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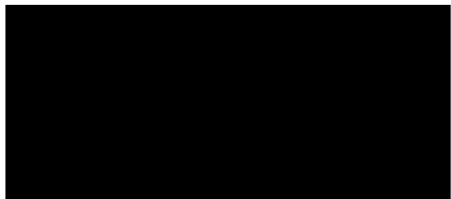
25 April 2008



**Case Reference Number** 


Dear 

**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:



I understand that  was a BT business customer. He has explained that in June 2007 he identified that his PCs were connected to domain dns.sysip.net.  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.

 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]'s 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]'s 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.