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<http://www.ico.gov.uk> <<http://www.ico.gov.uk>> or e-mail: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

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: 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](mailto:Katherine.Vander@ico.gsi.gov.uk)> wrote:

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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20/06/2008

**Katherine Vander**

**From:** Katherine Vander  
**Sent:** 11 April 2008 16:50  
**To:** [REDACTED]  
**Cc:** Lee Taylor  
**Subject:** RE: Webwise/ Phorm CONFIDENTIAL  
**Sensitivity:** Confidential

[REDACTED]  
Thanks for this.

I will be in contact next week about the statement and will be writing to you properly about the complaints next week.

Kind regards

Katherine

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

**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 "cooked" 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

Greg

20/06/2008

(32)

**Katherine Vander**

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**From:** [REDACTED]  
**Sent:** 11 April 2008 16:58  
**To:** Katherine Vander  
**Subject:** RE: Webwise/ Phorm CONFIDENTIAL  
**Sensitivity:** Confidential

Katherine

Also understand that Phil has lengthy conversation with Phorm today on opt-in question, so no need for me to follow up at this point.

Thanks

[REDACTED]

---

**From:** Katherine Vander [mailto:[Katherine.Vander@ico.gsi.gov.uk](mailto:Katherine.Vander@ico.gsi.gov.uk)]  
**Sent:** 11 April 2008 16:50  
**To:** [REDACTED]  
**Cc:** Lee Taylor  
**Subject:** RE: Webwise/ Phorm CONFIDENTIAL  
**Sensitivity:** Confidential

[REDACTED]

Thanks for this.

I will be in contact next week about the statement and will be writing to you properly about the complaints next week.

Kind regards

Katherine

---

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20/06/2008

(34)

**Katherine Vander****From:** [REDACTED]**Sent:** 14 April 2008 18:34**To:** Phil Jones; Katherine Vander; Lee Taylor [REDACTED]**Subject:** EU Feedback

Dear Phil,

Thank you for such a full and productive discussion on Friday and for your continued interest in Phorm and our technology.

We talked of the very positive outreach programme we have been conducting with key MEPs and members of the EU Commission in Brussels. As promised I am attaching a brief document that shows who we have met and a summary of their feedback.

We also agreed to draft a statement to cover some of the issues we are discussing. We have written something and are just consulting with BT on this to ensure we are coordinated on this front. We expect to be able to share this with you tomorrow for your approval.

Thanks you again for all your help and look forward to speaking again shortly.

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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## EU Feedback on Phorm's Technologies

Phorm has initiated discussions on enhancing internet privacy with a range of EU audiences, in view of the recent debates on the revision of the 2002 E-Privacy Directive, Google's acquisition of DoubleClick and the work on search engines undertaken in the Article 29 Working Party.

### European Commission

The Head of the Data Protection Unit, [REDACTED] considered that OIX and WebWise were clearly Privacy Enhancing Technologies, which were very much in line with what the Commission is seeking to achieve in terms of internet privacy. He invited Phorm to cooperate with the Commission to enhance privacy standards, and suggested that Phorm should present its technology to the Article 29 Working Party.

[REDACTED] responsible for privacy aspects in DG Information Society and Media, commented that Phorm's technology appeared to be far better than storing everything with an IP address for 18 months like Google. [REDACTED]

[REDACTED] was also very interested in the technology and invited Phorm to remain in contact with him.

[REDACTED] was interested in how the technology could be used to detect fraudulent websites, which tend to have a short life span, and saw that this could help to tackle 'phishing'.

### European Parliament

Phorm has met the Rapporteur on the revisions to the E-Privacy Directive in the Internal Market and Consumer Protection Committee, [REDACTED] (Conservative, UK), and [REDACTED] (Liberal, Germany), Draftsman on privacy aspects in the Civil Liberties, Justice and Home Affairs Committee, on several occasions. [REDACTED] and [REDACTED] have been particularly interested to learn how Phorm's technologies offer solutions to MEP concerns regarding the storage of personal data. They invited [REDACTED] to participate in an informal lunch discussion earlier this week to explain that the storage of browsing history is not necessary for targeted advertising, nor the use of IP addresses.

In addition, Phorm has met with [REDACTED] (Conservative, UK) who was concerned about the storage of personal data, and the adviser to [REDACTED] MEP (Liberal, Netherlands) who has been playing a leading role in the EU internet privacy debate and calling on the EU to develop global standards with the industry.

Overall, we consider that EU audiences have demonstrated significant interest in Phorm's technologies as a method of achieving their policy goals with a commercially viable proposition.

**Katherine Vander**

---

**From:** [REDACTED]

**Sent:** 15 April 2008 16:40

**To:** Phil Jones; Lee Taylor; Katherine Vander, [REDACTED]

**Subject:** Phorm Statement

Dear Phil,

Further to my note yesterday I'm attaching the statement we talked about in relation to our discussions – with particular reference to "Opt in" and "Opt out".

I believe we've reflected the position accurately but please would you have a look and provide any comments as we want to be highly coordinated with you in this area.

As background we see this statement as something we'd use if asked about the progress of our discussions with the ICO.

Thanks so much for your help here and your ongoing interest in Phorm.

Kind regards.

[REDACTED]

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## Phorm Opt Out Statement

D3

150408

We continue our productive dialogue with the Information Commissioner's Office and note their acknowledgement of the openness and transparency with which Phorm has engaged with all stakeholders.

One area of discussion is the recommendation of required notice under Section 7 of PECR – the legislation that deals with processing of traffic data. We draw attention in particular to the ICO's guidance that users must be able to exercise "valid informed consent" to the processing of that data.

Since Phorm technology does not use IP addresses to target advertising there is a strong argument that Section 7 of PECR doesn't apply. Nevertheless, we believe that it is incumbent on us and all participants in the internet to improve privacy standards – in particular, we believe that renewed attention should be paid to quality of notice rather than simply "opt in" versus "opt out."

It is worth noting that, across the online industry today 'opting in' can mean something as lacking in transparency as a clause buried deep in a contract that you click 'I agree' to. Often, despite having clicked on something, people remain unaware of what they have agreed to. Similarly, few consumers know that on major search engines, all of their search details and IP addresses are stored - despite theoretically being able to "opt out". Phorm believes that the most important thing is for people to be aware that a particular service is switched on. It is time to upgrade the 'opt in' versus 'opt out' debate to one which is relevant to the proposition at hand.

While the exact method of consent is a matter for the individual ISPs we have the potential opportunity to present two new concepts – "clear and transparent notice" and "recurring notice". As an example, during the upcoming pilot, BT will be able to explore the effectiveness of presenting users with a full-page notice (an "interstitial page") that they cannot miss. This will present them with the choice of using the service or not. Thereafter, as part of the pilot, BT will further evaluate showing recurring reminders of users' status (and their ability to change it) in banner ads as they browse.

These new standards will substantially exceed any legal requirement, and we feel confident that the ICO and other stakeholders will regard them as a step forward in transparency and choice.

End



Katherine Vander

From: [REDACTED]  
 Sent: 22 April 2008 14:32  
 To: Lee Taylor; Phil Jones; Katherine Vander  
 Cc: [REDACTED]  
 Subject: Final Informed Consent update



ICO 220408 d4.doc  
 (31 KB)

All,

Further to our call this morning, here is the statement that we will put out. There are two minor changes: A title change and the fact that we've made more explicit the examples of unavoidable and recurring consent by pointing out which is which (penultimate para). There are no substantive changes.

We will be putting this out shortly to key journalists who have shown an interest and to other stakeholders eg Don Foster MP. It would be helpful if the ICO press office could echo our points regarding ongoing dialogue with the ICO and the openness with which we have engaged stakeholders. Clearly we believe that valid informed consent is very important -- and a more helpful way of discussing consumer empowerment that a more binary opt in vs opt out.

Might the ICO be able to endorse this point?

Many thanks for all,

With attachment and pasted below

Phorm Informed Consent Update  
 D4  
 220408

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One area of discussion is the recommendation of required notice under Section 7 of PECR the legislation that deals with processing of traffic data. We draw attention in particular to the ICO's guidance that users must be able to exercise 'valid informed consent' to the processing of that data.

Since Phorm technology does not use IP addresses to target advertising there is a strong argument that Section 7 of PECR doesn't apply to our service. Nevertheless, we believe that it is incumbent on us and all participants in the internet to improve privacy standards in particular, we believe that renewed attention should be paid to quality of notice rather than simply 'opt in' versus 'opt out'.

It is worth noting that, across the online industry today 'opting in' can mean something as lacking in transparency as a clause buried deep in a contract that you click 'I agree' to. Often, despite having clicked on something, people remain unaware of what they have agreed to. Similarly, few consumers know that on major search engines, all of their search details and IP addresses are stored - despite theoretically being able to 'opt out'. Phorm believes that the most important thing is for people to be aware that a particular service is switched on. It is time to upgrade the 'opt in' versus 'opt out' debate to one which is relevant to the proposition at hand.

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## Phorm Informed Consent Update

D4

220408

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These new standards will substantially exceed any legal requirement, and we feel confident that the ICO and other stakeholders will regard them as a step forward in transparency and choice.

End


About Phorm:

Phorm is an innovative technology company specialising in delivering behaviourally and contextually targeted advertising while preserving users' personal privacy and security. Phorm's partners include leading Internet Service Providers (ISPs), Publishers, Ad Networks and Advertisers.

Phorm is a Delaware, US incorporated company, with offices in New York and London. The Company was admitted to the AIM market of the London Stock Exchange in 2004 and has over 100 employees.

For more information, please visit: [www.phorm.com](http://www.phorm.com).

Phorm, Inc.



(31)

**Katherine Vander**

---

**From:** [REDACTED]  
**Sent:** 06 May 2008 18:11  
**To:** Katherine Vander  
**Cc:** Phil Jones  
**Subject:** CONFIDENTIAL: WEBWISE/ PHORM  
**Sensitivity:** Confidential

Katherine

Just to let you know that the forthcoming trial has been put back again. Was due to launch 12 May, but has now been put back at least another week.

Will obviously keep you posted, and get a response to you on the complaint in the next day or so.

Kind Regards

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

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(53)

**Katherine Vander**

**From:** Katherine Vander  
**Sent:** 06 May 2008 18:16  
**To:** [REDACTED]  
**Subject:** RE: CONFIDENTIAL: WEBWISE/ PHORM  
**Sensitivity:** Confidential

[REDACTED]  
Thanks for letting me know.

Kind regards

Katherine

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

**From:** [REDACTED]  
**Sent:** 06 May 2008 18:11  
**To:** Katherine Vander  
**Cc:** Phil Jones  
**Subject:** CONFIDENTIAL: WEBWISE/ PHORM  
**Sensitivity:** Confidential

Katherine

Just to let you know that the forthcoming trial has been put back again. Was due to launch 12 May, but has now been put back at least another week.

Will obviously keep you posted, and get a response to you on the complaint in the next day or so.

Kind Regards

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

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(54)

**Katherine Vander**

---

**From:** Katherine Vander  
**Sent:** 09 May 2008 12:33  
**To:** [REDACTED]  
**Subject:** BT trials

[REDACTED]

I've just spoken to Phil who is keen to respond to his MP's letters about the trials as soon as possible. Is there any chance that BT's response will be with us today?

I appreciate you are no doubt very busy at the moment.

Kind regards

Katherine

Katherine Vander  
Casework and Advice Manager

Katherine Vander

30

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**From:** [REDACTED]  
**Sent:** 09 May 2008 19:29  
**To:** Katherine Vander  
**Cc:** Phil Jones  
**Subject:** RE: BT trials

Katherine

Apologies for delay- will send hard copy Monday. Any queries, please give me a call or drop me a line. Will be logging on over weekend.

Kind Regards

[REDACTED]

---

**From:** Katherine Vander [mailto:Katherine.Vander@ico.gsi.gov.uk]  
**Sent:** 09 May 2008 12:33  
**To:** [REDACTED]  
**Subject:** BT trials

[REDACTED]

I've just spoken to Phil who is keen to respond to his MP's letters about the trials as soon as possible. Is there any chance that BT's response will be with us today?

I appreciate you are no doubt very busy at the moment.

Kind regards

Katherine

Katherine Vander  
Casework and Advice Manager

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(SS)

**Katherine Vander**

**From:** Katherine Vander  
**Sent:** 10 May 2008 07:21  
**To:** [REDACTED]  
**Cc:** Phil Jones  
**Subject:** RE: BT trials

[REDACTED]

Thanks very much for getting back to us with this.

Kind regards

Katherine

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

**From:** [REDACTED]  
**Sent:** 09 May 2008 19:29  
**To:** Katherine Vander  
**Cc:** Phil Jones  
**Subject:** RE: BT trials

Katherine

Apologies for delay- will send hard copy Monday. Any queries, please give me a call or drop me a line. Will be logging on over weekend.

Kind Regards

[REDACTED]

---

**From:** Katherine Vander [mailto:[Katherine.Vander@ico.gsi.gov.uk](mailto:Katherine.Vander@ico.gsi.gov.uk)]  
**Sent:** 09 May 2008 12:33  
**To:** [REDACTED]  
**Subject:** BT trials

[REDACTED]

I've just spoken to Phil who is keen to respond to his MP's letters about the trials as soon as possible. Is there any chance that BT's response will be with us today?

I appreciate you are no doubt very busy at the moment.

Kind regards

Katherine

Katherine Vander  
Casework and Advice Manager

**From:** Lee Taylor  
**Sent:** 27 May 2008 16:47  
**To:** [REDACTED]  
**Subject:** Phorm and BT trial  
[REDACTED]

The complaint made by a member of the public about the BT trials in 06/07 is still open and so I cannot give your our view on it at this point.

Regards  
Lee



**Katherine Vander**

(29)

**From:** [REDACTED]  
**Sent:** 02 June 2008 18:05  
**To:** Phil Jones; Katherine Vander  
**Subject:** CONFIDENTIAL- Webwise trial  
**Sensitivity:** Confidential

Phil &amp; Katherine

Just to let you know that there is some possibility (after several false alarms, I know) that the Webwise trial will start next Monday, in which case it will be announced this Friday.

Thanks &amp; Regards

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 01 June 2008 14:57  
**To:** 'mail@ico.gov.uk'  
**Cc:** 'Phil.Jones@ico.gsi.gov.uk'  
**Subject:** CONFIDENTIAL- [REDACTED]  
**Sensitivity:** Confidential

Dear Sir or Madam

[REDACTED]

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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28

Katherine Vander

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From: [REDACTED]

Sent: 04 June 2008 13:55

To: Katherine Vander

Katherine

Am back in office, and no sign of letter regarding the [REDACTED] so would be grateful if you could indeed email me a copy.

Any any news on the other matter would be gratefully received....

Kind Regards

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

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(26)

**Katherine Vander**

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**From:** [REDACTED]  
**Sent:** 05 June 2008 11:41  
**To:** Phil Jones; Katherine Vander  
**Cc:** [REDACTED]  
**Subject:** Phorm/ Webwise

Phil & Katherine

This is just to let you know that we will not now be launching the Webwise trial next week (at least not early next week)- still a couple of issues to resolve.

The decision is not directly related to the renewed publicity surrounding the previous trials, but in any event I suspect that this will soak up a fair amount of resource over the next day or so. Just in case you haven't seen what sparked off the latest round, please see <http://nodpi.org/?p=10>

We are assuming that the timing is probably a consequence of the ICO decision not to pursue the previous trials, and are considering our options- given the inaccuracy of much of the comment. I will keep you posted....

Kind regards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Intranet: <http://btretail.intra.bt.com/products-btmobile-strategy/legalreg/index.html>

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**Katherine Vander**

**From:** [REDACTED]  
**Sent:** 11 June 2008 15:34  
**To:** Phil Jones; Katherine Vander  
**Cc:** [REDACTED]  
**Subject:** CONFIDENTIAL: RE: Phorm/ Webwise  
**Sensitivity:** Confidential

(39)

Phil &amp; Katherine

Just a quick update on [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Most recent exchanges of correspondence are attached FYI, and we anticipate that matters may rest here.....

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

Kind Regards  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 05 June 2008 11:41  
**To:** 'Phil.Jones@ico.gsi.gov.uk'; Katherine Vander  
**Cc:** [REDACTED]  
**Subject:** Phorm/ Webwise

Phil &amp; Katherine

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Kind regards  
[REDACTED]

20/06/2008



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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