



By email and post

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

9 May 2008

Dear Ms Vander

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]

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. [REDACTED]

[REDACTED]

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]'s 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).

[REDACTED]

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.

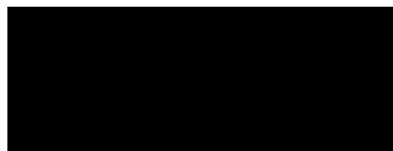
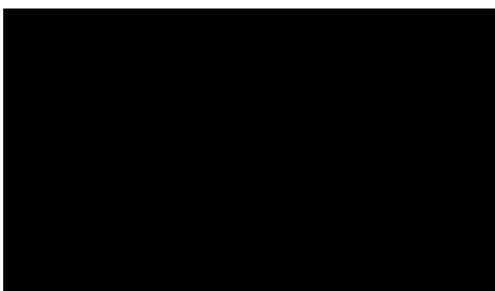
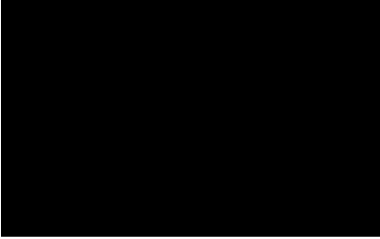
Rather, it is our view that since the trials were small scale and technical in nature, and entailed no significant detriment (we acknowledge the unanticipated problem flagged by [REDACTED]), seeking consent would not have served a meaningful purpose. As indicated above, only around one or two per cent 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]

Yours sincerely





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