

## **Guiding questions for meeting with Talk Talk about the proposed malware blocking service.**

I should point out that the ICO has no responsibility for assessment of compliance with (or enforcement of) the RIPAct so I do not intend to give advice on or come to a view on whether an interception has taken place or, if so, whether it is a legal interception.

There will be other general questions about the trial and our current stance on the matter as well as those questions which arise as we go along.

- When did the trial begin?
- Is it ongoing?
- What are the plans for rollout, if any?
- It appears to me that the planned service will be offered to those customers who sign up to it. Was this decision taken partly in light of legal requirements? If so, how do those requirements not apply to the collection and scanning of URLs that sits behind the suggested service?
- Clive Dorsman has written that "prior to deploying our network security technology, a thorough review of all relevant legislation was undertaken. Following the conclusion of that review, we are confident that our network security technology is in compliance with all such legislation." It would be useful to have a copy or at least sight of this review.
- You state in your letter that the service operates by "looking at" any URL accessed via your network. Clive refers to scanning engines being "given an anonymised list of webpage URLs" that have been visited by TTG customers. I need some more technical details on how these scanning servers get to the page the service intends them to "look at", how they are "given the list". The point here is that there are differing interpretations around as to how this service works but without the exact details we are currently unable to come to a view on whether and to what extent this trial has been undertaken in compliance with the legislation we enforce.
- In particular, though I appreciate that it is the website URL accessed by your network that these servers are interested in, rather than the fact that a specific subscriber accessed that

URL, your network only accessed the website URL because a subscriber's browser requested it. At what point in the process does the server 'doing the work' here become aware that there is a URL to "look" at? How is it made aware?

- You state that "no personal data has been collected or processed". I do think this will depend on the way in which the service works. Obviously, as the ISP, TTG already know that a particular subscriber's account is being used to access a particular site because TTG are the conduit for sending the request and serving the content. In other words, data relating to that subscriber is being processed. Is the proposed URL checking service entirely divorced from the core service of allowing customers to access web pages? If not, then personal data is being processed here, even if the only processing is the stripping away of any data relating to the subscriber prior to the URL being sent to the scanning engine.
- Not all URLs are the same. Do you truncate them? What about URLs containing session id/user authentication credentials? Personalised URLs?
- Obviously, data relating to where a user is browsing constitute traffic data but your letter does not address the issue of compliance with the PEC Regulations. Clearly, these Regulations are in part intended to particularise rules on processing of communications data even where such data are not specifically protected by data protection legislation.
- First, and I appreciate that answers to previous questions may address this, it would be useful if you could set out how the system operates so as to avoid breaching Regulations 7 and 8.
- Second, if a subscriber is accessing a dynamic page that is only served because of information stored on their terminal equipment (eg a cookie), then it seems to me that for the service to "look at" that page, then it would need to present the same information to the webserver. The important issue here is first of all whether this is how the service operates and second of all, if the service does access pages in this way, how it does so in compliance with Regulation 6 (2).

Dear [REDACTED]

You will be aware of recent media interest in Talk Talk's trial of a service aimed at blocking malware. This is a matter that has been brought to my attention by individuals concerned that the service involves the interception of communications and that the trial itself was undertaken without the knowledge of Talk Talk customers whose browsing habits have been tracked.

I should be grateful first of all if you could clarify how the monitoring takes place. While I recognise that the aim of the service is to protect users from websites containing malicious software, it is still important that it does so within the law. In a statement made to The Daily Telegraph, Talk Talk have assured customers that the monitoring process is completely legal. Please provide details of how your analysis demonstrates that the service can operate in compliance with the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations.

I am concerned that the trial was undertaken without first informing those affected that it was taking place. You will be aware that compliance with one of the underlying principles of data protection legislation relies on providing individuals with information about how and why their information will be used. You will also be aware that these principles are not suspended simply because the information is being used for the purposes of a trial. I should be grateful if you could inform me as to the reasons why the trial was conducted without first informing customers and in particular how such a trial was in compliance with the relevant legislation.

Finally, and in light of the public reaction to BT's trial of the proposed Webwise service I am disappointed to note that this particular trial was not mentioned to my officials during the latest of our liaison meetings. I appreciate that your analysis may have led to the conclusion that it was not necessary to provide us with this information but we would be in a much better position to respond to the enquiries we have received on this matter if we had the chance to review and discuss the trial with you.

  
Talk Talk Group

Via email

30 July 2010

Dear 

You will be aware of recent media interest in Talk Talk's trial of a service aimed at blocking malware. This matter has also been brought to my attention by individuals concerned that the service involves the interception of communications and that the trial itself was undertaken without the knowledge of Talk Talk customers whose browsing habits have been tracked.

I should be grateful first of all if you could clarify how the monitoring takes place. While I recognise that the aim of the service is to protect users from websites containing malicious software, it is still important that it does so within the law. In a statement made to The Daily Telegraph, Talk Talk have assured customers that the monitoring process is completely legal. Please provide details of how your analysis demonstrates that the service can operate in compliance with the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations.

I am concerned that the trial was undertaken without first informing those affected that it was taking place. You will be aware that compliance with one of the underlying principles of data protection legislation relies on providing individuals with information about how and why their information will be used. You will also be aware that these principles are not suspended simply because the information is being used for the purposes of a trial. I should be grateful if you could inform me as to the reasons why the trial was conducted without first informing customers and in particular how such a trial was in compliance with the relevant legislation.

Finally, and in light of the public reaction to BT's trial of the proposed Webwise service I am disappointed to note that this particular trial was not mentioned to my officials during the latest of our liaison meetings. I appreciate that your analysis may have led to the conclusion that it was not necessary to provide us with this information but we would be in a much better position to respond to the

enquiries we have received on this matter if we had the chance to review and discuss the trial with you.

I look forward to hearing from you.

Yours sincerely

Christopher Graham  
Information Commissioner

**Iman Elmehdawy**

---

**From:** [REDACTED] [REDACTED]@talktalkgroup.com]  
**Sent:** 12 August 2010 10:11  
**To:** David J. Evans  
**Subject:** RE: Response to your Letter on Malware Blocking  
**Attachments:** 20100805135819493.pdf

David,

Please find the letter attached.

If there are any advance questions you have for our Technical Director please let me know and I will forward on to him.

Kind Regards

---

**From:** David J. Evans [mailto:DavidJ.Evans@ico.gsi.gov.uk]  
**Sent:** 12 August 2010 09:52  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Response to your Letter on Malware Blocking

I wonder if you would be able to resend the response to me. I'm putting together a file for Monday's meeting and the attachment no longer works (currently feeling my way around a new records management system....).

Thanks very much and see you on Monday  
Dave

Dave Evans Group Manager - Business and Industry

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.  
T. 01625 545777 F. 01625 524519 [www.ico.gov.uk](http://www.ico.gov.uk)

---

**From:** [REDACTED] [mailto:[REDACTED]@talktalkgroup.com]  
**Sent:** 05 August 2010 15:33  
**To:** David J. Evans  
**Cc:** [REDACTED]  
**Subject:** RE: Response to your Letter on Malware Blocking

David,

No problem I will have [REDACTED] coordinate things from this end with [REDACTED]

If it is appropriate it would also be a good opportunity to update you on a new product offering for your information.

26/08/2010

Thanks

[REDACTED]  
[REDACTED]  
The Talk Talk Group  
11 Evesham Street, London, W11 4AR

Mob +44 (0) [REDACTED]  
Office +44 (0) [REDACTED]  
Email: [REDACTED]@talktalkgroup.com



---

**From:** David J. Evans [mailto:DavidJ.Evans@ico.gsi.gov.uk]  
**Sent:** 05 August 2010 14:46  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Response to your Letter on Malware Blocking

Dave Evans Group Manager - Business and Industry

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.  
T. 01625 545777 F. 01625 524519 [www.ico.gov.uk](http://www.ico.gov.uk)

---

**From:** David J. Evans  
**Sent:** 05 August 2010 14:46  
**To:** [REDACTED]  
**Subject:** RE: Response to your Letter on Malware Blocking

Dear [REDACTED]

Thanks very much for this – I will get back to you shortly but having spoken to Christopher Graham, I do think it would be useful to take you up on the offer of further information. I am not in the office tomorrow and need to leave early today but my colleague [REDACTED] will be able to arrange a meeting here if you could suggest some dates when you could come to Wilmslow.

Kind regards  
Dave

Dave Evans Group Manager - Business and Industry

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.  
T. 01625 545777 F. 01625 524519 [www.ico.gov.uk](http://www.ico.gov.uk)

---

**From:** [REDACTED] [mailto:[REDACTED]@talktalkgroup.com]  
**Sent:** 05 August 2010 14:22  
**To:** David J. Evans

26/08/2010

**Subject:** Response to your Letter on Malware Blocking

Dear David,

We have now completed an exercise with our technical team to re-confirm in our own minds that the network equipment we are testing to reduce the potential of malware impacting our customers is as originally thought clear of any infringement of DPA and PECR.

I therefore attach a letter to Christopher Graham and yourself that will clarify how the equipment operates and what has been happening to date.

Once Christopher and you have read the letter, I would be interested in your feedback and how you intend to use the information provided.

Please also do not hesitate to take up my offer in the letter to bring our senior technical person along to discuss further should you have any more questions.

I look forward to hearing from you.

Kind Regards

[Redacted]

[Redacted]

T:

[Redacted]

E:

@talktalkgroup.com



**TalkTalk**  
Group

W: [www.talktalk.co.uk](http://www.talktalk.co.uk)

A: 11 Evesham Street, London, W11 4AR

This communication together with any attachments transmitted with it ("this E-Mail") is intended only for the use of the addressee and may contain information which is privileged and confidential. If the reader of this E-Mail is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient you are hereby notified that any use, dissemination, forwarding, printing or copying of this E-Mail is strictly prohibited. Addressees should check this E-mail for viruses. The Company makes no representations as regards the absence of viruses in this E-Mail. If you have received this E-Mail in error please notify our IT Service Desk immediately by e-mail at [postmaster@talktalkgroup.com](mailto:postmaster@talktalkgroup.com). Please then immediately delete, erase or otherwise destroy this E-Mail and any copies of it.

Any opinions expressed in this E-Mail are those of the author and do not necessarily constitute the views of the Company. Nothing in this E-Mail shall bind the Company in any contract or obligation. For the purposes of this E-Mail "the Company" means TalkTalk Telecom Group PLC and/or any of its subsidiaries.

Please feel free to visit our website: [www.talktalkgroup.com](http://www.talktalkgroup.com)

TalkTalk Telecom Group Plc (Registered in England & Wales No. 7105891) 11

26/08/2010



Evesham Street, London W11 4AR

This communication together with any attachments transmitted with it ("this E-Mail") is intended only for the use of the addressee and may contain information which is privileged and confidential. If the reader of this E-Mail is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient you are hereby notified that any use, dissemination, forwarding, printing or copying of this E-Mail is strictly prohibited. Addressees should check this E-mail for viruses. The Company makes no representations as regards the absence of viruses in this E-Mail. If you have received this E-Mail in error please notify our IT Service Desk immediately by e-mail at [postmaster@Talktalkgroup.com](mailto:postmaster@Talktalkgroup.com). Please then immediately delete, erase or otherwise destroy this E-Mail and any copies of it.

Any opinions expressed in this E-Mail are those of the author and do not necessarily constitute the views of the Company. Nothing in this E-Mail shall bind the Company in any contract or obligation. For the purposes of this E-Mail "the Company" means TalkTalk Telecom Group PLC and/or any of its subsidiaries.

Please feel free to visit our website: [www.talktalkgroup.com](http://www.talktalkgroup.com)

TalkTalk Telecom Group Plc (Registered in Registered in England & Wales No. 7105891) 11  
Evesham Street, London W11 4AR

This communication together with any attachments transmitted with it ("this E-Mail") is intended only for the use of the addressee and may contain information which is privileged and confidential. If the reader of this E-Mail is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient you are hereby notified that any use, dissemination, forwarding, printing or copying of this E-Mail is strictly prohibited. Addressees should check this E-mail for viruses. The Company makes no representations as regards the absence of viruses in this E-Mail. If you have received this E-Mail in error please notify our IT Service Desk immediately by e-mail at [postmaster@talktalkgroup.com](mailto:postmaster@talktalkgroup.com). Please then immediately delete, erase or otherwise destroy this E-Mail and any copies of it.

Any opinions expressed in this E-Mail are those of the author and do not necessarily constitute the views of the Company. Nothing in this E-Mail shall bind the Company in any contract or obligation. For the purposes of this E-Mail "the Company" means TalkTalk Telecom Group PLC and/or any of its subsidiaries.

Please feel free to visit our website: [www.talktalkgroup.com](http://www.talktalkgroup.com)

TalkTalk Telecom Group Plc (Registered in Registered in England & Wales No. 7105891) 11  
Evesham Street, London W11 4AR



TalkTalk  
11 Evesham Street  
London  
W11 4AR

T 020 3417 1000  
F 020 3417 1001  
W [talktalk.co.uk](http://talktalk.co.uk)  
E [customerservice@talktalk.co.uk](mailto:customerservice@talktalk.co.uk)

Christopher Graham  
Information Commissioner  
Wycliffe House  
Water Lane, Wilmslow.  
SK9 5AF

Via email

5 August 2010

Dear Christopher

Thank you for your letter dated 30 July 2010 regarding the network testing of our proposed malware blocking service.

We are confident our network testing of the service falls outside the scope of the Data Protection Act 1998, the Privacy and Electronic Communications Regulations 2003 and indeed the data protection regime in the UK. It is unfortunate that the media and certain individuals have, without being fully informed, viewed the network testing of the service with suspicion. The use of words such as interception, following, tracking and monitoring with regard to individual customers has understandably caused concern and we are pleased to provide clarification of the network testing and how the full service will in future be operated.

The service operates by looking at any website URL that our network is used to access. The important point is that it is a website URL accessed by our network, not individual customers, that is recorded. We do not look at nor record who is accessing the website as we simply look at where web traffic is routed to on our network. The website URL alone is recorded and sent to the malware detection device situated in our network, which then checks the website for viruses / malware. A record is then kept as either a black or white list entry against the website URL. This process occurs daily and it is this process that has been tested during the network testing of the service. No personal data has been collected or processed, and accordingly there was no need to inform customers.

When the full service goes live, the network process described above will continue. We will then provide the service to customers to allow them to have traffic to website URLs

checked against the black and white lists. If a customer uses the service, traffic to a website URL is ignored if it's on the white list. If a website URL is on the black list, the traffic is sent to a "walled garden" screen with a warning and override option notified to the customer by way of a "pop up". The customer may then decide whether to proceed to the website URL. Naturally if a customer does not wish to use the service, website URLs accessed by the customer will not be checked against these lists.

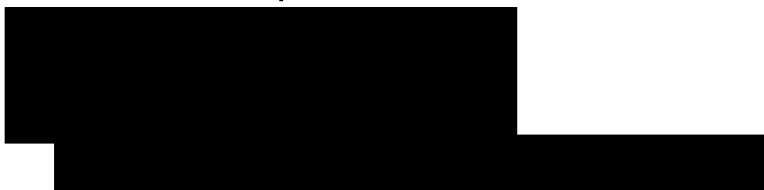
Our intention is to provide the service free of charge to customers later this year. The service will bring significant benefits reducing viruses and online threats posed to our customers.

Therefore to reconfirm we are not during the network testing intercepting, monitoring, following or tracking individual customer data, IP addresses, user names, addresses or in anyway collecting any information that could be construed as personal data. During the network test, all we have cached is the website URLs that our network has been accessing.

Our regular liaison meetings are an important forum for us to exchange ideas, views and to keep each other up to date with developments. For the reasons set out above, we did not consider it necessary to mention the network testing to you as no personal data was being collected or processed. Perhaps in hindsight as the network testing could only be implemented in the live network, and hence some sophisticated users were likely to become aware of it, we should have mentioned the testing to you. In future we will endeavour to do so in any similar scenarios.

I'd be very happy to come to your offices and provide further details of the service and would suggest bringing a senior representative from our technology team who are based in Irlam, if you feel this would be beneficial.

Yours sincerely

A large black rectangular redaction box covering the signature and name of the sender.