

Print Batch Separator Sheet

User: vanderk

Case Ref: ELE0196825

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[REDACTED]
[REDACTED]
British Telecommunications Plc
81 Newgate Street
London
EC1A 7AJ

25 April 2008

Case Reference Number [REDACTED]

Dear [REDACTED]

BT Trials of prototype advertising platform

The Information Commissioner's Office (ICO) has received a number of queries regarding 2006 and 2007 BT trials of a prototype advertising platform. As I mentioned previously we have received a specific complaint about this issue from:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

I understand that [REDACTED] was a BT business customer. He has explained that in June 2007 he identified that his PCs were connected to domain dns.sysip.net. [REDACTED] has indicated he was specifically concerned at this point that 121 Media or Phorm were conducting tests, however when he contacted BT he was advised (see enclosed correspondence) that his PCs probably had a virus or Trojan.

[REDACTED] complained to the ICO after he became aware that BT were working with Phorm earlier this year.

From the information in your emails of 9 and 10 April I understand that BT conducted two technical tests of a prototype advertising platform in September-October 2006 and June 2007 with the intention of evaluating the 'functional and technical performance' of the platform. You have explained that BT do not consider that any personally identifiable information was

processed, stored or disclosed during either trial.

Your 10 April email explains that whilst the 2007 trial did not involve any advertising, the 2006 trial did. This advertising was ultimately targeted based on profiles that had been compiled.

In a letter from [REDACTED] dated 16 August 2007 BT informed us about a data profiling proposal using information from the internet surfing habits of BT's ISP customers. The letter explains that BT have been approached by a company called Phorm.

Phil Jones recollection is that in a meeting with the ICO BT talked in general terms about profiling broad advertising categories however he does not recall any discussion over delivery of advertising.

The information available to us raises questions about BT's compliance with the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) in terms of the 2006 and 2007 trials.

BT's letter of 16 August stresses that BT want to be 'up-front' with customers about the intended profiling and identifies the need to consider compliance with Regulations 6 and 7 of the PECR (in terms of use of cookies and processing of traffic data). The letter also raises the question of compliance with the Data Protection Act 1998 and RIPA.

Our concern is that it is not clear whether BT considered these requirements during previous trials of a prototype for this product (with particular reference to the profile being built up to actually provide targeted advertising in the 2006 trial).

As you will appreciate our focus is now primarily on ensuring that future use of the Phorm system is compliant with the legislation and as transparent as possible for users. However we do need to address concerns that have been raised about the previous BT trials. Following coverage of this issue we have received a number of specific questions through MPs and the media about the 2006 and 2007 trials. In order to respond to these concerns, and to fully consider [REDACTED] complaint, we need further information from BT.

You have indicated that BT took legal advice at the time of the trials and I would therefore assume that you considered these issues. I would be grateful if you could clarify how BT considers the requirements of the legislation were met in the 2006 and 2007 trials, with particular reference to the requirements to provide clear and comprehensive information about the operation of any cookies, and the requirement to obtain consent for processing and use of traffic data.

I would also be grateful for your specific comments on [REDACTED] case.

In particular if you could confirm whether or not [REDACTED] was included in the 2007 trial of the product, and the details of any involvement.

It would be helpful if you could clarify why [REDACTED] does not appear to have received any information about the trial when he contacted BT to query what was happening.

Finally, I would appreciate any further comments that BT would like to make about these trials.

As we have a number of queries to respond to in addition to the specific complaint we would appreciate a response as soon as possible.

Yours sincerely

Katherine Vander
Casework and Advice Manager

Encs.

By email and post

Katherine Vander
Advice Manager
The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Dear Ms Vander

9 May 2008

Case Reference Number [REDACTED] BT trials of prototype advertising platform

Thank you for your letter of 25th April.

Firstly, I can confirm Phil Jones' understanding of the various discussions held with BT in relation to advertising propositions. Our records indicate that we did indeed discuss, in general terms, a number of such propositions in summer 2006. However, we did not at that stage discuss Webwise. We first contacted the ICO in writing about that proposition in August 2007, and were seeking your views with regard to an anticipated full-scale commercial roll out. I can confirm that at no stage did we discuss the prototype platforms with you in the context of the 2006 and 2007 trials.

As we have publicly stated, two technical tests of a prototype advertising platform were conducted 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 BT to ensure that, before any potential new technologies are employed, they are robust and fit for purpose. In tests of this nature, which in most cases will have little or no impact on customers, consent is not generally sought, and regulatory authorities are not generally consulted. However, it is of course incumbent on all Service Providers to seek appropriate legal and other expert advice.

BT and Phorm (previously 121 Media) sought legal advice before both trials. This focused primarily on possible interceptions under RIPA, partly because of potential criminal sanctions, and partly because this area of law is complex and relatively unexplored. Whilst we appreciate that the ICO has no jurisdiction under RIPA, you may wish to know that prior to the first trial, Phorm had obtained an external legal view that the technology to be employed, PageSense (as described in [REDACTED] letter of 16 August 2007) did not entail an interception

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

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

Turning to the trials themselves, no personally identifiable information was processed, stored or disclosed during either trial and we estimate that only a percent or two of our customer base was involved in each of the two trials.

The nature of these trials was such that we did not anticipate that customers would experience any problems and so we did not brief our helpdesks about them. Accordingly, our helpdesk was acting in good faith in advising the very small number of customers who contacted them with concerns along the lines described by [REDACTED] that the problems they were experiencing were virus related. We did not associate [REDACTED] enquiry with the 2007 trial and since we were not able to identify individual customers who participated, we were unable to get back to him (as you know, anonymity is an integral part of the Webwise process).

As for the 2003 Regulations, I am aware that [REDACTED] suggested in her letter that traffic data was likely to be processed for marketing purposes and that she also flagged the use of cookies. I am also aware that Phorm have subsequently expressed the view that Webwise will not entail the processing of traffic data. As you know, I have discussed this issue with Phil Jones, whose view is that whilst there may be no such processing for the purposes of the placing of adverts, the proposition does nevertheless entail the processing of traffic data at an earlier stage. For the purposes of this response, we are not asserting that traffic data is not processed.

Rather, it is our view that since the trials were small scale and technical in nature, and entailed no significant detriment (we acknowledge the unanticipated problem flagged by [REDACTED] seeking consent would not have served a meaningful purpose. As indicated above, only around one or two per cent of the customer base was involved in each trial, and we had no means of identifying who they would be. Moreover, since no adverts were served under the 2007 trial, it would have been difficult in that case to frame consent/ cookie wording that would have any resonance at all for our customers.

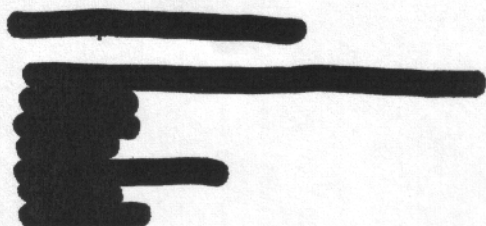
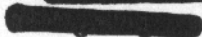
Finally, I should add that our customers' privacy is of the utmost importance to us and we remain fully committed to continuing our positive relationship with the ICO.

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

[REDACTED]
[REDACTED]
[REDACTED]

Yours sincerely

pp.



[REDACTED]
[REDACTED]
British Telecommunications Plc
81 Newgate Street
London
EC1A 7AJ

30 May 2008

Case Reference Number [REDACTED]

Dear [REDACTED]

2006 and 2007 BT Trials of prototype advertising platform

Thank you for your letter of 9 May regarding the trials of Phorm technology that BT conducted in 2006 and 2007.

We appreciate the detailed information you have provided,

You have explained that no personally identifiable information was processed, stored or disclosed during either trial.

I asked whether BT had considered the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 prior to the trials, with particular reference to Regulations 6 and 7.

You explained that in technical tests of this nature, which in most cases have little or no impact on customers, consent is generally not sought. You also stress that in these circumstances seeking consent would not have served a meaningful purpose and it would have been difficult to frame consent/ cookie wording in a way that would have had resonance for customers.

Whilst it does appear likely that a technical breach of the requirements of the Regulations occurred in the 2006 and 2007 trials, there is no evidence to suggest significant detriment to the individuals involved. We acknowledge the difficulties that you have highlighted in providing meaningful information to customers about small scale, anonymous technical trials in circumstances like

this. We do not envisage pursuing this matter further.

As you know we are focused on ensuring that any future use of Phorm technology is transparent for customers and will continue to work with BT on ensuring this is the case.

Yours sincerely

Katherine Vander
Casework and Advice Manager