taylor; Phil Jones
Subject: RE: Webwise/ Phorm CONFIDENTIAL
Sensitivity: Confidential

Katherine/ Phil

- No ads served at all in 2007 trial
- For 2006 trial, we bought ad slots from an ad network and served static default ads that dropped our cookie on the browser- similar practice to other ad serving platforms.
- With the cookies in place, we allowed anonymous user profiles to build up
- Finally we served ads (again via an ad network) and swapped the default ad for a targeted one where possible
- Numbers difficult to estimate, but probably a maximum of 15K "cookied" users per day, with average of one ad served per day.

Please let me know if you need anything else, or would like to discuss, prior to sending the complaints via the usual process.

On a separate but related point, was a little surprised that in your latest statement you seem to have come down fairly firmly in favour of opt-in, but obviously I understand the issues. I'd very much welcome a quick chat on this point. Is there any chance we could arrange something for tomorrow ?

Kind Regards

[REDACTED]

From: Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]
Sent: 10 April 2008 10:13
To: [REDACTED]
Cc: Lee Taylor; Phil Jones
Subject: RE: Webwise/ Phorm

[REDACTED]

Thank you for this. We are particularly interested in knowing about any targeted advertising presented during the trials and the number of customers involved.

I look forward to getting the further update from you on this.

Kind regards

Katherine

20/06/2008

Katherine Vander

From: Katherine Vander
Sent: 10 April 2008 11:09
To: [REDACTED]
Subject: RE: Contact from Phorm

[REDACTED]

Thank you for this.

We will have a look and get back to you.

Kind regards

Katherine

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

From: [REDACTED]
Sent: 10 April 2008 10:54
To: Katherine Vander
Cc: [REDACTED]
Subject: Re: Contact from Phorm

Dear Katherine,

Here is the statement we would like to make on PECR and Opt in / Opt out. We are under some pressure to clarify our position on these issues and hope that ICO will be able to support our statement.

With many thanks for your help and best wishes,

[REDACTED]

On 10/4/08 10:40, "Katherine Vander" <Katherine.Vander@ico.gsi.gov.uk> wrote:

[REDACTED]

Thank you for your call. If you would like to send the statement through to me I will be happy to see if it is something we can clarify swiftly for you.

Kind regards

Katherine

Katherine Vander
Casework and Advice Manager

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Katherine Vander

From: Katherine Vander
Sent: 10 April 2008 16:55
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Contact from Phorm

[REDACTED]

Thank you for sending the statement through, and for speaking to me today.

As we discussed the statement seems clear in explaining the requirement to obtain consent for the processing of traffic data, and in highlighting the ICO view on what is involved in obtaining valid informed consent.

As I mentioned when we spoke our view is that consent is more than simply 'not opting out'. There would essentially need to be some form of action where the individual knowingly indicates their consent to the processing. We can of course discuss the specifics of this process in more detail tomorrow.

Although I understand we have not discussed the detail of the process through which consent may be obtained during the conference calls with Phorm, our records indicate that we have mentioned the PECR issues (in particular the traffic data requirements of Regulation 7) during the calls so I'm not sure it is correct to suggest there has been no discussion of PECR with the ICO.

I hope this helps to clarify the situation

Kind regards

Katherine

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

From: [REDACTED]
Sent: 10 April 2008 10:54
To: Katherine Vander
Cc: [REDACTED]
Subject: Re: Contact from Phorm

Dear Katherine,

Here is the statement we would like to make on PECR and Opt in / Opt out. We are under some pressure to clarify our position on these issues and hope that ICO will be able to support our statement.

With many thanks for your help and best wishes,

[REDACTED]

On 10/4/08 10:40, "Katherine Vander" <Katherine.Vander@ico.gsi.gov.uk> wrote:

[REDACTED]

Thank you for your call. If you would like to send the statement through to me I will be happy to see if it is something we can clarify swiftly for you.

Kind regards

Katherine

Katherine Vander
Casework and Advice Manager

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Statement – D2

080408

Phorm Statement On PECR and Opt in/ Opt Out

"We've not yet had the opportunity to discuss PECR with the ICO but we will do shortly.

It isn't a simple question of Opt in and Opt Out. The PECR requirement is that users must consent to the processing of traffic data. The ICO's published guidance on this requirement makes it clear that what is important is that users are able to exercise valid informed consent.

"In order to obtain valid informed consent, the subscriber or user should be given sufficient clear information for them to have a broad appreciation of how such data is going to be used and the consequences of consenting to such use."

In the past opt in / opt out was a one off event through email.

Because we are working with ISPs we have the opportunity to present 2 new concepts – unavoidable and recurring notice for users. This will present users with a clear unavoidable and informed choice and an ongoing status update - through interstitial pages and recurring reminders in the banner ad space.

These new standards will substantially exceed any legal requirement."

End

4

Katherine Vander

From: [REDACTED]
Sent: 10 April 2008 18:02
To: Katherine Vander; Phil Jones
Cc: [REDACTED]
Subject: Re: Contact from Phorm

Katherine,

Thank you for your note. We look forward to speaking with you and Phil Jones tomorrow at 12.00. As part of the call, we would like to take you through the attached short presentation on our privacy standards and how they compare with widespread industry practice.

Best wishes,

[REDACTED]
On 10/4/08 16:54, "Katherine Vander" <Katherine.Vander@ico.gsi.gov.uk> wrote:

[REDACTED]
Thank you for sending the statement through, and for speaking to me today.

As we discussed the statement seems clear in explaining the requirement to obtain consent for the processing of traffic data, and in highlighting the ICO view on what is involved in obtaining valid informed consent.

As I mentioned when we spoke our view is that consent is more than simply 'not opting out'. There would essentially need to be some form of action where the individual knowingly indicates their consent to the processing. We can of course discuss the specifics of this process in more detail tomorrow.

Although I understand we have not discussed the detail of the process through which consent may be obtained during the conference calls with Phorm, our records indicate that we have mentioned the PECR issues (in particular the traffic data requirements of Regulation 7) during the calls so I'm not sure it is correct to suggest there has been no discussion of PECR with the ICO.

I hope this helps to clarify the situation

Kind regards

Katherine

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20/06/2008